

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

Daniel J. McKittrick,)	
Complainant/Appellant,)	HEADNOTE
)	
v.)	Remedial Case 215-5
)	
The Session of the West End Presbyterian))	
Church of Albany, New York,)	
Respondent/Appellee.)	

Admonishing a session: In a remedial case, a permanent judicial commission has the authority to issue an order admonishing a session to refrain from conducting future irregular installations.

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Daniel J. McKittrick,)	
Complainant/Appellant,)	DECISION AND ORDER
)	
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)	
The Session of the West End Presbyterian))	
Church of Albany, New York,)	
Respondent/Appellee.)	

This remedial case comes to the General Assembly Permanent Judicial Commission (GAPJC) on appeal from a decision of the Permanent Judicial Commission of the Synod of the Northeast (SPJC). This Commission finds that it has jurisdiction, that the Appellant has standing to appeal, that the appeal was properly and timely filed, and that the appeal states one or more grounds for appeal under D-8.0105.

History

This remedial case grows out of a complaint by Daniel J. McKittrick (Appellant), an elder of the West End Presbyterian Church, Albany, New York, (Church) to the installation of an elder-elect, challenging the sufficiency of the Session's examination.

On January 30, 2000, the Nominating Committee of the Church presented five candidates to the congregation and three were elected.

Following confusion and subsequent delays over the Session's examination process, particularly the framing of the questions asked of the candidates, the examination was held on April 29, 2000; the examination was sustained 5-2; and the class of three was installed to a three-year term of office on April 30, 2000.

Appellant filed a complaint with Permanent Judicial Commission of the Presbytery of Albany (PPJC) to have the installation of one of the elders set aside. He claimed that the elder had admitted during his examination that he was a gay man in a fifteen-year relationship, and that this information had previously been shared with his pastors and the nominating committee of the church.

In his original complaint, dated May 23, 2000, Appellant claimed that the Moderator of the Session failed to prevent the premature closure of the examination of Elders-elect. Appellant further alleged that the following day, the Moderator presided over the installation of the elders in violation of G-6.0106.

Subsequently on July 14, 2000, Appellant filed an amended complaint asking the PPJC to determine that the examination of an elder was irregular and to set aside the installation pending an examination that is compliant with the requirements of the Constitution.

The Moderator and Clerk of the PPJC, in their review of the jurisdictional questions, reserved judgment as to whether the complaint as amended stated a claim on which relief can be granted (D-6.0305d). A hearing was held on September 25, 2000.

The Moderator and Clerk recommended to the full PPJC that IF a trial were held AND the examination were held to be irregular, that the PPJC still did not have the power to set aside the installation. They stated that the ordination and installation of an officer cannot be separated; therefore, installation cannot be set aside by remedial action, only disciplinary action, citing several previous cases decided by this Commission: *Wier v. Second Presbyterian Church of Ft. Lauderdale, FL* – Remedial Case 211-2, 1999, 831, (*Wier* 1) and *Maxwell v. Pittsburgh Presbytery* Remedial Case No. 1, 1975, 254).

Appellant argued that these cases were not applicable, that there was a difference between ordination and installation; therefore, although the elder was previously ordained, his installation could be set aside without setting aside his ordination.

In its decision, PPJC rejected the argument of a distinction between ordination and installation, ruling on October 31, 2000, that neither an ordination nor installation can be set aside without procedural and evidentiary safeguards afforded in a disciplinary case. PPJC found no authority for separating the acts of ordination and installation; in fact, they found that ordination and installation are substantially identical, citing G-14.0202b, G-14.0205, G-14.0207, and G-14.0209.

Appellant appealed to the SPJC on February 10, 2001, arguing that the PPJC failed to distinguish between the functions of office which are perpetual versus those which are temporal; moreover, installation to serve as an active elder on session is not perpetual and said installation can be set aside in a remedial action without impairing whatsoever the perpetual function of the office.

SPJC ruled on October 13, 2001, dismissing both specifications of error and ordered that the decision of the PPJC be affirmed. In a concurring opinion, two commissioners questioned the fairness of the timing of the examination on April 29, 2000, and the installation on the next day which did not provide Appellant an opportunity to request a stay of enforcement.

Appellant appealed to GAPJC on November 13, 2001.

Specification of Error

Appellant urges only one ground for appeal:

That the SPJC committed an error in constitutional interpretation (D-8.0105) in ruling that the amended complaint “does not set forth facts upon which relief could be granted, and that the complaint must therefore be dismissed.”

This specification is sustained.

In ruling on a motion to dismiss for failure to state a claim, a permanent judicial commission must assume the truth of the facts alleged in the complaint and then determine whether those assumed facts warrant any relief. Appellant argues that the amended complaint sets forth two separate claims for relief: (1) that the process of examination was incomplete in light of the elder-elect’s disclosure of participation in a committed gay relationship, and should be declared irregular, and (2) that the installation of this elder-elect should be set aside.

