

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

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Frederick Nash Westbrook, III )  
Appellant (Complainant), )  
v. )  
Presbytery of New Hope, )  
\_\_\_\_\_  
Appellee (Respondent). )

**DECISION AND ORDER**

Remedial Case 219-14

**Headnotes**

1. **Discretionary authority of presbyteries to validate ministries.** Every presbytery has discretionary authority to determine who shall be its ministers and to approve the call of every minister laboring within its bounds. Every presbytery has discretionary authority to validate ministries in accordance with G-11.0403.
2. **Accountability in validated ministries.** While there is no particular form of employment or entity that is required for validation, a validated ministry must be in a setting where the minister is accountable to some entity other than him- or herself.
3. **All calls to ministry must be validated.** A call to ministry in the Presbyterian church must be confirmed by the calling community and validated by the presbytery. A call to ministry is never self-validating.
4. **Decisions of a permanent judicial commission.** Permanent judicial commissions must complete the full written decision and order while in session, and a final decision and order must signed be by the moderator and clerk. D-7.0402c. Permanent judicial commissions should not distribute preliminary notes or drafts of decisions, and all final decisions should be dated.

**Arrival Statement and Appearances**

This remedial case comes to the General Assembly Permanent Judicial Commission (GAPJC) on appeal by Reverend Frederick N. Westbrook, III, from a decision of the Permanent Judicial Commission of the Synod of the Mid-Atlantic (SPJC) dated September 2, 2009. 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-8.0105. The Appellant was present in person and was represented by Archibald Wallace, III. Ann H. Barnhill appeared for the Appellee, the Presbytery of New Hope (Presbytery).

**Jurisdictional Statement**

This Commission finds that it has jurisdiction, Westbrook has standing to appeal, the appeal was timely and properly filed, and the Notice of Appeal states one or more of the grounds for appeal in D-8.0105.

## History

Westbrook, a member at large of the Presbytery, sought to have his work as an independent media consultant validated as a ministry of the Presbytery. Westbrook provided independent media consulting services to educational institutions and other clients through his solely-owned, for-profit corporation. Westbrook's application for a validated ministry was considered by the Presbytery's Committee on Ministry on February 14, 2007, and initially approved, but reversed a few days later. The Committee on Ministry did not have authority to validate Westbrook's ministry and did not make a recommendation to Presbytery as required by G-11.0502b. The Presbytery took no action on the validation of Westbrook's ministry. On May 24, 2007, Westbrook filed his initial complaint regarding the failure of Presbytery to validate his ministry. His contentions were heard by the Synod of the Mid-Atlantic on July 8, 2008. The SPJC found that the Presbytery had erred by not voting on the Committee on Ministry recommendation, remanded the matter to the Presbytery and directed it to comply with the Book of Order to give Westbrook an opportunity to have his application for a validated ministry heard by the Presbytery.

The Presbytery's Committee on Ministry reconsidered Westbrook's application for a validated ministry. The Committee on Ministry recommended that the Presbytery deny Westbrook's request for a validated ministry. The Presbytery considered Westbrook's request at its regularly scheduled October 18, 2008, meeting. Westbrook had an opportunity to speak at the Presbytery meeting, and after a debate, the Presbytery voted by written ballot 50 to 26 to disapprove Westbrook's application for a validated ministry. Westbrook filed a second remedial complaint with the SPJC on or about December 19, 2008. The SPJC heard the second complaint on September 2 or 3, 2009.<sup>1</sup> The SPJC provided handwritten notes of its decision to the parties following the hearing, and issued a typed, decision dated September 3, 2009, on September 22, 2009. Westbrook's notice of appeal was filed on October 15, 2009. This Commission heard oral arguments on February 26, 2010.

### Specifications of Error

**Specification of Error No. 1:** *The Synod failed to find irregularities in the actions of the Presbytery of New Hope leading up to and in the denial of the Application of Rev. Westbrook for Validated Ministry Status at its October 18, 2008 meeting of the Presbytery.*

This Specification of Error Is Not Sustained for the reasons discussed in the Decision below.

**Specification of Error No. 2:** *The Synod failed to find irregularities in the actions of the Presbytery of New Hope in denying Rev. Westbrook fundamental fairness in the handling of Rev. Westbrook's re-evaluation for Validated Ministry Status in the events leading up to and in the meeting of Presbytery on October 18, 2008.*

This Specification of Error Is Not Sustained for the reasons discussed in the Decision below.

