

# Presbytery of Riverside

## Gracious Discernment, Dismissal, and Transfer Policy

### I. Preamble

#### Biblical and Theological Foundations

Jesus, in his pastoral prayer for his disciples, prayed, "I ask not only on behalf of these, but also on behalf of those who will believe in me through their word, that they may all be one. As you, Father, are in me and I am in you, may they also be in us, so that the world may believe that you have sent me. The glory that you have given me I have given them, so that they may be one, as we are one, I in them and you in me, that they may become completely one, so that the world may know that you have sent me and have loved them even as you have loved me. John 17: 20-23

Jesus' pastoral prayer for his disciples includes a plea not simply for unity but for the kind of oneness Jesus knew in relationship to God.

The Apostle Paul wrote, "I, therefore, the prisoner in the Lord, beg you to lead a life worthy of the calling to, which you have been called, with all humility and gentleness, with patience, bearing with one another in love, making every effort to maintain the unity of the Spirit in the bond of peace. Ephesians 4: 1-3

In his letters to the churches, Paul addressed the conflict present in many of these fledgling congregations. He repeatedly appealed for mutual forbearance and unity within the Body of Christ.

Despite earnest appeals for unity, the Presbyterian Church was born out of conflict over the beliefs and practices of the Roman Catholic Church. Through the years, the Church splintered as pastors and church members differed over a host of issues, including their understanding of faith, interpretation of scripture, political ideologies and social differences. Regrettably, the church on earth has never been fully "one." Nonetheless, along with other denominations, the Presbyterian Church (U.S.A.) is an integral part of the Body of Christ and exists to serve the Kingdom of God as expressed through the Great Ends of the Church:

- The Proclamation of the Gospel for the salvation of humankind;
- The shelter, nurture, and spiritual fellowship of the children of God;
- The maintenance of divine worship;
- The preservation of the truth;
- The promotion of social righteousness; and
- The exhibition of the Kingdom of Heaven to the world. [F-1.0304]

The mere presence of theological differences does not preclude coexistence within the Presbyterian Church (U.S.A.). "We are persuaded that there is an inseparable connection

between faith and practice, truth and duty.” [F-3.0104] “We also believe that there are truths and forms with respect to which men of good characters and principles may differ. And in all these we think it the duty of both private Christians and societies to exercise mutual forbearance toward each other.” [F-3.0105]

“Presbyters are not simply to reflect the will of the people, but rather to seek together to find and represent the will of Christ.” [F-3.0204] without dialogue there cannot be a mutual understanding of the will of the people and the will of God.

All property held by a church congregation in whatever fashion is held in trust for the use and benefit of the Presbyterian Church (U.S.A.).[G-4.0203; the “Trust Provision”] “The relationship to the Presbyterian Church (U.S.A.) of a congregation can be severed only by constitutional action on the part of the presbytery (G-3.0303b). If there is a schism within the membership of a congregation and the presbytery is unable to effect a **reconciliation** or a division into separate congregations within the Presbyterian Church (U.S.A.), the presbytery shall determine if one of the factions is entitled to the property because it is identified by the presbytery as the true church within the Presbyterian Church (U.S.A.). This determination does not depend upon which faction received the majority vote within the congregation at the time of the schism.” [G-4.0207]

Bearing in mind these Great Ends of the Church, the Presbytery of Riverside engages the following process of discernment, dismissal, and transfer concerning a congregation’s request for discernment, dismissal or transfer in a cooperative spirit between the congregation and the Presbytery and commits to fair and just negotiations.

This process is informed by the concerns, challenges and struggles of the congregation, its leaders, and denominational issues surrounding a congregation's desire to disaffiliate from the Presbytery of Riverside and/or the Presbyterian Church (U.S.A.). The Presbytery of Riverside will consider separately the concerns of each congregation pondering the alternatives.

All persons, teams, and councils are expected to work first toward **reconciliation**, and if not possible, toward a resolution that is fair, just and gracious for all parties. It is hoped that healing may result from prayerful use of this process. If it is discerned that a congregation should be dismissed from the Presbytery of Riverside and/or the PCUSA, the accompanying Discernment, Dismissal and Transfer Policy anticipates and expects all persons and entities involved will demonstrate integrity in negotiating the terms and conditions for dismissal.

Rulings of the Permanent Judicial Commission of the General Assembly control the constitutional prerogatives for all members of the Presbyterian Church (U.S.A) and the policies set forth herein. See Appendices B and C.

## II. Discernment

### Process of Discernment for Sessions Considering Departure from the Presbytery of Riverside

1. When the Presbytery of Riverside [hereinafter “Presbytery”] through direct or indirect communication learns a congregation is considering a request for dismissal from the Presbytery and/or the Presbyterian Church (U.S.A.) [hereinafter “PCUSA”], a Discernment

Team of no fewer than three persons will be appointed by the Moderator of the Presbytery to meet with the pastor and Session. Suggestions for the composition of this team include: the Moderator or his/her designee, a representative from the Committee on Ministry, a representative from the Evangelism, Mission, and Advocacy Team. The Moderator of the Presbytery will appoint a moderator of the Discernment Team. The Executive Presbyter and Stated Clerk will be ex-officio members of the team without vote.

2. The Discernment Team will hold an initial meeting with the pastor and Session to pray with them and explore their reasons for wanting to disaffiliate from the Presbytery and/or the PCUSA, and what steps might be undertaken to effect reconciliation between the congregation and the Presbytery. The Discernment Team will report findings to the Vision Coordinating Team and the Session. The Session will appoint three or four representative members of the congregation to complete the Discernment Team. The Session and Discernment Team may schedule additional meetings as needed to determine if mutual forbearance may preserve the relationship.

In reporting to the Vision Coordinating Team and the session, the Discernment Team will consider the following questions:

- How have the teaching and ruling elders of the congregation been informed of the presenting issues, and what are their sources of ongoing information? How did the topic of potential dismissal from the Presbytery and/or the PCUSA arise? What resources have been supplied to the Session and congregation, and by whom?
- To what extent is the congregation united in its direction? What evidence exists within the congregation of unity and/or division in the church's direction? If there are members in disagreement with the majority, what opportunities are being offered by the Session and pastor for their voices to be heard? Is it possible to describe why any members have left the congregation? Are there members who wish to remain in the PCUSA and who might be declared the "true church," pursuant to G-4.0207?
- What is the geographical location of this congregation? How strategic is this location to the mission of the Presbytery? What opportunities exist in this geographic area of the Presbytery to develop a new PCUSA congregation?
- What financial and property resources have the Presbytery and the PCUSA invested in the development of this congregation? Are there outstanding loans to the denomination or to commercial lenders?
- Describe the degree of support from this congregation of the ministries and mission of the Presbytery and the PCUSA through per capita and mission giving. If per capita and/or mission support has been reduced or not paid, what are the circumstances that led to the change? How have members been involved in the Presbytery?
- How does the Session understand the "common trust" regarding PCUSA property?

