

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

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Glenda Hope, Lynne Reade, Jerrold Jayne, )  
David M. Lew, Cynthia Joe, David Soohoo, )  
Mildred E. Kilgore, Katherine Reyes, Jeanne )  
Choy Tate, Evangeline L. Hermanson, Robert )  
F. Hermanson, Paul Watermulder, )  
Complainants/Appellants, )  
)  
v. )  
)  
Presbytery of San Francisco, )  
Respondent/Appellee. )  
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**DECISION AND ORDER**

**Remedial Case 216-6**

**Headnotes**

1. Presbytery’s Discretion Regarding Candidates: In fulfilling its duties under G-4.0306a(2) and G-14.0304 to “give guidance” to a candidate and to evaluate a candidate’s readiness for ministry, a presbytery enjoys wide discretion. “The responsibility of making a judgment about the wisdom of a person remaining on the roll of candidates belongs to the candidate’s presbytery.” *Bedford-Central Presbyterian Church v. Presbytery of New York City, Minutes*, 1987, p. 119.
2. Presbytery’s Use of Confidential Documents as Basis for Candidate’s Removal from Rolls: A presbytery is not obligated to provide to a candidate either the text or the source of any confidential documents on which it relies in deciding to remove a candidate from its rolls. But the nature of the covenant relationship requires a presbytery to provide to a candidate in a timely manner the substance of the concerns raised in such documents when those concerns form the basis for a recommendation of removal. The information provided to the candidate should be sufficiently detailed to permit the candidate a fair opportunity to respond.
3. Failure to State a Claim Upon Which Relief Can be Granted: In considering whether a complaint states a claim upon which relief can be granted, a permanent judicial commission shall base its determination solely upon the assumed truth of the facts alleged in the complaint. *Daniel J. McKittrick v. The Session of West End Presbyterian Church of Albany, New York, Minutes*, 2003, p. 273.
4. No Summary Dismissal Where Facts Disputed: Where there are factual allegations that, if proved true, would entitle the complainant to some relief, “a dismissal is only appropriate after thorough examination of the record and opportunity for all parties to be heard.” *Minutes*, 1990, p. 139.

5. Duty to Transmit Record When Case Accepted by Higher Governing Body: The record in a case shall be transmitted to the clerk of the higher governing body only after notice that the case has been accepted. (D-6.0307c) A case is deemed “accepted” only after an affirmative ruling on the preliminary questions in D-6.0305. It may be necessary, however, to transmit minutes and papers related to a case before it is accepted for the purpose of deciding a challenge to a ruling on preliminary questions in a hearing under D-6.0306a.

### **Arrival Statement**

This remedial case comes to the General Assembly Permanent Judicial Commission (GAPJC) on appeal from a decision by the Permanent Judicial Commission of the Synod of the Pacific (SPJC) dismissing a complaint on jurisdictional grounds—namely, for failure to state a claim upon which relief can be granted. (D-6.0305d) This Commission finds that it has jurisdiction, that the Appellants have 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.

### **Appearances**

Lynne Reade represented the Appellants. Stephen Taber and Rick Ballard appeared as counsel for the Appellee.

### **History**

In this case the Appellants, various minister members and elder commissioners to a meeting of the Presbytery of San Francisco (Presbytery), challenged the regularity of the Presbytery’s decision under G-14.0312 to remove a candidate for the ministry of the Word and Sacrament from its roll of candidates. The Presbytery’s Committee on Preparation for Ministry (CPM) had recommended to Presbytery that the candidate in question be removed from its rolls, and the Presbytery voted to do so at its meeting on November 12, 2002.

Because the SPJC ultimately dismissed the complaint for failure to state a claim upon which relief can be granted, the parties’ pleadings are summarized below.

#### **The Parties’ Pleadings**

The complaint attacked the regularity of the Presbytery’s action on four grounds.

