

2001, Pby of Elizabeth v. Finn,  
**Disciplinary Case 213-9,**

Presbytery of ELIZABETH

Appellee

v.

Lawrence M. FINN, III

Appellant

This Disciplinary Case comes before the Permanent Judicial Commission of the General Assembly (Commission) on appeal by Lawrence M. Finn, III, minister (Mr. Finn), from a decision by the Permanent Judicial Commission of the Synod of the Northeast (SPJC). The Presbytery of Elizabeth is the Appellee.

This Commission finds that it has jurisdiction, that Mr. Finn has standing to appeal, that the appeal was properly and timely filed, and that the appeal is in order (D-13.0301).

**a History**

Mr. Finn was admitted to practice law in New Jersey in 1981. An investigation was undertaken against him by the New Jersey Supreme Court for failure to comply with a fee arbitration, resulting in temporary suspension on October 13, 1993. Mr. Finn was subsequently disbarred on May 5, 1998, for alleged misappropriation of client funds.

Mr. Finn completed his studies at New York Theological Seminary in May 1993 and was certified as ready to receive a call on March 28, 1995. In connection with his ordination, which occurred on April 26, 1998, Mr. Finn made certain statements regarding his law practice, asserting that he resigned from the New Jersey Bar on July 16, 1993, in order to devote himself to his new calling.

This disciplinary case commenced on or about July 8, 1998, with the receipt of a letter addressed to the Stated Clerk of the Presbytery of Elizabeth from a member of the presbytery, alleging that Mr. Finn knew as early as June of 1995 that his resignation from the New Jersey bar

was not effective because ethics matters were pending. On August 20, 1998, an Investigating Committee was appointed to investigate the accusation and made its report on February 2, 1999.

On or about January 15, 1999, a second accusation was received stating that on November 1, 1998, Mr. Finn "did intentionally touch the breast of a woman who is a member of the First Presbyterian Church of Elizabeth." On January 29, 1999, this accusation was referred to the same Investigating Committee, which reported on the second charge on March 5, 1999.

At the pre-trial conference, Mr. Finn was informed that if he could not afford counsel, the Presbytery Permanent Judicial Commission (PPJC) would appoint counsel, and was provided with a list of names of possible counsel. Mr. Finn employed counsel, with the understanding, based on a letter from the Executive Presbyter, that the Presbytery would pay \$35 an hour. There is no record of PPJC approval of this arrangement.

The trial before the PPJC commenced on July 8, 1999, and continued on July 9. Subsequently, the Prosecuting Committee, the PPJC attorney and Mr. Finn held discussions towards a settlement of the case, without success. The trial continued on October 16, 1999, and resulted in a judgment against Mr. Finn. The record of the PPJC trial submitted to this commission is almost non-existent. The first hour and twelve minutes of the trial were recorded by written notes, which were submitted to this Commission. This written record covered a portion of the preliminary motions. The remainder of the trial was tape recorded and neither party requested a written transcript. However, Mr. Finn has alleged in arguments before this Commission that the tape recording is garbled and inaudible.

On November 22, 1999, Mr. Finn appealed the decision to the SPJC, which on May 5, 2000, issued a decision sustaining some specifications of error and not sustaining others. On June 5, 2000, Mr. Finn appealed to this Commission.

Mr. Finn filed a timely Notice of Appeal. This Commission accepts the delineation of specifications in an amended brief as a valid articulation of the errors specified in the Notice of Appeal.

## **b Specifications of Error**

Mr. Finn set forth twelve specifications of error. In the following discussion, the specifications are restated for clarity and are grouped by categories.

[Note: because the specifications are grouped by categories, they do not follow a simple numerical order in the decision.]

(1) *Disclosure Issues:*

I. *The SPJC erroneously concluded that Mr. Finn had been the subject "of a disciplinary proceeding against him by the New Jersey Supreme Court for misappropriation of a client's funds [that] began on October 13, 1993 . . ."*

This specification is not sustained.

Although the proceeding that led to Mr. Finn's October 13, 1993 suspension from the bar began before that date and a later investigation for misappropriation of client funds ultimately led to his disbarment, the factual error regarding the investigation date did not affect the outcome on the charges of intentionally misleading the Presbytery for the reasons set forth under Specifications II and III.

