

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

Jane Adams Spahr,)	
)	
)	DECISION AND ORDER
v.)	
)	Disciplinary Case 218-12
Presbyterian Church (U.S.A.) through)	
the Presbytery of Redwoods,)	
Appellee.)	

Headnotes

- 1. Marriage is defined by the *Book of Order* W-4.9001.** W-4.9001 provides four definitional statements of marriage. As a definition, W-4.9001 does not prohibit an officer of the Presbyterian Church (U.S.A.) who has been authorized to perform marriages from performing a same sex union. A same sex ceremony is not and cannot be a marriage under W-4.9001.

- 2. Same-sex unions are not to be confused with marriages.** There are differences between same sex ceremonies and marriage ceremonies. The liturgy should be kept distinct for the two types of services. Officers of the Presbyterian Church (U.S.A.) who are authorized to perform marriages shall not state, imply, or represent that a same sex ceremony is a marriage because under W-4.9001 a same sex ceremony is not and cannot be a marriage.

- 3. Standard of review.** Factual determinations made by a trier of fact are accorded a presumption of correctness. Questions of constitutional interpretation are not subject to the same deference.

Arrival Statement

This disciplinary case came before the General Assembly Permanent Judicial Commission (GAPJC or this Commission) on appeal filed by the Appellant, Jane Adams Spahr (Spahr), from a decision of the Permanent Judicial Commission of the Synod of the Pacific (SPJC) dated August 18, 2007.

Jurisdictional Statement

This Commission finds that it has jurisdiction, that Spahr has 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 required under D-13.0106.

Appearances

Spahr was present in person and was represented by Sara M. Taylor, Tim K. Cahn and Scott Clark. The Presbyterian Church (U.S.A.) (PCUSA) through the Presbytery of Redwoods (Presbytery) was represented by the counsel for the prosecuting committee, Stephen L. Taber, Lyn Hamilton, and David Jordan-Erwin.

History

On February 28, 2004, Spahr, a minister of the Word and Sacrament, participated in a wedding ceremony for two men in Ontario, Canada. On October 24, 2004, the Presbytery filed a disciplinary case against Spahr based on this activity, charging her with violating W-4.9001 of the "Directory for Worship." Presbytery withdrew that charge in March, 2005, after determining that Spahr's level of participation in that particular ceremony was not in violation of W-4.9001 and as Authoritatively Interpreted by the 203rd General Assembly (*Minutes*, 1991, at 21.124-128) (1991 AI). Presbytery was granted permission to amend the charge to allege that:

Spahr conducted two same-gender marriages: the marriages of Connie Valois and Barbara Jean Douglass on August 21, 2004; and of Annie Senechal and Sherrill Figuera on May 27, 2005 in violation of W-4.9001. On August 21, 2004, you, Dr. Jane Adams Spahr, did perform a wedding service in the marriage of Connie Valois and Barbara Jean Douglass and on May 27, 2005 you did perform a wedding service in the marriage of Annie Senechal and Sherrill Figuera, and thereby you have acted contrary to the Constitution of the Presbyterian Church U.S.A. These actions were in violation of W-4.9001 which states, in part, 'Christian marriage is a covenant through which a man and a woman are called to live out together before God their lives of discipleship....'

By performing these wedding services, you violated Authoritative Interpretations of the General Assembly which declare that it would not be proper for a Minister of the Word and Sacrament to perform a ceremony that the minister determines to be the same as a marriage ceremony.

Trial was held before the Presbytery's Permanent Judicial Commission (PPJC) on March 2-3, 2006. In her trial testimony, Spahr acknowledged that she had performed the ceremonies at issue and others preceding them. The record reflects that she also signed a "Certificate of Marriage" for each of the ceremonies which is the subject of this case. She testified that her ministry had been a "ministry of marriage equality." Spahr had officiated at ceremonies between same gender couples whether the couple described the ceremony as a "union," a "marriage" or in other terms. Spahr provided heterosexual and same sex couples the same counseling and preparation work before performing any ceremony.