- On what grounds does the Session believe the congregation will be able to better serve God's Kingdom and accomplish the Great Ends of the Church outside the Presbytery and/or the PCUSA?
  - What conversations, if any, have teaching elder(s), the Clerk of Session, or other ruling elders entered into with a receiving presbytery and/or other Reformed body?
3. The Discernment Team, in coordination with the Session, will send a letter to the members of the congregation explaining the discernment process and will also include contact information for all members of the Discernment Team and the Session.
4. The Session will schedule at least three congregational forums (at least 3 weeks apart) for the Session and the entire Discernment Team to engage the congregation in conversation and share information regarding the discernment, dismissal/transfer process.
- The meetings will be widely promoted to all members by means effective for each congregation (at least 2 consecutive Sundays' announcements).
  - The Discernment Team and the Session will determine the format and leadership of the Congregational Forums.
  - No official congregational business will be conducted and no official congregational votes taken.
  - The Discernment Team members will attend and have voice. Other guests may attend as invited by the Session or Discernment Team to answer anticipated questions.
  - The Discernment Team will keep a general record of the meetings: their content, spirit, mood, character, and number in attendance, with an eye toward healthy discussions.
5. Members of the Discernment Team will meet individually with the teaching elder(s), discussing the following questions:
- How are you feeling personally about dismissal?
  - How is your decision affected by loyalty to present staff and/or the congregation?
  - What are your thoughts about the fairness and openness of this process, and how have dissenting opinions been addressed?

- Would you prefer to stay with the Presbytery and/or the PCUSA if the congregation were to be dismissed?
  - As a teaching elder what kind of leadership are you exercising in the midst of this process?
6. The second meeting of the Discernment Team with the Session will be for the purpose of evaluating the congregational forums. The Discernment Team will make a report to the Vision Coordinating Team and the Session.
7. The session will meet for a prayer retreat, at least three hours in length, to seek God's guidance. At the conclusion, the session may determine to continue with the Discernment Dismissal Transfer Process, to end the process, or to engage in further exploration with the Discernment Team.
8. The Session's decision to proceed with dismissal from the Presbytery and/or PCUSA will be determined by secret ballot at a called session meeting. The tally of the vote of the Session will be communicated in writing to the Stated Clerk of the Presbytery. If the vote is not unanimous, the Discernment Team will determine with the Session whether to proceed to the next step.
9. The third required meeting of the Discernment Team and session will be for the purpose of discussing real terms of dismissal, including the choice of the Reformed Body or presbytery to which the congregation would eventually be released. The tax exempt status of the congregation and the creation of new corporate records and possible name change of the congregation will be addressed in the settlement agreement. The clerk of session shall communicate with the appropriate official(s) of the Reformed Body or presbytery to which the congregation would be released, to determine necessary actions to be taken, and to determine whether it is possible to proceed. The Discernment Team will report to the Vision Coordinating Team and the Session, including whether or not to recommend seeking an advisory vote from the congregation.
10. The discerning church shall provide complete written disclosure to the Presbytery of all church records, including but not limited to, 1) current church rolls and contact information for all members; 2) current church/corporation by-laws; 3) Articles of Incorporation; 4) recorded deeds to real property; 5) property tax records for the most recent 5-year period; 6) the church's annual reports for the previous five years; 7) the church's financial reports for the previous five years; 8) Statistical Reports to the Office of the General Assembly of the PCUSA for the previous five years; 9) documents relating to any endowments, trusts or investments held by the church or for which the church is the beneficiary; 10) documentation of past PCA payments or deficiencies for the previous 10 year period; 11) copies of all communications between Session and the congregation regarding dismissal/disassociation with PCUSA; and copies of Minutes for congregational and session meetings for the 12 month period preceding the congregational forums.

### **III. Dismissal**

#### **Process for Dismissal of a Congregation from the Presbytery of**

## Riverside

Upon completion of the *Process of Discernment for Sessions Considering Departure from the Presbytery of Riverside*, the Session, the congregation, and the Presbytery will be guided by the following process:

### A. CONGREGATIONAL MEETING AND VOTING GUIDELINES

1. The complete Discernment Team shall be informed of and have an opportunity to be present for meetings of the Session and congregation at which decisions regarding dismissal are considered.
2. At the request of the Session, the Presbytery shall call a meeting of the congregation for the purpose of considering a vote to request that the Presbytery dismiss the congregation. Notice for the meeting, at least 30 days in advance thereof, with copies of the full dissolution agreement or an executive summary approved by the complete Discernment Team, shall be given through written letter to each member on the roll of the congregation; as well as through Sunday worship announcements and other forms of communication utilized by the congregation. Public worship announcements will be made at all worship services between the date of the call and the actual congregational meeting.
3. A quorum of the equivalent of 66% of members of the congregation, enrolled on December 31 of the calendar year before the called meeting, must be present. The attendees will be recorded by name. Proxy voting will not be permitted.
4. Representatives from the Presbytery will be allowed the privilege of the floor.
5. The congregational vote to request dismissal will be by secret written ballot. At least eighty percent (80%) of those present and voting must vote in favor of requesting dismissal in order for the proposal to pass.
6. The congregational vote to request dismissal may include options to divide the congregation, dissolve the congregation, transfer to another presbytery within the PCUSA, or leave the PCUSA to join another Reformed denomination; a congregation will not be dismissed to independent status. Reasonable efforts must be made by the congregation to encourage and accommodate the attendance of shut-in members, in both the discussions and voting.
7. If a motion requesting dismissal passes by the requisite majority, then the Discernment Team will continue the dismissal process with the Session. In the event the motion does not pass by the requisite majority or the requisite quorum is not achieved, then the Discernment Team will meet with the Session at a future date to engage in a process of reevaluation and further discernment.
8. Agreement on terms of dismissal by the Session and the Vision Coordinating

Team, and a letter indicating the intention to receive the congregation from another Reformed body or presbytery must be received by the Presbytery prior to continuing this dismissal process.

9. The congregation may vote on the final dissolution agreement twice in a 6-month period between first congregational vote and the second vote. If the congregation fails to receive the 66% quorum of active members and 80% affirmative vote, the process is considered completed, the Discernment Team will be dismissed, the congregation will be encouraged to work toward reconciliation, and the Gracious Dismissal procedure may not be reinitiated for a period of at least one year. A renewed request for dismissal/dissolution may only be initiated once a request for discernment letter from the Clerk of Session is received by the Stated Clerk of the Presbytery and a new Discernment Team is appointed by the Moderator of Presbytery.

## **B. MEMBERSHIP CONCERNS**

If a motion to dismiss passes both the congregation and the Presbytery by the necessary majorities, then:

1. The Discernment Team will make provision for contacting every member of the departing congregation in order to assist the transfer of membership for any persons expressing a desire to maintain membership in a congregation in Riverside Presbytery.
2. Any Inquirers or Candidates having membership in a departing congregation will have the opportunity, with the aid of the Committee on Preparation for Ministry, to transfer their membership to another PCUSA congregation and to have the 6-month requirement of membership in the new church waived, thereby maintaining their status in the inquiry or candidacy process.
3. Any pastor desiring not to depart from the Presbytery with the congregation he/she is serving will be paid by the departing congregation severance pay and benefits. Such payments should commence on the date following the final service of worship mentioned in item 4 of section D below, or such other date negotiated between the pastor and Session. Severance payments will stop after six months, or the pastor begins a new call, whichever comes first.