**Specification of Error No. 3:** *The Synod failed to correct the irregularity in the actions of New Hope Presbytery in incorrectly determining the meaning and application of the term "accountability" in G-11.0403.*

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<sup>1</sup> The record in this case contained undated documents, and the SPJC Decision recites conflicting dates. Counsel for the parties sent undated correspondence. Thus, this Commission is left with a confusing record of the procedural history of this case.

This Specification of Error Is Not Sustained for the reasons discussed in the Decision below.

**Specification of Error No. 4:** *The Synod committed its own irregularity in failing to comply with D-7.0402c in the manner in which it attempted to render its decision.*

This Specification of Error Is Not Sustained. D-7.0402c states “A written decision shall be prepared while in session, and shall become the final decision when a copy of the written decision is signed by the moderator and clerk of the permanent judicial commission. A copy of the written decision shall immediately be delivered to the parties to the case by personal service or by certified delivery.” In this case, the SPJC provided the parties with a copy of handwritten notes of the SPJC’s decision immediately following the hearing of the case. These notes were not dated and were not signed by the moderator and clerk of SPJC and could not have been a final decision under D-7.0402c. A signed, written decision was issued by the SPJC about three weeks after the hearing. Issuing undated, unsigned notes of a decision does not comply with the requirements of D-7.0402c. D-7.0402c requires permanent judicial commissions to complete the full written decision and order while in session, and requires a final decision and order to be signed by the moderator and clerk. D-7.0402 also requires permanent judicial commission to deliberate in private. Permanent judicial commissions should not distribute preliminary notes or drafts of decisions, and all final decisions should be dated. The parties, however, agreed that any procedural error by the SPJC in rendering its decision did not have any effect on the substantive issues in this case and any error is not sustained because it is moot.

### **Decision**

Citing *Williamson v. Presbytery of Western North Carolina*, Minutes, p. 475 (2006) (GAPJC Remedial Case 217-7) (2005), Westbrook argued that the Presbytery did not develop additional written criteria for validation of ministries within its bounds and thus violated G-11.0403.<sup>2</sup> The record of this case clearly negates such a contention. Both the February 2006 and May 2006 versions of the Presbytery’s Validated Ministry Handbook (Handbook) contain sufficient written criteria for determining whether to validate the ministry of a member at large. In addition to the expository language in the Handbook describing the Presbytery’s criteria for validating ministries, the Handbook contains additional references to the mission of the Presbytery and its expectations that any validated ministry will support that mission, Scriptural citations, and references to other portions of the *Book of Order* and the *Book of Confessions*.

Further, the Handbook includes two application forms: one to be completed by the minister and one to be completed by the entity which the minister would serve.<sup>3</sup> These forms contain specific and detailed questions that give any applicant clear notice of the information the Committee on Ministry would seek and consider in determining whether to recommend to the Presbytery that it validate the ministry. Several of the questions on these forms are preceded by further explanatory material describing the criteria for validating ministries, such as the following material in the “Application Form For Agencies/Organizations”:

Ministers in the Presbyterian Church are required to be accountable to the

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<sup>2</sup> In this case, we need not decide whether a presbytery that relies only on the criteria set forth in G-11.0403 is acting within constitutional bounds.

<sup>3</sup> Two annual reporting forms are also included in the presbytery’s Handbook and both must be completed annually by the minister and the entity which the minister serves once a ministry has been validated.

Presbytery and to the organization or agency which employs<sup>[4]</sup> the minister. This accountability of ministers to your organization and to the Presbytery is for both work and personal conduct and character.

6.) What formal supervisory structures does your organization use to encourage and monitor the professional development and oversight of this ministry?

7.) What tools or methods will be used to conduct works and character evaluations in your organization?

8.) After receiving written authorization from the minister, will you share performance reviews, disciplinary actions and formal complaints with the Presbytery? How will you do this?

This Commission concludes that the Presbytery's Handbook, with its explanations, additional criteria and forms, complies with G-11.0403. There is no evidence to sustain any error that the Presbytery lacked sufficient, written criteria for validating ministries.

Westbrook also contended that he was not treated fairly by the Presbytery in its handling of his application for a validated ministry and that he was denied due process by the Presbytery because he did not have notice of the criteria, nor an adequate opportunity to be heard. Any error in the initial process was addressed when the Presbytery started over and reconsidered Westbrook's application. After a second hearing by the Presbytery, Westbrook again complained to the Synod, but the second time, the SPJC found the Presbytery's process, although flawed, was minimally sufficient.<sup>5</sup>

Westbrook completed the forms in the Presbytery Handbook and thus had full notice of the criteria the Presbytery used during the validation process. The Presbytery gave Westbrook an ample opportunity to demonstrate that he had been called to a ministry that meets the criteria of G-11.0403 and specifically the accountability provisions of G-11.0403d. The Presbytery considered all of the material Westbrook submitted, including the Handbook forms as completed by Westbrook in his capacity as minister and as the employing entity. Although Westbrook contended that he wanted to submit additional materials, there is no evidence to show that he had any additional materials that he could or would have submitted to cause the Presbytery to reach a different conclusion about the nature of Westbrook's ministry and the accountability issues surrounding it.

