

Hope Church v. Central Church,
Remedial Case 206-3,
11.086

HOPE PRESBYTERIAN CHURCH
Complainant/Appellant

v.

CENTRAL PRESBYTERIAN CHURCH
Respondent/Appellee

This is a remedial case that has come before the Permanent Judicial Commission of the General Assembly on an appeal from a decision of the Permanent Judicial Commission of the Synod of the Pacific.

This commission finds that it has jurisdiction, that appellant has standing to appeal, that the appeal was properly and timely filed, and that the appeal is in order (Book of Order, D-13.1200a).

a. History

On June 16, 1991, the Session of Central Presbyterian Church (Central) in Eugene, Oregon, ordained two self-affirming, practicing homosexual members to the office of deacon. The ordinations were preceded by a congregational meeting in which the congregational nominating committee presented its annual slate of candidates for election. The two individuals were found to be well qualified, with one having just completed a term as an elder in active service. It came as a surprise to the session when letters from each of the two candidates were received by the church in which they acknowledged that they were practicing homosexuals. Central conducted a careful process of open meetings and discussion concerning the ordination of the two individuals. After discussion, the congregation, finding no better qualified and willing candidates, reaffirmed its original vote and again elected the two to the office of deacon. The two were later ordained by the session.

The Session of Hope Presbyterian Church (Hope) of Portland, Oregon, hearing of the ordinations, filed a complaint with the stated clerk of the Presbytery of the Cascades. Hope contended that these ordinations violated Presbyterian law and constituted a rebellion against the Word and will of God.

The case was tried on February 11-14, 1992, by the Permanent Judicial Commission of the Presbytery of the Cascades on Hope's complaint seeking remedial relief. At the conclusion of the trial, the permanent judicial commission filed its written decision finding that an irregularity had occurred in the ordinations of the two individuals. However, it ruled that the remedy sought by complainant, namely annulment, was "inappropriate" and declined to set aside the ordinations. The permanent judicial commission also rejected Hope's additional contentions that the ordinations constituted a rebellion against the Word and will of God.

Hope appealed to the Permanent Judicial Commission of the Synod of the Pacific from that portion of the presbytery permanent judicial commission decision that refused to annul the ordinations and to remove the two persons from the office of deacon and, further, from the decision of the permanent judicial commission that denied the relief requested by Hope to rebuke Central for rebellion and to require public repentance.

The Permanent Judicial Commission of the Synod of the Pacific held a hearing on January 23, 1993, and rendered its decision on March 26, 1993. It held that the presbytery permanent judicial commission erred in its ruling that an irregularity occurred in the ordination of the two individuals, but that the presbytery permanent judicial commission did not err by refusing to annul the ordinations or by failing to require Central to repent and confess error. Timely notice of appeal was filed on April 9, 1993.

b. The Issues in the Case

There are two basic issues in this case: (1) the regularity of the ordination of self-affirming, practicing homosexual persons as deacons; and (2) the power of a higher governing body to annul or set aside such an ordination. These two issues are reflected in Hope's specifications of error.

c. Specifications of Error

(1) The synod permanent judicial commission erred in failing to rule that the elections and ordinations of the two self-affirming, practicing homosexuals were null and void and to remove them from office.

This specification of error is not sustained.

While this commission recognizes that the ordinations were not in accordance with constitutional law in the Presbyterian Church (U.S.A.), they must stand in accordance with Book of Order, G-14.0203. Hope has failed to cite us to any precedent in church history where this relief has been granted.

(2) The synod permanent judicial commission erred by failing to rebuke Central Presbyterian Church for rebelling against the Word and will of God, and by failing to order Central to publicly acknowledge wrongdoing before presbytery.

This specification of error is not sustained.

The presbytery fulfilled its responsibility under Book of Order, D-3.0400 in fashioning an appropriate remedy. Failure to grant the remedy requested by Hope is not error.

(3) The synod permanent judicial commission erred in that it reversed that portion of the decision of the presbytery permanent judicial commission that declared the ordination of two self-affirming, practicing homosexuals to be irregular when:

(a) such finding had not been appealed;

and

(b) this portion of the decision is itself based upon an erroneous interpretation of Presbyterian law.

