

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

Richard A. RICE)
Complainant/Appellee)
)
v.)
)
Presbytery of PHILADELPHIA)
Respondent/Appellant)

REMEDIAL CASE 208-3

This is a remedial case which has come before the Commission on appeal by the Presbytery of Philadelphia from a decision by the Permanent Judicial Commission of the Synod of the Trinity (Synod PJC).

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 is in order. (D-13.1200a)

HISTORY

The record of this case is confusing.

Richard A. Rice, minister, Complainant-Appellee, served Northminster Presbyterian Church in the Presbytery of Philadelphia in the early 1970's. In the midst of divorce proceedings he resigned the pastorate, gave up his ordination as a Minister of the Word and Sacrament, and renounced the jurisdiction of the Presbyterian Church. Afterward the Presbytery re-ordained him and approved his call to the pastorate of the Bristol Presbyterian Church, also in the Presbytery of Philadelphia. In the midst of proceedings leading toward a second divorce Mr. Rice also resigned that pastorate. In the trial of this present Case, he admitted that "activity of a

sexual nature with members of the congregations or outside the congregations" had been involved with the problems he had had with both congregations. He entered a Presbytery-supervised counseling and rehabilitation program in 1985. In December, 1987, the Counselling sub-committee of the COM permitted Mr. Rice "to pursue a position in the Presbytery that would be closely supervised by a colleague familiar with (his) work." In December, 1989, the COM's executive committee stated, "he is now available to be considered as a stated supply."

Late in 1993, the Pastor of the Kensington Parish, a larger parish of four churches, recommended Mr. Rice to the Parish Council as "Pulpit Supply Pastor," a position which he began on January 1, 1994. He served at Wilkey Memorial Church. In March, 1994, just before leaving the Parish, the Pastor recommended that a stated supply be appointed for each of its churches, and said, "With Richard Rice already becoming familiar with the Parish it would be wise to appoint him as one of the pastors."

On July 28, 1994, the Presbytery's Committee on Ministry (COM) took the following action: "That Richard Rice, per notification of Session, be recognized as temporary supply at Wilkey" (emphasis added). On September 6, 1994, the Parish Council of the Kensington Parish voted to request the Presbytery to appoint Mr. Rice as Stated Supply of Beacon Presbyterian Church, another congregation of the Parish. On September 20, 1994, the COM reported its July 28, 1994, action to a stated meeting of the Presbytery. The Presbytery voted "to refer the action back to the Committee on Ministry for consideration of his services in previous parishes as a factor in considering him for varying pastoral services in the Kensington Parish."

The Moderator of the COM testified that "concerns (about Mr. Rice's suitability) were expressed by various people on the COM at different points." When asked at trial to identify those who expressed concerns, he refused to do so.

On September 22, 1994, a special subcommittee of the COM met with Mr. Rice. After this interview this special subcommittee reported to the full COM expressing concerns about Mr. Rice's suitability as temporary supply. The COM, purportedly sitting as an administrative commission on October 6, 1994, voted to rescind "the July 28, 1994 action approving Richard Rice as temporary supply at Beacon (emphasis added) concluding that relationship effective November 1, 1994." The session of Wilkey Memorial Church, the session of the Beacon church and the Parish Council did not agree to this action. Letters from the Parish Council and all the sessions of the churches in the Parish objected to the COM's action. Mr. Rice was informed of COM's action by letter from the Stated Clerk dated October 11, 1994.

Mr. Rice filed a complaint against the action of the Presbytery of Philadelphia with the Synod of the Trinity on November 7, 1994. Synod PJC conducted a trial of the case on March 22, 1995, and issued its decision on April 3, 1995.

In that decision, the Synod PJC stated:

The commission finds that the action of the Committee on Ministry, sitting as an administrative commission, removing the complainant, a Minister of Word and Sacrament and a member in good standing of the Presbytery, from the position of temporary supply within the Kensington Parish was improper in that the complainant was not given a fair hearing and a right to face his accusers as required of administrative commissions by the Book of Order, G-9.0505d.

