

**THE PERMANENT JUDICIAL COMMISSION
OF THE SYNOD OF THE PACIFIC
OF THE PRESBYTERIAN CHURCH (U.S.A.)**

The Presbyterian Church (U.S.A.) through)	FINAL DECISION AND ORDER
The Presbytery of the Redwoods)	
Prosecuting Committee)	
Appellee,)	Appeal in Disciplinary Case 10-03
v.)	
)	
The Rev Dr Jane Adams Spahr,)	
)	
Appellant.)	
)	

ARRIVAL STATEMENT

This disciplinary case came before the Synod Permanent Judicial Commission (SPJC or this Commission) on appeal filed by the Appellant, Jane Adams Spahr (Spahr), from a decision of the Permanent Judicial Commission of the Presbytery of Redwoods (PPJC) dated August 27, 2010.

JURISDICTIONAL STATEMENT

The preliminary questions posed in D-13.0301 were all answered in the affirmative.

APPEARANCES

Jane Adams Spahr appeared in person and was represented by Beverly Brewster, Scott Clark, and Sara Taylor. The Presbytery of Redwoods (Presbytery) was represented by JoAn Blackstone and Dan Fowler.

HISTORY

This case came to the SPJC as the result of a trial held by the PPJC of the Presbytery of the Redwoods on August 24, 2010. On August 27, 2010, the decision of the PPJC was finalized. In that trial Spahr was charged with:

1. Implying that a same sex ceremony was a marriage, in violation of the judgment of the Permanent Judicial Commission of the General Assembly (GAPJC) in its decision and order in Disciplinary Case 218-12, *Jane Adams Spahr v. Presbyterian Church (U.S.A.)* (Spahr, 2008) which stated “ ... 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.”

2. Persisting in a practice of disobedience concerning charge # 1 between the dates of June 17, 2008 and November 3, 2008, when same-sex marriages were valid and lawful in the State of California, by performing no fewer than fifteen such ceremonies between persons of the same sex that were represented as marriages.

3. Persisting in actions indicated in charges # 1 and # 2 in a manner illustrating her failure to be governed by the polity of the Presbyterian Church (U.S.A.), in violation of ordination vows (W-4.4003e).

4. Repeatedly acting in violation of the Book of Order and therefore failing to further the peace, unity, and purity of the church (W-4.4003g).

Charges one through three were sustained by the PPJC. Charge four was not sustained.

Two prior cases bear on the issues involved in this case. The first is *Spahr* (2008) which was heard by the GAPJC on April 28, 2008. That decision held “that officers of the PCUSA authorized to perform marriages shall not state, imply or represent that a same sex ceremony is a marriage.” Not long after the *Spahr* (2008) ruling was handed down, same-sex marriages became legal in some jurisdictions, including California and Massachusetts. On May 15, 2008, the California Supreme Court ruled that same gender marriages are to be legally recognized and constitutionally protected .

On February 7, 2011, the GAPJC, for the first time, addressed “a marriage of two persons of the same gender when such marriages are permitted under the laws of the state in which the marriage is performed” (Disciplinary Case 220-102 of the GAPJC; *Jean K. Southard v Presbytery of Boston*) (*Southard*, 2011). The GAPJC ruled “In light of the change in laws in some states, this Commission reiterates that officers of the PCUSA who are authorized to perform marriages, when performing a ceremony for a same-gender couple, shall not state, imply, or represent that the same-gender ceremony is an *ecclesiastical* marriage ceremony as defined by PCUSA polity, whether or not the civil jurisdiction allows same-gender marriages” (emphasis added).

PRELIMINARY STATEMENT

The facts of this case are not in question. Rather the outcome of this case depends upon the application of ecclesiastical precedent to those facts.

The controlling precedent in this case is found in *Southard* . *Spahr* conducted several marriages between June 17 and November 4, 2008. Several of these marriages were for same sex couples at a time in California when the civil law authorized them. These marriages remain legally recognized marriages in California.

The question is this: in the performance of these same-gender marriages, did Spahr's participation in any way "state, imply or represent" that these ceremonies were ecclesiastical marriages, the standard set in *Southard*? This Commission concludes that it did. This conclusion is supported by Spahr's testimony that she considered these same-gender marriages to be equal in every way to opposite-gender marriages and she felt bound by her understanding of Scripture and the Constitution. The implication that ecclesiastical marriages were performed is further supported by the trial testimony of Spahr's witnesses as to their understanding of their marriage ceremonies. The cumulative effect of signing the marriage license as a Presbyterian minister, conducting ceremonies on church property, using the same pre-marital counseling, and using the same liturgy for services further supports the implication that these were ecclesiastical marriages.