##### *(1) Reliance on Confidential Documents in Violation of G-1.0304*

In making its recommendation that the candidate be removed from the covenant relationship, the Presbytery’s CPM relied on a number of documents it had obtained or generated during the course of its evaluation of the candidate, but that it refused to share with the candidate on the grounds of alleged confidentiality. According to Appellants, the CPM shared with the candidate the concerns raised by these documents only in a generic way, and without giving the candidate either access to the documents or information specific enough to permit the candidate

to rebut any of the specific matters from which the CPM's concerns may have arisen. The complaint alleged that the Presbytery's reliance on these secret documents in determining the candidate's fitness for ministry violates the directive of G-1.0304 that "truth is in order to goodness."

The Presbytery's answer defended the propriety of its reliance on confidential documents by noting the absence of any *Book of Order* provision requiring such disclosure and the allegedly common practice of presbyteries in granting confidentiality to people providing information about candidates. Presbytery further asserted that the candidate had waived any right to complain about the CPM's use of confidential information by signing the standard form for candidates and inquirers, which contains the following language:

I hereby release the Church and its committees, agents, and representatives from any claims, causes, or actions, which may arise from said inquiries and answers received to such inquiries and any use made of such answers. Further, I grant permission for the Presbytery Committee to contact any person listed by me as a reference or any other person not so listed to discuss my suitability and readiness.

*(2) Ignoring Alleged Conflict of Interest*

The complaint also charged that the CPM process was fundamentally unfair in that Presbytery ignored an alleged bias and conflict of interest on the part of one CPM member. That member had reportedly made a false allegation about the candidate, but had nevertheless participated in the CPM's recommendation to terminate the Presbytery's covenant relationship with the candidate.

The Presbytery denied that any CPM member had made any false statements, had a conflicting interest, or had acted with bias.

*(3) Failure to Give Guidance in Violation of G-14.0306a(2)*

Appellants charged that Presbytery violated its duty under G-14.0306a(2) to support a candidate "with an understanding and sympathetic interest" and to "give guidance in regard to . . . practical training and plans for education." According to Appellants, although the CPM appointed a task force to investigate concerns about the candidate's ability to resolve conflicts, the CPM gave the candidate "no guidance" regarding training or education that might help the candidate address these concerns.

The Presbytery's answer disputed the factual allegation of "no guidance," contending the candidate received "ample guidance."

*(4) Abuse of Discretion*

Finally, Appellants alleged that Presbytery abused its discretion and violated fundamental principles of fairness in reaching its decision that the candidate was not fit for the ministry of Word and Sacrament. The complaint enumerated several items as evidence of the CPM's

alleged abuse: handling its investigation of the candidate as if it were a disciplinary matter, but without any of the due process protections, discouraging the candidate's request for the presence of an elder as counsel during a meeting with the CPM task force, refusing the candidate's request for specifics about allegations made against the candidate, voting to remove the candidate from the covenant relationship before giving the candidate an opportunity to speak with the full committee as required by G-14.0312, refusing a request for further conversation once the candidate received the more detailed information contained in the CPM's report to Presbytery recommending termination of the covenant relationship, and mischaracterizing reports and failing to note positive references about the candidate when discussing alleged negative "patterns."

The complaint requested a stay of enforcement of the Presbytery's decision to terminate the covenant relationship, submission to the SPJC under seal of the entire CPM file on the candidate, and reinstatement of the candidate to the covenant relationship.

The Presbytery denied each of Appellants' allegations and any abuse of discretion or violation of fundamental fairness. Presbytery opposed the requested submission of the entire CPM file to the SPJC and urged dismissal of the complaint for failure to state a claim on three grounds. First, while conceding that the SPJC could review the Presbytery's action for irregularity in the process, it argued that, under *Donna Bevensee v. Presbytery of New Brunswick, Minutes*, 1998, p. 134, the SPJC could not substitute its judgment for that of the Presbytery. Second, it contended that the SPJC had no power to compel the Presbytery to violate its agreements with third parties who had supplied information about the candidate only under a guarantee of confidentiality. Third, it contended that it had followed the procedures mandated by G-14.0312 and the Presbytery's own "Steps and Procedures" policy for removing a candidate "for sufficient reasons."

