

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

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| Session of Colonial Presbyterian Church, )<br>Kansas City, Missouri, )<br>Complainant/Appellant, )<br>) | <b>DECISION AND ORDER</b>   |
| v. )  | <b>Remedial Case 218-01</b> |
| )   | <b>(formerly 217-15)</b>    |
| Session of Grace Covenant Presbyterian )<br>Church, Overland Park, Kansas, )<br>Respondent/Appellee. )  |                             |
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**Headnotes**

1. **Sufficiency of Session Examination of Elders-elect:** Session examination must meet the *Wier* standard “if the governing body has reasonable cause for inquiry *based on its knowledge of the life and character of a candidate*, it has a positive obligation to make due inquiry and uphold all of the standards of ordination and installation” (emphasis added). However, the governing body must have “direct and specific knowledge that such a person is in violation of the ordination and installation standards of the *Constitution*” (*Wier v. Session, Second Presbyterian Church of Ft. Lauderdale, FL, Minutes, 2002, p.339*).
  
2. **Pleading Standards 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” (*McKittrick v. Session, West End Presbyterian Church of Albany, New York, Minutes, 2003, pp.272-274*).
  
3. **Alternative Resolution:** Attention of all ... is directed to the Biblical obligation to resolve disputes without strife and to avoid judicial process when possible (D-1.0103P). The Presbytery and parties are urged and encouraged to explore alternative dispute resolution as provided by G-9.0106 and particularly the possibility of special administrative review as provided by G-9.0409a.

**Arrival Statement**

This remedial case comes to the General Assembly Permanent Judicial Commission (GAPJC) on appeal by the Session of Colonial Presbyterian Church (Colonial) from a decision of the Permanent Judicial Commission of the Synod of Mid-America (SPJC) to dismiss a Remedial Complaint against the Session of Grace Covenant Presbyterian Church (GCPC) for failure to state a claim upon which relief may be granted.

**Jurisdictional Statement**

This Commission finds that it has jurisdiction, the Appellant has standing to appeal, the appeal was properly and timely filed, and the appeal states one or more grounds for appeal under D-8.0105.

### **Appearances**

The Session of Colonial Presbyterian Church, Complainant/Appellant, was represented by Ryan G. Terril. The Session of Grace Covenant Presbyterian Church, Respondent/Appellee, was represented by Michael D. Hockley and Ky A. Weekley.

### **History**

In April, 2004, the Session of GCPC initiated a series of congregational discussions and circulated mailings to prepare the congregation for the election of officers in May. These included a session letter to the congregation, a summary chart of *Book of Order* provisions, a series of questions and answers, an election “roadmap,” and a voting process chart, among others. These discussions and mailings centered on the constitutional, biblical, and confessional issues of ordination standards, specifically the standard laid out in G-6.0106b, requiring “fidelity within the covenant of marriage between a man and a woman, or chastity in singleness. Persons refusing to repent of any self-acknowledged practice which the confessions call sin shall not be ordained and/or installed as deacons, elders, or ministers of the Word and Sacrament.” The pastor preached at least two sermons on the topic, one on the day of the election. On May 16, 2004, the congregation elected the slate of officers.

At the June, 2004, meeting of Presbytery of Heartland Committee on Ministry (COM), members expressed concern about the election of a woman “thought to be a lesbian” to the session of GCPC. An appointed task force of COM met with representatives of GCPC on June 24, 2004. The GCPC group consisted of its three pastors, eight elders, and the four elders-elect. A discussion of constitutional issues ensued. The COM report concluded that “the congregation was very well prepared for this particular election of officers.” The record of this case does not show that the COM took further action.

Subsequently, the four elders-elect were ordained and/or installed on July 18, 2004.

On September 13, 2004, the session of Colonial made a written request to the session of GCPC to cure an alleged delinquency in the ordination and installation of one or more elders. The session of GCPC did not act to correct the alleged delinquency at its next stated meeting on September 20, 2004. Colonial asked the GCPC session for the questions used to examine elders-elect. In a subsequent (undated) written communication, an elder from GCPC described their examination process as follows:

- a. The discussion by them of their personal faith journey. Two questions were then asked of all elder designates:
  - i. How do you understand your role as an elder, if ordained; and

- ii. Having completed your training (in the doctrine, government and discipline of the church and in the duties of Elder), what concerns do you have about fulfilling your role as an Elder?
- b. The Elder candidates are then asked the constitutional questions in G-14.0207.

On October 13, 2004, Colonial filed a complaint with Presbytery of Heartland Permanent Judicial Commission (PPJC) against the GCPC session claiming an irregularity and a delinquency in the examination, ordination, and installation of its elders-elect.

In December, 2004, the PPJC moderator and clerk examined the papers and found that the Complaint did not state a claim upon which relief can be granted (D-6.0305d). On January 31, 2005, Colonial challenged the findings of the moderator and clerk. The PPJC on March 10, 2005, upheld the findings of the moderator and clerk and dismissed the Complaint for failure to state a claim upon which relief can be granted.

On April 20, 2005, Colonial appealed the decision of the PPJC to the SPJC. The SPJC held a hearing on October 28, 2005, and issued a decision upholding the decision of the PPJC, thus dismissing the case for failure to state a claim under D-6.0305d.

Colonial filed the Notice of Appeal to this Commission on December 15, 2005. This Commission accepted the appeal and heard the arguments of the parties on July 28, 2006.

### **Specifications of Error**

*Specification of Error No. 1: The Permanent Judicial Commission of the Synod of Mid-America committed an injustice in the process when it ruled that Appellant's Complaint failed to state a claim upon which relief can be granted.*

This specification of error is sustained.

