

**Pby of NYC v. Sisley, Jr.,
Disciplinary Case 208-10,
12.113**

**THE PRESBYTERIAN CHURCH (U.S.A.) BY
THE PRESBYTERY OF NEW YORK CITY**

Appellee

v.

JOHN R. SISLEY JR.

Accused-Appellant

This is a disciplinary case which has come before this Commission on appeal from a decision of the Permanent Judicial Commission of the Synod of the Northeast (synod PJC).

Pursuant to the *Book of Order*, D-13.1200a, this Commission finds that the appeal has been timely filed, the Commission has jurisdiction, the Appellant has standing to file, and the appeal is in order.

a. History

12.114

In January 1969, Appellant became the pastor of the Pebble Hill Presbyterian Church in DeWitt, New York. In the spring of 1970, a married female member of the church sought counseling from Appellant. The counseling relationship soon involved hugging and kissing, and eventually evolved into intimate sexual contact. These activities and the relationship between the parties lasted for several years, terminating in approximately 1974 or 1975. Appellant left the Pebble Hill Presbyterian Church in 1976.

In October 1992, the aggrieved wrote to the Stated Clerk of the Presbytery of Cayuga-Syracuse and accused the Appellant of sexual misconduct. The allegation was forwarded to Appellant's current presbytery, the Presbytery of New York City, which appointed a Special Disciplinary Committee (SDC) in December of 1992. The SDC conducted an inquiry to determine whether charges should be filed against the Appellant. On July 19, 1993, the SDC filed a single charge of "sexual misconduct" with twelve specifications.

The trial before the Permanent Judicial Commission of the Presbytery of New York City (Presbytery PJC) began on February 12, 1994, with five commissioners present. Although D-4.0100e of the *Book of Order* prohibits a moderator of a governing body from serving on that body's permanent judicial commission, one of the five commissioners was the moderator of the Presbytery of New York City. No objection or challenge to the composition of the Presbytery PJC was raised by either party.

During the first day of the trial, over Appellant's objections, the Presbytery PJC allowed the SDC to amend the charge to allege "sexual abuse" instead of "sexual misconduct." The Presbytery PJC also allowed the SDC to amend the dates of one of the specifications.

The Presbytery PJC received additional evidence in March and July 1994. One of the five

commissioners of the Presbytery PJC, who had been present during the first day of trial, was absent from all subsequent hearings and did not take part in the disposition of the case. This reduced the number of commissioners hearing the matter from five to four, which (as noted above) included the moderator of the Presbytery.

On December 1 1994, the Presbytery PJC rendered a preliminary decision which found that Appellant had committed sexual abuse. In February 1995, the Presbytery PJC heard additional evidence concerning the degree of censure that should be imposed on Appellant. On April 28, 1995, the Presbytery PJC entered a final judgment, found the Appellant guilty of sexual abuse and ordered Appellant temporarily excluded from the exercise of ordained office for nine months.

Appellant appealed the Presbytery PJC's decision on April 28, 1995, and asserted, among other specifications of error, that the Presbytery PJC had erred in allowing the SDC to amend the charge to allege "sexual abuse." Appellant also argued that the Presbytery PJC's judgment was void because the moderator of the Presbytery had served as a commissioner on the Presbytery PJC in violation of D-4.0100e, and the Presbytery PJC had, thus, proceeded without a quorum and should have declared a mistrial. Section D-8.1300d states: "Loss of a quorum shall terminate the case in a mistrial and the case shall be tried again from the beginning."

In its decision, the Synod PJC found that the moderator of the Presbytery was not an eligible member of the commission, that the Commission did not have a quorum, that the proceedings should have terminated in a mistrial, and that the Presbytery PJC's decision was null and void. The Synod PJC remanded the case for a new trial pursuant to D-8.1300d.

The Appellant appealed the Synod PJC's decision on November 8, 1995.

b. Specifications of Error

The Presbytery PJC erred in allowing the SDC to amend the charge after the trial began and in not dismissing the charge.

This specification of error is sustained.

Section D-8.1200c permits a charge to be amended, even after the trial of a disciplinary case has begun, if the amendment does not change the substance of the charges and specifications or prejudice the accused. We reject the Appellant's assertion that the Presbytery PJC erred in allowing the SDC to amend the charge to allege "sexual abuse" instead of "sexual misconduct." The terminology of the change did not prejudice the Appellant. The substance of the charge and the specifications alleged in support were not modified. The Appellant was not unfairly surprised and was not deprived of an opportunity to defend himself.

Although the amendment to the charge did not prejudice the Appellant, we nevertheless find that the Presbytery PJC erred in failing to dismiss the charge under Section D-7.1100 of the *Book of Order*. We acknowledge that the 203rd General Assembly (1991), in proposing an amendment to Section D-7.1100 of the *Book of Order*, commented that "the intent of making this alteration in the statute of limitations of filing charges in cases of sexual misconduct is that it be retroactive" (Minutes, 1991, Part I, p. 76). Interpreted in light of the comment, we believe that the amendment to Section D-7.1100 was intended to be retroactive.

It is clear that this amendment applies retroactively to extend indefinitely the statute of limitation in all cases of sexual abuse on which the statute had not expired as of the date the amendment became effective (June 10, 1992). However, to apply the amendment in such a manner as to revive charges which were time barred by the previous statute of limitation would be inconsistent with and contrary to the fundamental and basic procedural safeguards guaranteed

under the Rules of Discipline. The Preamble to the Rules of Discipline states, in part, that all members ``are to be accorded procedural safeguards and due process, and it is the intention of these rules so to provide."

We disapprove of the actions of Appellant and all acts of sexual misconduct and misuse of position and power by an officer or member of our Church and that disapproval is not diminished by time. However, we cannot hold that the amendment to D-7.1100 has the effect of reviving previously barred charges unless it expressly so provides. The effect of this decision is that no charges of sexual abuse may be prosecuted if based on alleged offenses occurring before June 10, 1989.

Appellant has raised additional specifications of error. In light of the disposition of the foregoing specification of error, the other specifications are moot and need not be addressed. See D-13.1300d.

c. Order

12.116

It is therefore ordered that the decision of the Synod of the Northeast Permanent Judicial Commission is vacated and the charge against the Appellant dismissed.

12.117

It is further ordered that the Stated Clerk of the Synod of the Northeast 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.

12.118

It is further ordered that the Stated Clerk of the Presbytery of New York City 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.

James M. MacKellar, member of the Commission, recused himself and, accordingly, took no part in the deliberations or decision of the case. Laura S. Mendenhall and Frances Pitts, members of the Commission, were not present for the meeting of the Commission and, accordingly, took no part in the deliberations or decision of the case.

Dated this 19th day of May 1996.