

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

Ronald L. WIER)	
Complainant/Appellant)	
)	
v.)	REMEDIAL CASE 211-2
)	
SESSION, SECOND Presbyterian Church)	
of Fort Lauderdale, FL)	
Respondent/Appellee)	

PRELIMINARY FINDINGS

The General Assembly Permanent Judicial Commission finds that it has jurisdiction; that the Appellant has standing to appeal; that the appeal was properly and timely filed and that the Appellant states one or more of the grounds for appeal found in D-8.0105.

HISTORY

On January 14, 1996, the Session of Second Presbyterian Church of Fort Lauderdale, Florida ordained Ray Whetstone to the office of elder. He had formerly been ordained a deacon in 1993, and had served for two years as moderator of the Board of Deacons until election as an elder. He had been nominated by the nominating committee and elected by the congregation.

Session examined all candidates and authorized their ordination on December 19, 1995. All candidates, Whetstone included, were examined in accordance with G-

14.0205¹ of the *Book of Order* and found to possess the necessary qualifications. The Appellant, a member of Session, moved to disapprove Whetstone's examination but the motion died for lack of a second. The Appellant did not file a remedial complaint against the Session's decision to ordain Whetstone nor attempt to obtain a stay of enforcement to prevent the ordination from taking place. (D-6.0103)

Both the Appellant and the Appellee stipulated to the following facts:

that the Session ordained Ray Whetstone on the 14th day of January, 1996 as an elder knowing at the time of said ordination that he was actively engaged in a committed homosexual relationship with another male....

Following the ordination, a complaint was duly filed by the Appellant on March 11, 1996. The Permanent Judicial Commission of the Presbytery of Tropical Florida (Presbytery PJC) heard the case on April 17, 1997. Thereafter the Commission issued its decision holding that the ordination of Whetstone as elder was an irregular act and the Session was admonished to refrain from ordaining anyone who is a self-affirming, practicing homosexual person. It further held that because this was a remedial case, it was without authority to declare the ordination of Whetstone null and void and held that his ordination stood pursuant to G-14.0203.

¹While it is the practice to follow the Constitution in effect at the time an irregularity is alleged to have occurred (in the instant case 1995-1996), the lower courts relied on the 1996-1997 edition. There are no substantive differences between the two editions in the provisions relied upon. Our citations are to the 1996-97 edition.

Appellant appealed the decision to the Permanent Judicial Commission of the Synod of South Atlantic (Synod PJC), seeking nullification of the ordination and complaining about procedural matters. The Synod PJC heard and considered specifications of error in Appellant's petition, and in a decision dated November 14, 1997, declined to sustain these specifications. This appeal followed.

SPECIFICATIONS OF ERROR

Appellant raises four specifications of error:

I. The Synod PJC erred in holding that an irregular ordination may not be annulled through a remedial action.

This specification is not sustained.

Neither party appealed the decision of the court of original jurisdiction that the ordination was "irregular." That decision is not at issue in this case. Moreover, the order admonishing the Session to refrain from future irregular ordinations is, in itself, an appropriate and constitutional action. What is at issue is whether the ordination could have been annulled, set aside, voided, or vacated through a remedial action.

It is the decision of this Commission that an ordination of a church officer who has been duly elected by a congregation, and duly examined and ordained by the appropriate governing body which has not been impeded in the exercise of this power through a stay of enforcement, may not be annulled through a remedial action.

As provided in G-14.0203, "the office of elder or deacon is perpetual and no one may... be divested of it except as provided in the Rules of Discipline." The Synod PJC decision correctly held that:

The Rules of Discipline do provide for removal from office and setting aside the ordination of an individual found guilty in a disciplinary case: CHAPTER XII. CENSURE AND RESTORATION IN A DISCIPLINARY CASE. See especially D-12.0104(a) and D-12.0104(b), which describe removal from office and removal from membership, both of which include setting aside the individual's ordination. These are the only provisions in the Rules of Discipline for setting aside the ordination of an elder or deacon. *There is no similar language relative to a remedial case, there is no comparable chapter relating to a remedial case, and there is no remedial case equivalent to D-11.0800 "Enforcement", as relates to a remedial case.* (Emphasis supplied)

At stake is the preservation of the principles of due process and fundamental fairness accorded individuals by our Constitution. There is a distinction to be maintained between remedial and disciplinary actions: judicial process through disciplinary action affords individuals specific rights of due process (e.g., facing accusers and speaking in one's own defense) and requires standards of proof that are more stringent than remedial action. Pursuing what are effectively disciplinary ends through remedial action subverts the intent of our polity to safeguard these rights. As stated in D-1.0101: "In all respects, members are to be accorded procedural safeguards and due process, and it is the intention of these rules so to provide."

