



The More Light Presbyterians Legal FAQ: Frequently Asked Questions about LGBT issues and the PCUSA Book of Order

v2.64 last update 1/8/04. Copyright (c) 2005 More Light Presbyterians
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This document is an attempt to collect in one place some answers to common questions about legal issues related to lesbian, gay, bisexual and transgender people in the life of the PCUSA. This FAQ is not a substitute for legal advice about PCUSA church law and its current interpretation by the Presbyterian court system. If you're seeking detailed legal advice about what you can or can't do within the PCUSA's rules, please contact MLP's liaison for judicial affairs - see www.mlp.org/contact for current contact information.

Because laws and their interpretations can change, the information in this FAQ can go out of date over time. You can find the most recent version of this FAQ at www.mlp.org/resources

A note on marriage language: the LGBT equality movement in the United States presently has no consistent language for how to speak about a marriage between two LGBT people. Some people speak of "same-sex marriage", others "same-gender marriage", others use the arguably inappropriate expression "gay marriage", and so on. By consensus of the board of More Light Presbyterians, this FAQ uses the term "same-gender marriage", since we feel that it's more inclusive of the marriages of all people within the LGBT community. However when we quote the specific text of Presbyterian court decisions, the adjective "same-sex" may appear because that's the language written in the actual decision.

Q: Can my church ordain an openly gay, lesbian, bisexual, or transgender person as an elder or deacon?

A: Yes. The Presbyterian Church (U.S.A.) is quite explicit that it will not discriminate against any "category" of people, including categories based on sexual orientation or gender. (However, please also read the next question below, where we discuss how the PCUSA distinguishes between "orientation" and "practice".)

An "Authoritative Interpretation" of the Constitution was issued by the General Assembly on this issue in 1998. It reads:

"Standing in the tradition of breaking down the barriers erected to exclude people based on their condition, such as age, race, class, gender, and sexual orientation, the Presbyterian Church (U.S.A.) commits itself not to exclude anyone categorically in considering those called to ordained service in the church, but to consider the lives and behaviors of candidates as individuals."

Q: But doesn't the Presbyterian Book of Order ("BOO") forbid gay / lesbian people from serving as leaders in the denomination?

A: No. Certainly there are people who would like you to believe that the BOO forbids gay/lesbian people from ordained leadership, but Presbyterian court decisions have been quite clear that simply being gay or lesbian is not sufficient grounds to disqualify a person for ordination.

However, the Presbyterian courts have drawn a distinction between sexual orientation and sexual "practice", based in part on a 1978 resolution by Presbyterian General Assembly which claims that "unrepentant homosexual practice does not accord with the requirements for ordination." Even though the legal status of this resolution remains in dispute, the highest court of our denomination has ruled that the real issue involved with ordination is one of "practice", not sexual orientation. However, the Presbyterian courts have significantly narrowed the range of circumstances under which any judicial complaint about "practice" can be valid. Here's the relevant extract from the Wier decision:

“When a complaint alleges violation of a constitutional standard that may have extreme consequences to a person’s reputation, career, or friendships, a greater degree of pleading specificity is required. A complaint making such allegations must assert factual allegations of how, when, where, and under what circumstances the person was self-acknowledging a practice which the Confessions call a sin.”

“The plain language of the *Constitution* clearly states that disqualified persons must have self-acknowledged the proscribed sin. Self-acknowledgement may come in many forms. In whatever form it may take, self-acknowledgment must be plain, palpable, and obvious and details of this must be alleged in the complaint” (see Headnotes, Remedial Case 214-5, *Wier*).

The "plain, palpable, and obvious" standard specified here, in which "details must be alleged in the complaint" and the practice must be "self-acknowledged" sets a high bar for anybody who wants to attack an openly lesbian or gay person by filing a Presbyterian judicial complaint against her or him.

The status of bisexual and transgender Presbyterians has not been addressed directly by the Book of Order, nor has it been addressed by the church courts. At least one Presbytery has allowed a transgender minister to continue in office after a gender transition, and another has received a transgender person as a candidate.

Q: So what is Presbyterian Book of Order section G-6.0106b and why is it a problem?

A: G-6.0106b was an attempt by some Presbyterians to exclude LGBT folks from serving the church in the ordained offices (minister, elder and deacon). However, it was poorly written and – rather than being specific in their attempt to exclude – they created a vague statement that, in fact, excludes *everyone* from church office! Section G-6.0106b of the Book of Order, aka “amendment B” reads:

“Those who are called to office in the church are to lead a life in obedience to Scripture and in conformity to the historic confessional standards of the church. Among those standards is the requirement to live either in fidelity within the covenant of marriage between a man and a woman, or chastity in singleness. Persons refusing to repent of any self-acknowledged practice which the confessions call sin shall not be ordained and/or installed as deacons, elders, or ministers of the Word and Sacrament.”

This policy addresses the odd concept of a “self-acknowledged” practice of one of the more than 250 sins mentioned in the Book of Confessions. It applies only to those who “acknowledge” a personal practice that is considered sin. G-6.0106b does not specify a particular sin from among that list.

