

History

Presbytery held a stated meeting on October 10-12, 2005. In the call to that meeting, the Moderator stated:

An inquirer who is ready to be accepted as a candidate for ministry wishes to inform you that she is a lesbian and lives in a committed relationship. Although our Book of Order (G-14.0305a-i) requires those coming to be ordained to observe fidelity in marriage and chasteness in singleness, the Book of Order does not place this standard on those in the candidacy process.

At the stated meeting, Presbytery voted by a ballot vote to move the person from inquirer to candidacy on a vote of 169 in favor, 114 opposed, and none abstaining. Stewart, an honorably retired minister member, was present at the stated meeting of Presbytery on October 10-12, 2005. He initiated a remedial complaint against Presbytery dated January 9, 2006, in which the relief sought was “that the Synod of the Sun order Presbytery to remove [the candidate] from the roll of candidates for minister of the Word and Sacrament.”

The trial in the remedial case against Presbytery was heard by the SPJC on September 8, 2006. The SPJC, on a tie vote, failed to sustain the Complaint. This decision was appealed to the GAPJC by Notice of Appeal dated October 11, 2006.

GAPJC issued a Preliminary Order on October 20, 2006, accepting the case for hearing.

In the interim, the candidate by a letter dated November 17, 2006, to the Committee on Preparation for Ministry requested that her name be withdrawn from the roll of candidates. On March 3, 2007, Presbytery voted to remove her from the roll of candidates for minister of the Word and Sacrament. Following this action, Presbytery moved to dismiss the case on the grounds of mootness on March 6, 2007.

The Executive Committee of this Commission issued an Order for Dismissal dated March 23, 2007, on the grounds that the relief requested in Stewart’s Complaint dated January 9, 2006, has been granted and that there is no longer a case upon which relief can be granted as required by D-6.0301(3)e.

Stewart requested a hearing before the full Commission on March 28, 2007, on the Order for Dismissal. The Executive Committee of the GAPJC issued an Order for Hearing on April 4, 2007, limited to the issue of mootness. The hearing on the issue of mootness was heard by this Commission on May 4, 2007.

Decision

The issue before this Commission is whether Presbytery’s removal of the candidate’s name from the roll of candidates for minister of the Word and Sacrament rendered this matter moot. In other words, should this action continue even though the relief requested by Stewart has been achieved?

Stewart, in his complaint and during the trial, made numerous challenges to the action of Presbytery at its stated meeting on September 8, 2006. However, Stewart consistently maintained that, as relief, the candidate should be removed from the roll of candidates for minister of Word and Sacrament. This was achieved at the March 3, 2007, presbytery meeting. Upon a review of the record in this case, this Commission finds that no further relief can be granted. When the relief requested has been achieved, the case is moot.

In response to the Order for Dismissal, Stewart argues that the case was directed to the Presbytery, not to the person who was advanced to candidate status. The complaint was not made against the Presbytery in the abstract, but in the context of the Presbytery's specific action to enroll a candidate. Because the enrollment has been withdrawn by the Presbytery, the subject of the action no longer exists. There is no point in proceeding in a case in which the findings and conclusions cannot affect the final outcome.

Stewart also argues that Presbytery committed a variety of errors in the timing, location, and conduct of its October, 2005, meeting. Again, these allegations are only relevant in the context of the specific action challenged.

Stewart further argues that there is a "need for guidance" because the statements to the Presbytery and the SPJC cast doubt on the *Book of Order* requirements for candidates. This Commission is not an advisory body for the Presbyterian Church (U.S.A.) regarding matters relating to the Constitution, but is charged with deciding cases or controversies. However, this Commission notes with concern that the record shows that both the Presbytery and the SPJC appear to have relied on the *Book of Order: Annotated Edition* entry for the *Sheldon, et al. v. Presbytery of West Jersey, Minutes*, 2000, p. 589, case, rather than the language of the case itself. Such reliance was misplaced. The erroneous explanation given under G-14.0305d of the *Book of Order: Annotated Edition* to the *Sheldon* case provides "An inquirer may be received as a candidate even if not currently eligible for ordination because of G-6.0106b, but could not be ordained if found at the time for certification of readiness for ordination not to be in compliance."

The annotation is a misstatement of the cited case. *Sheldon* concerned an inquirer being considered for candidacy who was a celibate gay man, and therefore eligible to become a candidate. Furthermore, the GAPJC specifically found in *Sheldon* that "...the evidence supports a determination that the candidate has not violated the standard of G-6.0106b." *Sheldon* concludes by stating, "However, if the [Presbytery] should determine the Candidate to be ineligible for candidacy at some point in the future, the [Presbytery] should remove the Candidate's name from the roll of candidates, as provided by G-14.0312."

The correspondence in the record from the Stated Clerk of the General Assembly also cites *Wier v. Second Presbyterian Church, Ft. Lauderdale, Minutes*, 2002, p. 339, which is more relevant to this case: "If the governing body has reasonable cause for inquiry based on its knowledge of the life and character of the candidate, it has the positive obligation...to uphold all the standards for ordination and installation."

The task of this Commission is to consider and decide individual cases which come before it on the basis of the Constitution and the law of the Presbyterian Church (U.S.A.). In addition to the Constitution, the law includes authoritative interpretations of the General

Assembly and decisions of the GAPJC. Annotations found in the *Book of Order: Annotated Edition* can be helpful to the Church as it seeks to be faithful in its life and service; however, they are not authoritative. The assistance that annotations offer to the church is as a guide to the deliverances of the bodies that have been accorded authority in our Constitution. To the extent that the misstatement in the *Book of Order: Annotated Edition* was relied upon by the Committee on Preparation of Ministry, the Presbytery, and the SPJC, it misled each body.

Order

IT IS THEREFORE ORDERED that the Order of Dismissal dated March 23, 2007, of the Executive Committee of this Commission is affirmed.

IT IS FURTHER ORDERED that the Stated Clerk of Mission Presbytery 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 the Sun 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.

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 218-04, George R. Stewart v. Mission Presbytery, made and announced at Kansas City, Missouri, on May 6, 2007.

Dated this 7th day of May, 2007.

Dissent

We respectfully dissent from the majority's decision that this matter is moot. Stewart's complaint alleged an irregularity in the action of Presbytery when it enrolled a self-acknowledged, non-repentant, practicing lesbian as a candidate for minister of the Word and Sacrament. Stewart complained about the process by which the Presbytery approved this candidacy as well as the action of the approval. Whether the process of the Presbytery leading to its approval of the candidate was irregular is not a question that is rendered moot by the candidate's request to withdraw her name. The case was fully briefed before the Presbytery voted to remove the candidate. At the very least, Stewart should be given an opportunity to amend his complaint and to clarify the relief requested in light of the changed circumstances regarding the status of the candidate. Whether the Presbytery's procedure and action were

irregular are questions that can and should be heard and determined by the Synod PJC against the holding of *Sheldon et al. v. Presbytery of West Jersey*, Minutes, 2000, p.589, and *Book of Order* section G-6.0106b. That determination is improperly truncated by the majority's determination that the case is moot in its entirety. Accordingly, we would hear the appeal from the SPJC on the merits of an amended complaint (if Stewart elects to file one) or on the original complaint. In all other respects, we concur in the decision of the majority.

Catherine Borchert

Ronald Bullis

Fred Denson

Judy Woods