

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

Ivan White and David Crews)
Appellants (Complainants),)
v.)
Session, St. Paul Presbyterian Church of)
San Angelo, Texas)
Appellee (Respondent).)

DECISION AND ORDER

Remedial Case 220-01

Arrival Statement

This filing before the Permanent Judicial Commission of the General Assembly (GAPJC or this Commission) is an appeal of a decision of the Permanent Judicial Commission of the Synod of the Sun (SPJC) rendered on March 23, 2010. The Notice of Appeal was received by the Stated Clerk of the General Assembly on March 29, 2010.

Jurisdictional Statement

This Commission finds that it has jurisdiction, that Appellants Ivan White (White) and David Crews (Crews) have standing to file the Appeal, that the Appeal was properly and timely filed, and that the Appeal states one or more of the grounds for appeal in D-8.0105.

Appearances

White and Crews appeared in person, representing themselves. The Session of the St. Paul Presbyterian Church (Session) was represented by Douglas Nave and Mary Noel Golder.

History

This case concerns an elder-elect who is openly gay and living in a committed same-sex relationship. However, the undisputed testimony is that the relationship is non-sexual.

The original complaint, filed by Wayne White and Ivan White on December 12, 2008, with the Presbytery of Tres Rios (Presbytery), challenged the action by the Session in sustaining the examination for ordination of David Cooper (Cooper) as an elder-elect for the class of 2011. The Presbytery's Permanent Judicial Commission (PPJC) granted a stay of enforcement on December 18, 2008.

A trial was held by the PPJC on May 16, 2009. The Decision of the PPJC reversed the Session's action to sustain the examination of Cooper as an elder. The Decision cited Cooper's statement that "I am gay;" his participation in a commitment ceremony with a man he refers to as his partner; that on two occasions Cooper and his partner had been photographed together for a church pictorial directory; and

the statement of Cooper's partner at a November 2007 congregational meeting that Cooper's name had been withdrawn from a slate of nominees for office at that time because "it is against Presbytery rules for anyone living in an openly homosexual relationship to serve as elder." In rendering its decision, the PPJC cited *Wier v. Second PC*, Remedial Case 214-5, noting that the "governing body [had] reasonable cause for inquiry based on its knowledge of the life and character of the candidate," and had "the positive obligation to make due inquiry and uphold all the standards for ordination and installation."

After the PPJC reversed the Session's decision, on May 31, 2009, the Session conducted a second examination of Cooper, following the specific direction which had been provided by the PPJC "on the matters upon which examination should be conducted." During this examination, the Session specifically asked Cooper if he was in compliance with G-6.0106b of the *Book of Order*. Cooper stated that he was in compliance. No information was submitted to contradict Cooper's statement that his relationship with his male partner did not involve sexual activity. The Session sustained the examination.

On June 1, 2009, White and Crews filed a complaint virtually identical to the one filed earlier, alleging that the Session had sustained the examination of Cooper, "a self-affirmed, practicing homosexual," as an elder-elect for the class of 2011. A second trial was held by the PPJC on September 8, 2009. The decision of the PPJC, rendered on September 12, 2009, again ordered that the Session's examination of Cooper be reversed on the basis of its finding that "as a self affirmed homosexual living in a committed same sex relationship [Cooper] is in violation of confessional standards." The PPJC also noted in its discussion that "The confessional statements and scripture do not make a distinction between homosexual orientation and practice."

On October 19, 2009, the Session filed a Notice of Appeal with the Stated Clerk of the Synod of the Sun (Synod) and requested a Stay of Enforcement of the PPJC's decision, which was granted by the SPJC on November 16, 2009. On February 10, 2010, the SPJC issued a decision which was subsequently determined to be incomplete by the Executive Committee of the GAPJC on the grounds that the SPJC decision did not include a determination of "whether the decision of the lower governing body shall be affirmed, modified, set aside, reversed, or the case remanded for a new trial" (D-8.0404b). A corrected decision by the SPJC, completed on March 23, 2010, clarified that the decision of the PPJC was reversed. No discussion or rationale is included in the SPJC decision and Order.

Subsequently, a Notice of Appeal and a Request for a Stay of Enforcement were received by the Stated Clerk of the General Assembly. A Stay of Enforcement was granted on April 5, 2010. The Executive Committee of the GAPJC accepted the Appeal on April 16, 2010.

Specifications of Error and Decision

Specification of Error No. 1: The SPJC committed a procedural irregularity when the former moderator of the SPJC signed the corrected decision instead of the corrected decision being signed by the current moderator of the SPJC.

This Specification of Error is Not Sustained for the reason stated below, following Specification of Error No. 3.

Specification of Error No. 2: The SPJC committed a procedural irregularity when its corrected

decision was not rendered by a majority of SPJC members.