In effect, G-6.0106b laid the groundwork for our own “don’t ask, don’t tell” policy in which gay, lesbian and bisexual Presbyterians may not be ordained or installed if they are honest about their most intimate and committed relationships. The status of transgender Presbyterians in relation to G-6.0106b is even more vague since this paragraph neither distinguishes sex from gender nor defines what it means by a “man” and a “woman.”

Q: Can a church session be "sued" under the PCUSA's legal system for ordaining a gay/lesbian/bisexual/transgender elder?

A: In American society, in which people often invoke an adversarial legal process as a measure of first resort rather than a measure of last resort, the answer to "can I be sued for that?" is almost always "yes, because you can be sued for anything." The better question to ask isn't "will somebody file a complaint against me?" but "have the Presbyterian courts said that what I'm doing is OK?" If your actions are within the range of actions that this FAQ says are OK under Presbyterian case law, then even if somebody does file a complaint against you, it's very unlikely that the complaint will ever result in charges being filed against you under the PCUSA's judicial system. Presbyterian judicial bodies, unlike the U.S. civil courts, first seek reconciliation. If reconciliation is impossible, then, like the U.S. civil courts, our ecclesiastical courts work heavily from precedent and from the decisions issued by higher judicial bodies.

Q: As a Presbyterian minister, can I perform a same-gender holy union ceremony for a same-gender couple?

A: Yes. The General Assembly's Permanent Judicial Commission has interpreted the Church's Constitution in reference to love and marriage for our LGBT community by indicating that a "same-sex union that is liturgically distinct from a marriage ceremony *is permissible under church law.*" This decision (Benton v. The Presbytery of Hudson River) noted that "the Directory for Worship affirms the value of worship services in the practice of pastoral care and gives *great latitude* to ministers and sessions in addressing the pastoral care of members. A same-sex ceremony celebrates a loving, caring and committed relationship," says this PJC decision. "Therefore, it would be appropriate for this worship occasion to be in the form and spirit of W-6.3010 and 6.0311" (from *the Directory for Worship* in the *Book of Order*, section: "Resources of Worship for Pastoral Care").

Q: Can I perform a same-gender marriage ceremony for a LGBT couple?

A: The Book of Order does not address the issue of same-gender marriage. "Marriage," however, is described three different ways in quick succession in our Directory for Worship:

- 1) marriage as "a civil contract between a man and a woman". This description in the Book of Order is now factually out of date, as the state of Massachusetts now allows and recognizes same-gender civil marriages.
- 2) a Christian marriage is "a covenant through which a man and a woman are called to live out together before God their lives of discipleship;"
- 3) and the Christian marriage service is defined as a service in which "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).

The PCUSA presently considers same-gender marriage ceremonies to be a violation of the rules of the Book of Order (Benton v. The Presbytery of Hudson River), although it remains to be seen whether the courts will continue to sustain this prohibition if the couple is legally married under civil law. As of this writing, a disciplinary case against a Presbyterian pastor who officiated at a legal same-gender marriage ceremony in Canada is now pending adjudication in the courts of the church. If you conduct a ceremony for a same-gender couple, and if that ceremony is clearly called a "marriage" ceremony, and if somebody opposed to same-gender marriage ceremonies finds out about the service and files a judicial complaint against you, that complaint could be found to have merit and be sent to trial in the courts of the church. The end result of a successful judicial complaint against you isn't possible to predict since the Presbyterian courts have great discretion in the degrees of censure if a guilty verdict results and is sustained on appeal.

The situation regarding the marriage of a couple where one is transgender is even more vague, as the BOO has no definition of what defines a "man" or a "woman." Ministers choosing to perform a marriage

ceremony for such a couple should be aware that they might open themselves to a variety of charges in an area with little or no legal precedent in the Presbyterian Church, (U.S.A.). As an organization that seeks full equality for all LGBT Presbyterians, MLP welcomes inquiries from ministers considering such a ceremony.

Q: What does "chastity" mean in G-6.0106b?

A: Within the context of the Presbyterian legal system, we literally don't know. The word may have been included in G-6.0106b in an attempt to pull language in from question #108 of the Heidelberg Catechism, which is part of the Presbyterian Book of Confessions. The language in the Catechism calls on all people to "live chaste and disciplined lives, whether in holy wedlock or in single life," so within the context of the Heidelberg Catechism, "chastity" clearly doesn't mean "celibacy". The 2003 General Assembly, when given the opportunity, declined to explicitly define the term.

Q: Are there questions that might be important for a Session to ask candidates for ordination?

A: According to the courts of the Presbyterian Church, there are times that it is appropriate for a Session to inquire into the life of a candidate for ordination as elder or deacon. Court decisions indicate that if the Session has "reasonable cause for inquiry based on its knowledge of the life and character of the candidate, it has the positive obligation to make due inquiry and uphold all the standards of ordination and installation."