The Complaint alleges that the session failed to conduct sufficient inquiry consistent with the standard set forth in *Wier v. Session, Second Presbyterian Church of Ft. Lauderdale, FL, Minutes*, 2002, p.339 and specifically failed to inquire of each of the elders-elect as to whether he or she was living in compliance with G-6.0106b. Colonial's allegations are based on materials distributed to the congregation during a period of education and discernment leading up to the congregation's election of four persons to serve as elders as well as a report from the COM. The materials cited in the Complaint include a letter from the session to the congregation dated March 30, 2004<sup>1</sup>.

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<sup>1</sup> This letter from the session of GCPC to the congregation states, in part, "we anticipate that some in the congregation may be particularly interested in discussing [ordination standards] since electing at least one of the nominees might be out of order according to one paragraph in the Constitution G-6.0106b."

The *Wier* case states that “if the governing body has reasonable cause for inquiry *based on its knowledge of the life and character of a candidate*, it has a positive obligation to make due inquiry and uphold all of the standards of ordination and installation.” The *Wier* case further states, however, that the governing body must have “direct and specific *knowledge* that such a person is in violation of the ordination and installation standards of the Constitution. A hunch, gossip or stereotype is not a sufficient ground to compel a governing body to make *further inquiry*” (emphases added).

The crux of the Complaint is whether GCPC session had reasonable cause for further inquiry of the elders-elect as to their willingness to uphold all the standards for ordination and installation.

Since this appeal is limited to the preliminary jurisdictional question of whether or not the Complaint states a claim upon which relief can be granted (D-8.0301), the decision must address only that narrow issue. The pleading standard for failure to state a claim is clearly articulated in *McKittrick v. Session, West End Presbyterian Church of Albany, New York, Minutes, 2003*, pp.272-274:

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.

At this stage of the proceeding, this Commission is compelled to accept as true the allegation in the Complaint that the GCPC session may have had cause for further inquiry based on its professed knowledge of the life and character of the elders-elect.

It therefore cannot be said with certainty that this Complaint fails to state a claim upon which relief can be granted. If the facts alleged in this Complaint are assumed true *only* for the purposes of deciding the preliminary jurisdictional questions, the case must be accepted for trial by the PPJC. With the presentation of evidence and witnesses, the PPJC will have the opportunity to deliver a decision on the Complaint in full.

Accordingly, the decision of the SPJC is reversed on the narrow question of whether the GCPC session conducted a sufficient examination of one or more elders-elect prior to ordination and installation.

*Specification of Error No. 2: The SPJC erred in not applying proper standards to its review of the evidence and authorities in reaching its decision.*

This specification of error is not sustained.

Because this Commission is deciding preliminary jurisdictional questions, and not reviewing evidence presented at a trial, this specification of error is not sustained.

## Decision

There are sufficient allegations presented in this Complaint, that, if assumed true, would state a claim upon which relief could be granted. The assumption of truth of alleged facts is only for the purpose of determining this preliminary jurisdictional question. The ultimate determination of whether or not those facts alleged are indeed true is properly left to the trier of fact. If it is determined that the session's examination of elders-elect was not sufficient, then the presbytery has the authority to require that future examinations be conducted in compliance with the *Constitution*.

## Order

IT IS THEREFORE ORDERED that the decision of the Permanent Judicial Commission of the Synod of Mid-America be reversed.

IT IS FURTHER ORDERED that the decision of the Permanent Judicial Commission of the Presbytery of Heartland be reversed, that all the preliminary jurisdictional questions be answered in the affirmative, and that this Complaint proceed to trial on the facts unless an alternative resolution is achieved.

The attention of all parties is directed to D-1.0103. In the spirit of this provision, this Commission strongly urges and encourages the Presbytery Permanent Judicial Commission to explore alternatives to resolve this case between the parties, including allowing time for the Presbytery to consider using a special administrative review of the elder-elect examination process of Grace Covenant Presbyterian Church.

If a special administrative review is conducted by the Presbytery, it will determine, in accordance with G-9.0409a, whether the examination:

- (a) was regular and in accordance with the *Constitution*;
- (b) was prudent and equitable; and
- (c) was faithful to the mission of the whole church.

If the dispute between the parties is not resolved by means of a special administrative review or other alternative dispute resolution processes in accordance with G-9.0601, the Presbytery Permanent Judicial Commission shall proceed with the trial on the merits of the case. Whether the case goes to trial or an alternative method of resolution is used, the parties are enjoined to be mindful of the standards set in the *Wier* case.

The trial, should it be necessary, shall commence by June 1, 2007.

IT IS FURTHER ORDERED that the Clerk of Session of Colonial Presbyterian Church, Kansas City, Missouri, report this decision to the Session at its first meeting after receipt, that the Session 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 Clerk of Session of Grace Covenant Presbyterian Church, Overland Park, Kansas, report this decision to the Session at its first meeting after receipt, that the Session 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 Heartland 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.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of Mid-America 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.

### **Absences and Non-participants**

Mildred Morales was not present and took no part in this case. Judy Woods took no part in the decision in this case.

### **Certificate**

We certify that the foregoing is a true 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 218-01 (formerly 217-15) Session of Colonial Presbyterian Church, Kansas City, Missouri, v. Session of Grace Covenant Presbyterian Church, Overland Park, Kansas, made and announced at Louisville, Kentucky, on October 16, 2006.

Dated this 16<sup>th</sup> day of October, 2006.