These facts, the testimony of Spahr and the testimony of witnesses Spahr married in same-gender ceremonies, support the conclusion that, at a minimum, there was an implication those ceremonies were in fact ecclesiastical marriages. Indeed, Spahr testified the marriages she performed for same sex couples were equal in every respect to those of other couples. She stated that in the marriage ceremony, "[T]his is what I say at the end, I say this to everyone, 'Whom God has joined together, let nobody ever mess with,' that's what I say and that's what I believe" (Volume II PPJC trial transcript, p. 335, lines 22-24).

Taken together, these facts support the conclusion, and at minimum the implication, that more than civil weddings occurred; ecclesiastical weddings were performed by an ordained officer of the PC(USA). As such the conduct of Spahr violated the prohibition set forth in *Spahr (2008)* and *Southard*.

The standard at the time Spahr conducted the weddings and the standard used by the PPJC in arriving at its decision was *Spahr (2008)*, which held "that officers of the PC(USA) authorized to perform marriages shall not state, imply or represent that a same sex ceremony is a marriage." *Southard* followed and offered a more narrow view. This Commission is compelled to follow *Southard* as the most recent decision by the GAPJC. There is no prejudice to the parties because the conduct prohibited by *Southard* is a subset of the conduct previously prohibited by *Spahr (2008)*.

Based upon this analysis, we now turn to the Specifications of Error.

SPECIFICATIONS OF ERROR

SPECIFICATION OF ERROR NO. 1. *The Presbytery Permanent Judicial Commission erred in entering a verdict that contradicts its own findings that Rev. Spahr was faithful to both Scriptures and the Constitution in celebrating marriages of same-gender couples (D-11.0403). This constitutes injustice in the decision and fails to apply the constitutional burden of proof beyond a reasonable doubt (D-11.0403a).*

This Specification of Error is not sustained.

Being faithful to Scripture and the Constitution on other matters does not provide a defense for the actions charged in this case.

SPECIFICATION OF ERROR NO. 2. *The Presbytery Permanent Judicial Commission erred in constitutional interpretation when it determined the Rev. Jane Adams Spahr committed “the offense of representing that a same sex ceremony was a marriage.”*

This Specification of Error is not sustained.

The PPJC did not err in its constitutional interpretation. As noted in the PRELIMINARY STATEMENT and the analysis therein, the standard at the time Spahr conducted the weddings and the standard used by the PPJC in arriving at its decision was *Spahr (2008)*. *Spahr (2008)* was modified by *Southard*. This Commission is compelled to follow *Southard* as the most recent decision by the GAPJC. Under both *Spahr (2008)* and *Southard*, the implication that a civil marriage is also an ecclesiastical marriage when performed for same-sex couples is a violation of the constitutional standard.

SPECIFICATION OF ERROR NO. 3. *The Presbytery Permanent Judicial Commission erred in constitutional interpretation when it determined the Rev. Jane Adams Spahr’s actions were in direct violation of the Constitution of the Presbyterian Church (U.S.A.) Book of Order as interpreted by the General Assembly Permanent Judicial Commission (GAPJC) in its Decision and Order in Disciplinary Case No. 218-12, Jane Adams Spahr v. Presbyterian Church (U.S.A.) (“2008 Spahr Decision”).*

This Specification of Error is not sustained.

See explanation in Specification of Error No. 2.

SPECIFICATION OF ERROR NO. 4. *The Presbytery Permanent Judicial Commission erred in constitutional interpretation when it determined the Rev. Jane Adams Spahr persisted in a pattern or practice of disobedience concerning the 2008 Spahr Decision.*

This Specification of Error is not sustained.

There is sufficient evidence in the record to support the finding of a pattern and practice contrary to *Spahr (2008)*, even as modified by *Southard*.

SPECIFICATION OF ERROR NO. 5. *The Presbytery Permanent Judicial Commission erred in constitutional interpretation in holding that it was “constrained to accept” language in the 2008 Spahr Decision that said “officers of the PCUSA authorized to perform marriages shall not state, imply or represent that a same sex ceremony is a marriage.”*

This Specification of Error is not sustained.

See explanation in Specification of Error No. 2 and G-13.0103r in the *Book of Order*.

SPECIFICATION OF ERROR NO. 6. *The Presbytery Permanent Judicial Commission's misapplication of the language in the 2008 Spahr Decision deprives lesbian gay bisexual and transgender members of the church rights and privileges which are to be accorded all active members of the church in violation of G-5.0502*. This constitutes both error in constitutional interpretation and injustice in the decision.*

This Specification of Error is not sustained.

The PPJC did not misapply the language of *Spahr (2008)*.

*This Commission notes that G-5.0502 has no application to this case.