At the trial, a motion was made to disqualify a member of the PPJC based on the allegation that the member had a personal interest in the case because she took part with Spahr in a "ceremony of commitment" on August 5-6, 2004. The motion was denied.

By its order dated March 3, 2006, the PPJC found that Spahr had committed no chargeable offense, and thus she was effectively found to be “not guilty” as charged. Based on a 2005 amendment to D-13.0106b, which permits a prosecuting committee to appeal the decision in a disciplinary case, Presbytery filed this appeal on March 23, 2006. A request by the SPJC to refer the case to the GAPJC was denied on May 7, 2007, because (1) the complexity of the issues invited consideration by the full judicial structure of the PCUSA, (2) acceptance of reference to the GAPJC would deny the parties one level of appellate review, and (3) there would be no extraordinary expense or delay if reference were not accepted. The SPJC subsequently held a hearing, and on August 18, 2007, issued its decision finding, Spahr guilty of violating W-4.9001 and the 1991 AI, and imposing on her the censure of rebuke.

Preliminary Statement

This is a disciplinary, not a remedial, case. Ministers of the Word and Sacrament can be charged with offenses for “any act or omission ... that is contrary to the Scriptures or the Constitution.” (D-2.0203) Such charges must be clear and specific enough that the accused may know and understand the nature of the offenses charged and defend against the charges. In considering this case, this Commission had to determine whether the charges against Spahr were properly stated as offenses contrary to Scripture or the Constitution of the PCUSA. It is important that members and officers of the church know beforehand what conduct is prohibited as well as the basis for imposing censure. The Commission would note that while the Prosecuting Committee relied heavily on the decision in *Benton v. Presbytery of Hudson River Minutes*, 2000, Part I pp. 580-589, Remedial Case 212-11. *Benton* was a remedial case rather than a disciplinary case and involved the policies of a session. It is not applicable to this case.

Specifications of Error and Decision

Specification of Error No. 1 (Appellant’s 5): The SPJC erred in constitutional interpretation by concluding that, taken together, the 1991 AI, Benton and the provisions of W-4.9001 constitute a mandatory prohibition against a minister of the Word and Sacrament conducting same sex marriages.

This specification of error is sustained in part and not sustained in part for the reasons stated below following Specification of Error No. 2.

Specification of Error No. 2 (Appellant’s 4 and 6): The SPJC erred in constitutional interpretation by concluding that Spahr committed a disciplinary offense.

This specification of error is sustained.

Spahr was charged with and found guilty of violating W-4.9001 and the 1991 AI by performing “wedding service[s] in the marriage of” two same sex couples. The SPJC determined that Spahr was guilty based on her actions in performing “wedding” services for two same sex couples. Even after amendment of the charges by the Presbytery, the offense charged was the act of performing same sex marriages.

There is no prohibition in W-4.9001 against performing a same sex ceremony. The 1991 AI acknowledged that there is no mention in the *Book of Order* of same sex unions or ceremonies. The 1991 AI states that it is not “proper” for ministers to conduct ceremonies represented as marriages between persons of the same sex.

W-4.9001 in the *Book of Order* defines marriage as follows:

Marriage is a gift God has given to all humankind for the well-being of the entire human family. Marriage is a civil contract between a woman and a man. For Christians marriage is a covenant through which a man and a woman are called to live out together before God their lives of discipleship. In a service of Christian marriage a lifelong commitment is made by a woman and a man to each other, publicly witnessed and acknowledged by the community of faith.

W-4.9001 provides four definitional statements of marriage. As a definition, W-4.9001 does not prohibit a minister from performing a same sex union. Moreover, the 1991 AI did not prohibit ministers from performing ceremonies intended to bless or recognize the union between two men or two women.