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<sup>4</sup> The Presbytery explained that any reference to an "employing" agency or organization could encompass various forms of affiliation between a minister and the agency, organization or other entity the minister would serve in a validated ministry and is not intended to be limited to narrow secular understandings of the term "employment" relevant to various labor or tax laws.

<sup>5</sup> To the extent that any of Westbrook's due process arguments are based on a purported failure by the Presbytery to adhere to its own Handbook, such an error would not rise to the level of a Constitutional violation.

Westbrook had an opportunity to present his case to the Committee on Ministry and on the floor of Presbytery. There is no evidence to show the process was unfair to Westbrook or that he was denied due process.<sup>6</sup>

Westbrook also complained that the Presbytery's process for validating his ministry lacked specificity. The Presbytery's criteria are set forth in the Handbook and its accompanying forms. The criteria, particularly the application and evaluation forms in the Handbook, are specific and unambiguous. For the reasons discussed above, this Commission finds that Presbytery has adequate, specific written criteria for validating ministries.

Additionally, Westbrook argued that the Presbytery's criteria for validating ministries are too subjective. This assertion conflates the purported subjectivity of the criteria with the Presbytery's discretionary authority to apply the criteria. Every presbytery has discretionary authority to determine who shall be its ministers and to approve the call of every minister laboring within its bounds (G-11.0402). There is no evidence to show the Presbytery acted arbitrarily, capriciously or abused its discretionary authority in applying the Presbytery's written criteria to the materials submitted by Westbrook.

Westbrook's third specification of error addresses his contention that Presbytery misapplied the concept of "accountability" found in G-11.0403. The Presbytery declined to validate Westbrook's ministry because it found Westbrook could not meet the standard in G-11.0403d that a validated ministry must be "carried on in accountability for its character and conduct to the presbytery and to organizations, agencies, and institutions." This provision was amended in 1987 by the 199<sup>th</sup> General Assembly, which added the phrase "and institutions" and removed the words "where appropriate" in order to clarify that ministries of those who were self-employed or acting independently and were not answerable to some other entity for the character and conduct of the ministry should not be validated (*Minutes*, 1987, Part I, p. 610, 611).

The Presbytery declined to validate Westbrook's ministry as a self-employed media consultant working in his one-person, for-profit corporation, where he was accountable for his ministry to no one but himself. The Presbytery's decision rested upon the principle that a validated ministry must be in a setting where the minister is accountable to an entity other than him- or herself.<sup>7</sup> There is no particular form of employment or entity that is required for validation, and a ministry in a for-profit entity, or an independent, self-employed consultant, could be validated where the minister demonstrates that he or she is accountable for the ministry to some entity other than him- or herself and the other criteria for validation are met. Westbrook proposed an advisory board, but the Presbytery concluded the proposed board would not have had sufficient oversight functions for Westbrook's ministry. Accountability does not exist where the minister would supervise and evaluate him- or herself.

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<sup>6</sup> The SPJC Decision made an unexplained distinction between the spirit and letter of the law with respect to "fundamental fairness." This Commission has previously distinguished the principles of "due process" relevant in disciplinary cases from the principles of "fundamental fairness" relevant in remedial cases. See, e.g., *Lewis v. Presbytery of New York*, (*Minutes*, 1995, p. 11.066). Although due process may require more, both due process and fundamental fairness require notice, an opportunity to be heard, and a fair, unbiased consideration of the issues.

<sup>7</sup> A presbytery could provide the necessary oversight functions through its Committee on Ministry or another group within the presbytery. While it is not likely to be feasible or reasonable to expect presbyteries to accept such responsibilities for every minister who seeks a validated ministry, presbyteries could provide such a service if they elected to do so. In so doing, the presbytery would be accepting responsibilities beyond those set forth in G-11.0403.

