Arrival Statement

This remedial case comes before the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.) (this Commission or GAPJC) on appeal from a Decision of the Permanent Judicial Commission of the Synod of the Covenant (SPJC) regarding action taken by the Presbytery of Muskingum Valley (the Presbytery or Appellant) with respect to Robert A. Hauser (Complainant or Appellee).

Jurisdictional Statement

This Commission has jurisdiction, Appellant has standing to file this Appeal, the Appeal was properly and timely filed, and the Appeal states one or more of the grounds for appeal under D-8.0105.

Appearances

Appellant was present through a member of the Committee of Counsel, Christopher Stewart, and was represented by James A. Wilson. Appellee and his counsel, Edward H. Koster, appeared by telephone conference call such that both could hear and be heard by all present.

History

This case arises from Appellant’s allegation of errors by the SPJC in its decision on a remedial complaint against the Presbytery for denying Appellee’s request to be restored from a censure of temporary exclusion from ordered ministry.

Appellee was granted honorably retired status on January 27, 2008. He was placed on the inactive roll of teaching elders by the Presbytery on April 28, 2010, after censure was imposed by the Permanent Judicial Commission of Muskingum Valley Presbytery (PPJC) pursuant to D-12.0104d (the PPJC Decision). The censure imposed was “temporary exclusion from the office of Minister of Word and Sacrament for a period of not less than four years, with credit for one year.” This effectively was a period of exclusion of no fewer than three (3) years.
Neither party appealed this censure. Appellee remains a member of the Presbytery excluded from office.

Appellee requested on April 17, 2013, that the Presbytery consider restoring him to ordered ministry. The Presbytery voted at a special meeting on April 1, 2014, to deny Appellee’s request for restoration.

Appellee filed a remedial case against the Presbytery, with the SPJC, on April 23, 2014. The SPJC conducted a trial on March 16, 2015, on the issue of whether the Presbytery had the right to exclude the Appellee from the office of teaching elder for a period greater than four years under the terms of a censure that mandated a temporary exclusion for a period not less than four years. The SPJC noted that other issues would be examined in a trial on a future date, if necessary.

On March 16, 2015, the SPJC ruled that a temporary exclusion from the exercise of ordered ministry shall be for “a definite period of time” or for a defined period of supervised rehabilitation; that the Presbytery acted unconstitutionally in establishing a period “not less than 4 years” without an established period of rehabilitation; that the Presbytery violated its constitutional mandate in refusing Appellee’s request for restoration; that the Presbytery retains judicial jurisdiction; and that remedial action is appropriate (the SPJC Decision). It then remanded the matter to the Presbytery and directed that Appellee shall have the right to apply for restoration.

The Presbytery appealed the SPJC Decision on March 23, 2015. The appeal included a challenge to the preliminary questions of the Complaint, as amended, before the SPJC. The Presbytery also filed a separate motion for stay pending appeal. This Commission issued a Preliminary Order for Hearing on March 25, 2015, and granted a Stay on March 27, 2015.

Specifications of Error

Specification of Error No. 1: The Permanent Judicial Commission of the Synod of the Covenant erred in the proceedings and in constitutional interpretation in finding that Appellee had standing to assert the claims contained in the Complaint and Amended Complaint in this matter.

This specification of error is not sustained.

Given his status as a member excluded from office, Appellee could speak on the floor of Presbytery, but only on matters relating to himself [see GA (1994, 197, 21.092, Req. 94-13)]. As a teaching elder member of the Presbytery, Appellee had standing to file a complaint. Enrollment at a particular meeting is not a requirement for a teaching elder.

Specification of Error No. 2: The Permanent Judicial Commission of the Synod of the Covenant erred in the proceedings and in constitutional interpretation in finding Appellee had stated a claim upon which relief could be granted insofar as his Complaint and Amended Complaint
sought to modify the censure imposed upon him in a disciplinary case, which he had not appealed.

This specification of error is sustained.

Appellee argues that the PPJC Decision for an indefinite temporary exclusion was erroneous. While the PPJC Decision was not compliant with the language of D-12.0104, Appellee waived his right to have the order judicially modified by failing to file a timely appeal. The time limit for such appeals serves the compelling purpose of finality in disciplinary matters.