The ceremonies that are the subject of this case were not marriages as the term is defined by W-4.9001. These were ceremonies between women, not between a man and a woman. Both parties acknowledged the ceremonies in question were not marriages as defined by the *Book of Order*. It is not improper for ministers of the Word and Sacrament to perform same sex ceremonies. At least four times, the larger church has rejected overtures that would prohibit blessing the unions of same sex couples.¹ By the definition in W-4.9001, a same sex ceremony can never be a marriage. The SPJC found Spahr guilty of doing that which by definition cannot be done. One cannot characterize same sex ceremonies as marriages for the purpose of disciplining a minister of the Word and Sacrament and at the same time declare that such ceremonies are not marriages for legal or ecclesiastical purposes.

The PPJC was correct in finding that by performing the two ceremonies at issue, Spahr did not commit an offense as charged. Therefore, the SPJC erred in determining that Spahr was guilty of violating W-4.9001 or the 1991 AI.

In holding that Spahr was not guilty as charged, this Commission does not hold that there are no differences between same sex ceremonies and marriage ceremonies. We do hold that the liturgy should be kept distinct for the two types of services. We further hold that officers of the PCUSA authorized to perform marriages shall not state, imply, or represent that a same sex ceremony is a marriage. Under W-4.9001, a same sex ceremony is not and cannot be a marriage.

Spahr argued that her actions were justified based on her work in providing pastoral care to a marginalized and oppressed community. Spahr served in a validated ministry charged with caring for members of the gay, lesbian, bi-sexual, and transgender (GLBT) community and reported regularly to her presbytery about the same sex unions and “weddings” she performed. These services were not described as marriages in her reports as found in the record of the case.

¹ Annotated *Book of Order* W-4.9001

It is acknowledged by those who have heard this case at every level that Spahr has acted in light of her call and the church's call to participate in a caring and compassionate ministry to persons who have been marginalized, who are faithful Christians, and who wish to be accepted in every way as full members of the body of Christ. In this, Spahr may consider herself to be acting in the role of a prophet to the church, while others would reject such a characterization. Prophecy contains risk and uncertainty both for those who would speak and for those who listen. The role of a prophet carries consequences. It is the burden of a church officer to accept the consequences of his or her actions that are the ecclesiastical equivalent of civil disobedience.

Membership in the PCUSA is open to all persons. (G-4.0400) The General Assembly has affirmed several times and in various ways its commitment to stand for the just and equal treatment of all persons regardless of sexual orientation. While drawing a distinction between sexual orientation and sexual practice, and maintaining behavioral standards for ordained office that further limit sexual practice, the church has attempted to minister to GLBT persons through the efforts of ministers like Spahr. The tension the church has created between sexual orientation and sexual practice has led to turmoil and dissension that will likely continue for some time. The difficulties faced by this Commission in deciding this case reflect that tension.

Christians are called to do justice . The language of W-7.3000 and W-7.4000 is replete with admonitions that are inconsistent with imposing censure on a minister of the Word and Sacrament for reaching out to a marginalized and oppressed segment of the body. Moreover, "the Christian community offers pastoral care to its members in their personal and communal life." (W-6.3001) The church should provide ministries of pastoral care to people in recognizing and celebrating times of transition and commitment. (W-6.3010) "The worship of God in the Christian community is the foundation and context for the ministry of pastoral care as well as for the ministry of nurture in faith." (W-6.4000)

In summary, Specification of Error No. 1 is not sustained because by definition, "marriage is . . . between a man and a woman." (W-4.9001) Specification of Error No. 1 and Specification of Error No. 2 are sustained because W-4.9001 does not state a mandatory prohibition on performing a same sex ceremony. The charge was for performing a marriage ceremony, which by definition cannot be performed.

Specification of Error No. 3 (Appellant's 1): The SPJC committed an irregularity in the proceedings by (a) substituting its judgment for that of the PPJC in the evaluation of Spahr's conduct and (b) failing to apply the 2006 General Assembly's Authoritative Interpretation of G-6.0108 (2006 AI).