## **C. PROPERTY SETTLEMENT AGREEMENT**

### 1. Assets of the Departing Congregation:

The assets of the departing congregation referred to in this document shall include, but not be limited to, all land, buildings, furnishings, artifacts, cash, endowments, bank accounts, securities, investments, and trust accounts, wherever situated.

a. Appraisal. Due diligence regarding the value of property requires a fair and complete appraisal of the value of property of the congregation seeking dismissal as follows:

i. The departing congregation shall obtain and pay for an appraisal report signed by a member of the American Institute of Real Estate Appraisers. If the Presbytery does not accept such Appraisal Value, the Presbytery shall promptly obtain and pay for another appraisal report signed by another member of the American Institute of Real Estate Appraisers. The average of the two appraisals thus obtained will then be proposed as the Appraised Value. If either party is unwilling to accept the average of the two appraisals and if the parties are unable to otherwise agree on an amount for the Appraised Value, either party may request that the two appraisers be asked to jointly select a third appraiser whose appraisal report will be binding upon both parties. The costs of this appraisal report shall be shared equally by both parties, and the Appraised Value thus obtained shall be used to effect the Settlement from which neither party may withdraw.

ii. In addition to the above, the departing congregation shall pay all closing costs due at the time of transfer of title of the assets of the departing congregation. The departing congregation also agrees to maintain the property in good condition, maintain adequate insurance and pay all financial obligations related to the Assets of the Congregation. In the event of non-compliance of any of the departing congregation's obligations, the Presbytery shall have the right to maintain the property and meet all related financial obligations with reimbursement coming from the departing congregation directly, or added to the proceeds otherwise due to the Presbytery on final transfer of the Assets of the departing congregation.

iii. Payment of such amount determined above shall be paid to the Presbytery prior to the departing congregation being dismissed by the Presbytery.

iv. The departing congregation shall be free of all debt owed to the Presbytery or Synod before being dismissed by the Presbytery.

v. Should the congregation seeking dismissal choose not to pay for the Appraised Value of the assets it seeks to take with it in dismissal, it may, in the alternative transfer title to all the congregation's assets to the Presbytery in lieu of payment.

b. Settlement.

If the congregation desires to retain its property, the Discernment Team and representatives of appropriate committees of the Presbytery of Riverside will evaluate the missional interests of the Presbytery in making recommendations concerning the settlement of financial obligations, including the Presbytery's fiduciary responsibility to the PCUSA. Factors to be taken into consideration include, but are not limited to, 1) the denomination's dollar investment in the congregation, 2) the Presbytery's energy investment over the past 20 years, 3) the Appraised Valuation of the property, 4) all Assets as defined above, and 5) the potential of establishing a new PCUSA congregation in that area. The value of all real estate property held during the five years prior to dismissal will be considered part of the valuation.

c. *Per Capita* and Mission Assessments

i. The congregation will be required to pay any unpaid *per capita* for the current year and any unpaid *per capita* in previous years. In addition, the congregation will pay *per capita* apportionment to the Presbytery (based on the number of members on

December 31<sup>st</sup> of the year prior to the session vote approving dismissal, see Section III.A.3. above) for the three years following the year in which the decision to depart was made final by vote at the Presbytery meeting.

ii. In addition to the *per capita* and property payments, the departing congregation will make a onetime contribution to the Mission of the Presbytery of Riverside equal to the average of all mission monies the congregation has given over the previous five years or a minimum of 7% of the general fund budget in use in December of the previous year mentioned in Section III.3 above.

d. Finalizing the Settlement Agreement.

i. A final settlement date will be established by which all financial obligations and encumbrances must be paid before title to the property can be released to the departing congregation or receiving body or presbytery. Also, the agreement will indicate whether payments will be interest-free or will specify the interest rate. No title transfers of property will be transacted until all such financial obligations are met.

ii. If the congregation is departing from the PCUSA, all loans held by the denomination will be paid in full on or before the final settlement date.

iii. The congregation will assume full responsibility for any loans, debts, or encumbrances incurred through commercial institutions or private individuals.

iv. The departing congregation will be responsible for any and all legal expenses incurred in the process of departing from the Presbytery and/or the PCUSA.

## **D. PROCESS FOR THE PRESBYTERY TO VOTE TO DISMISS A CONGREGATION**

### 1. Procedure for Vote of the Presbytery on Settlement Agreement

- a. Once the congregation's desire for dismissal from the PCUSA has been validated, and it has accepted the terms of the negotiated agreement for dismissal, a summary of the conclusions and the process of the Discernment Team and the negotiated terms of the agreement for dismissal along with a Discernment Team report will be made available to all members of the Presbytery for their review well in advance of the meeting at which the Presbytery vote will be taken. Presbytery shall vote separately on 1) the dismissal of the congregation under the terms of the Dismissal Agreement; and 2) the membership of the teaching elders.
- b. If the Presbytery does not approve the proposed dismissal of the congregation on the terms that have been negotiated, the entire Discernment Team will be strongly encouraged to consider renegotiations and/or mediation in an effort to come to an amended agreement.

### 2. Determination of Members' Desire for Transfer

- a. Within thirty (30) days of the Presbytery's vote approving dismissal of the congregation to another Reformed body, the Presbytery will prepare and send a letter to members of the church informing them of their options to be dismissed with the congregation or to remain in the PCUSA by transferring their membership to

another congregation in the area, or to the Presbytery itself. The church will mail the letter to all active members of the congregation promptly and will bear all costs associated with this mailing. The letter will direct that responses are to be returned to the Presbytery. The Presbytery will then ensure that contact is made with those members wishing to remain in the PCUSA and that they are assisted in joining a new congregation of their choice.

- b. In the event that the Presbytery identifies potential for a new worshipping community to be started in response to this dismissal, the Presbytery leadership will appoint a task force to work with members and other interested parties who choose to stay in the PCUSA.

### 3. Effective Date of Dismissal

The effective date of dismissal and transfer of property shall be at the completion of required actions as listed in the terms of the Dismissal Agreement, but in any case, no more than ninety (90) days after the vote of the Presbytery.

### 4. Completing the Dismissal

Recognizing that the departure of valued colleagues in ministry will be a matter of pain for all parties, it is appropriate for the Presbytery to hold a service of worship to provide a time of thanksgiving for prior shared ministry and prayers for the ongoing witness of both the departing congregation and of all the other congregations in the Presbytery and the PCUSA.

## **E. ADDITIONAL ITEMS**

1. The negotiated settlement will address appropriate disposition of financial assets, and other tangible and intangible assets. Session and congregational minutes and the church register will be up to date and surrendered to the Presbytery, for transfer to the Presbyterian Historical Foundation. Copies may be retained by the departing congregation.

2. The Presbytery shall be provided with detailed information concerning the terms of the pending reception of the teaching elders and congregation by the entity to which the congregation is departing. The transfer of the congregation will not be presented to the Presbytery for a vote to dismiss the congregation until the Stated Clerk of the Presbytery has received official notice from the receiving entity.

Date of Adoption by the Presbytery of Riverside June 9, 2012; revised February 23, 2013 and September 12, 2015.

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## IV. Appendices

### Appendix A: Relevant Sections of the New Form of Government

*With regard to Presbytery's relationship with Sessions:*

#### **G-3.0303 Relations with Sessions**

- A. Control the location of new congregations and of congregations desiring to move as well as to divide, dismiss, or dissolve congregations in consultation with their members;
- B. Counsel with a session concerning reported difficulties within a congregation, including:
  - (1) Advising the Session as to appropriate actions to be taken to resolve the reported difficulties,
  - (2) Offering to help as a mediator, and
  - (3) Acting to correct the difficulties if requested to do so by the session or if the session is unable or unwilling to do so, following the procedural safeguards of the Rules of Discipline;
- C. Consider and act upon requests from congregations for permission to take the actions regarding real property as described in **G-4.0206**.

*With regard to Church Property;*

#### **G-4.0203 Church Property Held in Trust**

All property held by or for a congregation, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a congregation or of a higher council or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

#### **G-4.0206 Selling, Encumbering, or Leasing Church Property**

**Selling or Encumbering Congregational Property:** A congregation will not sell, mortgage, or otherwise encumber any of its real property and it will not acquire real property subject to an encumbrance or condition without the written permission of the presbytery transmitted through the session of the congregation.