In validated ministries, the Committee on Ministry acts in a manner similar to that of the local church when a minister of Word and Sacrament is called to pastoral service. Whenever a minister is called to any ministry, whether in a particular congregation of the church, in a governing body of the church, as a chaplain, teacher or missionary, or in an organization, entity or agency in which the church has no official participation, the call must be confirmed by the calling community and validated by the presbytery. A call to ministry in the Presbyterian church always involves responsibility for participating in the ministry of the church at large. See G-6.0201. A call to ministry is never self-validating. Westbrook admitted that he “called” himself to work in his own corporation and is answerable to no one but himself.

Therefore, the Presbytery did not err in its decision not to validate Westbrook’s proposed ministry as an independent media consultant. The SPJC did not err in refusing to reverse the decision of the Presbytery.

### **Order**

IT IS THEREFORE ORDERED that the decision of the Permanent Judicial Commission of the Synod of the Mid-Atlantic is sustained.

IT IS FURTHER ORDERED that after receiving this Decision and Order, the Stated Clerk of the Synod of the Mid-Atlantic shall report this Decision and Order to the Synod at its next regularly scheduled meeting, that the Synod enter this Decision and order in its entirety in the Synod’s minutes and that an excerpt from the Synod minutes showing entry of this Decision and Order be sent to the Stated Clerk of General Assembly.

IT IS FURTHER ORDERED that after receiving this Decision and Order, the Stated Clerk of the Presbytery of New Hope shall report this Decision and Order to the Presbytery at its next regularly scheduled meeting, that the Presbytery enter this Decision and order in its entirety in the Presbytery’s minutes and that an excerpt from the Presbytery minutes showing entry of this Decision and Order be sent to the Stated Clerk of General Assembly.

### **Absences and Non Participants**

Commissioner Angel Casaus-Urrutia and Commission Bradley C. Copeland were not present and took no part in the hearing, deliberations or decision of the Commission in this case. Commissioner Yun Jin Kim recused himself and took no part in the hearing, deliberations or decision of the Commission in this case.

Dated this 28<sup>th</sup> day of February, 2010 at Louisville, Kentucky

**Concurring Opinion by Commissioners Judy L. Woods, Michael B. Lukens, H. Clifford  
Looney, Greg A. Goodwiller and Meta Shoup Cramer**

We concur with the majority opinion, but offer the following concurrence to clarify what we believe is an error in *Williamson v. Presbytery of Western North Carolina*, Minutes, p. 475 (2006) (GAPJC Remedial Case 217-7). In *Williamson*, this Commission found that the Presbytery of Western North Carolina adopted “process statements and timelines” for validating ministries, and “adopted a new policy for ‘determining and evaluating validated ministries.’” *Id.* at p. 476. Nevertheless this Commission sustained *Williamson*’s specification of error that the Presbytery of Western North Carolina’s Policy for Review of Validated Ministries was not in full compliance with G-11.0403. *Id.* at p. 479. Specifically, this Commission found that the “development and use of written criteria is mandatory.” *Id.* This Commission then ordered the Presbytery of Western North Carolina to develop “separate, written criteria for validation of ministries within its bounds as specified in G-11.0403.” *Id.* at p. 479.

In this case, we agree with the majority that this Commission need not decide whether a presbytery that relies only on the criteria set forth in G-11.0403 is acting within constitutional bounds. The Commission need not have reached that question in *Williamson* because it found that the Presbytery of Western North Carolina had adopted a policy, process and timeline for validating ministries. This inconsistency was compounded by the Commission’s error in holding that G-11.0403 mandates that presbyteries “develop” “separate” and presumably additional written criteria for validating ministries. The plain language of G-11.0403 does not require this. G-11.0403 requires that presbyteries shall determine the ministers of the Word and Sacrament who shall be its continuing members and states: “In making this determination the presbytery shall be guided by written criteria developed by the presbytery for validation of ministries within its bounds.” G-11.0403 does require presbyteries to develop separate criteria for validation of ministries “in addition to” the requirements of G-11.0403 a-e, but requires that any criteria used by a presbytery shall be based on those criteria and G-6.0100 and G-6.0200.

For these reasons, the Concurrence in Part and Dissent in Part by Commissioner June Lorenzo in *Williamson* is the better reasoned interpretation of G-11.0403. While G-11.0403 may be properly read to require presbyteries to “be guided by” any additional written criteria developed by the presbytery for validation of ministries within its bounds, Commissioner Lorenzo correctly observed that the “‘shall’ language emphasized by the majority [in *Williamson*] is not solely focused on producing written and additional criteria....” *Id.* at p. 483. Commissioner Lorenzo is also correct that the 1997 amendments to G-11.0403, G-11.0406b and G-11.0411 do not mandate that presbyteries develop written criteria in addition to the requirements of G-11.0403 for validating ministries.