G-9.0505d provides as follows:

d. Notwithstanding, that in any case where allegations or assertions concerning individuals are determined to be of such seriousness that their consequence, if proven true, could be the removal from office or position, discipline, or other serious result for the individual, those concerned shall be given the right to face their accusers, and to hear from them the allegations or assertions against them, and be given sufficient time to prepare and make a reasoned defense, including the cross-examination of witnesses. This paragraph shall apply whether or not formal charges under the Rules of Discipline have been filed or anticipated.

The [Synod] Commission believes that G-9.0505d is applicable. The removal was initiated by assertions as to the complainant's "suitability" made by a special subcommittee of the COM and others. The consequence of the assertions could have been, and was in fact, the removal of the complainant from the position of temporary supply, a position as to which affirmative counsel had earlier been given by the Committee on Ministry, sitting as an administrative commission, on July 28, 1994. As noted in G-9.0505d, that paragraph is applicable whether or not formal charges under the Rules of Discipline have been filed or are anticipated.

The Synod PJC pointed out that the only opportunity given to Mr. Rice to respond was the meeting with the special subcommittee on September 22, 1994. Synod PJC stated that that meeting did not meet the requirements prescribed in G.9.0505d in the following respects:

1. Mr. Rice was not informed that assertions had been made which could result in his removal as temporary supply.
2. Mr. Rice was not given an opportunity to face those who had made assertions against him, or to cross-examine witnesses.
3. Mr. Rice was not given time to prepare a reasoned defense.

The Synod PJC also found that the COM acted improperly in failing to involve the sessions of the Kensington Parish, or to implement other alternatives to removal of Mr. Rice as temporary supply, which might have preserved the peace and harmony of the affected churches. The Synod PJC opined that such consideration and involvement is required by G-11.0502i and G-11.0502j and compelled by Scripture, citing Matthew 18:15-17, as an example.

The Synod PJC's order stated:

The Commission . . . orders the action of the COM on October 6, 1994, removing Mr. Rice from the position of temporary supply within the Kensington Parish, vacated. The Sessions within the Kensington Parish may therefore secure [Mr. Rice's] services as temporary supply unless and until the Presbytery takes action consistent with this decision, or the sessions terminate the relationship.

DECISION

From the record in this Case it appears to this Commission that neither Mr. Rice, the Kensington Parish Council, the COM, the Presbytery, nor the Synod PJC properly applied the *Book of Order* provisions relevant to this case. Those provisions are:

- G-6.0201 As the Lord has set aside through calling and training certain members to perform a special ministry of the Word and Sacrament and has committed to them a variety of work to do, the Church through the presbytery calls them to the responsibility and office of ministers of the Word and Sacrament. Such ministers shall be members of presbytery, which shall designate them to such work as may be helpful to the Church in mission, in the performance of which they shall be accountable to the presbytery
- G-9.0403 A governing body may delegate particular aspects of its task to councils, boards, agencies, commissions, and committees, but always on the basis of accountability to the governing body.
- G-9.0502 A commission is empowered to consider and conclude matters referred to it by a governing body. The appointing body shall state specifically the scope of power given to a commission
- G-9.0505d d. Notwithstanding, that in any case where allegations or assertions concerning individuals are determined to be of such seriousness that their consequence, if proven true, could be the removal from office or position, discipline, or other serious result for the individual, those concerned shall be given the right to face their accusers, and to hear from them the allegations or assertions against them, and be given sufficient time to prepare and make a reasoned defense, including the cross-examination of witnesses. This paragraph shall apply whether or not formal charges under the Rules of Discipline have been filed or anticipated.
- G-11.0103 The presbytery . . . therefore has the responsibility and power: . . .
- k. to take special oversight of churches without pastors
- n. to ordain, receive, dismiss, install, remove, and discipline ministers
- p. to designate ministers to work as teachers, evangelists, administrators, chaplains, and in other forms of ministry recognized as appropriate by the presbytery

G-11.0502 The committee [on ministry] shall serve the presbytery in the following ways: . . .

b. It shall make recommendations to presbytery regarding calls for the services of its ministers . . . Every request by a minister . . . for the presbytery's approval of a task appropriate to the ministry, though not a pastoral relationship to a particular church, shall be made by the minister or candidate through the committee and shall be reported by it to the presbytery with recommendation for presbytery's action.

f. It shall counsel with sessions regarding stated supplies, interim pastors or interim associate pastors, and temporary supplies when a church is without a pastor, and it shall provide lists of pastors . . . to supply vacant pulpits. Concurrence of the presbytery through its committee on ministry is required when a session invites an interim pastor or interim associate pastor as provided for in G-14.0513b and c.