#### **G-4.0207 Property of Congregation in Schism**

The relationship to the PCUSA of a congregation can be severed only by constitutional action on the part of the presbytery **G-3.0303b**. If there is a schism within the membership of a congregation and the presbytery is unable to effect reconciliation or a division into separate congregations within the PCUSA, the presbytery will determine if one of the factions is entitled to the property because it is identified by the presbytery as the true church within the PCUSA. This determination does not depend upon which faction received the majority vote within the congregation at the time of the schism. **See G-4.0208 for exceptions**

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

**APPENDIX**

**B**

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Wilber Tom, David Hawbecker, and )  
Thomas Conrad, )  
Appellants (Complainants), )  
 )  
v. )  
 )  
Presbytery of San Francisco, )  
Appellee (Respondent). )  
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**Decision and Order**  
Remedial Case 221-03

**Arrival Statement**

This filing before the Permanent Judicial Commission of the General Assembly (GAPJC or this Commission) is an appeal of a Decision of the Permanent Judicial Commission of the Synod of the Pacific (SPJC) rendered on March 23, 2012. The Notice of Appeal was received by the Stated Clerk of the General Assembly on May 10, 2012.

**Jurisdictional Statement**

This Commission finds that it has jurisdiction, that Appellants have 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 under D-8.0105.

**Appearances**

Wilbert Tom, David Hawbecker, and Thomas Conrad (Appellants), were represented by JoAn Blackstone. Presbytery of San Francisco (Presbytery or Appellee) waived its appearance at the hearing and chose to rely on its written submissions.

**History**

Presbytery formed a workgroup on December 11, 2008, to develop a policy regarding any church located in the Presbytery that wished to be dismissed from the Presbyterian Church (U.S.A.) (PC(U.S.A.)). Scott Farmer (Farmer), Senior Pastor, Community Presbyterian Church of Danville (Danville) served on that workgroup. While the exact date is unknown, it is not disputed that Danville had begun discussions regarding the dissolution of their relationship with the PC(U.S.A.) at the time of Farmer's selection to the policy workgroup.

Presbytery, at its September 15, 2009, stated meeting, adopted what was known as the "Gracious Dismissal Policy" (GDP) as a result of the recommendation of the policy workgroup. While the GDP acknowledged *Book of Order* G-8.0201 (now G-4.0203) (the Trust Clause) that provides all property held by or for a congregation "is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)," the GDP interpreted the Trust Clause "to reflect the church's organic unity as it fulfills 'The Great Ends of the Church,' strengthening its ability to guide its

member churches into their witness to the broader community." The GDP found that it was "the right of a congregation to seek and request dismissal with its property to another reformed denomination." The GDP also set forth that the Trust Clause was not to be used as a weapon to threaten civil action against a congregation over issues of conscience.

To mitigate financial impact on mission and ministry of Presbytery, the GDP requested the congregation seeking dismissal to pay Presbytery annually for five years: (1) funds to offset declining per capita and (2) funds to offset a declining contribution to the mission budget. The GDP did not mention payment of any other funds to Presbytery, such as payment for the value of the congregation's real property and other assets.

Five months after the adoption of the GDP by Presbytery, the session of Danville, of which Farmer was moderator, notified Presbytery in February 2010 of its intention to seek dismissal to the Evangelical Presbyterian Church (EPC). Pursuant to the GDP, a Presbytery Engagement Team (PET) was appointed by Presbytery during its stated meeting on April 13, 2010, to work with the session and congregation of Danville to effect reconciliation, if possible, or to negotiate the terms of the dismissal. Also pursuant to the terms of the GDP, Danville formed a Special Committee of the Congregation (SCC), on which Farmer participated, to negotiate with PET. During a called congregational meeting on September 12, 2010, Danville voted to seek dismissal from the PC(U.S.A.) pursuant to the terms negotiated by PET and SCC. The terms of the negotiation were subject to approval by Presbytery.

According to the testimony of members of PET, the GDP did not include a requirement to consider the value of the congregational property for the use and benefit of the PC(U.S.A.). Under the terms of the final agreement reached with PET, Danville agreed to make a lump sum payment of \$108,640 to Presbytery to compensate for declining per capita. Additionally, Danville agreed to pay \$42,000 per year for five years to support targeted PC(U.S.A.) ministries, missions and ministers. No other monies were contemplated or discussed by PET with SCC.

At its November 9, 2010, stated meeting, Presbytery conditionally approved the terms of the dismissal as set forth by PET and SCC. The resolution provides:  
The effective date of [Danville's] dismissal will be November 10, 2010. If there is no stay or filing of a complaint during a 90-day waiting period, consistent with the interval identified in the Presbyterian Church (U.S.A.) *Book of Order* for the filing of stays and complaints, full implementation will occur on February 9, 2011.

At that same meeting, Presbytery voted to suspend the GDP. Subsequently, Presbytery adopted a new GDP which is not relevant to this appeal.

On February 2, 2011, within the 90-day time frame approved by Presbytery, Appellants filed a remedial complaint against Presbytery with the SPJC. On June 4, 2011, SPJC answered all the preliminary questions affirmatively under D-8.0105. An amended complaint was filed on October 14, 2011.

Trial was held on March 22, 2012. At the beginning of the trial, Appellants moved to disqualify a commissioner pursuant to D-7.0401b(2), alleging that the commissioner was predisposed to rule against Appellants as evidenced by the "tenor of his comments" set forth in an October 6, 2011, email. The motion was denied by SPJC.

During the trial a number of documents were offered for inclusion in the record. These

documents included the PC(U.S.A.)'s *Amicus Curiae* Brief before the California Supreme Court and the Annual Statistical Report of Danville which had been sent to the Stated Clerk of Presbytery. The moderator sustained Presbytery's objections to the admission of these documents. The Appellants objected to the admission of other documentary evidence, including an email from a PET member summarizing her conversation with a representative of the Department of Constitutional Services within the Office of the Stated Clerk. Appellants' objections were overruled.

Additionally, while questioning a witness, a commissioner stated, "The agreement that you struck between the Presbytery and CPC Danville, my home church, also referred to as CPC, so Central, however, has several points in it with subpoints." Neither party made an objection regarding disqualification of this commissioner at that time for any possible conflict of interest, if the commissioner meant by his comment that Danville was his "home church."

On March 23, 2012, SPJC ordered that the action of Presbytery on November 9, 2010, dismissing Danville pursuant to the terms of the agreement, be affirmed.

On May 7, 2012, Appellants mailed their Notice of Appeal to the GAPJC and all other appropriate recipients. During the Presbytery stated meeting on May 8, 2012, the PET reported that the new implementation date of the agreement would fall between May 21 and May 26, 2012. Appellants believe that PET, at this stated meeting, was aware of the Notice of Appeal to the GAPJC.

On May 18, 2012, the GAPJC issued its preliminary order finding that it had jurisdiction, that the Appellants had standing to file the Appeal, that the Appeal was properly and timely filed, and that the Appeal stated one or more of the grounds for appeal under D-8.0105. Notice of such GAPJC decision accepting the Appeal was timely mailed to the parties. On May 21, 2012, Presbytery executed quitclaim deeds to Danville and Danville paid the per capita and mission funds pursuant to the agreement.