This specification is sustained in part and not sustained in part.

This specification contains both a procedural and a substantive issue. The procedural issue, identified by clause (a), questions the right of the synod permanent judicial commission to reverse a finding that has not been appealed.

This portion of the specification of error is not sustained.

This commission finds that the issue involving the ordinations was inextricably entwined with the question involved in the determination of specification of error number one, so that the judgment of the lower body was appropriately subject to modification (Book of Order, D-13.1300c).

The substantive issue identified by clause (b) questions the synod's understanding of current constitutional law on the right of a session to ordain self-affirming, practicing homosexuals.

This portion of this specification of error is sustained.

This specific issue of constitutional law in the Presbyterian Church (U.S.A.) has been determined after careful consideration in Union Presbyterian Church of Blasdell, New York, et al. vs. The Presbytery of Western New York, Remedial Case 197-9 (Minutes, 1985, Part I, p. 121), which held that a self-affirming, practicing and unrepentant homosexual may not be ordained as a deacon. Remedial Case 197-9 was based on an interpretation issued by the 190th General Assembly (1978) in the UPCUSA that found "that unrepentant homosexual practice does not accord with the requirements for ordination set forth in the Form of Government . . ." (Minutes, UPCUSA, 1978, Part I, p. 265). The 119th General Assembly (1979) of the PCUS adopted a similar statement. (See Minutes, PCUS, 1979, Part I, pp. 201-210.) Subsequent General Assemblies had reaffirmed that position prior to Remedial Case 197-9.

The prohibition against ordaining a self-affirming, practicing homosexual has been challenged directly and indirectly by numerous overtures to the General Assembly after Remedial Case 197-9. To date, the General Assembly has not acted to overturn the basis of this commission's determinative decision in that case.

This decision, grounded in the authority of the General Assembly to issue authoritative interpretations of the Constitution, speaks clearly and without ambiguity on the issue presented by this case. Any change in policy where no ambiguity of interpretation exists must await change by subsequent action of the General Assembly.

d. Order

It is therefore ordered that the decision of the synod permanent judicial commission be reversed and that the decision of the Presbytery of the Cascades be reinstated.

It is further ordered that the stated clerk of the Presbytery of the Cascades 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 (Book of Order, D-8.1900).

The untimely death of Harold Densmore, member of the commission, on October 24, 1993, precluded his participation in the proceedings. Ferdinand Pharr was not present and took no part in the proceedings.

e. Opinion Concurring and Dissenting in part of David Prager, Patricia K. Norris, E. Cader Howard, Janet Schlenker and W. Clark Chamberlain

Although we concur with the majority in the order and with its decision with respect to specifications of error 2 and 3(a), we respectfully dissent with respect to a portion of the majority's decision as to specification of error 1 and to its decision as to specification of error 3(b).

The basic issue of whether a self-affirming, practicing, unrepentant homosexual may constitutionally be ordained as a deacon was decided by the General Assembly Permanent Judicial Council [Commission] in 1985 in the case of Union Presbyterian Church of Blasdell, New York, et al. v. The Presbytery of Western New York (Remedial Case 197-9). In that case, the General Assembly Permanent Judicial Commission held that such a member of a congregation could not be ordained to the position of minister, elder, or deacon.

In arriving at its decision in Remedial Case 197-9, the Permanent Judicial Commission relied primarily upon the policy statement regarding homosexual conduct and orientation adopted by the 190th General Assembly (1978) in the UPCUSA which stated that "unrepentant homosexual practice does not accord with the requirements for ordination set forth in Form of Government . . ." (Minutes, 1978, UPCUSA, Part I, p. 265), Remedial Case 197-9 rejected the contention that G-5.0202, which guarantees any active member of a church the right to vote and hold office in that particular church, determines the issue.

The dissent in Remedial Case 197-9 held that denial to a church member of access to a congregational office was in direct violation of G-5.0202. The dissenters argued that the Book of Order could not be amended by a "definitive guidance".