### **The SPJC's Rulings**

The SPJC granted a stay of enforcement of the Presbytery's decision to remove the candidate from its rolls. The Acting Moderator and Clerk of the SPJC issued a preliminary ruling on March 11, 2003, dismissing the complaint for failure to state a claim upon which relief could be granted. They concluded, among other things, that the "secrecy complained of is a reasonable part of the process of inquiry."

Prior to a May 2, 2003 hearing before the full SPJC on the Appellants' challenge to this ruling, the parties entered into a Stipulation of Facts setting forth the facts in the complaint assumed to be true for purposes of determining whether it stated a claim. *Daniel J. McKittrick v. Session of West End Presbyterian Church of Albany, New York, Minutes*, 2003, p. 273. At the hearing the SPJC also permitted testimony from witnesses "on the limited question of how the provisions of the Book of Order should be applied generally in matters involving the process of preparation of candidates for ministry."

Following the hearing, the full SPJC dismissed the complaint. It ruled that the stipulated facts, "[t]aken separately or in total," failed to show "that the process afforded to [the candidate] was unfair in any material regard" and that the Presbytery had acted within its discretion and not committed any irregularity.

Regarding the CPM's reliance on confidential documents, the SPJC held that the *Book of Order* does not require their disclosure to a candidate and that the Presbytery has discretion to seek and rely on confidential communications. In support of this conclusion, the SPJC cited the following evidence introduced at the hearing: a consent form signed by the candidate and the testimony of two witnesses regarding the practice of presbyteries in seeking and using confidential communications.

The SPJC further rejected Appellants' challenge to the participation in decision making of a CPM member with an alleged conflict of interest or bias. The SPJC held that the "CPM would certainly have had the discretion to believe or not believe" an allegedly false assertion about the candidate and "would also have the burden of decision as to what weight should be granted to it, if true." Therefore, the SPJC concluded that "[b]elief or nonbelief in underlying factual determinations is the role and charge of the CPM members rather than a basis for recusal."

With respect to the CPM's alleged failure to provide any guidance to the candidate concerning conflict resolution, the SPJC held that the CPM has discretion to provide the guidance they deem appropriate. Citing a list of documents in the candidate's CPM file, which list was entered as evidence during the May 2 hearing, the SPJC ruled that it "is clear on the face of this record that the many reports, minutes, and consultations provided the candidate would have been quite instructive as to the candidate's status" and that the "CPM exercised appropriate discretion in not providing further guidance."

Finally, the SPJC ruled that the process issues cited in the complaint as evidence of the CPM's alleged abuse of discretion and violation of fundamental fairness "lack cogency and materiality."

Although initially limiting its stay of enforcement until the filing of an appeal to this Commission, the SPJC ultimately granted a stay that permits the candidate to remain on the rolls of Presbytery pending this Commission's resolution of the appeal.

### **Specifications of Error**

*Specification of Error Number 1: The SPJC erred in concluding that confidential communications may be kept secret from the candidate.*

This specification is sustained in part and not sustained in part. "The responsibility of making a judgment about the wisdom of a person remaining on the roll of candidates belongs to the candidate's presbytery." *Bedford-Central Presbyterian Church v. Presbytery of New York City, Minutes*, 1987, p. 119. The Presbytery, through its CPM, performs on behalf of the whole church the critical function of evaluating a candidate's readiness to enter the ministry of the Word and Sacrament. That process of "guidance and evaluation" (G-14.0304) is a discernment process that necessarily requires the exercise of judgment and discretion on the part of a CPM. The *Book of Order* does not specifically address the use of confidential documents as a means by

which a CPM may equip itself to make that judgment, nor does it mandate the disclosure of any such documents to a candidate.