### **Specifications of Error**

*Specification of Error No. 1: (Appellants' Specification of Error No. 1) The proceedings of the Synod Permanent Judicial Commission (SPJC) were irregular, in that the decision is inconsistent with substantial evidence from the testimony of witnesses at the trial, that in determining the terms of its dismissal of a large suburban church the Presbytery of San Francisco (Presbytery) failed to consider or to understand the meaning of the property trust clause (G-4.0202, formerly G-8.0201) or that the church property in question was in fact unequivocally owned by the Presbyterian Church (U.S.A.).*

This Specification of Error is sustained.

*See the rationale below Specification of Error 7.*

Specification of Error No. 2: *(Appellants' Specification of Error No. 10) The SPJC erred in constitutional interpretation, in that it failed to apprehend or give effect to the plain meaning of the language of the express trust now at G-4.0203 (formerly G-8.0201) in the context of a church seeking dismissal, that all property held by a congregation "is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.)."*

This Specification of Error is sustained.

*See the rationale below Specification of Error 7.*

Specification of Error No. 3: *(Appellants' Specification of Error No. 11) The SPJC erred in constitutional interpretation, in that it failed to consider or give effect to a relevant Authoritative Interpretation (AI) of the Book of Order (Request 9-88), an answer provided by the General Assembly of 1988 on the recommendation of the Advisory Committee on the Constitution (ACC) which, in the context of a presbytery's response to a church seeking dismissal, interprets the property trust clause to require proper consideration to be given to the interests of the Presbyterian Church (U.S.A.) as provided in Chapter VIII. This AI goes on to say, "in particular, G-8.0201 recognizes the principle that all property for or by a particular church is held in trust for the use and benefit of the Presbyterian Church (U.S.A.) Thus the Presbyterian Church (U.S.A.) is a party in interest when a presbytery takes action with respect to a request to dismiss a church with its property."*

This Specification of Error is sustained.

*See the rationale below Specification of Error No. 7.*

Specification of Error No. 4: *(Appellants' Specification of Error No. 12) The SPJC erred in constitutional interpretation, in that it failed to consider or give effect to a subsequent AI of the property trust clause, in an answer provided by the General Assembly in 1989 on the recommendation of the ACC: "When dealing with a request by a church for dismissal with its property pursuant to G-11.0103i and G-11.0103y, the presbytery is responsible for exercising the express trust provisions of G-8.0201 recognizing and protecting the interests of the Presbyterian Church (U.S.A.). Separate consideration should be given to the questions of dismissing the congregation, the disposal of property, and the relationships of ministers of Word and Sacrament." "Each request for dismissal should be considered in the light of the particular situation and circumstances involved."*

This Specification of Error is sustained.

*See the rationale below Specification of Error No. 7.*

Specification of Error No. 5: *(Appellants' Specification of Error No. 13) The SPJC erred in constitutional interpretation, in that it disregarded testimony of members of the Presbytery's*

*PET who had negotiated the terms of dismissal of the CPCD and whose recommendation the Presbytery had adopted. This testimony demonstrated, among other things, a consistent failure to understand the meaning of the property trust clause as expressed in the Book of Order, a failure to have read or considered relevant Authoritative Interpretations of the Constitution, an apparent failure to understand that the PC (U.S.A.) owned the church property, a failure to grasp the fact that a transfer of the real property without consideration amounted to a gift, an exclusive reliance on the Presbytery's previously approved dismissal policy as understood by members of the PET, a failure to understand how to apply the trust clause other than in the context of specific process steps in the policy, and a belief that the policy precluded even having a discussion about having the church property remain in the hands of the denomination or asking for any payment for the property upon its transfer.*

This Specification of Error is sustained.

*See the rationale below Specification of Error No. 7.*

*Specification of Error No. 6: (Appellants' Specification of Error No. 14) The SPJC erred in constitutional interpretation, in that it upheld the Presbytery's action as being within its discretion as trustee of the church property, based on Presbytery's contention that the transfer of the property without consideration would serve "the Great Ends of the Church" and further the "total ministry and witness for Christ," thus making any further recognition of the property trust unnecessary or inappropriate.*

This Specification of Error is sustained.

*See the rationale below Specification of Error No. 7.*

*Specification of Error No. 7: (Appellants' Specification of Error No. 15) The SPJC erred in constitutional interpretation, in that its decision would indicate that a presbytery has unfettered discretion with respect to church property being used by a congregation seeking dismissal to another Reformed denomination, while the Book of Order places the fiduciary and related responsibilities of a trustee of the property on the presbytery.*

This Specification of Error is sustained.

Presbytery voted to approve the transfer of the valuable Danville property unless a complaint or stay was filed within 90 days. A complaint was so filed. Following the ruling by SPJC, a new implementation date for the agreement was set. In the interim, an appeal was filed to this Commission and accepted with a preliminary order being entered May 18, 2012. Nevertheless, on May 21, 2012, Presbytery executed a quitclaim deed to Danville before this Commission was able to conduct the hearing on this appeal.

Presbytery, having transferred title while this case was pending, argued that the transfer of title renders the case moot because the quitclaim deed had been signed and could not be revoked.

Notwithstanding the transfer of title, in cases where circumstances prevent a remedy, this Commission may exercise its declaratory authority to provide guidance to lower councils and prevent future violations. *Daniel J. McKittrick v. The Session of the West End Presbyterian Church* (Remedial Case 215-5, 2003).

The *Book of Order* provides in G-8.0201 (now G-4.0203) that:

All property held by or for a congregation, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), whether legal title is lodged in a corporation, a trustee or trustees, or an unincorporated association, and whether the property is used in programs of a congregation or of a higher council or retained for the production of income, is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A.).

Under the Trust Clause, a presbytery's discretionary authority to determine property rights, while broad, must be guided by the presbytery acting as a fiduciary for the benefit of the PC(U.S.A.), the beneficiary of the Trust Clause. A congregation's financial and all other assets are also understood to be covered by the Trust Clause. *Chesterbrook Taiwanese PC v. National Capital Presbytery*, Remedial Case 217-12, 2006.

Under the fiduciary obligations inherent in the Trust Clause, a presbytery must take into consideration the PC(U.S.A.)'s use and benefit of the property in every decision concerning its disposition. To comply with the Trust Clause, the presbytery must consider the interest of PC(U.S.A.) as a beneficiary of the property. Payments for per capita or mission obligations are not satisfactory substitutes for valuations of the property held in trust. (G-4.0203)

The Trust Clause reflects our understanding of the church as a communion of saints across time, with responsibilities both to those who came before and those who will follow. When a congregation seeks to leave the PC(U.S.A.), it is breaking what is often a significant historic relationship; it is also departing from a fellowship in which its officers have participated, by whose polity they have pledged to be governed, and with which many members may feel bonds of affection.

Based on an examination of the record, this Commission finds that the GDP developed by Presbytery, its implementation, and SPJC in its trial decision, failed to duly consider the economic interests of the PC(U.S.A.). Such consideration is essential. SPJC's exclusion of documents which were the most convincing evidence of the position of PC(U.S.A.) in regard to the Trust Clause and of the financial position of Danville, strongly supports the allegation of erroneous interpretation. Failure to consider the property value and the PC(U.S.A.)'s beneficial interest in the property was a fatal omission of the trustee's duty to the PC(U.S.A.).

The justification given by Presbytery for dismissal of the Danville church with property, which included only "Great Ends of the Church" and avoidance of litigation, was erroneously upheld by SPJC. While certainly valid, such considerations alone are not sufficient to satisfy the due diligence requirement imposed by the Trust Clause. SPJC erred in finding that due consideration had been given to the interest of the PC(U.S.A.) as the trust beneficiary under the *Constitution*. Due diligence, of necessity, will include not only the spiritual needs of the

congregation and its circumstances, but an examination of the congregation's financial position and the value of the property at stake. It is undisputed that Presbytery failed to make such an examination. SPJC erred in failing to require that financial due diligence be undertaken by Presbytery.