The majority decision in Remedial Case 197-9 was erroneous and must be overruled. In arriving at this decision, we have considered certain specific provisions of the Book of Order that establish two basic doctrines which are fundamental in Presbyterian law. They are: (1) inclusiveness of all persons within the membership of the church; and (2) division of powers among the four governing bodies of the church - the session, presbytery, synod and General Assembly.

First, inclusiveness is guaranteed by Book of Order, G-5.0103, which states that "no persons shall be denied membership because of race, ethnic origin, worldly conditions, or any other reason not related to profession of faith" [emphasis added]. The fellowship of Christ must be extended to all persons. Failure to do so constitutes a rejection of Christ and causes a scandal to the gospel. This provision requires that the church include as active members all persons including those with homosexual orientation.

An active member is a person "who has made a profession of faith in Christ, has been baptized, has been received into membership of the Church, has voluntarily submitted to the government of the Church, and participates in the Church's work and worship" (Book of Order, G-5.0202). The same section states with specificity that an active member "is entitled to all the rights and privileges of the Church including the right to . . . vote and hold office" [emphasis added]. The right to hold office is, of course, dependent upon the member's election by the congregation (Book of Order, G-6.0107).

Second, there are a number of sections of the Book of Order pertaining to the division of power among the respective governing bodies that have constitutional implications for the ordination issues presented to this court. Pertinent sections are as follows:

- The "government of this Church is representative, and the right of God's people to elect their officers is inalienable" (Book of Order, G-6.0107).
- "It is necessary to the integrity and health of the Church that persons who serve as officers shall adhere to the essentials of the Reformed faith and polity as expressed in the Book of Confessions and the Form of Government [but that] . . . freedom of conscience . . . is to be maintained" (Book of Order, G-6.0108a).
- "The decision as to whether a person has departed from the essentials of the Reformed faith and polity is made initially by the individual concerned but ultimately becomes the responsibility of the governing body in which he or she serves" [emphasis added] (Book of Order, G-6.0108b).

This last section also recognizes that the local congregation is best qualified to evaluate and elect its own officers. The session's decision to ordain and install is ultimate and final and is not subject to review by the

presbytery or a higher governing body (Book of Order, G-6.0108b). If, however, the elected officer commits an offense, he or she is subject to church discipline as provided by the Book of Order.

If the fellowship of Christ must be extended to all persons, we cannot approve a rule that arbitrarily precludes an active member who is a homosexual person from serving as a deacon, thus preventing that member from giving sympathy, witness and service to others in the church and community. That would indeed be a scandal to the gospel.

This conclusion is consistent with Book of Order, G-14.0203, which declares that the office of elder or deacon is perpetual and no one can lay it aside at pleasure or be divested of it except as specifically provided in the Book of Order.

In this case, the record is clear that Central Presbyterian Church carefully examined the two individuals involved and discharged all of its constitutional responsibilities in an exemplary manner. It could not have acted in a more thoughtful, loving, or responsible manner. Indeed, its actions and approach in fulfilling its constitutional mandates should serve as a model for our church. As the chair of Central Presbyterian Church's nominating committee testified at the trial before the Presbytery of Cascades permanent judicial commission, "[T]his was a decision on two individuals who are well qualified. We looked at them as persons. We did not look at them as a class of people. We looked at them as individuals who have talents, abilities, and commitments to offer to the church."

The dissent in Remedial Case 197-9 held that denial to a church member of access to a congregational office violated G-5.0202 and that the Book of Order could not be amended by a "definitive guidance". We agree.

The 1978 policy statement acknowledges in its conclusions that the phrase "homosexual persons" does not occur in the Book of Order of the United Presbyterian Church and, further, that the Book of Order does not give explicit direction to presbyteries, sessions, and congregations as to whether or not self-affirming, practicing homosexual persons are eligible or ineligible for ordination to office.