But the *Book of Order* does describe the relationship between the candidate and a presbytery as a “covenant relationship.” (G-14.0301) Inherent in a covenant relationship is the expectation of candor and trust between the CPM and the candidate as they work together to discern the candidate’s readiness for ministry. Therefore, the nature of the covenant relationship requires that the CPM communicate in a timely fashion to the candidate the *substance* of any concerns raised in confidential documents that are of such gravity that these concerns may prompt a CPM to recommend the candidate’s removal from the rolls. That communication should be sufficiently detailed to permit the candidate to respond to or rebut any concerns or to undertake any corrective action or further education or training. The CPM is under no obligation to share either the text or the source of the document itself with the candidate. As this Commission said in *Bedford-Central*, a case challenging a presbytery’s removal of a candidate from its rolls, “[t]he Presbyterian Church, throughout its history, in this country, has sought to guarantee that its decision-making processes operate openly, deliberately, fairly, and inclusively, in ways most likely to secure ‘the approbation of an impartial public, and the countenance and blessing of the great Head of the Church universal.’ (G-1.0308.)” Therefore, while a CPM has discretion to use and rely on confidential documents in order to perform its gatekeeping function, “secrecy” is inimical to the candor and trust inherent in a covenant relationship.

Because the SPJC dismissed this case on a jurisdictional ground without the benefit of a trial, the SPJC did not have before it a full evidentiary record that would permit it to determine whether the CPM shared with the candidate the substance of concerns raised by the confidential documents in a way that permitted the candidate a fair opportunity to respond. That assessment of the CPM’s process will be a matter for the SPJC to determine following any trial that occurs on remand of this case to the SPJC.

*Specification of Error Number 2: The SPJC erred in concluding that the CPM has the discretion to provide guidance as they deem appropriate.*

This specification is not sustained. The duty of a CPM under G-14.0306a(2) to “give guidance” to the candidate necessarily entails the exercise of judgment about the needs of a particular candidate and the kind of further education or training that would be appropriate in helping the candidate prepare to serve the church in ordained ministry. In both the *Bedford-Central* and *Bevensee* cases, this Commission acknowledged the wide latitude the *Book of Order* grants a CPM in discharging its responsibilities. Although the CPM’s discretion is not absolute or unfettered, the SPJC correctly concluded that a CPM’s fulfillment of its duties under G-14.0306a(2) involves discretion. Whether the CPM abused its discretion in this case is a matter for trial.

*Specification of Error Number 3: The SPJC erred by attempting to decide the case on the merits, rather than limiting itself to determining whether a claim had been made.*

This specification is sustained. The SPJC committed two procedural errors. First, in determining whether a complaint states a claim upon which relief may be granted, a judicial

commission must assume the truth of all facts alleged in the complaint and decide whether those facts would entitle the complainant to any relief under the *Book of Order*. (*McKittrick*) In this case the complaint alleged, among other things, that the Presbytery violated its duty under G-14.0306a(2) “to give guidance in regard to . . . practical training and plans for education” in that the CPM provided “no guidance” (emphasis supplied) about training or education in conflict resolution. Because the SPJC was required to assume the truth of that factual allegation, the complaint on its face stated a claim that the Presbytery had committed an irregularity in the process of handling this candidacy. If the allegation of “no guidance” were ultimately supported with proof at trial, the Appellants would be entitled to a remedy that, at the very least, requires the CPM to correct this procedural default and to resume its work with the candidate.

Second, the SPJC clearly went beyond the face of the complaint to endorse the Presbytery’s factual assertion that it had provided “ample guidance.” Citing a hearing exhibit that listed the documents in the candidate’s CPM file, the SPJC held that it “is clear on the face of *this record* that the many reports, minutes, and consultations provided the candidate would have been quite instructive as to the candidate’s status.” (Emphasis supplied.) In relying on matters outside the complaint, the SPJC not only violated the standard set forth in *McKittrick* but also improperly determined the merits of disputed factual allegations without the benefit of a trial. As this Commission reminded stated clerks and moderators of permanent judicial commissions in 1990, the *Book of Order* contains no constitutional provision permitting “summary dismissal of any case” where there are disputed factual allegations that, if proved, would entitle the complainant to some relief. Under those circumstances, “a dismissal is only appropriate after thorough examination of the record and opportunity for all parties to be heard.” (*Minutes*, 1990, p. 139)

*Specification of Error Number 4: The SPJC erred by basing its decision on the limited testimony and exhibits permitted at the hearing and the stipulation of facts, and not on the complaint itself.*

This specification is sustained. For the reasons set forth under Specification of Error #3, the SPJC erred in its dismissal of this case.