II. *The SPJC erroneously concluded that Mr. Finn's resignation from the New Jersey Bar was not possible.*

This specification is not sustained.

The documentary record before the SPJC indicates that, under New Jersey Supreme Court rules, Mr. Finn could not resign from the Bar while an ethics matter was pending, and that Mr. Finn had been apprised of this fact in June 1995, almost three years before he represented on the Presbytery floor that he had resigned from the Bar.

III. *The SPJC erred in sustaining the ruling that Mr. Finn's withholding of certain information about his status as a member of the Bar constituted an offense.*

This specification is not sustained.

While there is not an affirmative obligation to divulge all matters of character and conduct while a candidate is under care, the *Constitution* clearly contemplates an assumption of truthfulness (Westminster Larger Catechism, C-7.255). A material omission with an intention to mislead or deceive, therefore, is a chargeable offense. SPJC, therefore, correctly sustained the ruling that Mr. Finn's consistent failure to disclose the pendency of an ethics investigation constituted an offense.

XI. *The SPJC ignored testimony at trial that a candidate is not required to divulge "negative information" in the preparation of a Personal Information Form (PIF), and that this constituted an injustice in the SPJC's decision.*

This specification is not sustained.

Mr. Finn's preparation of a PIF is irrelevant to the charge for which he was convicted. The record is sufficient to support the decision of the SPJC without the need for consideration of the PIF or the testimony in question.

(2) *Counsel Fees:*

IV. *The SPJC failed to find as error the PPJC's failure to order payment of reasonable expenses for his defense.*

This specification is not sustained.

The Rules of Discipline at D-11.0302 state, "If the accused in a disciplinary case is unable to secure counsel, the session or the permanent judicial commission shall appoint counsel for the accused. Reasonable expenses for defense shall be authorized and reimbursed by the governing body in which the case originated."

The record in this case has no finding by the PPJC that Mr. Finn was unable to secure counsel or that Mr. Finn ever requested a hearing on the appointment of counsel. Therefore, there is no basis upon which the PPJC can appoint counsel. (See *Presbyterian Church (U.S.A.) v. Hardwick* (1985, p. 112); *Presbytery of East Tennessee v. Cook* (1999, p. 834)). The foregoing notwithstanding, any agreement which the executive presbyter may have entered into without such approval may be enforceable in accordance with its terms, but there is no additional obligation to pay counsel fees.

Based on the foregoing, the presbytery is not obligated to pay any of the costs of defense of Mr. Finn beyond that to which the Presbytery has already obligated itself.

(3) *Investigating Committee:*

V. *The SPJC erroneously held that the Investigating Committee could investigate both charges although they were unrelated in time and substance, and that the Investigating Committee was prejudiced against him in conducting the investigation of the first charge.*

This specification is not sustained.

The *Book of Order* does not prohibit a single investigating committee from investigating unrelated accusations, although under certain circumstances it may be advisable to appoint separate investigating committees when the accusations are unrelated and prejudice may result. The use of a single investigating committee may result in greater efficiency and thoroughness. In this case, the record before the SPJC does not reflect that the Investigating Committee was prejudiced against the Mr. Finn because of its investigation of the two accusations.

This Commission does not believe that a violation of the *Constitution* occurred, but we identify legitimate concerns about fairness and authority. The Investigating Committee was formed and had essentially concluded its work on the first set of issues around the credibility and trustworthiness of Mr. Finn. At its meeting on January 29, 1999, it authorized its moderator to file the charges on the issues originally assigned. He did so in a document dated February 2, 1999. From this document it is clear that, by January 29, the Investigating Committee had arrived at the conviction that the Mr. Finn had lied, misled, and deceived by intent over several years. Thus, it may have formed judgments about Mr. Finn which could have influenced its work on the sexual misconduct charge.

The record before us suggests that the decision of the Presbytery to make such an assignment was influenced by an on-line bulletin board regarding polity. We remind those facing such questions that inquiries on any polity issue should properly be made to the clerk of the applicable governing body, not by random inquiry to other sources.

VI. *The SPJC should have found a violation of D-10.0202a when Mr. Finn was not given the name of the accuser as part of the statement of the alleged offense.*

This specification is not sustained.

