

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

Presbyterian Church (U.S.A.) by)
The Presbytery of San Jose)
Complainant/Appellee,)
v.)
Steven P. Moyer,)
Respondent/Appellant.)

**DECISION AND ORDER
Disciplinary Case 216-3**

HEADNOTES

1. Cross-examination of Witnesses: Due process requires reasonable opportunity and latitude in cross-examination of witnesses.
2. Challenge to the Organization of a Permanent Judicial Commission: A permanent judicial commission must take action on each challenge of its organization.

Arrival Statement

This disciplinary case came before this Commission (GAPJC) on an appeal filed by the Respondent/Appellant Steven P. Moyer from a decision of the Permanent Judicial Commission of the Synod of the Pacific (SPJC) dated February 27, 2003. 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-13.0106.

Appearances

Lynne Reade represented the Appellant. John Kelso appeared as counsel for the Appellee.

History

This case is the second disciplinary case filed and tried against Appellant for a sexual offense, though against a different victim, and for offenses which occurred prior to offenses in the first case. While the first case was on appeal, new charges were brought against the Appellant. Although counsel for the Presbytery of San Jose (Appellee) requested admission of new evidence in the first proceeding, the denial of that petition led to the commencement of this action.

In the first case the Permanent Judicial Commission of the Presbytery of San Jose (PPJC) found the Appellant guilty and entered findings of fact stating its belief that Appellant “exhibited a consistent, and unrelenting pattern of lying.” On appeal to the SPJC, this finding on Appellant’s credibility was ordered stricken from the record. Also the censure was ultimately changed to a thirty-month temporary exclusion from the exercise of ordained office.

This appeal to the GAPJC arises from the second case. On April 24, 2002, the PPJC found the Appellant guilty on one count of sexual abuse through misuse of office or position with one woman and one charge of sexual misconduct with that same woman and one other woman. On April 25, 2002, the PPJC removed the Appellant from the office of minister of Word and Sacrament following the censure hearing.

In the trial of both cases the organization of the PPJC was the essentially the same; that is, three of the seven commissioners on the second case had tried the first case and another three had participated in pretrial proceedings in that case. This appeal claims constitutional irregularities arising from the organization of the PPJC as well as other matters.

Specifications of Error

Specification of Error Number 1: The SPJC erred in that Appellant’s challenge to the organization of the PPJC (D-11.0402b) was never properly voted upon but was treated only as a request for reference.

This specification of error is sustained.

Appellant argues that the PPJC erred by failing to rule on his challenge to the organization of the PPJC. Further the PPJC, having denied the request for reference, erroneously thought it had concluded the matter. Appellant argued before the PPJC that because many of the same people were on both commissions, their prior exposure to the allegations of the first case called into question their ability to be impartial triers of fact, especially those who had made credibility findings. In fact, the trial transcript in this second case discloses a clear antagonism by the Moderator, who sat on both cases, toward Appellant’s counsel. The Appellee responds that the challenge was not properly framed and could only be treated as a request for a referral to the SPJC. The Appellee complains that a “global challenge,” as made by Appellant, would have left the commission without a quorum, paralyzing the procedure.

Although the challenge was ambiguously and inartfully expressed, Appellant did succeed in challenging the individual organizational composition of the PPJC. Once faced with the issue, the PPJC had a duty to respond to the challenge. On the record before this Commission, the PPJC does not appear to have done so. In treating the challenge as a request for reference only, the PPJC ignored the major thrust of the Appellant’s concern.

As a further observation, Appellant would have been better served had Appellant challenged each PPJC commissioner individually by name, allowing the PPJC to deal with each challenge as it was raised. This would have avoided the problem of an alleged “global challenge.” which would have essentially forced the PPJC to disqualify itself *en masse*, leaving no quorum. Should a permanent judicial commission by disqualification no longer have a quorum, it is bound to pursue the steps under D-5.0206 for dealing with a lack of quorum.

Specification of Error Number 2: The SPJC erred in failing to conclude that the Presbytery PJC was not an impartial trier of fact.

