

PRESBYTERY OF THE TWIN CITIES AREA
Committee of Counsel
Report to Presbytery
March 14, 2009

The General Assembly Permanent Judicial Commission (GAPJC) met on Friday, February 27, 2009, in San Diego, California for the purpose of hearing oral argument on three cases, including the remedial case of Bierschwale, Lenz & Shanholtzer v. Presbytery of the Twin Cities Area.

The Committee of Counsel appeared on behalf of the PTCA via written brief and we also appeared in person at the hearing. Each side of the case was permitted 30 minutes to make an oral presentation, after which the GAPJC members questioned each side regarding many issues and points. The hearing for our case lasted a total of about 3 hours.

The purpose of the appeal was to determine whether the Amended Complaint states a claim against the PTCA upon which relief can be granted. The complainants alleged twelve specifications of error by the synod permanent judicial commission when it dismissed the Amended Complaint without holding a trial. Each of these specifications of error was analyzed and discussed in the written brief filed by the Committee of Counsel early in February, 2009, prior to the hearing.

During our oral presentation to the GAPJC, we discussed our position that the PTCA committed no error or irregularity when it decided to restore Dr. Capetz to the exercise of ordained office and validate his ministry; that these decisions were within the PTCA's discretion, and that Dr. Capetz' restoration to the exercise of office cannot be challenged in a remedial case.

The GAPJC agreed with the PTCA on all these points. The GAPJC found that the Amended Complaint does not state a claim upon which relief may be granted as to Dr. Capetz' restoration and the validation of his ministry as a professor at United Theological Seminary. The GAPJC ruled that the complainants cannot further challenge Dr. Capetz' restoration; they cannot challenge the process used by the PTCA; and they cannot challenge the validation of his ministry. Similarly, the complainants may not seek an admonition of the PTCA with respect to future ordinations, installations or ordinations. The GAPJC said that Dr. Capetz' restoration was not irregular and the validation of his ministry was not irregular. The GAPJC dismissed ten of the twelve specifications of error which were alleged against the PTCA.

The GAPJC did, however, rule that the synod permanent judicial commission should hold a trial for the specific purpose of determining (a) whether there are facts that Dr. Capetz stated a departure under G-6.0106b, and if so, (b) whether that departure was a failure to adhere to the requirements of G-6.0108; and if the facts show (a) and (b), then the synod permanent judicial commission will determine whether the PTCA's action was irregular.

The GAPJC stated that the trial of this case should include a presentation of evidence to determine whether the requirements of G-6.0108 have been met.

The GAPJC has not said that PTCA did anything wrong. It simply said that the complainants now have a chance to have a trial and present evidence before the synod permanent judicial commission on the narrow issue of whether Dr. Capetz' statements to the presbytery were a proper exercise of freedom of conscience under G-6.0108.

The synod permanent judicial commission has not scheduled a trial date for this matter.

Respectfully submitted,

Committee of Counsel
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