Specification of Error No. 8: *(Appellants' Specification of Error No. 2) The proceedings of the SPJC were irregular, in that one of its commissioners made a comment, before a witness could answer a question, to the effect that the attorney-client privilege would preclude answering the question, and cast doubt on the witnesses' ability to waive the privilege.*

This Specification of Error is not sustained.

There was no error in having the question of attorney-client privilege raised by a commissioner. If the moderator was incorrect in finding that the witness could not waive the privilege, such ruling was harmless because ultimately the witness was allowed to testify concerning the information objected to.

Specification of Error No. 9: *(Appellants' Specification of Error No. 3) The proceedings of the SPJC were irregular, in that in questioning a witness one of its commissioners made reference to, and quoted, a provision of the Book of Order that was not in effect at the time of the disputed action (G-4.0201), thus providing misleading support for the Presbytery's position.*

This Specification of Error is not sustained.

References to provisions of the *Book of Order* are not evidence. They may be incorrect or untimely but they have no impact without a determination or decision being based on the provisions that are considered.

Specification of Error No. 10: *(Appellants' Specification of Error No. 4) The proceedings of the SPJC were irregular, in that one of its commissioners belatedly revealed, near the conclusion of the trial in which he had materially participated as described at 2. and 3., above and at other times during the proceedings, that the "Danville church" (the church that was to have been dismissed by the Presbytery under the disputed terms), was his home church. In addition, there is nothing from the record that would indicate other than the same commissioner's full participation in the SPJC deliberations that followed the trial, despite the appearance of a significant conflict of interest.*

This Specification of Error is not sustained.

Having reviewed the record, it is clear the commissioner was not referring to Danville as his home church. Support for this conclusion can be found in that there was no objection or question of conflict of interest raised by anyone after his statement.

Specification of Error No. 11: *(Appellants' Specification of Error No. 5) The SPJC erred in declining to receive as proper evidence the Amicus Curiae Brief of Clifton Kirkpatrick et al. in support of the position of the Episcopal Church before the Supreme Court of California in the*

*Episcopal Church Cases. This brief sets forth the official legal position of the Presbyterian Church (U.S.A.) with respect to church property as provided in the property trust clause in the Book of Order.*

This Specification of Error is sustained.

Failure to receive the *Amicus Curiae* Brief into the record was an abuse of discretion in that it was a clear statement of the legal position of the PC(U.S.A.) as it related to the Trust Clause. Recognition of the legal position of the PC(U.S.A.) as the beneficiary under the Trust Clause is integral to any presbytery analysis concerning disposition of church property.

Specification of Error No. 12: *(Appellants' Specification of Error No. 6) The SPJC erred in declining to receive as proper evidence the Annual Statistical Report for the Community Presbyterian Church of Danville (CPCD), which was sent by its Clerk of Session to the Stated Clerk of the Presbytery of San Francisco. Appellants believe this report provides useful information concerning the number of members and financial strength of CPCD, matters which the Presbytery failed to consider but should have considered in negotiating the terms of its dismissal.*

This Specification of Error is sustained.

The failure to receive the report on Danville was an abuse of discretion because it provided relevant information which should have been considered as part of the dismissal.

Specification of Error No.13: *(Appellants' Specification of Error No. 7) The SPJC erred in receiving as proper evidence a copy of an E-mail communication from a member of the Presbytery Engagement Team (PET), the ad hoc committee that was charged with negotiating the terms of dismissal with representatives of CPCD, to the other members of the PET, describing her telephone conversation with a third party, despite her testimony that there was no follow-up discussion of its contents on the part of the PET and hence no indication that the PET based its actions on that conversation or E-mail message.*

This Specification of Error is not sustained.

There was no abuse of discretion by SPJC in receiving such evidence.

Specification of Error No. 14: *(Appellants' Specification of Error No. 8) The SPJC erred in receiving as proper evidence a copy of an E-mail communication from a member of the PET to the other members of the PET in which she related her understanding of the reasons for the CPCD Sessions' desire to leave the PC(U.S.A.). At no time was any evidence testimony produced to suggest that the Presbytery's terms of dismissal were influenced in any way by the matters discussed in that communication.*

This Specification of Error is not sustained.

There was no abuse of discretion by SPJC receiving such evidence.

*Specification of Error No. 15: (Appellants' Specification of Error No. 9) For the reasons stated at 10 (Appellants' 4) and 14 (Appellants' 8), above, there was a manifestation of prejudice in the conduct of the case.*

This Specification of Error is not sustained.

This Commission did not sustain either Specifications of Error No. 10 or No. 14 (Appellants' No. 4 and No. 8). Therefore, there was no manifestation of prejudice as a result of the conduct alleged in those Specifications of Error.

### **Decision**

When the lower council's actions cannot be undone, this Commission may exercise its declaratory authority to provide guidance to lower councils and to prevent future violations.

When a congregation seeks dismissal under G-11.0103i (now G-3.0301a), it is the responsibility of the presbytery to fulfill its fiduciary duty under the Trust Clause. This fiduciary duty requires that the presbytery exercise due diligence regarding the value of the property of the congregation seeking dismissal. Due diligence, of necessity, includes not only an evaluation of the spiritual needs of the congregation and its circumstances but also financial analysis of the value of the property at stake. Payments for per capita or mission obligations are not satisfactory substitutes for the separate evaluation of the value of the property held in trust.

### **Order**

IT IS THEREFORE ORDERED that the Decision of the Synod of the Pacific Permanent Judicial Commission is affirmed in part and reversed in part as set forth above.

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, 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 Presbytery of San Francisco report this Decision to the Presbytery of San Francisco at its first meeting after receipt, that the Presbytery of San Francisco 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.

### **Absences and Non-Appearances**

Commissioner Mary Charlotte McCall was not present and did not participate in this decision. Commissioner Patrick Notley did not participate in this decision.

## **Concurring Opinion of H. Clifford Looney and Terry Epling**

We concur in the majority decision.

Transfers of property remain within the discretion of Presbytery but the Presbytery must be mindful of the interest of the PC(U.S.A.) in maintaining the presence of the denomination to meet the needs of that affected Community including that portion of the church membership that wishes to remain within the PCUSA.

We also join in the majority's conclusion that the language of the Gracious Dismissal Policy adopted by the Presbytery of San Francisco did not require adequate consideration of property retention issues. The needs of future congregations, the involved debt, the probability that a substantial number of dissenting members may be enabled to continue a PCUSA congregation would compel retention of a property or equity facilitating those or similar interests are all matters to be considered to be involved in the Presbytery trustee's decision. The Gracious Dismissal Policy did not require the PET to deal with those aspects of the dismissal decision.

However erroneous the omissions of the GDP, and the construction given by its PET, it may well have been within the discretion of the Presbytery to dismiss the Danville church with its property.

Many factors other than the attempt to be "gracious" with the Danville congregation may have been considered. Those include:

This Danville congregation acquired these assets and had been paying on them and had been successful in meeting the need of a Presbyterian witness for the Christian faith in this community for many years;

The church had tried development of other PC (USA) churches in the area without success;

Only 4% of the congregation voted against the dismissal decision;

The PET felt, apparently with substantial basis, that the needs of the community for Presbyterian witness to the faith would be met by this church as it was constituted, and that no plan for an additional church was presently feasible, so that there was no need to use any of the equities of the property interests of the church for that purpose; and that no resources of the denomination had been used in the form of loans, nor was there any remaining indebtedness which was not being assumed by the Danville church.