At various times, the General Assembly and its Permanent Judicial Commission have addressed the matter of remedying irregular ordinations. This Commission reaffirms its position expressed most recently in *Hope Presbyterian Church v. Central*

Presbyterian Church (General Assembly Remedial Case 206-3, 1994), a case substantially similar to this, in which we held with respect to ordinations which were irregular, “While this commission recognizes that the ordinations were not in accordance with constitutional law in the Presbyterian Church (U.S.A.), they must stand in accordance with the *Book of Order*, G-14.0203.” In neither *Hope v. Central* nor this case has any relevant precedent been cited to contradict this historic position.

The report of the Special Commission of 1925, adopted by the General Assembly of the Presbyterian Church (U.S.A.) in 1927, addressed directly the questions “What is a constitutional ordination? How can a proposed ordination be arrested before consummation? And after consummation is it revocable?” (GA Minutes, 1927, p.68) The report states that the appropriate means to prevent an ordination until a higher governing body may review the case is through a stay of enforcement. *If a stay is granted*, but the ordaining body proceeds nevertheless, then the ordaining body “would become liable to censure, but the pretended ordination itself, not having been performed according to specific constitutional requirement, would be invalid. In other words, there would have been no ordination at all according to the provisions of our Constitution.” (GA Minutes, 1927, p.69) *When no stay of enforcement is sought or granted*, “the complaint may be answered by the superior court, even by the General Assembly, unfavorably to the [ordaining body’s] action, but this would not invalidate the ordination....” (*Ibid.*) In such cases, the ordaining body may be disciplined for erroneous action, and the governing body of review has authority to deal with ordaining bodies that are proved to be contumacious. However, if there has been no stay, and the candidate has

been invested with the office, the issue is between the governing bodies, to which the candidate is not even a party. The report adds, "The one proper method of proceeding against the newly ordained [officer] would be to prefer charges against [the officer] personally and the substantive charges should be based upon facts coming to the knowledge of the [higher governing body] subsequent to [the] ordination" (*Ibid.*) -- that is, through disciplinary action.

In support of its position, the report states:

The most convincing fact of all is that the General Assembly, in all its history has never nullified an ordination nor revoked one by the process [of remedial action].... In all the cases brought before our highest tribunal, the Assembly invariably has stopped short of rescinding an ordination or licensure complained of, or of ordering a Presbytery to do so. This is a fact of first importance to which it is scarcely possible to attach too great significance. Long and unbroken custom observed in administrative practice and confirmed in judicial decisions where adverse interests have been represented by parties whose contentions have been denied acquires almost the force of written law. It would be a radical departure if we were to change this practice covering two centuries of time without some positive mandate from the Presbyteries." (GA Minutes, 1927, pp. 70-71)

The wisdom of the position taken in 1927 has been proved over an additional seventy-one years, and it applies in this particular case. The Appellant failed to exercise

the available remedy through a stay of enforcement of the contemplated ordination at the appropriate time.

The annulment of an irregular, consummated ordination through remedial action would inevitably erode foundational due process protections afforded individuals by our Constitution. Since disciplinary actions have profound and serious consequences on all concerned and on the church as a whole, we exhort the church not to provoke such proceedings through irregular ordinations or to initiate disciplinary actions vindictively or without prayerful consideration.

II. The Synod PJC erred when it determined that Appellant abandoned his motion for default.

This specification is not sustained.

III. The Synod PJC erred when it determined there were insufficient facts to find that the Presbytery PJC erred in determining prior to trial, without informing the parties, that it lacked the authority to nullify the subject ordination.

This specification is not sustained.

IV. The Synod PJC erred when it determined that two members of the Presbytery PJC voluntarily recused themselves.

This specification is not sustained.

The materials submitted do not permit a determination that the recusals were not voluntary, although the trial record casts some doubt as to whether the recusals were necessary. Members of permanent judicial commissions are reminded that *ex parte*

advice is not dispositive, and, in considering recusal, should be guided by D-5.0205, D-7.0401, D-11.0403a, and their obligation to consider all cases with impartiality.

ORDER

IT IS THEREFORE ORDERED that the decision of the Synod PJC be affirmed.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of South Atlantic 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.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Tropical Florida 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.

Christine Levister and Ferdinand Pharr, former members of the Commission, having resigned from 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 8th day of August, 1998.