

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

Presbytery of San Joaquin)
Appellant,)
)
 v.)
)
The Presbytery of the Redwoods,)
Appellee)

HEADNOTES
Remedial Case 215-8

Edgar T. Hart, Steve Nesheim,)
Larry Ballenger, Bill McDonald,)
Merle Wood, Rebecca Jordan-Irwin,)
And Kent A. Webber,)
Appellants,)
)
 v.)
)
The Presbytery of the Redwoods,)
Appellee)

HEADNOTES
Remedial Case 215-8

1. Conflict of Interest - Any time a member of a permanent judicial commission acts for or against a party as counsel, that commissioner should be recused from any further hearing involving the party.

2. Standard for Ordination - The Constitution, G-6.0106b, specifies that a person who refuses to repent of any self-acknowledged practice that the confessions call sin is not eligible for ordination or installation. Sexual orientation, therefore, alone is insufficient to make a person ineligible for ordination or installation.

3. Governing body standard for inquiry - If a person does not self-acknowledge a practice that the confessions call sin, then a governing body has a positive obligation to make further inquiry only if it has direct and specific knowledge that such 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. Reasonable grounds must include factual allegations of how, when, where, and under what circumstances the individual was self-acknowledging a practice which the confessions call sin.

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These remedial cases come before this Commission on appeal from a decision of the Permanent Judicial Commission of the Synod of the Pacific (SPJC) dismissing the complaints for failure to state a claim in light of this Commission’s decision in *Wier v. Session, Second Presbyterian Church, Ft. Lauderdale, Florida*, Remedial Case 214-5 (Minutes, 2002, page 339). (Hereinafter referred to as Wier 2).

Pursuant to *Book of Order* D-8.0103, this Commission finds that it has jurisdiction, that appellants have standing to appeal, that the appeals were properly and timely filed, and that the appeals state one or more grounds for appeal under D-8.0105.

History

On September 21, 2001, after receiving the report and unanimous recommendation of its Committee on Preparation for Ministry, the Presbytery of the Redwoods voted to ordain a self-acknowledged lesbian as a minister of the Word and Sacrament.

Appellants Hart, et al. (Hart, et al.) are minister members or presbyters of the Presbytery of the Redwoods (Appellee). On October 9, 2001, they filed a remedial complaint alleging that Appellee had acted irregularly in voting to ordain because the candidate’s self-disclosure of her sexual orientation triggered a duty of further inquiry that was not fulfilled. Their complaint requested a declaration of irregularity, an order setting aside the ordination, an admonition to Appellee to adhere to the *Book of Order*, and a remand for further examination of the candidate. Hart, et al. also filed a petition

with the SPJC seeking a stay of enforcement of the decision to ordain, but were unsuccessful in that attempt, and the candidate was ordained on October 21, 2001.

On November 19, 2001, Appellant Presbytery of San Joaquin (San Joaquin) filed a substantially similar remedial complaint against Appellee, except that they did not seek to set aside the ordination which had already occurred. San Joaquin also filed a separate remedial complaint against the SPJC with this Commission requesting a determination that the SPJC had abused its discretion in refusing to grant the stay sought of enforcement sought by Hart, et al. and seeking an order of reference under which this Commission would conduct any further proceedings involving this candidate and the Appellee. The SPJC appointed one of its commissioners to its Committee of Counsel to defend against that complaint.¹

In a pretrial conference on March 4, 2002, the complaints of Hart, et al. and San Joaquin were consolidated for trial before the SPJC, and all parties were ordered to submit prior to trial an outline of the evidence to be produced and the theory upon which the evidence was relevant.

On April 23, 2002, Appellee filed a motion to dismiss both cases in light of the decision rendered by this Commission on April 14, 2002, in *Wier 2*. In spite of this notice that Appellee would rely upon the pleading standards outlined in *Wier 2*, Appellants decided not to amend their complaints at any time prior to trial and the SPJC's ruling on Appellee's motion.

On May 17, 2002, the parties gathered for trial. Appellant San Joaquin challenged the composition of the SPJC on three grounds. First, it moved to recuse the commissioner who served on the Committee of Counsel in the separate case filed by San Joaquin against the SPJC on the ground that her role as counsel disqualified her from service. Second, it challenged the participation of the moderator on the ground that she had failed to enforce against the Appellee her pretrial order of March 4, 2002, regarding the outline of evidence. Third, San Joaquin challenged the entire SPJC and sought a reference of its complaint to this Commission on the ground that the SPJC was the respondent in the separate matter San Joaquin had filed against it. The SPJC rejected all three challenges.

The SPJC then heard arguments on Appellee's Motion to Dismiss All Cases in light of *Wier 2*. It ruled that *Wier 2* required dismissal of the complaints for failure to state a claim because nowhere did either complaint allege that the candidate self-acknowledged a *practice* which the confessions call sin.²

Specifications of Error

I. That the motion to dismiss which was granted in favor of the respondent was not timely filed.

This specification is not sustained.

¹ This Commission rejected San Joaquin's effort to charge the SPJC with abuse of discretion in a case to which San Joaquin had not been a party because San Joaquin lacked standing. See *Presbytery of San Joaquin v. Permanent Judicial Commission of the Synod of the Pacific and Synod of the Pacific* (Minutes, 2002).

² Appellant San Joaquin belatedly sought to amend its complaint only on August 29, 2002, *after* it had filed its notice of appeal of the SPJC's decision.