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

(a) This case raises other procedural issues. This case is an appeal by a prosecuting committee as permitted by D-13.0102. Giving a prosecuting committee the right to appeal does not change the standard of review. Factual determinations made by a trier of fact are presumed to be correct. Questions of constitutional interpretation are not subject to the same deference, but are reviewed by an appellate body anew. (*Hardwick v. Permanent Judicial Commission of the*

Synod of North Carolina, *Minutes*, 1983, p. 45) The SPJC determined that the PPJC erred in its constitutional interpretation.

In a case in which a prosecuting committee appeals a verdict of not guilty, the appellate body should not determine the appropriate censure in the first instance. Therefore, when the SPJC reversed the PPJC verdict, it should have remanded the case to the PPJC to impose a censure consistent with the SPJC's decision. Attention is drawn to D-11.0403e, in which censures are imposed by the triers of fact who have heard "evidence as to the extent of the injury suffered, mitigation, rehabilitation, and redemption."

(b) Spahr also contends that the SPJC failed to apply the 217th General Assembly's Authoritative Interpretation, (2006 AI) and *Bush et al. v. Presbytery of Pittsburgh*, Remedial case 218-10, February 11, 2008. The 2006 AI and *Bush* do not apply because they deal with ordination standards that are not at issue in this case.

Specification of Error No. 4 (Appellant's 3): The SPJC committed injustice in the decision by concluding that the Constitution of the PCUSA sanctions marriage only between a man and woman.

This specification of error is not sustained.

As more fully discussed above in response to Specifications of Error Nos. 1 and 2, the SPJC was correct that W-4.9001 defines marriage as only between a man and woman, and that the Constitution does not address any other form of marriage. However, as discussed elsewhere in this decision, Spahr did not commit a sanctionable offense as charged.

Specification of Error No. 5 (Appellant's 7): The SPJC erred in constitutional interpretation by failing to apply the 2006 AI and historic constitutional principles of polity when it failed to determine whether Spahr's performance of same sex marriages violated an essential tenet of Reformed faith or polity and, if so, whether the violation fell outside the bounds of G-6.0108.

This specification of error is not sustained.

Because this Commission has found that Spahr did not commit a sanctionable offense as charged, this specification of error is not sustained.

Specification of Error No. 6 (Appellant's 8): The SPJC erred in constitutional interpretation by incorrectly applying G-6.0108, failing to apply subsections (c)-(e) of the 2006 AI, and by finding Spahr's actions contrary to the Constitution, and, therefore, censurable, even though she "acted with conscience and conviction" in performing her ministerial duty with respect to the marriages.

This specification of error is not sustained.

Because this Commission has found that Spahr did not commit a sanctionable offense as charged, this specification of error is not sustained.

Spahr justifies her actions by claiming freedom of conscience as delineated in G-6.0108. Freedom of conscience is a foundational principle of the PCUSA. (G-1.0301) However, Spahr's repeated reliance on G-6.0108 as a standard of freedom to justify her actions ignores the thrust of this principle: freedom of conscience must be exercised within bounds. Rather than describing freedom of conscience in any absolute way, G-6.0108 declares the manner in which the conscience of an officer of the church is bound. The binding of the conscience of an officer of the church permits freedom of conscience with regard to the interpretation of Scripture only insofar as it "may be possible without serious departure from these standards, without infringing on the rights and views of others, and without obstructing the constitutional governance of the church." Further, G-6.0108 states that an officer's conscience is "captive to the Word of God as interpreted in the standards of the church so long as he or she continues to seek or hold office in that body." Submission to the current standards of the church may not always be comfortable, but it is not optional.

Specification of Error No. 7 (Appellant's 2): The SPJC erred by concluding that a member of the PPJC should have been disqualified.

This specification of error is sustained.

The SPJC determined that one member of the PPJC should have been disqualified from serving on the PPJC because there was at least an appearance of a conflict of interest. The PPJC member's participation was challenged because she "might conceivably have an interest in the case" based on evidence that she participated with Spahr in a "ceremony of commitment." At that ceremony of commitment, the PPJC member "led a blessing over the wine which was shared 'by the two to be wed,' she shared her story of her relationship with her best friend; she co-read in liturgy; she led a ceremony of lighting a 'unity candle,' which 'is an ancient Jewish custom called circling'; and she offered prayers and the benediction." These actions pertained to ceremonies not at issue in this case and thus did not rise to the level of an "interest in the case" requiring disqualification of the member under D-11.0402b(1).

