

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

Jack C. Volkers,)	
)	DECISION AND ORDER
Complainant/Appellant,)	
)	
v.)	Remedial Case 217-10
)	
Presbytery of Wabash Valley,)	
)	
Respondent/Appellee.)	

Headnotes

1. **Seeking review of disciplinary cases through remedial means:** The procedures used or the outcome in a disciplinary case are not to be laterally attacked through a remedial case.
2. **Seeking disciplinary ends through remedial means:** The remedial process may not be used to achieve disciplinary ends. Ronald L. Wier v. Session, Second Presbyterian Church of Fort Lauderdale, FL, *Minutes*, 1999, p.831.
3. **Safeguarding fair process:** All involved in disciplinary processes must adhere rigorously to the requirements of the Book of Order to ensure that all participants are accorded procedural safeguards and due process.
4. **Addressing procedural irregularities by an investigating committee:** The proper avenue for addressing procedural irregularities by an investigating committee in a disciplinary proceeding is a petition for review (D-10.0204).
5. **Preservation of a case record:** Requests for relief which would require the altering of the record of a case or the expunging of the record are contrary to the Book of Order requirements found in D-11.0600, and are therefore beyond the authority of a permanent judicial commission.

Arrival Statement

This remedial case comes to the General Assembly Permanent Judicial Commission (GAPJC) on appeal filed by Complainant/Appellant, Jack C. Volkers (Appellant), from a decision by the Permanent Judicial Commission of the Synod of Lincoln Trails (SPJC) dated January 29, 2005. This Commission finds that it has jurisdiction, that 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.

Appearances

Jack C. Volkers represented himself. Judy L. Woods appeared as counsel for the Presbytery of Wabash Valley.

History

During July/August, 2002, an investigating committee was formed by the Presbytery of Wabash Valley (PWV) in response to several letters alleging misconduct on the part of Appellant. Disciplinary charges were filed against Appellant on September 27, 2002, and amended on October 7, 2002. Following pre-trial conferences on October 22, 2002 and December 1, 2002, PWV proposed a settlement on December 12, 2002, which was not accepted by Appellant. On January 18, 2003 the charges were dismissed in order to file amended charges.

On August 11, 2003, amended charges were filed against Appellant. There followed a pre-trial hearing on September 27, 2003, and a pre-trial conference on November 1, 2003. Additional charges were filed against Appellant on December 24, 2003.

Appellant filed a remedial complaint with the Synod of Lincoln Trails (SPJC) against PWV on December 27, 2003, alleging that the first disciplinary case was wrongfully initiated.

The Permanent Judicial Commission of PWV (PPJC) held a trial on the second disciplinary case on September 10-11, 2004. Appellant was found not guilty on all charges.

The above-mentioned December 27, 2003 complaint filed with SPJC was a remedial case questioning the legality of the process used by PWV in the first disciplinary case. The preliminary order from the Executive Committee of the SPJC dismissed the case. Appellant challenged that ruling, but did not submit a brief. Appellant submitted a supplemental complaint dated November 24, 2004. The SPJC reconsidered the challenge, and after a hearing on January 29, 2005, issued an order dismissing the case, relying on the precedent that a remedial complaint cannot be used to attack a disciplinary case, and holding that the requests for relief were beyond the authority of a permanent judicial commission.

The present appeal, filed by Appellant on March 9, 2005, challenging the decision of the SPJC on January 29, 2005, was heard by the GAPJC on August 5, 2005.

Specifications of Error

Specification of Error Number 1: The Permanent Judicial Commission of the Synod of Lincoln Trails erred in determining that this case be dismissed “on the basis that the conduct or outcome of a disciplinary case cannot be attacked in a remedial case.”

This specification of error is not sustained.

This Commission is not persuaded that the circumstances of this case are sufficient to distinguish it from the principle established by *Robert Cook v. Presbytery of East Tennessee*, *Minutes*, 1999, p.838; *San Mateo Presbyterian Church v. Presbytery of San Francisco*, *Minutes*, 1997, p.141; *Robert Cook v. Presbytery of East Tennessee*, *Minutes*, 1997, p.142; and *Douglas J. Essinger-Hileman v. Presbytery of Redstone*, *Minutes*, 2001, 12.1106. These cases held that the procedures used or the outcome in a disciplinary case are not to be laterally attacked through a remedial case.