The 1978 statement was provided as a definitive guidance. That is distinctly different from a requirement that flows from an authoritative interpretation. Congregations should be free to prayerfully consider the guidance and to either follow the guidance or not as their consciences and the Holy Spirit leads them in the election of their church officers. In this case, the consciences of the congregation of Central Presbyterian Church should not be disregarded. It follows inexorably that the ordinations were not irregular.

Questions have arisen concerning the General Assembly's action on the Report of the Advisory Committee on the Constitution (Minutes, 1993, Part I, p. 322). We find that any interpretation of the definitive guidance so as to exclude unrepentant homosexuals as a class from ordination as deacons and elders violates certain provisions of the current Book of Order as identified above. The General Assembly can interpret the provisions of the Book of Order - it cannot amend it without following prescribed procedures. A careful examination of the Advisory Committee on the Constitution's report, as approved by the General Assembly, reveals that it is largely predicated upon this court's holding in Remedial Case 197-9. Because Remedial Case 197-9 should be overruled, this court should hold that the definitive guidance is not an authoritative interpretation. Therefore, much of what has followed Remedial Case 197-9, including the report of the Advisory Committee, must fall. If the General Assembly wishes to change the constitutional law of the Church, it must do so in accordance with the Book of Order through established process for amendments.

On the basis of the sections of the Book of Order cited above, we hold that the synod permanent judicial commission was correct in its ruling that no irregularity occurred in the ordination of the two deacons and, further, we would overrule Remedial Case 197-9. Nevertheless, we concur in the order of the majority of our brothers and sisters. We would also declare that the definitive guidance is not a binding authoritative interpretation.

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a. History

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c. Specifications of Error

(1) The synod permanent judicial commission erred in failing to rule that the elections and ordinations of the two self-affirming, practicing homosexuals were null and void and to remove them from office.

This specification of error is not sustained.

While this commission recognizes that the ordinations were not in accordance with constitutional law in the Presbyterian Church (U.S.A.), they must stand in accordance with Book of Order, G-14.0203. Hope has failed to cite us to any precedent in church history where this relief has been granted.

(2) The synod permanent judicial commission erred by failing to rebuke Central Presbyterian Church for rebelling against the Word and will of God, and by failing to order Central to publicly acknowledge wrongdoing before presbytery.

This specification of error is not sustained.

The presbytery fulfilled its responsibility under Book of Order, D-3.0400 in fashioning an appropriate remedy. Failure to grant the remedy requested by Hope is not error.

(3) The synod permanent judicial commission erred in that it reversed that portion of the decision of the presbytery permanent judicial commission that declared the ordination of two self-affirming, practicing homosexuals to be irregular when:

(a) such finding had not been appealed;

and

(b) this portion of the decision is itself based upon an erroneous interpretation of Presbyterian law.

This specification is sustained in part and not sustained in part.

This specification contains both a procedural and a substantive issue. The procedural issue, identified by clause (a), questions the right of the synod permanent judicial commission to reverse a finding that has not been appealed.

This portion of the specification of error is not sustained.

This commission finds that the issue involving the ordinations was inextricably entwined with the question involved in the determination of specification of error number one, so that the judgment of the lower body was appropriately subject to modification (Book of Order, D-13.1300c).

The substantive issue identified by clause (b) questions the synod's understanding of current constitutional law on the right of a session to ordain self-affirming, practicing homosexuals.

This portion of this specification of error is sustained.

This specific issue of constitutional law in the Presbyterian Church (U.S.A.) has been determined after careful consideration in *Union Presbyterian Church of Blasdell, New York, et al. vs. The Presbytery of Western New York, Remedial Case 197-9* (Minutes, 1985, Part I, p. 121), which held that a self-affirming, practicing and unrepentant homosexual may not be ordained as a deacon. Remedial Case 197-9 was based on an interpretation issued by the 190th General Assembly (1978) in the UPCUSA that found "that unrepentant homosexual practice does not accord with the requirements for ordination set forth in the Form of Government . . ." (Minutes, UPCUSA, 1978, Part I, p. 265). The 119th General Assembly (1979) of the PCUS adopted a similar statement. (See Minutes, PCUS, 1979, Part I, pp. 201-210.) Subsequent General Assemblies had reaffirmed that position prior to Remedial Case 197-9.