In this case, the decision of the PPJC not to uphold the challenge to the member in question should not have been overturned. The member was not subject to the mandatory disqualification standards of D-5.0205, which applies to all types of cases. The member also did not fall into the disqualification standards of D-11.0402b(1), which pertain to disqualification in disciplinary cases. D-11.0402b(1) requires disqualification in a disciplinary case when the commissioner is "personally interested in the case" or has been "active for or against any party." The SPJC determination that the member should have been disqualified from serving was in error.

Order

IT IS THEREFORE ORDERED that the Decision of the Permanent Judicial Commission of the Synod of the Pacific is reversed and the censure is removed.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of 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.

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 the General Assembly.

**Concurring Opinion of Fred L. Denson, William E. Scheu,
and Gregory A. Goodwiller for Specifications of Error 1 and 2**

We join in the foregoing Decision and Order (Decision). We understand the Decision to be an authoritative interpretation of W-4.9001, to mean that officers of the PCUSA who are authorized to perform marriages shall not hereafter perform a same sex union ceremony in which or with respect to which such officer states, implies or represents to be a marriage or the equivalent thereof. While the Commission did not find Spahr guilty as charged herein, in part because her conduct occurred under prior authoritative interpretations, we understand that future noncompliance with the authoritative interpretation of the Decision will be considered to be a disciplinable offense.

**Concurring Opinion of Catherine G. Borchert, Tony M. Cook,
and William E. Scheu for Specification of Error No. 7**

Specification of error #7 concerns the conclusion of the SPJC that one of the members of the PPJC should have been disqualified due to her participation in a same gender commitment service.

We agree with the conclusion in law of the majority. However, what is right in a narrow legal sense may not be best either for the parties or for the church. A member of a permanent judicial commission who is placed in a position of trust by his or her sisters and brothers in the church needs to do special work in discerning if their actions and connections with a party to a case places them in a situation in which a reasonable person would question their ability to maintain the objectivity necessary to undertake the task of judging and disciplining another.

In this case, the decision of the PPJC not to uphold the challenge to the member in question was undoubtedly legally correct, and so should not be overturned. The rationale presented by the Synod concerning the participation of the member is wise and should always be considered prayerfully by any commissioner who may have past associations of any kind with a party in a disciplinary case.

**Concurring Opinion of Mary Eleanor Johns, Catherine G. Borchert,
and Susan J. Cornman**

Much of the argument in this case centered on the provision of pastoral care by Spahr as her call to ministry. In providing pastoral care, the minister must take into account not only the rules of the church, but the call to faithfulness as Presbyterians. Among other places in the Constitution, the living out of our faithfulness as Christians and as Presbyterians is called forth through the words which define compassion, justice, reconciliation and peace in the "Directory for Worship", W-7.3002 - W-7.3004, sections which speak of compassion in settings of worship, show compassion as advocacy, and speak of faithful compassion. The ways in which compassion is seen to be faithful include the following from W-7.3003:

Such acts of compassion, done corporately and individually, are the work of the church as the body of Christ. The church is called to minister to the immediate needs and hurts of people. The church is also called to engage those structures and systems which create or foster brokenness and distortion. Christians respond to these calls through acts of advocacy and compassion, through service in common ministries of the church, and through cooperation with agencies and organizations committed to those ends. (G-3.0300)

The "Directory for Worship" continues, delineating ways in which we are called to serve.

Following the example of Jesus Christ, faithful disciples today express compassion

- a. with respect for the dignity of those in need,
- c. with willingness to risk their own comfort and safety."