The Commission has before it a limited record from the disciplinary case against Appellant. That limited record, however, reveals significant irregularities in the process. The cumulative effect of the numerous procedural errors impacted the integrity of the process.

Appellant was found not guilty in the disciplinary case. Notwithstanding his acquittal, Appellant has already initiated several disciplinary cases against persons involved in prosecuting and deciding the disciplinary case.

The remedial case before this Commission should also be dismissed because it improperly seeks to achieve disciplinary ends through a remedial complaint. In *Ronald L. Wier v. Session, Second Presbyterian Church of Fort Lauderdale, FL*, *Minutes*, 1999, p.831, this Commission explained why this undermines the safeguards established in the Book of Order.

At stake is the preservation of the principles of due process and fundamental fairness accorded individuals by our Constitution. There is a distinction to be maintained between remedial and disciplinary actions: judicial process through disciplinary action affords individuals specific rights of due process ... and requires standards of proof that are more stringent than remedial action. Pursuing what are effectively disciplinary ends through remedial action subverts the intent of our polity to safeguard these rights.

This Commission urges that all involved in disciplinary processes adhere rigorously to the requirements of the Book of Order so that “all participants are accorded procedural safeguards and due process.” D-1.0101.

Specification of Error Number 2: The Permanent Judicial Commission of the Synod of Lincoln Trails erred in determining that the proper remedy for addressing procedural irregularities in a disciplinary proceeding is through a petition for review under D-10.0204.

This specification of error is not sustained.

D-10.0204 provides the proper remedy for addressing procedural irregularities by an investigating committee in a disciplinary proceeding.

There is confusion in the record regarding Appellant’s letter of February 12, 2003, which Appellant names as a “petition for review” in his Notice of Appeal, though said letter does not ask for review; moreover, the letter was not treated as such by the PPJC.

The PPJC considered Appellant's second "motion to dismiss" as a "petition for review," but dismissed it as untimely since the investigation had concluded.

Specification of Error Number 3: The Permanent Judicial Commission of the Synod of Lincoln Trails erred in determining that Appellant's claims for relief (including sealing the record of the case, disposing of the record, altering the record, making public apology, and announcing the determination of the disciplinary case) were beyond the authority of a permanent judicial commission.

This specification of error is sustained in part and not sustained in part.

Requests for relief which would require the altering of the record of a case or the expunging of the record are contrary to the Book of Order requirements found in D-11.0600, and are therefore beyond the authority of a permanent judicial commission.

The request for presbytery announcements of the outcome of the disciplinary case is within the authority of a permanent judicial commission. However, this has already been accomplished by virtue of compliance with D-11.0701, which requires that such announcement be made at the "next presbytery meeting," and that the stated clerk "enter the full decision upon the minutes of the presbytery."

Specification of Error Number 4: The Permanent Judicial Commission of the Synod of Lincoln Trails erred in determining that there is no remedy by use of a remedial proceeding to correct a wrongful initiation of a disciplinary proceeding by a presbytery.

This specification of error is not sustained.

See discussion under specification of error #1.

Specification of Error Number 5: The Permanent Judicial Commission of the Synod of Lincoln Trails erred in refusing to conduct an evidentiary trial on the allegations of Appellant in his remedial complaint against said Presbytery.

This specification of error is not sustained.

See discussion under specification of error #1.

Decision and Order

IT IS THEREFORE ORDERED that the decision of the Permanent Judicial Commission of the Synod of Lincoln Trails is affirmed.

IT IS FURTHER ORDERED that in light of the many serious errors in the conduct of the investigation and hearings in the disciplinary cases against Appellant, the Presbytery of Wabash Valley Permanent Judicial Commission and the General Presbyter and Stated Clerk of the Presbytery of Wabash Valley shall receive training and guidance no later than February 28,

2006, in the proper conduct of investigations, trials and hearings by the Office of the General Assembly along with available former members of the General Assembly Permanent Judicial Commission; a report of this training shall be made to this Commission as well as to the Synod.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of Lincoln Trails 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 Wabash Valley 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.

Absences and Non-participants

Jesse Butler was not present and took no part in this case.

Dated this 7th day of August, 2005.