In short, there may have been no apparent reason to require retention by the PC (USA) of any property interest. With the evidence in that stature, the burden of proof that the Complainant would had to have met to show an abuse of discretion by the Presbytery would have been heavy.

The testimony of Lois Quick (record p. 262 & 286) indicates that the properties were encumbered by about three million dollars in debt that the Danville congregation agreed to pay in accepting the property. Rev. Kathy Runyeon indicates at page 174 of the record that the Presbytery had no competing plans for the property.

The facts here presented to the PET are not ones that suggest that there would be substantial benefit from retaining the property. What the Presbytery did in securing additional mission and per capita payments may or may not have been sufficient to “balance the books” in this particular scenario, but it was within their discretion once they exercised due diligence and considered all the factors inherently required by the fiduciary duty of a trustee.

### **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 Remedial Case 221-04, Wilbert Tom, David Hawbecker, and Thomas Conrad, Appellants (Complainants), v. Presbytery of San Francisco, Appellee (Respondent), made and announced at Louisville, KY this 28<sup>th</sup> day of October 2012.

Dated this 28<sup>th</sup> day of October, 2012.

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Bradley C. Copeland Moderator  
Permanent Judicial Commission of the General Assembly

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Jay Lewis, Clerk  
Permanent Judicial Commission of the General Assembly

I certify that I did transmit a certified copy of the foregoing to the following persons by Federal Express Next Day Air, directing C. Laurie Griffith to deposit it in the mail at Louisville, KY, this 28<sup>th</sup> day of October, 2012.

JoAn Blackstone, Counsel for Appellant (Complainant) Linda Lee,  
Committee of Counsel for Appellee (Respondent) Stated Clerk,  
Synod of the Pacific  
Stated Clerk, Presbytery of San Francisco  
General Assembly Permanent Judicial Commission

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it in person to Joyce Lieberman, on October 28, 2012.

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Jay Lewis, Clerk  
Permanent Judicial Commission of the General Assembly

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 General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly, in Louisville, KY on October 28, 2012, Remedial Case 221-04 Wilbert Tom, David Hawbecker, and Thomas Conrad, Appellants (Complainants), v. Presbytery of San Francisco, Appellee (Respondent), and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at Louisville, KY on October 28, 2012.

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Joyce Lieberman, Assistant Stated Clerk

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

<b>APPENDIX C</b>
-----------------------

Presbytery of New York City )  
Appellant (Respondent) )  
vs. )  
Ruling Elder Mildred McGee, Teaching )  
Elder Flora Wilson Bridges, Ruling Elder )  
Douglas Howard, Teaching Elder Lonnie )  
Bryant, Ruling Elder Daniel Amiot Priso, )  
Teaching Elder Phillip Newell, Ruling )  
Elder )  
Emmanuel Gouad Njayick, Teaching Elder )  
George Todd, Ruling Elder Estella Taylor, )  
and Ruling Elder Norita Chisolm )  
Appellees )  
(Complainants)

**DECISION AND ORDER**

Remedial Case 221-08

**Arrival Statement**

This filing before the Permanent Judicial Commission of the General Assembly (GAPJC or this Commission) is an appeal of a Decision of the Permanent Judicial Commission of the Synod of the Northeast (SPJC) rendered on September 11, 2013. The Notice of Appeal was received by the Stated Clerk of the General Assembly on September 23, 2013.

**Parties**

Appellant/Respondent is The Presbytery of New York City (PNYC). Appellees/Complainants are Ruling Elder Mildred McGee, Teaching Elder Flora Wilson Bridges, Ruling Elder Douglas Howard, Teaching Elder Lonnie Bryant, Ruling Elder Daniel Amiot Priso, Teaching Elder Phillip Newell, Ruling Elder Emmanuel Gouad Njayick, Teaching Elder George Todd, Ruling Elder Estella Taylor, and Ruling Elder Norita Chisolm.

**Jurisdictional Statement**

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This Commission finds that it has jurisdiction, that Appellants have 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 under D-8.0105.

### **Appearances**

Appellant/Respondent was represented by John Griem and Reade Ryan. Appellees/Complainants were represented by Tee Gee Wilson and Lisa Borge.

### **History**

On February 13, 2013, the Stated Clerk of the Synod of the Northeast received a Remedial Complaint from Ruling Elder Mildred McGee, *et alia*, alleging that the action of the PNYC in adopting and implementing its Gracious Dismissal Policy (GDP) was irregular in regard to constitutional requirements of The Presbyterian Church U.S.A. (PC(U.S.A.)).

The development of the GDP by the PNYC began early in 2012, informed by the action (Resolution 04-28) of the 218th General Assembly (2008) (GA) urging presbyteries to formulate a gracious and pastoral response to churches requesting dismissal from the PC(U.S.A.). This GA resolution, although not an authoritative interpretation, was used as the basis for the development of the GDP. Just after that Assembly in October 2008, the PNYC through its Committee on Mission and Finance, which also served as the Board of Trustees (BoT), had obtained a realtor's opinion of value of the properties held by all its congregations. Almost four years later, in July 2012, the BoT created a draft GDP that was distributed to the PNYC for its meeting on July 28, 2012; however, there was no discussion of the draft at that meeting. A later draft was given a first reading and discussion at the December 6, 2012, meeting of the PNYC. After two open hearings on December 13 and 20, 2012, the present GDP was approved by the PNYC on January 29, 2013, by a vote of 56 in favor and 49 against.

The SPJC summarized the GDP in the following way:

...[T]he PNYC GDP allows sessions to request initiation of the dismissal process following a 2/3 vote. Upon receipt of the notice, the stated clerk then calls one or more meetings between the Special Resolutions Committee of the presbytery and the session (or its representatives), as well as the BOT (or its representatives) during the 120-day period following receipt of the notice. If the filing notice is not withdrawn at the end of the period, a congregational meeting is called (50% quorum) and dismissal is approved if confirmed by a 3/4 congregational vote. Financial arrangements include payment of any arrears in per capita, five years of per capita payments on a declining scale, and compensation for church property of 10% of the assessed value that exceeds \$1,000,000, with a cap on the compensation of \$2,000,000.

In addition, the policy allows for a downward adjustment or waiver in the case of hardship.

With the remedial complaint, Complainant also requested a Stay of Enforcement. The Executive Committee (EC) of the SPJC answered the Preliminary Questions in the affirmative and the Stay of Enforcement was subsequently granted by the SPJC.

Respondent requested an extension of the deadline for filing its response and the SPJC granted this extension. Respondent submitted a motion to the SPJC on April 29, 2013, to refer the case to the GAPJC, to which Complainants responded on May 14, 2013. The SPJC denied the motion on May 23, 2013. Respondent filed a second motion on July 2, 2013, asking the SPJC to reconsider its decision to deny the earlier motion to

refer the case to the GAPJC, to which Complainants again responded on July 16, 2013. The SPJC EC denied this motion on July 27, 2013.

Complainant filed for relief on February 13, 2013, and this remedial case was decided by the SPJC on September 11, 2013. In its decision, the SPJC sustained five of the seven specifications of error by Complainant and ordered that the GDP of the PNYC shall be set aside and shall have no force or effect.

### **Specifications of Error**

*Specification of Error No. 1: The SPJC erred in constitutional interpretation by holding that the Presbytery GDP conferred a unilateral right on a congregation to depart from the Presbyterian Church (U.S.A.), in violation of G-4.0207 and Sundquist v. Heartland Presbytery, GA PJC 219-03.*

This specification of error is not sustained.