Mr. Finn has acknowledged that there was technical compliance with D-10.0101, in that the accusation was provided to Mr. Finn. D-10.0202a does not require that the name of the accuser be given as part of the statement of the alleged offense.

(4) *Evidence:*

VII. *The SPJC failed to find as error the PPJC's acceptance of all records and documents listed in Mr. Finn's complaint.*

This specification is not sustained.

We are unaware that Mr. Finn has presented proof that any such evidence does not comply with D-14.0101. Because Mr. Finn has the burden of proof on appeal, this specification must be denied.

VIII. *The SPJC found that the improperly admitted evidence (consisting of "minutes" of the Investigating Committee which included characterizations of Mr. Finn) did not prejudice the outcome of the case.*

This specification is not sustained.

Mr. Finn has the burden of proof on appeal, but has offered no evidence to the effect that SPJC's finding was incorrect. The PPJC's decision indicates that it relied on evidence other than the improperly admitted evidence. Nonetheless, the Commission admonishes permanent judicial commissions not to allow admission of material into evidence which has a low probative value and a high possibility of an inflammatory effect.

An egregious problem is the reception into the record by the PPJC of the collection of opinion, hearsay, speculation, accusation, and pre-judgment that was described as minutes of the meetings of the Investigating Committee.

The SPJC declared, and this Commission has agreed, that there was sufficient evidence properly before the PPJC to adjudicate the case, but the practice of presenting the thoughts and claims of the Investigating Committee and those it consulted as if they were evidence is improper.

The *Constitution* charges an investigating committee to investigate and, if it believes such action warranted, to file charges with a session or permanent judicial commission. The governing body is to receive nothing but the charges and the opinion of the investigating committee that there are grounds for action.

The session or permanent judicial commission then receives the charges and, in trial, the evidence the investigating committee and the defense put before them properly. To put before either the governing body or the permanent judicial commission members opinion, reflection, rumor, or other material which does not meet the standard for proper evidence does raise a serious question of due process. The defense in such a situation may be impaired in its ability to refute what has been entered improperly, even if later it is ruled inadmissible.

IX. *The SPJC erred in holding that the PPJC's admission into evidence of the Investigating Committee minutes containing extraneous prejudicial statements did not deprive Mr. Finn of a fair trial on the sexual misconduct charge because he failed to present strong rebuttal evidence concerning that charge and the PPJC's decision was based on "wholly convincing" witness testimony.*

XII. *The SPJC erred in finding that Mr. Finn's guilt was proved beyond a reasonable doubt, thereby, misinterpreting and misapplying the burden of proof in a disciplinary proceeding.*

These Specifications are sustained in part, and not sustained in part.

The crux of both specifications is that the evidence before the PPJC did not prove Mr. Finn guilty beyond a reasonable doubt on both charges. However, as discussed above, the PPJC relied on documents that demonstrated beyond a reasonable doubt that Mr. Finn was guilty of failure to disclose the pendency of the Bar investigation. Judgments of a lower commission have the presumption of correctness and may only be disturbed by a higher court if they are plainly wrong, without supporting evidence, or manifestly unjust. (*Congregation for Reconciliation v. Pby. of Miami*, 2000) The SPJC did not err in affirming the PPJC with respect to that charge.

The situation is, however, different with respect to the sexual misconduct charge. That charge was not grounded on, and thus, determinable by a paper record. At trial, Mr. Finn, his wife, and the woman Mr. Finn allegedly touched testified. From that evidence, the PPJC determined Mr. Finn's guilt. On appeal, the question before the SPJC was whether the PPJC's factual determinations concerning that charge were entitled to the presumption of correctness.

The record pertaining to the sexual misconduct charge before the SPJC, however, prevented it from making this determination. This is because the record on appeal did not include a transcript of the witnesses' testimony regarding the incident. The record before us reflects that the testimony of those witnesses was tape recorded, and that before these witnesses testified, Mr. Finn voiced a concern about whether a verbatim recording of the trial testimony was being made so that a record would be preserved for appeal. He was assured that the proceedings would be tape recorded.