The prohibition against ordaining a self-affirming, practicing homosexual has been challenged directly and indirectly by numerous overtures to the General Assembly after Remedial Case 197-9. To date, the General Assembly has not acted to overturn the basis of this commission's determinative decision in that case.

This decision, grounded in the authority of the General Assembly to issue authoritative interpretations of the Constitution, speaks clearly and without ambiguity on the issue presented by this case. Any change in policy where no ambiguity of interpretation exists must await change by subsequent action of the General Assembly.

d. Order

It is therefore ordered that the decision of the synod permanent judicial commission be reversed and that the decision of the Presbytery of the Cascades be reinstated.

It is further ordered that the stated clerk of the Presbytery of the Cascades 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 (Book of Order, D-8.1900).

The untimely death of Harold Densmore, member of the commission, on October 24, 1993, precluded his participation in the proceedings. Ferdinand Pharr was not present and took no part in the proceedings.

e. Opinion Concurring and Dissenting in part of David Prager, Patricia K. Norris, E. Cader Howard, Janet Schlenker and W. Clark Chamberlain

Although we concur with the majority in the order and with its decision with respect to specifications of error 2 and 3(a), we respectfully dissent with respect to a portion of the majority's decision as to specification of error 1 and to its decision as to specification of error 3(b).

The basic issue of whether a self-affirming, practicing, unrepentant homosexual may constitutionally be ordained as a deacon was decided by the General Assembly Permanent Judicial Council [Commission] in 1985 in the case of Union Presbyterian Church of Blasdell, New York, et al. v. The Presbytery of Western New York (Remedial Case 197-9). In that case, the General Assembly Permanent Judicial Commission held that such a member of a congregation could not be ordained to the position of minister, elder, or deacon.

In arriving at its decision in Remedial Case 197-9, the Permanent Judicial Commission relied primarily upon the policy statement regarding homosexual conduct and orientation adopted by the 190th General Assembly (1978) in the UPCUSA which stated that "unrepentant homosexual practice does not accord with the requirements for ordination set forth in Form of Government . . ." (Minutes, 1978, UPCUSA, Part I, p. 265), Remedial Case 197-9 rejected the contention that G-5.0202, which guarantees any active member of a church the right to vote and hold office in that particular church, determines the issue.

The dissent in Remedial Case 197-9 held that denial to a church member of access to a congregational office was in direct violation of G-5.0202. The dissenters argued that the Book of Order could not be amended by a "definitive guidance".

The majority decision in Remedial Case 197-9 was erroneous and must be overruled. In arriving at this decision, we have considered certain specific provisions of the Book of Order that establish two basic doctrines which are fundamental in Presbyterian law. They are: (1) inclusiveness of all persons within the membership of the church; and (2) division of powers among the four governing bodies of the church - the session, presbytery, synod and General Assembly.

First, inclusiveness is guaranteed by Book of Order, G-5.0103, which states that "no persons shall be denied membership because of race, ethnic origin, worldly conditions, or any other reason not related to profession of faith" [emphasis added]. The fellowship of Christ must be extended to all persons. Failure to do so constitutes a rejection of Christ and causes a scandal to the gospel. This provision requires that the church include as active members all persons including those with homosexual orientation.

An active member is a person "who has made a profession of faith in Christ, has been baptized, has been received into membership of the Church, has voluntarily submitted to the government of the Church, and participates in the Church's work and worship" (Book of Order, G-5.0202). The same section states with specificity that an active member "is entitled to all the rights and privileges of the Church including the right to . . . vote and hold office" [emphasis added]. The right to hold office is, of course, dependent upon the member's election by the congregation (Book of Order, G-6.0107).