Contrary to the argument of Hart, et al., D-6.0303 permits, but does not require a motion to dismiss to be filed with the Answer to the complaint. In this case, the basis for the motion to dismiss did not arise until the *Wier 2* decision was rendered. Appellee filed its motion to dismiss nine days following that decision. We find this was timely.

2. *That the motion to dismiss was based upon a case (Wier v. Session, 2002) that was not final as it is under appeal.*

This specification is not sustained.

The decisions of the GAPJC are final and not subject to appeal.

3. *That the SPJC erroneously determined that the complaint did not state a claim upon which relief could be granted.*

This specification is not sustained.

4. *That the SPJC erroneously found that the complaint did not state that the candidate was self-acknowledged in a practice that the Confessions call sin.*

This specification was withdrawn, with Hart, et al. admitting that “self confession as a practicing lesbian...was not actually alleged in the complaint.”

5. *That the SPJC failed to allow the Complainants to amend their complaint to conform to the Wier 2 standard.*

This specification is not sustained.

The brief of Hart et al. states that they chose not amend their complaint lest they admit “that their case was ill-founded.” Further, if Hart, et al did indeed possess sufficient or direct evidence of the non-compliance of the candidate to the constitutional standards for ordination, then three weeks is more than sufficient to amend a complaint.

6. *That there was injustice in the process by the SPJC.*

This specification is not sustained.

7. *That there were error in the reception of evidence and error in hastening to a decision.*

This specification is not sustained.

Since there was not sufficient ground to proceed to a trial wherein any evidence would have been received, there is no error.

Presbytery of San Joaquin Specifications of Error

8. *That the challenge to the commissioner who served on the Committee of Counsel for the SPJC should have been granted.*

This specification is sustained.

Any time a member of a permanent judicial commission acts for or against a party as counsel, that commissioner should be recused from any further hearing involving the party. In the instant case, this error is harmless since San Joaquin's case is fatally flawed as discussed below.

9. *That the challenge to SPJC Moderator should have been granted.*

This specification is not sustained.

The Appellee sufficiently complied with the SPJC Moderator's pre-trial order.

10. *That the challenge to the entire SPJC should have been granted and that a reference should have been asked of the GAPJC.*

This specification is not sustained.

Only a Session or a PJC can ask for a reference. There were not sufficient grounds for a reference to be mandated. The alleged disqualification and the alleged need for a reference arose only because San Joaquin had filed a separate case against the SPJC. As this Commission ruled in *Presbytery San Joaquin v. SPJC*, that effort was procedurally improper. Therefore, San Joaquin cannot seek to disqualify the entire SPJC based upon an improper remedial case.

11. *That the SPJC erroneously cited the Wier 2 Decision as a basis for dismissal.*

This specification is not sustained.

The Decisions of the GAPJC are interpretations of the Constitution under which the case was filed. That Constitution did not change. Further, the Appellants had sufficient opportunity and notice to amend their complaint to the *Wier 2* standard.

12. *That the SPJC erroneously held that the complaint fails to allege a self-acknowledged practice that the Confessions call sin.*

This specification is not sustained.

San Joaquin alleges the self-acknowledged homosexual orientation of the candidate but, by choice, left out any allegation concerning self-acknowledged practice in their complaint. Their reasoning was that, according to the *Le Tourneau* Decision (1993, 163, *LeTourneau v. Pby of Twin Cities Area*), orientation alone is sufficient ground for

further questioning of a candidate. However, Le Tourneau was determined prior to the adoption of G-6.0106b, which specifies that a candidate who refuses to repent of any self-acknowledged practice that the confessions call sin is not eligible for ordination or installation. Orientation, therefore, alone is insufficient to make a person ineligible for ordination or installation. Further, this commission cured the theological defect of the Le Tourneau Decision through the application of the doctrine of total depravity in Wier 2. The defect in question rested upon the assumption that one category of persons is more prone to sin than other categories of persons. The doctrine of total depravity teaches us that not only do all fall short of the glory of God, but that there is no part of our person that is not in need of the redeeming grace of our Lord Jesus Christ. Thus, sexual orientation alone would be no more sufficient or reasonable grounds for further questioning than would singleness, obesity or any other categorization. In other words, stereotypical profiling is not a reasonable or valid ground for singling out a candidate for additional questioning. Therefore, if a person does not self-acknowledge a practice that the confessions call sin, then a governing body has a positive obligation to make further inquiry only if it has direct and specific knowledge that said person is in violation of the ordination and installation standards of the Constitution. In order to faithfully hold the central tenet of total depravity, there must be a higher pleading specificity as to what constitutes the grounds for reasonable cause prior to inquiry. A hunch, gossip or stereotype is not a sufficient ground to compel a governing body to make further inquiry. Reasonable grounds must include factual allegations of how, when, where, and under what circumstances the individual was self-acknowledging a practice which the confessions call a sin.

Order

IT IS THEREFORE ORDERED that the decision of the PJC of the Synod of the Pacific is affirmed.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Pacific 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 General Assembly.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of San Joaquin and the Stated Clerk of the Presbytery of the Redwoods 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.

Jesse Butler, William Carlough, Mildred Morales, and Daniel Saperstein, members of this Commission, were not present for the hearing and took no part in the deliberation or decision. As a representative from the Synod of the Pacific, Wendy Warner, recused herself and did not take part in the hearing, nor did she take part in the deliberations or the decision in this case.

Dated this 3rd day of March, 2003.