A remedial case may not be used to address an error committed in a disciplinary case. Presbytery of East Tennessee v. Cook (211-5, 1999); Evans v. Presbytery of Lake Michigan (207-4, 1995). “[T]he appellate process is the means by which a judicial commission’s alleged errors in constitutional interpretation are corrected.” Presbytery of San Joaquin v. Permanent Judicial Commission, Synod of the Pacific, and Synod of the Pacific (215-3, 2002). Pursuant to prior GAPJC decisions, this Commission will not revisit the PPJC disciplinary decision through this remedial appeal. Therefore, this specific claim is not one upon which relief can be granted.

Specification of Error No. 3: The Permanent Judicial Commission of the Synod of the Covenant erred in the proceedings and in constitutional interpretation in determining that it had the authority in this remedial action to modify the terms of censure imposed upon Appellee in a disciplinary case and not appealed by him in that disciplinary case.

This specification of error is sustained.

See the rationale for Specification of Error No. 2.

Specification of Error No. 4: The Permanent Judicial Commission of the Synod of the Covenant erred in the proceedings and in constitutional interpretation in finding that the Presbytery of Muskingum Valley acted unconstitutionally in following the express language of a censure imposed upon Appellee in a disciplinary case that was not appealed by him in that disciplinary case.

This specification of error is sustained.

See the rationale for Specification of Error No. 2.

Specification of Error No. 5: The Permanent Judicial Commission of the Synod of the Covenant erred in the proceedings and in constitutional interpretation in finding that the Presbytery of Muskingum Valley “retains judicial jurisdiction” in a disciplinary case in which a final judgment and censure have been entered and from which no timely appeal has been taken.
This specification of error is sustained in part and not sustained in part.

A presbytery has no authority to amend a censure. Insofar as the judicial process requires ongoing enforcement of a censure, that authority rests with the presbytery.

Specification of Error No. 6: The Permanent Judicial Commission of the Synod of the Covenant erred in the proceedings and in constitutional interpretation, assuming it has the jurisdiction to hear a challenge to Appellee's censure, in not returning the case to the Permanent Judicial Commission of the Presbytery of Muskingum Valley for a new determination of the appropriate censure to be imposed upon Appellee.

This specification of error is sustained.

Decision

The Book of Order grants authority to the council that imposed the censure to determine restoration to ordered ministry (D-12.0104h). The PPJC Decision does not set a definite period of time for temporary exclusion, however the PPJC clearly intended its order to be a temporary exclusion, not a permanent removal. Permanent judicial commissions must follow Chapter XII of the Rules of Discipline, which governs censure and restoration in disciplinary cases. In fact, D-12.0104 provides language to be used when a temporary exclusion is pronounced.

When a permanent judicial commission issues a decision in a disciplinary case that does not comply with the Book of Order, the remedy for the accused is direct appeal.

Nothing in this Decision should be read to prohibit the Presbytery from using any appropriate considerations in exercising its functions concerning its membership. The Presbytery must, in all respects, accord procedural safeguards and due process in considering restoration. The particular facts in this case require this Commission to clarify that this Decision does not create a new category of temporary exclusion.

Order

IT IS THEREFORE ORDERED that the Decision of the Permanent Judicial Commission of the Synod of the Covenant is affirmed in part and reversed in part, and the stay is lifted. This Decision only dismisses matters related to the modification of the disciplinary censure through this remedial case. This Decision does not address any other issues reserved by the Permanent Judicial Commission of the Synod of the Covenant in its Decision dated March 16, 2015.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Covenant report this Decision to the Synod of the Covenant at the first meeting after receipt, that the Synod of the Covenant 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 Muskingum Valley report this Decision to the Presbytery of Muskingum Valley at the first meeting after receipt, that the Presbytery of Muskingum Valley 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-Appearances

Commissioners A. Bates Butler, III, and Terry Epling did not participate in the hearing or deliberations.

Concurring Opinion
of Robin L. Roberts, Mary McClure, Maurice Caskey, and Barbara Bundick

There is no clear procedural path to address the un-appealed PPJC Decision. The Book of Order does not contemplate a collateral attack on a closed judicial decision. Were a procedural path available, we would find that the order was unconstitutional, as it was neither for a definite time nor for a period defined for completion of supervised rehabilitation (D-12.0104). The PPJC Decision clearly could have been appealed by Hauser. His failure to do so, especially given his stated reason of attempting to take advantage of a non-appeal, has placed the GAPJC in the uncomfortable position of not reversing a plainly unconstitutional order.

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 222-06, The Presbytery of Muskingum Valley Appellant (Respondent), Robert A. Hauser Appellee (Complainant), made and announced at Jeffersonville, Indiana, this 3rd day of October, 2015.

Dated this 3rd day of October, 2015.