While this is the case, at the same time it is important to remember that "self-acknowledgement" is a key issue, and an accusation against any candidate must be very specific. The same decision cited above indicates that "when a complaint alleges violation of a constitutional standard that may have extreme consequences to a person's reputation, career, or friendships, a greater degree of pleading specificity is required. A complaint making such allegations must assert factual allegations of how, when, where, and under what circumstances the person the person self-acknowledging a practice which the Confessions call a sin."

The decision defines "self-acknowledgement" this way: "The plain language of the Constitution clearly states that disqualified persons must have self-acknowledged the proscribed sin. Self-acknowledgement may come in many forms. In whatever form it may take, self-acknowledgement must be plain, palpable, and obvious and details of this must be alleged in the complaint."

Thus, for example, if a candidate for ordination were to be accused of greed or usury and they are unrepentant as they continue to receive a high rate of interest from the bank or loans (practices identified as sin in our Confessions), then those bringing the accusation against them must provide concrete evidence (such as bank statements, witnesses to the transactions, and other items/observations) that is "plain, palpable, and obvious." In the same way, the candidate in question, if he or she self-acknowledges, that self-acknowledgment must include specific details of the deed(s) of the "sin."

A Session must take into account that all people are in the state of sin, and therefore no single category of person can be singled out for inquiry. Therefore, MLP suggests that, during the examination phase, the moderator be clear in asking all proposed candidates the same question. Such a question might be: "We have studied together in preparation for ordination and installation. You are familiar with the standards for ordination in the Presbyterian Church, U.S.A. Is there anyone present who feels obligated to make a statement before we proceed?"

Q: If I'm a candidate for elder or deacon and the examining session asks me a question about my sex life, what are my options?

A: An individual has the freedom to speak of his/her sex life or not. In our view, the decision is an individual one and completely a matter of conscience and etiquette. Some strategists, noting that the Presbyterian courts have ruled that practices must be "self-acknowledged" for judicial charges to be

legitimate, have advocated what might be called a "play it safe" approach which suggests that candidates should cite privacy concerns and decline to answer such specific questions. Others in the More Light movement consider such a silence-based approach to be a violation of their ethics, since the "play it safe" approach essentially creates a double standard: heterosexual people are allowed to talk freely about their sex lives but LGBT people aren't. So another approach would be to answer such a question quite openly and honestly. How you might answer this type of question will depend on your own conscience and what the Spirit is telling you... we can't tell you the "correct" way to answer such a question in this FAQ.

It's also important to note that if a session asks this question, they should be asking it equally of all candidates of all sexual orientations and gender identities.

Q: Transgender concerns are particularly confusing. The Book of Order uses "man" and "woman" freely when addressing marriage issues (W-4.001) and ordination issues (G-6.0601b), but provides no guidance for how these commonly used terms are defined. The International Olympic Committee recently suspended all testing to determine maleness and femaleness of athletes because they could not find a measure that worked consistently and reliably to determine an athlete's sex. How does the church determine this for persons requesting marriage services or those who may be elected to ordained office, particularly in cases of gender transition (transgender) or intersexual conditions?

A: The BOO does not recognize either intersex (also known as hermaphroditic) persons or transgender persons as points of concern. In every place where sex and/or gender is important, the BOO simply assumes that Presbyterians are either men or women, and makes no further attempt to define or describe their sex/gender status. In 1996 the Presbytery of Greater Atlanta examined and approved the continued ordination of a minister who had undergone a gender transition from male to female (including surgical sex reassignment). The Presbytery received a theological reflection on this action the next year. While several complaints were filed as a result of this action, none were found to have merit, and the minister continues to serve in the Presbytery as a minister member in good standing. In addition, the Presbytery of Boston recently received an openly transgender candidate for minister of word and sacrament.

This should not be construed to mean that the Presbyterian Church (U.S.A.) has settled (or even considered) the status of individuals whose sex and/or gender lies outside the strictly male/female binary. Ministers and Sessions venturing into this area should do so only after careful consideration and a clear understanding of the issues involved. Whether or not the church chooses to address this concern, it will become part of our future life together. More Light Presbyterians is happy to discuss transgender concerns with Presbyterians seeking advice, so don't hesitate to contact us with your questions. For some background on transgender concerns, see our *More Light on Transgender* information sheet at www.mlp.org/resources/mlptgn.html and the Sydney Anderson interview on volume 2 of our *Project Hearts & Minds* video series, available at www.mlp.org/heartsandminds.

REFERENCES:

The "Benton vs. the Presbytery of Hudson River" decision (May 2000) is at www.mlp.org/resources/hu_dobbs_gapjc.html

"Ronald L. Wier v. Session, Second Presbyterian Church of Ft. Lauderdale, Florida", remedial case 214-5, available at www.pcusa.org/gapjc/decisions/pjc21405.pdf

"Theological Reflection on the Affirmation of the Ordination of Erin Swenson by Greater Atlanta Presbytery" (1997), unpublished report received by the Presbytery of Greater Atlanta, available from Erin Swenson, erin@erinswen.com