We disagree with the assumption of the SPJC and the Appellee that these are not separate claims for relief. The first claim—essentially one for declaratory relief—seeks the kind of relief that a permanent judicial commission has authority to grant in a remedial case under D-7.0402b, which states in part that the commission “shall either order such action as is appropriate or direct the lower governing body to conduct further proceedings in the matter.” In fact, in our decision in *Wier I*, we concluded that an order admonishing a session to refrain from future irregular ordinations was “*in itself*, an appropriate and constitutional action.” (Emphasis supplied.) In short, we concluded that such declaratory relief was available *even though* the irregular ordination in that case could not properly be set aside through a remedial, as opposed to a disciplinary, proceeding.

Therefore, in this case, Appellant was entitled to a trial at which he could present evidence in support of his allegation that the examination process was irregular, and we are remanding this matter to the SPJC with instructions that it remand this matter immediately to the PPJC for the purposes of conducting such a trial.

We note that, according to the record, the term of this elder-elect may expire on April 30, 2003. We therefore direct the SPJC and PPJC to act with all due speed to ensure that Appellant receives a trial on the merits and a decision before that date. However, passage of time will not moot the first claim for relief.

Appellant’s second claim for relief raises the question whether an installation may be set aside in a remedial action.

When the basis for challenging an installation is purely procedural and does not involve any possible allegation of personal conduct violating constitutional standards on the part of an installee or class of installees, but rather a delinquency or irregularity on the part of the governing body, then a remedial case is in order.

However, when a challenge to an installation is predicated upon presumed guilt of an individual installee, then a disciplinary case, not a remedial is in order (*Wier I*). The reason for such is that the structure and nature of our constitution are based on presumed trust. (G-7.0103) This is both a great strength and severe weakness. We trust that governing bodies will enforce the decisions of permanent judicial commissions. We also trust that governing bodies will rightly ordain and install officers.

When a governing body violates the presumed trust upon which its power rests, and wrongly installs someone, the proper remedy is multifaceted. First, since the person in question has already been installed and has, thereby, certain due process rights, a remedial case is not in order since the prosecution of said remedial case would necessarily presume guilt on disciplinary charges not yet proven. Given that the governing body in question holds presumed trust, a mere allegation is not sufficient to warrant the truncation of any individual’s right to due process. Therefore the proper placement of a complaint against the individual allegedly wrongly installed is in the disciplinary realm rather than remedial.

Regarding the governing body, since the disciplinary and not the remedial course is in order, an administrative review by the higher governing body may be required to remedy the situation of a person allegedly or wrongly installed. The consequence of the administrative review is possible assumption of original jurisdiction of the lower governing body or instruction that said lower body correct itself.

It should be further noted that when the presumed trust granted to governing bodies is violated, the rule and benefit of law are placed in danger. The rule of law affords protection to all minorities from the capriciousness of the majority. It also gives opportunity to all through a uniform code of behavior and understanding. For the Church Universal not to live in such a way would only make us indistinguishable from the world that our Lord Jesus came to save and redeem.

It will be necessary for the PPJC to decide whether any installation can be set aside only if, after a full trial on the facts alleged to constitute an irregularity in the examination process, it concludes that the Session erroneously decided that the elder-elect was eligible for installation (an irregularity) or that the Session failed to conduct a proper examination (a delinquency), and that the second claim is not otherwise moot (*Session of Londonderry Presbyterian Church, et al. v. Presbytery of Northern New England*, Remedial Case 213-2, 2001).

We further note that when, as in this case, an installation occurs immediately following the examination process, there may be no practical opportunity for a protesting or dissenting party to seek a stay of enforcement of the decision to install. The Presbyterian custom of conducting business “decently and in order” should not be converted into a race in which the swift prevail. We undermine our system of mutual accountability when the proceedings such as ordination or installation are rushed with the consequence (whether intended or otherwise) that certain remedies become unavailable. Therefore, we encourage governing bodies to permit sufficient time between the examination and installation or ordination of a candidate so that there can be no intimation that any governing body intended to shield its action from scrutiny.

Order

IT IS THEREFORE ORDERED that the decision of the Permanent Judicial Commission of the Synod of the Northeast be reversed and that the Permanent Judicial Commission of the Synod of the Northeast immediately remand this matter to the Permanent Judicial Commission of the Presbytery of Albany with direction that it proceed forthwith to conduct a trial and render a decision on the facts alleged in Appellant’s amended complaint.

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 General Assembly.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Albany 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.

Jesse Butler, William Carlough, John Dudley, Mildred Morales, and Daniel Saperstein, members of this Commission, were not present for the hearing and took no part in the deliberation or decision.

Dated this 3rd day of March, 2003.

