

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

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Presbyterian Church (U.S.A.), )  
by the Presbytery of Santa Fe )  
 )  
v. )  
 )  
Gilbert Edward Gearhart )  
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**HEADNOTES**

**Disciplinary Case 214-6**

1. **Announcement of Decision in Disciplinary Case:** D-13.0104, requiring that a governing body suspend further action after a finding of guilt in a disciplinary case pending the outcome of a timely-filed appeal, does not operate to suspend the reading of the trial commission's decision at the next stated or adjourned meeting of the presbytery as mandated by G-11.0701.
  
2. **Guilty Plea Waives Right to Appeal or Contest Matters Preceding the Guilty Plea:** A plea of guilty to charges of an offense in a disciplinary case makes moot any challenges arising up to the guilty plea, and such challenges cannot be raised later in an appeal.
  
3. **Procedural Requirements for Censure Hearings:** Censure hearings under D-11.0403e must be conducted according to the general requirements of D-11.0400 and G-9.0301.



with issues prior to the guilty plea (Presbyterian Church (U.S.A.) by the Presbytery of East Tennessee v. Robert Cook, 1999, 211-4) and granted a hearing before the full Commission on the two remaining specifications of error.

The Presbytery cross-appealed by requesting a constitutional interpretation of two provisions in the Rules of Discipline (D-11.0701 and D-13.0104), which were viewed as conflicting. A hearing was granted on the cross-appeal, which was also heard on April 13, 2002 in Dallas, Texas.

### **Specifications of Error**

#### **1. Specification of Error IV:**

*The SPJC failed to take into account the evidence given by appellant=s therapists in the*

**This specification of error is not sustained.**

The record illustrates that Appellant's therapists, Appellant, and the victims testified at length. Neither the SPJC nor this Commission are in a position to judge the credibility and demeanor of those who testified. The broad discretion of the PPJC to determine the appropriate degree of censure was not an abuse of discretion, in light of the evidence before the PPJC. The trier of fact is given broad discretion to weigh the evidence that was before it. Appellant does not complain that he was not permitted to produce witnesses to testify on his behalf, that his witnesses were not given adequate time to testify, or that the proceedings were conducted unfairly. Appellant=s complaint is a disagreement with the PPJC on the weight to be given to the conflicting evidence that was before the PPJC.

#### **2. Specification of Error VII:**

*That the censure of temporary exclusion of ten years for the offense of sexual abuse*

**This specification of error is not sustained.**

Given the serious nature of the charges to which the Appellant pled guilty, the on Ministry (G-11.0502) has an affirmative obligation to care for its ministers, which has not been fulfilled. We urge the Presbytery to consider the several avenues available to it in satisfying the obligations created by this provision.

The second issue concerns the conduct of a censure hearing. Like a trial, a censure hearing is a formal proceeding. The broad discretion given in the conduct of a censure hearing should have no effect on the formality of proceedings. Such a hearing must be conducted with the same safeguards and protections that a permanent judicial commission observes in conducting a trial. (D-11.0400)

time of

## **Cross Appeal**

*The SPJC erred in determining that the appeal process takes precedence over the duty of the stated clerk to read the decisions of the PPJC at the next stated or adjourned meeting of the presbytery.*

### **This Specification of Error is sustained.**

The Appellant asserts that the public reading of a decision being appealed is an unwarranted invasion of the respondent's right to privacy and, as such, a violation of due process safeguards. There exists neither a provision of the *Book of Order* nor case precedent that supports this assertion.

The reading of a permanent judicial commission's decision at the subsequent stated meeting of the presbytery with jurisdiction is a mandated responsibility of the stated clerk of that presbytery.

D-11.0701 provides:

If the presbytery is meeting when the decision is received from the clerk of the permanent judicial commission, *the stated clerk shall read the decision to the presbytery immediately* and shall enter the full decision upon the minutes of the presbytery. If the presbytery is not meeting, the stated clerk shall read the decision to the presbytery at its first stated or adjourned meeting thereafter. [Emphasis added]

On the other hand, D-13.0104 provides:

The notice of appeal, if properly and timely filed, shall suspend *further proceedings by lower governing bodies*, except that, in the issuance of temporary exclusion from exercise of ordained office or membership or removal from office or membership, the person against whom the judgment has been pronounced shall refrain from participating and voting in meetings until the appeal is finally decided. [Emphasis added]

The *proceedings*, referred to in D-13.0104, are defined as, "A sequence of events occurring at a particular place or occasion . . . . The institution or conducting of legal action."<sup>1</sup> (D-11.0701 is to be distinguished from D-13.0104 in two respects.)

First, D-11.0701 is a duty imposed on an officer rather than a governing body. Second, it is an isolated act. However, if one were to assert that it is *part of a proceeding*, it is the final action

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<sup>1</sup>*The American Heritage Dictionary of the English Language*, Third Edition. (Boston, Houghton Mifflin Company, 1992) 1444a.

taken to give effect to the permanent judicial commission's decision. It cannot be contemplated as a first step in any action prohibited by D-13.0104.

D-13.0104 is a prohibition on *future proceedings* that a lower governing body might legitimately initiate, absent the filing of the appeal.

The Appellant argues that "[t]he effect of the Appeal process should take precedence over the duty of the Stated Clerk." This argument is counter-intuitive. The Rules of Discipline are clearly and sequentially written. Further, the provision expressly directs when the stated clerk is to fulfill the provision's mandate and creates no exception to the duty to read the commission's decision at the next presbytery meeting.

### **Order**

IT IS THEREFORE ORDERED that the appeal be dismissed in its entirety, since the cross-appellant's constitutional question has been answered in the text of the decision. The Presbytery is strongly encouraged to comply with its obligation under G-11.0502a to visit regularly and consult with each member of the presbytery.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Southwest 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 Santa Fe 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.

The following members of the Commission were not present and took no part in the hearing or decision of this matter: Jesse Butler, Mildred Morales, and Daniel Saperstein.

Dated this 14<sup>th</sup> day of April, 2002.