Thereafter, during the process of the appeal to the SPJC, Mr. Finn requested copies of the tape recordings. According to Mr. Finn, and not disputed or challenged by Appellee, the tape recordings were largely "inaudible when involving an exchange of conversations between two parties." In his specifications of error before the SPJC, Mr. Finn asserted that an accurate recording of the first days of the trial (when the witnesses testified regarding the incident) had

not been made as required by the *Book of Order*. The SPJC agreed, and also found that the quality of the recording was poor. The SPJC held, however, that this irregularity did not affect the outcome of the proceedings before the PPJC. Although this irregularity did not affect the trial and does not invalidate the PPJC's factual findings of guilt, it clearly compromises Mr. Finn's rights on appeal.

The *Book of Order* provides that the clerk of the permanent judicial commission is responsible for making arrangements for the "accurate verbatim recording of all testimony and oral proceedings." D-11.0601a. The clerk is not obligated to have the recording of the proceedings transcribed if an appeal is taken. It is up to each party to an appeal to decide whether it might be helpful to include a transcript of the proceedings in the record on appeal. Upon making satisfactory arrangements for payment, a party is entitled to ask the clerk to have a transcript prepared. See D-11.0601f.

Here, Mr. Finn did not request the clerk to have a transcript prepared. If an appellant wishes to argue that the lower court's factual determinations based on testimony are not entitled to the presumption of correctness, it is the appellant's responsibility to take the necessary steps to ensure that the record presented on appeal includes a transcript of the witnesses' testimony. Normally, the appellant must bear the consequences of failing to take these steps. Mr. Finn did not take those steps, but in light of the SPJC'S determination that the quality of the recording was poor, such a request may have been futile.

The SPJC was not, therefore, presented with a record on appeal which would have allowed it to decide whether the PPJC's factual determinations on the sexual misconduct charge were entitled to the presumption of correctness. And, it appears that it was deprived of this record by the PPJC's failure to comply with D-11.0601a. Therefore, specifications IX and XII are sustained with respect to the sexual misconduct charge only.

If a PPJC complies with its obligations under D-11.0601a to make arrangements for the "accurate verbatim recording of all testimony and oral proceedings," a party's failure to exercise their rights under D-11.0601f cannot be excused and will restrict and limit that party's ability to argue on appeal the insufficiency of the evidence in the record. If a PPJC fails to meet its obligations under D-11.0601a, as demonstrated in this case, its judgment may be subject to reversal. The circumstances of this case require that result as to the charge of sexual misconduct. We reverse the judgment of the PPJC on the charge of sexual misconduct without disturbing the PPJC's factual findings of guilt on that charge.

(5) *Sexual Misconduct Issue:*

X. *The SPJC failed to regard the arbitrary redesignation of the offense by PPJC during the course of its proceedings, resulting in injustice in the decision.*



This specification is not sustained.

The specification is rendered moot, in light of this Commission's findings under Specifications IX and XII, above.

*c. Order*

IT IS THEREFORE ORDERED that the order issued by the SPJC is affirmed and the revised statement of censure dated June 22, 2000, as amended by this decision, shall be effective and, therefore, the temporary exclusion, shall commence as of the date of this Order.

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.

IT IS FURTHER ORDERED THAT the Stated Clerk of the Presbytery of Elizabeth 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.

Dated this 4th day of February, 2001.

*d. Concurring Opinion in part; Dissenting Opinion in Part by: Stephen L. Taber and Catherine G. Borchert*

We dissent from that part of the decision of the Commission in sustaining in part specifications IX and XII. While it appears that the recording of the trial may have been defective, we believe that the defects in the record are not properly before the Commission and that there is nothing properly before this Commission which would warrant sustaining these specifications.

Mr. Finn has the burden of proving to this Commission that the decisions of the SPJC and the PPJC were in error. There is no evidence before the Commission that any decision of either of these bodies was in error. While the recording of the trial may be defective, Mr. Finn never requested a transcript, as provided in D-11.0601f. Accordingly, Mr. Finn is in no position to complain about the absence of the transcript.

The record before us indicates that the PPJC relied upon the testimony of the alleged victim, Mr. Finn and Mr. Finn's wife in connection with the sexual misconduct charge. Mr. Finn did not allege the existence any testimony by any of these witnesses which would indicate that the testimony of the alleged victim was in any way compromised or discredited. We believe that the PPJC could reasonably have relied on the testimony of an alleged victim in preference to that of the alleged perpetrator and his wife.

We fully concur with the remainder of the decision.