Acts of compassion through the power of the Holy Spirit are accompanied by the worshipful acts of justice, leading to peace and reconciliation. W-7.4002 includes the following:

Justice is the order God sets in human life ... for giving rights to those who have no power to claim rights for themselves. The biblical vision of doing justice calls for

- c. supporting people who seek the dignity, freedom, and respect that they have been denied.
- h. redressing wrongs against individuals, groups, and peoples in the church, in this nation, and in the whole world.

In following these constitutional admonitions, a minister may find the call to compassion and advocacy in tension rules of the church. The church's structure and discipline are to be heeded, even while the minister's faithfulness to Christ is unquestioned.

**Concurring Opinion and Dissenting Opinion in Part of
Judy L. Woods, Patrick W. Notley, Mary Eleanor Johns, Fane Downs, and Susan J.
Cornman for Specifications of Error 1 and 2**

In rendering its decision, the majority has taken the liberty of legislating in the guise of interpreting inconsistencies between W-4.9001 on the one hand, and the 1991 AI and this Commission's decision in *Benton v. Presbytery of Hudson River*, Remedial Case 212-11 (2000), on the other hand. For the reasons stated herein, we respectfully concur in the result of the majority, but disagree with the decision of the majority to the extent that it rests on the 1991 AI or *Benton*. Spahr was charged with and found guilty of violating W-4.9001 and the 1991 AI by performing "wedding" services for two same sex couples. There is no prohibition in W-4.9001 or elsewhere in the Constitution against performing a same sex wedding or other ceremonies to recognize or bless same sex unions. The 1991 AI acknowledged that there is no mention in the Book of Order of same sex unions or ceremonies.

The majority is correct that W-4.9001 defines "marriage" as between a man and a woman. Any ceremony, no matter what is called, between two men or between two women, is not and cannot be a marriage. As a definition, W-4.9001 does not prohibit a minister of the Word and Sacrament or authorized church officer from performing a same sex union or blessing ceremony. Neither the 1991 AI, nor this Commission's decision in *Benton*, prohibited ministers from performing ceremonies intended to bless or recognize the union between two men or two women. Because a same sex ceremony cannot be a "marriage" as marriage is defined by W-4.9001, it should not be necessary to say more. It is not the place of this Commission to go any farther and step into the legislative realm. The larger church has declined at least four times to amend W-4.9001 with regard to same sex ceremonies. The majority now takes this step to amend the definition to include prohibitions. See the Annotations to W-4.9001 describing repeated unsuccessful attempts to change W-4.9001. Any steps to define or distinguish same sex ceremonies or the nomenclature applied to them is best left to the General Assembly, not this Commission.

Benton attempts to draw a line between a marriage and a same sex ceremony based on the conclusion that a marriage confers a new status on the couple, while a same sex union blesses an existing relationship. The new status on which *Benton* differentiates marriages from same sex ceremonies is not defined. Then in circular fashion, *Benton* concludes the status results from the pronouncement of "marriage" which is *a priori* defined by W-4.9001 as a status only available to a man and a woman. *Benton* and the 1991 AI "admonished" ministers and sessions to take special care to avoid confusing same sex ceremonies with marriages. This advice is consistent with the current state of our Constitutional language, which makes it clear that there is no such thing as "marriage" between same sex couples. W-4.9001. The majority purports that *Benton* (on which the SPJC relied heavily for its decision to censure Spahr) is not applicable. However, the holding in this case extends the holding in *Benton*. The majority refused to address *Benton* squarely or acknowledge that *Benton* is built on a foundation of sand. We dissent because the majority fails to point out the fallacies of *Benton*, and then converts admonitions in *Benton* into prohibitions. We disagree with that portion of the majority decision and do not join in it. In all other respects, we join in the majority decision as to Specifications of Error Nos. 1 and 2 and as to the remainder of the decision.

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 Disciplinary Case 218-12, Jane Adams Spahr, Appellant, v. Presbyterian Church (U.S.A.) through the Presbytery of Redwoods, Appellee, made and announced at Louisville, Kentucky, on April 28, 2008.

Dated this 28th day of April, 2008.