SPECIFICATION OF ERROR NO. 7. *The Permanent Judicial Commission erred in constitutional interpretation when it determined the Rev. Jane Adams Spahr violated her ordination vow to be governed by the polity of the church (W-4.4003e) by intentionally and repeatedly acting in violation of the 2008 Spahr Decision.*

This Specification of Error is not sustained.

There is sufficient evidence in the record to support the finding of a pattern and practice contrary to *Spahr (2008)*, even as modified by *Southard*. This pattern and practice supports the finding of a rejection of the polity of the church with respect to marriage as currently expressed in the *Book of Order* and *Southard*.

SPECIFICATION OF ERROR NO. 8. *The Presbytery Permanent Judicial Commission erred in constitutional interpretation when it elevated a single sentence of the 2008 Spahr Decision over the authority of the Gospel, the witness of Scripture, and the plain language of the Constitution (G-1.0100, G-1.0307, W-4.4003).*

This Specification of Error is not sustained.

See explanation in Specification of Error No. 2 and G-13.0103r in the *Book of Order*.

SPECIFICATION OF ERROR NO. 9. *The Presbytery Permanent Judicial Commission decision is contrary to the inclusive mandates of Scripture and G-3.0401 and G-4.0403 and requires ministers of word and sacrament to discriminate against lesbian, gay, bisexual and transgender persons, contrary to the Gospel and G-5.0202.* This constitutes both error in constitutional interpretation and injustice in the decision.*

This Specification of Error is not sustained.

The constitutional interpretations of *Spahr (2008)* and *Southard* by the PPJC are not inconsistent with the *Book of Order* when read as a whole.

*This Commission notes that G-5.0202 does not exist in the *Book of Order*.

SPECIFICATION OF ERROR NO. 10. *The Presbytery Permanent Judicial Commission decision is contrary to the requirements of W-7.3000 and W-7.4000 and to the admonitions of the 2008 Spahr decision concerning those constitutional provisions. This constitutes both error in constitutional interpretation and injustice in the decision.*

This Specification of Error is not sustained.

The constitutional interpretations of *Spahr (2008)* and *Southard* by the PPJC are not inconsistent with the *Book of Order* when read as a whole.

SPECIFICATION OF ERROR NO. 11. *The Presbytery Permanent Judicial Commission decision requires ministers of word and sacrament to deny to LGBT couples and their families pastoral care in worship and in life required by Scripture and by G-6.0202b, G-6.0203, W-6.3002, W-6.3010, W-6.4000. This constitutes both error in constitutional interpretation and injustice in the decision.*

This Specification of Error is not sustained.

The constitutional interpretations of *Spahr (2008)* and *Southard* by the PPJC are not inconsistent with the *Book of Order* when read as a whole.

SPECIFICATION OF ERROR NO. 12. *The Presbytery Permanent Judicial Commission erred in constitutional interpretation by failing to determine whether Rev. Spahr's ministry with these couples and their families was faithful to the Word of God and the essentials of Reformed faith and polity under G-6.0108.*

This Specification of Error is not sustained.

G-6.0108 affirms freedom of conscience, but does not authorize actions contrary to the polity of the PCUSA as expressed in the *Book of Confessions* and the Form of Government in the *Book of Order*. It is unnecessary for the PPJC to determine the conscience of a defendant to sustain a charge; rather it is only necessary to determine if the facts support charges brought in the case. The PPJC did not fail to address Spahr's defense nor did it err in its use of constitutional interpretation.

SPECIFICATION OF ERROR NO. 13. *The Presbytery Permanent Judicial Commission confesses its own error, the injustices of its decision, and the harm to lesbian, gay, bisexual and transgender people "that has been, and continues to be, done to them in the name of Jesus Christ" by the church (D-13.0106a(6)).*

This Specification of Error is not sustained.

COMMENTS

1. This Commission applied *Spahr (2008)* and *Southard* as authoritative decisions of the GAPJC. It is troubling that the GAPJC appears to have usurped the legislative province of the General Assembly when it created a new basis for discipline in *Spahr (2008)*. The GAPJC itself recognized that the decisions in *Spahr (2008)* and *Southard* created new bases for discipline by refusing to retroactively apply the standards to either Spahr or Southard. Whatever our opinion of the principle may be, it would appear that if the GAPJC has authority to proscribe specific behavior in this instance, it may do so in many other instances as well. The General Assembly and the presbyteries are more representative and better equipped to consider such matters by the usual practice of amending the *Book of Order*.

2. This Commission has a continuing concern about the pastoral role of a Minister of Word and Sacrament to those same-gender partners who wish to have a civil marriage. *Spahr* and *Southard* help to clarify the difference between civil and ecclesiastical weddings and the prohibitions required from PCUSA clergy in officiating at same-gender ecclesiastical weddings.