*Specification of Error Number 5: The SPJC erred in failing to require Presbytery to forward all minutes and papers related to the case.*

This specification is not sustained. D-6.0307c requires the clerk of a lower governing body to forward “all minutes and papers pertaining to the case” upon notification by the stated clerk of the higher governing body that the case has been “accepted.” The SPJC dismissed this case on jurisdictional grounds and hence did not “accept” the case. Therefore, the duty of the Stated Clerk of the Presbytery to forward all records and papers related to the case had not been triggered.

Because, however, this Commission concludes that the SPJC erred in dismissing this matter and that the case should have been “accepted” and a trial on the merits conducted, the Stated Clerk of the Presbytery must now comply with D-6.0307c by forwarding all minutes and papers related to this case to the Synod Clerk. Said minutes and papers shall include the

complete CPM file on the candidate, including those items deemed “confidential” by the CPM. The Presbytery may submit these “confidential” items to the Synod Clerk under seal, to be reviewed only by members of the SPJC for purposes of permitting the SPJC as the trier of facts to ascertain whether, as a matter of fair process, the CPM shared with the candidate the substance of any concerns raised in these confidential communications in a way that permitted the candidate to respond.

Although not at issue in this case, the Commission notes some tension between the language of “acceptance” in D-6.0307c and the requirement under D-6.0306a that a party challenging an adverse finding on a preliminary question be given an “opportunity to present evidence and argument on the finding in question.” In certain circumstances—for example, where the preliminary question of standing may depend upon disputed facts that might be resolved by reference to the minutes and papers related to a case—it may be necessary for the clerk of the lower governing body to transmit the record even at that stage.

*Specification of Error Number 6: The SPJC erred in limiting the duration of its stay of enforcement until the filing of an appeal or expiration of the time allowed for appeal.*

This specification is not sustained. This specification of error became moot when the SPJC amended its decision to continue the stay of enforcement until the expiration of the time for filing an appeal or the resolution of any appeal.

*Specification of Error Number 7: The Presbytery committed constitutional violations, specifically a disregard of its duty under G-14.0306a(2), in removing the candidate from the covenant relationship.*

This specification is not sustained. This alleged error raises a merits issue that can be determined only after any trial that occurs on remand of this case to the SPJC.

*Specification of Error Number 8: The Presbytery mischaracterized documents in the candidate’s CPM file in reaching its decision to recommend removal of the candidate from the rolls.*

This specification is not sustained. This alleged error raises a merits issue that can be determined only after any trial that occurs on remand of this case to the SPJC.

*Specification of Error Number 9: The Presbytery abused its discretion by the manner in which it handled the process of evaluating the candidate throughout its covenant relationship with the candidate.*

This specification is not sustained. This alleged error raises a merits issue that can be determined only after any trial that occurs on remand of this case to the SPJC.

## **Order**



IT IS THEREFORE ORDERED that the decision of the Permanent Judicial Commission of the Synod of the Pacific is reversed, except that the stay of enforcement remains in effect pending the final resolution of this matter, and this case is remanded to that Permanent Judicial Commission with directions to conduct a trial on the merits or to pursue any other pretrial mediation options that it deems appropriate.

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 Francisco 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.

Leon Fanniel was not present and took no part in the deliberations or decision of the Commission on this case.

Dated this 12<sup>th</sup> 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 Remedial Case 216-6, Glenda Hope *et al.* v. Presbytery of San Francisco, made and announced at Louisville, KY on October 13, 2003.

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

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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  
Stephen L. Taber, Counsel for the Appellee  
Kathy Runyeon, Stated Clerk, Presbytery of San Francisco  
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.

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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 Remedial Case 216-6, Glenda Hope *et al.* v. Presbytery of San Francisco 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.

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C. Laurie Griffith  
Manager of Judicial Process and Social Witness