The specification of error is sustained.

See Specification of Error Number 1.

Specification of Error Number 3: The SPJC erred in that, under the guise of “pastoral confidentiality,” a non-parishioner prosecution witness was improperly allowed to testify about statements made to her by the Appellant, but the defense was not allowed to cross-examine her about anything that she said to the Appellant.

This specification of error is sustained.

Appellee cannot use the alleged privilege as a sword to elicit testimony from the witness concerning statements made by Appellant during the allegedly privileged conversations and then invoke that privilege as a shield to prevent cross-examination on statements made by that witness in those same conversations.

Specification of Error Number 4: The SPJC erred in not allowing defense counsel to cross-examine a main prosecution witness on her credibility.

The specification of error is sustained.

The limitation of Appellant’s effort to cross-examine the Appellee’s principal witness violated Appellant’s right to due process. The record indicates that a witness produced by Appellee offered testimony essential for the prosecution. Appellant was prevented from follow-up cross-examination based on lack of relevance. This Commission finds that given the importance attached to this witness, due process required that reasonable opportunity and latitude for cross-examination be afforded.

In a trial in a disciplinary case, “The prosecuting committee shall present its evidence in support of the charges, subject to objection and cross-examination by the accused.” (D-11.0402g) The Preamble to the Rules of Discipline assert, “In all respects, members are to be accorded procedural safeguards and due process, and it is the intention of these rules so to provide.” (D-1.0101)

Procedural safeguards and due process must be protected in order to maintain the integrity of church discipline. Inattention to due process undermines the “church’s exercise of authority given by Christ” in the disciplinary process. (D-1.0101) Regardless of how egregious the offense might be, an accused should never be deprived of due process, lest in a zealous pursuit of the law the rule of law be undermined.

Specification of Error Number 5: The SPJC erred in failing to reverse the PPJC in their refusal to allow mitigating evidence.

This specification is not sustained.

A permanent judicial commission is not required by D-11.0403e to hear any mitigating evidence.

Specification of Error Number 6: The SPJC erred in failing to reverse for undue severity of censure.

This Commission’s decision to remand this case renders consideration of this specification premature.

Order

IT IS THEREFORE ORDERED that the decision of the Permanent Judicial Commission of the Synod of the Pacific be reversed and that the case be remanded for a new trial.

IT IS FURTHER ORDERED that the Synod of the Pacific Permanent Judicial Commission ensure that the trial is conducted by commissioners who did not participate in the either of the trials against this Appellant. This direction is specific to this case and should not be construed as a precedent holding that a person may never serve in consecutive judicial proceedings involving the same parties.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Pacific 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 San Jose 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.

John Dudley, Leon E. Fanniel, and June Lorenzo were not present and took no part in the deliberations or decision on this case.

Dated this 12th day of October, 2003

Certificate

We certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) in Disciplinary Case 216-3, Presbyterian Church (USA) by the Presbytery of San Jose v. Steven P. Moyer, made and announced at Louisville, KY on October 13, 2003.

Jane E. Fahey, Moderator
Permanent Judicial Commission of the General Assembly

Ernest E. Cutting, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I did transmit a certified copy of the foregoing to the following persons by UPS Next Day Air, directing C. Laurie Griffith to deposit it in the mail at Louisville, KY on October 13, 2003.

Lynne Reade, Counsel for the Appellant
John E. Kelso, Counsel for the Appellee
John Lococo, Stated Clerk, Presbytery of San Jose
Joey Mills, Stated Clerk, Synod of the Pacific
General Assembly Permanent Judicial Commission

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it in person to C. Laurie Griffith, on October 13, 2003.

Ernest E. Cutting, Clerk
Permanent Judicial Commission of the General Assembly

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly Permanent Judicial Commission at Louisville, KY on October 13, 2003 in Disciplinary Case 216-3, Presbyterian Church (U.S.A.) by the Presbytery of San Jose v. Steven P. Moyer and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Louisville, KY on October 13, 2003.

C. Laurie Griffith
Manager of Judicial Process and Social Witness