G-14.0513 When a church does not have a pastor, or while the pastor is unable to perform her or his duties, the session should obtain the services of a minister of this denomination in a temporary pastoral relation . . . Temporary pastoral relations are those of stated supply, interim pastor, interim co-pastor, interim associate pastor, temporary supply, or organizing pastor . . .

d. A temporary supply may be a minister, a candidate, a commissioned lay preacher, or an elder secured by the session to conduct services when there is no pastor or the pastor is unable to perform pastoral duties. The session shall seek the counsel of presbytery through its committee on ministry before securing a temporary supply.

Taken together these parts of the Form of Government provide that in this case:

(1) The COM was not empowered to act as an administrative commission in these circumstances, but only to "act on calls, dissolutions and related matters which in its judgment require action." This specific scope of power granted by the Presbytery does not include counselling with sessions regarding temporary supplies.

(2) If the COM is functioning as an administrative commission it is subject to the requirements of G-9.0505d.

(3) However, if the COM is functioning as a committee, it is clearly required by G-14.0513d to give counsel to sessions on the employment of temporary supplies.

(4) A session may employ a temporary supply after seeking counsel from the COM even when the counsel is negative. The session's action, not the COM's counsel, can effectively terminate a temporary supply relationship.

(5) However, the COM has responsibility and power given by G-11.0502 to make recommendations to presbytery "regarding calls for the service of its ministers" and regarding approval of requests by ministers for "approval of a task appropriate to the ministry, though not a pastoral relationship to a particular church."

(6) In light of G-6.0201, G-11.0103k, G-11.0103n, G-11.0103p, G-11.0502b, a presbytery clearly has the right and responsibility to approve or disapprove of the ministerial tasks undertaken by its members, including serving as temporary supply. This power should not be exercised arbitrarily. Thus, even though a session may extend an employment offer to a temporary supply as long as it consults with COM, a minister may not accept such an offer without presbytery's approval.

Therefore in the case before us, the COM could not have acted as an administrative commission because

- (1) the Presbytery did not grant it power to act as it did; and
- (2) the Presbytery could not have given it such power because the Presbytery itself did not possess that power (See G-14.0513d).

The COM's action was therefore ineffective.

The COM could have made recommendations to the Presbytery pursuant to G-11.0502b and the Presbytery could have acted on those recommendations. If the COM desired to terminate Mr. Rice's temporary pastoral relationship it should have framed its action as a recommendation that Presbytery not approve of his ministerial work rather than as "negative advice" to the Sessions which had employed him.

Although in acting as a committee the COM would not be required to provide the due process described in G-9.0505d, Christian courtesy and fairness indicate that it would have been proper to provide Mr. Rice an opportunity to present his side of the matter rather than rely on anonymous assertions against his "suitability". Indeed, we find reliance on anonymous assertions repugnant to fair and orderly process.

Because of the passage of time and events subsequent to the actions complained of, it is beyond our power to restore Mr. Rice to the position he once held in the Kensington Parish.

SPECIFICATIONS OF ERROR

Because of the decision above, we do not sustain any of the eleven specifications of error stated in the Presbytery's brief. Also because of the decision above, we do not affirm the reasoning given in the Synod PJC's decision, although we affirm its order.

ORDER

IT IS ORDERED that the order of the Synod PJC is affirmed:

The Commission . . . orders the action of the COM on October 6, 1994, removing Mr. Rice from the position of temporary supply within the Kensington Parish, vacated. The Sessions within the Kensington Parish may therefore secure [Mr. Rice's] services as temporary supply unless and until the Presbytery takes action consistent with this decision, or the sessions terminate the relationship.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Philadelphia 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 be sent to the Stated Clerk of the General Assembly; and

that the Stated Clerk of the Synod of the Trinity 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. (D-8.1900)

Charles Hammond, member of this Commission, was not present for the hearing and took no part in the deliberation or decision. (D-4.0400b)

Dated this 29th day of October, 1995.