Our concern is for those PCUSA clergy who wish to officiate at a same-gender civil wedding. What would such a minister need to do to faithfully perform a civil wedding while conforming to PCUSA polity regarding ecclesiastical weddings? Would a Minister of Word and Sacrament be faithful to PCUSA polity, for example, if they officiated in a civil wedding outside a church plant, performed without any reference to the Directory for Worship, have the wedding license signed with no reference to a denomination or an ordination, or sans any other implication stated or unstated to the PCUSA? Or, is it a violation of church polity for PCUSA clergy to officiate at a civil same-gender wedding in all circumstances?

In a time when increasing numbers of states permit same-gender weddings and civil unions, it is important for the church to clarify how its clergy might pastorally participate in such secular occasions while honoring the PCUSA's definition of Christian marriage.

3. The Presbyterian Church (USA) has had a long season of discourse and debate regarding issues involving the participation of gay, lesbian, bisexual and transgender persons within the life of the church. Bound by the call of Scripture and Christ's message of grace and love, many have chosen to stay in the midst of conflict to serve as advocates for those people and issues important to them. This Commission heard argument referencing the personal and poignant nature of this debate from participants on all sides who care at deep levels about the direction the church may go. The goodwill evidenced between the parties and their commitment to the church's discernment process was an example of how members may remain faithful to their convictions yet further the resolution of conflict. In her decision to stay within the bounds of the PC(USA) and be subject to the church's polity and discipline, Rev. Spahr's ministry provides another example of engagement and commitment. May the church, as it continues this debate, find friends among colleagues in ministry and work with them, remaining subject to the ordering of God's Word and Spirit.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the Decision of the Presbytery Permanent Judicial Commission is sustained.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of the Redwoods report this decision to the Presbytery of the Redwoods at its first meeting after receipt, that the Presbytery of the Redwoods 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 Synod of the Pacific.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Pacific report this decision to the Synod of the Pacific at its first meeting after receipt, that the Synod of the Pacific enter the full decision upon its minutes.

ABSENCES

Dee Schilling, Commissioner from the Presbytery of the Redwoods was recused and took no part in the deliberations of this case. Commissioner James Bennett from the Presbytery of San Jose did not participate.

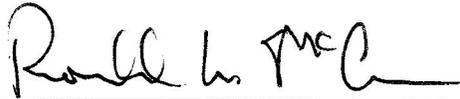
DATE

Dated this 25th day of March, 2011.

Signed



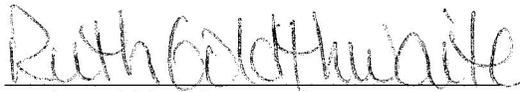
Ruth Goldthwaite, Moderator
Permanent Judicial Commission of the Synod of the Pacific



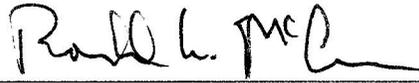
Ronald McCune, Assistant Clerk
Permanent Judicial Commission of the Synod of the Pacific

CERTIFICATES

We certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of the Synod of the Pacific, Presbyterian Church (U.S.A.), in the Appeal of Case No. 10-03, The Presbyterian Church (U.S.A.) through The Presbytery of the Redwoods Prosecuting Committee, Appellee, v. The Rev. Dr. Jane Adams Spahr, Appellant, made and announced at Oakland, CA, on March 25, 2011.



Ruth Goldthwaite, Moderator
Permanent Judicial Commission of the Synod of the Pacific



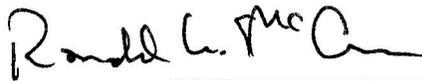
Ronald McCune, Assistant Clerk
Permanent Judicial Commission of the Synod of the Pacific

I certify that I did transmit a certified copy of the foregoing to the following persons by certified mail, return receipt requested, directing Wendy G. Warner to deposit it in the United States mail at Modesto, CA, on March 28, 2011.

The Rev. Wendy Warner
Stated Clerk
Synod of the Pacific
200 Kentucky St, Suite B
Petaluma, CA 94952-3825

The Permanent Judicial Commission of the Synod of the Pacific

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the Synod of the Pacific by delivering it in person to Wendy G. Warner on March 25, 2011.



Ronald McCune, Assistant Clerk
Permanent Judicial Commission of the Synod of the Pacific

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the Synod of the Pacific, made on March 25, 2011, in the Appeal of Case No. 10-03, The Presbyterian Church (U.S.A.) through The Presbytery of the Redwoods Prosecuting Committee, Appellee, v. The Rev. Dr. Jane Adams Spahr, Appellant.

Dated at Oakland, CA on March 25, 2011



Wendy G. Warner, Stated Clerk
Synod of the Pacific