This Specification of Error is Not Sustained for the reason stated below, following Specification of Error No. 3.

Specification of Error No. 3: The SPJC committed a procedural error when its corrected decision did not adjust the directive date.

This Specification of Error is Not Sustained.

While the Notice of Appeal alleges that certain procedural errors were made by the SPJC, there are no facts in the record to support the allegations.

Specification of Error No. 4: The SPJC accepted as true Cooper's statement that while he is in a committed same-sex relationship, he is not sexually active.

This Specification of Error is Not Sustained.

There is no evidence in the record that contradicts Cooper's statement. The SPJC was bound to the record it had before it, as is this Commission.

Specification of Error No. 5: The SPJC erred by not accepting the PPJC's determination that Cooper refused to repent of his homosexual orientation and living in a committed same-sex relationship.

This Specification of Error is Not Sustained.

The Church has repeatedly distinguished between sexual orientation and sexual practice. In 1998, the 210th General Assembly approved the following authoritative interpretation of G-6.0106 and G-4.0403:

Standing in the tradition of breaking down the barriers erected to exclude people based on their condition, such as age, race, class, gender, and sexual orientation, the Presbyterian Church (U.S.A.) commits itself not to exclude anyone categorically in considering those called to ordained service in the church, but to consider the lives and behaviors of candidates as individuals. (*Minutes*, 1998, pp. 68, 166)

There is no constitutional expectation that an individual would need to repent of any of the above "conditions."

Cooper testified under oath that while he is gay and in a same-sex relationship, the relationship is non-sexual. He testified that his relationship "doesn't preclude love, it doesn't preclude caring for each other. It does preclude the sexual activity, the physical involvement of sexual activity."

It was the Session's responsibility to assess the suitability of Cooper for ordination, including the relationship between Cooper and his partner. Such an assessment may be overturned by a higher governing body only for "extraordinary reasons" (*Rankin v. National Capital Union Presbytery*, Minutes, Pt. 1, pp. 113, 114 (1981)). Neither the record nor the argument of the parties reflected that the PPJC had extraordinary reasons for overturning the action of the Session. This constitutional error by the PPJC was reversed by the SPJC.

This Commission concurs with the SPJC.

Specification of Error No. 6: The SPJC erred in constitutional interpretation by failing to recognize the jurisdictional oversight of the Presbytery over a Session regarding the examination and ordination process.

This Specification of Error is Not Sustained.

The SPJC properly exercised its responsibilities of judicial review of the decision of a lower governing body.

Order

IT IS THEREFORE ORDERED that the Decision of the Permanent Judicial Commission of the Synod of the Sun is hereby sustained.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of Tres Rios report this Decision and Order to the Presbytery at its first meeting after receipt, that the Presbytery enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order 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 and Order to the Synod at its first meeting after receipt, that the Synod enter the full Decision and Order upon its minutes, and that an excerpt from those minutes showing entry of the Decision and Order be sent to the Stated Clerk of the General Assembly.

Absences and Non-Participants

Commissioner Clifford Looney was absent and did not participate in the deliberations.

Concurring Opinion

I concur in this Decision. I do so, however, with the conviction that additional comment is necessary regarding a perceived terminological problem in this case and the need for clarification.

The provision of G-6.0106b prohibits ordination of a person who is unrepentant of any "self-acknowledged practice" of sinful behavior as defined by the Confessions. The General Assembly as far back as 1978, reiterated by the General Assembly in 1998, and by this Commission as recently as 2002, distinguished between "orientation" and "practice," in ruling that only the latter has been the basis of

application of this prohibition.¹ But, instant this case, the issue of "practice" has emerged anew through the claim that a "practiced" sexual dimension (here not applicable) is necessary in order for "practice" in G-6.0106b to apply, i.e., sexual practice is necessary beyond the acknowledged fact of participation in a committed homosexual relationship.

The church confronts here the need for clarification. Is the focus of the church exclusively on practice that is narrowly defined as "sexual practice" (undefined further within the spectrum of sexual conduct) or does it intend a wider application to a committed homosexual relationship in general?

In the absence of definitional clarity in this matter of "practice", judicial judgment is faced with an interpretive dilemma that the church needs to address.

Dated this the 8th Day of August, 2010.

Michael B. Lukens

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 GA2010-101, Ivan White and David Crews, Appellants (Complainants), v. Session, St. Paul Presbyterian Church of San Angelo, Texas, Appellee (Respondent) made and announced at Louisville, KY on August 8, 2010.

Dated this 8th day of August, 2010.

¹ UPUSA Minutes, I.264-265 (1978); PCUSA Minutes I.166 (1998); *Wier v. Session, Second Presbyterian Church of Ft. Lauderdale* (2002).