Second, there are a number of sections of the Book of Order pertaining to the division of power among the respective governing bodies that have constitutional implications for the ordination issues presented to this court. Pertinent sections are as follows:

- The "government of this Church is representative, and the right of God's people to elect their officers is inalienable" (Book of Order, G-6.0107).
- "It is necessary to the integrity and health of the Church that persons who serve as officers shall adhere to the essentials of the Reformed faith and polity as expressed in the Book of Confessions and the Form of Government [but that] . . . freedom of conscience . . . is to be maintained" (Book of Order, G-6.0108a).
- "The decision as to whether a person has departed from the essentials of the Reformed faith and polity is made initially by the individual concerned but ultimately becomes the responsibility of the governing body in which he or she serves" [emphasis added] (Book of Order, G-6.0108b).

This last section also recognizes that the local congregation is best qualified to evaluate and elect its own officers. The session's decision to ordain and install is ultimate and final and is not subject to review by the presbytery or a higher governing body (Book of Order, G-6.0108b). If, however, the elected officer commits an offense, he or she is subject to church discipline as provided by the Book of Order.

If the fellowship of Christ must be extended to all persons, we cannot approve a rule that arbitrarily precludes an active member who is a homosexual person from serving as a deacon, thus preventing that member

from giving sympathy, witness and service to others in the church and community. That would indeed be a scandal to the gospel.

This conclusion is consistent with Book of Order, G-14.0203, which declares that the office of elder or deacon is perpetual and no one can lay it aside at pleasure or be divested of it except as specifically provided in the Book of Order.

In this case, the record is clear that Central Presbyterian Church carefully examined the two individuals involved and discharged all of its constitutional responsibilities in an exemplary manner. It could not have acted in a more thoughtful, loving, or responsible manner. Indeed, its actions and approach in fulfilling its constitutional mandates should serve as a model for our church. As the chair of Central Presbyterian Church's nominating committee testified at the trial before the Presbytery of Cascades permanent judicial commission, "[T]his was a decision on two individuals who are well qualified. We looked at them as persons. We did not look at them as a class of people. We looked at them as individuals who have talents, abilities, and commitments to offer to the church."

The dissent in Remedial Case 197-9 held that denial to a church member of access to a congregational office violated G-5.0202 and that the Book of Order could not be amended by a "definitive guidance". We agree.

The 1978 policy statement acknowledges in its conclusions that the phrase "homosexual persons" does not occur in the Book of Order of the United Presbyterian Church and, further, that the Book of Order does not give explicit direction to presbyteries, sessions, and congregations as to whether or not self-affirming, practicing homosexual persons are eligible or ineligible for ordination to office.

The 1978 statement was provided as a definitive guidance. That is distinctly different from a requirement that flows from an authoritative interpretation. Congregations should be free to prayerfully consider the guidance and to either follow the guidance or not as their consciences and the Holy Spirit leads them in the election of their church officers. In this case, the consciences of the congregation of Central Presbyterian Church should not be disregarded. It follows inexorably that the ordinations were not irregular.

Questions have arisen concerning the General Assembly's action on the Report of the Advisory Committee on the Constitution (Minutes, 1993, Part I, p. 322). We find that any interpretation of the definitive guidance so as to exclude unrepentant homosexuals as a class from ordination as deacons and elders violates certain provisions of the current Book of Order as identified above. The General Assembly can interpret the provisions of the Book of Order - it cannot amend it without following prescribed procedures. A careful examination of the Advisory Committee on the Constitution's report, as approved by the General Assembly, reveals that it is largely predicated upon this court's holding in Remedial Case 197-9. Because Remedial Case 197-9 should be overruled, this court should hold that the definitive guidance is not an authoritative interpretation. Therefore, much of what has followed Remedial Case 197-9, including the report of the Advisory Committee, must fall. If the General Assembly wishes to change the constitutional law of the Church, it must do so in accordance with the Book of Order through established process for amendments.

On the basis of the sections of the Book of Order cited above, we hold that the synod permanent judicial commission was correct in its ruling that no irregularity occurred in the ordination of the two deacons and, further, we would overrule Remedial Case 197-9. Nevertheless, we concur in the order of the majority of our brothers and sisters. We would also declare that the definitive guidance is not a binding authoritative interpretation.

*Decision of the General Assembly Permanent Judicial Commission
Of the Presbyterian Church (USA)
1994
General Assembly Minutes, p. 142*