While it may be understandable for a presbytery to develop a policy dealing with congregations considering dismissal, with the intention of avoiding costly litigation, the GDP at the center of this case breaches the bounds of the Constitution of the PC(U.S.A.). The PNYC GDP exhibits substantial constitutional flaws in at least three ways concerning this specification of error. First, the GDP establishes a dismissal process that, as the SPJC notes, is “self-executing,” whereby fulfillment of a series of steps and conditions automatically enacts dismissal upon their completion. A final vote by the PNYC is purposefully denied in the GDP in order to avoid divisive and argumentative response to a dismissal request, as admitted by the PNYC in the record and during arguments. Even though the process contains provisions for consultation with the PNYC and congregational input, it is in fact a predetermined and formulaic mechanism that replaces a final specific review and vote by the PNYC. The Constitution at G-3.0301a reserves as a direct act of the presbytery the authority to dismiss a church, a polity provision explicitly reasserted by G-4.0207.

As the SPJC noted, the PNYC does not need an independent policy in order to accomplish a just and effective dismissal:

The Respondent has asserted that an order by this Commission to set aside this GDP would leave the presbytery in limbo and render it unable to reach any agreements on dismissal agreements, leaving only the option of costly litigation. This is a seriously overreaching assessment. We are sensitive to the difficult situation in which the PNYC finds itself and appreciate its sincere desire to deal with that as well as it can....[A dismissal agreement] can be achieved, either through Administrative Commissions appointed in each case that presents itself and is empowered to do so, or, indeed, by a Special Resolutions Committee, preparing the proposal for presbytery action. Considering that the presbytery mustered a majority vote, however slim, for the GDP under consideration in this case, and with the case-by-case requirement satisfied in these cases, it ought to be possible for the PNYC to reach agreement on approval for such dismissal arrangements.

The second constitutional error in the GDP is its provision that the vote by a congregation effectuates the dismissal process. This vote terminates the process and has the authority to effect dismissal without any constitutional authority so to act. The final certification by the PNYC is merely perfunctory. Further, such a congregational vote is not authorized within the permitted functions of a congregation in G-1.0503 and is specifically prohibited in *Sundquist et al. vs. Heartland Presbytery*: “Withdrawal from the Presbyterian Church (U.S.A.) is not a matter that can be considered at a congregational meeting” and the consultations of presbytery with members of the congregation “are not meetings at which business of the congregation may be

conducted.” [citation] It should also be noted that the General Assembly in 1991 declared: “Nowhere is written that the congregation is permitted to make the decision that the presbytery commits itself in advance to confirm.” GA Minutes (1991, Req. 91-24, Part I, p.411). In spite of this stream of clear constitutional interpretation, the GDP portrays a self-implementing dismissal rooted in a congregational decision in violation of the exclusive right and responsibility of a presbytery to dismiss a congregation.

The third constitutional error of the GDP is that a predetermined, formulaic mechanism runs counter to constitutional provisions for mutual dialogue and particular discernment. This Commission has previously rejected such approaches in matters related to ordination and membership (Larson citation here). The presbytery's right and responsibility for specific review and the necessity of individualized consideration on sensitive matters in the life of the church remain a core concept of PC(U.S.A.) polity.

*Specification of Error No. 2: The SPJC erred in constitutional interpretation by holding that the GDP does not give effect to the Trust Clause (G-4.0203) as required by Tom v. Presbytery of San Francisco, GA PJC 221-03 and G-4.0204.*

This specification of error is not sustained.

The Book of Order provides in G-4.0203 that “[a]ll property held by or for a congregation, a presbytery, a synod, the General Assembly, or the Presbyterian Church (U.S.A.), ...is held in trust nevertheless for the use and benefit of the Presbyterian Church (U.S.A).” The Trust Clause was interpreted by this Commission in *Tom, et al., v. Presbytery of San Francisco*, as it related to that presbytery's gracious dismissal policy, in the context of a number of factors including both spiritual and pecuniary aspects of the fiduciary responsibility. In *Tom*, this Commission said:

When a congregation seeks dismissal under G-11.0103i (now G-3.0301a), it is the responsibility of the Presbytery to fulfill its fiduciary duty under the Trust Clause. This fiduciary duty requires that the Presbytery exercise due diligence regarding the value of the property of the congregation seeking dismissal. Due diligence, of necessity, includes not only an evaluation of the spiritual needs of the congregation and its circumstances but also financial analysis of the value of the property at stake. Payment for per capita for missions obligations are not satisfactory substitutes for the separate evaluation of the value of the property held in trust. *Tom, et al., v. The Presbytery of San Francisco*, Remedial Case GA PJC 221-03, October 2012.

This Commission is again called upon in this case to clarify the parameters of the Trust Clause. The Trust Clause creates an express trust in favor of the PC(U.S.A.) as a whole and not for the presbytery, the congregation, or any other body. Therefore, the presbytery, acting in the role of trustee, must exercise due diligence such that its determination is both reasonable and evident in the record. While presbytery is entitled to deference in making the fiduciary decisions under the Trust Clause, such deference is limited by the fiduciary obligations owed to the whole church.

Under the facts of this case, the PNYC argues that the requirement of due diligence under the Trust Clause has been met by adopting a formula for determining the value of the property at the time of enacting the GDP by the PNYC. However, the fiduciary nature of the Trust Clause requires an individual determination of the facts and circumstances related to dismissal of any church rather than a set formula, which may not be appropriate to the particular circumstances of a congregation. As stated by the SPJC, there must be an “individual assessment and valuation of the church’s unique situation, finances, history, spiritual needs and financial needs” when considering dismissal.

In addition, the exercise of the fiduciary duty must be carried out during the course of discernment of a particular church's request for dismissal. A formulaic predetermination fails to account for the individualized

requirement demanded by proper application of the fiduciary duty incumbent upon a presbytery. The SPJC correctly determined that the PNYC, acting as a fiduciary, may not abdicate this role (G-4.0207 and G-3.0303b). The record shows that the PNYC sought to avoid conflict and litigation. However, concern about conflict and litigation cannot justify abandonment of constitutional mandates.

Thus, the presbytery, in exercising its authority to perform due diligence under the fiduciary duties required by the Trust Clause, is required to make an appropriately timed, individual, unique determination of the circumstances applicable to any church requesting dismissal. In accountability to the PC(U.S.A.) as the beneficiary under the Trust Clause, such determination must be reasonable and based on documented facts. The GDP enacted by the PNYC fails to meet these requirements and, therefore, is unconstitutional.

*Specification of Error No. 3: The SPJC erred in constitutional interpretation by holding that the GDP did not provide specific guidance regarding discernment of theological differences as a basis for dismissal, in violation of F-1.0302a and F-1.0301.*

This specification of error is not sustained.

The PNYC adopted the GDP "to provide for reconciliation and resolution within the Presbytery of New York City" and to permit their congregations to be dismissed to join another Reformed denomination for theological reasons. The policy did not seek reconciliation and resolution as the initial step in the process (G-4.0207). The policy accepts notice from a congregation of perceived theological differences as sufficient for dismissal without concern for mutual discernment and dialogue (Sundquist). It is the nature and weight of theological difference that is critical in a justification for dismissal. The mere presence of theological differences does not preclude coexistence within the PC(U.S.A.). As stated in F-3.0105 "there are truths and forms with respect to which men of good characters and principles may differ. And in all these we think it the duty of private Christians and societies to exercise mutual forbearance toward each other." The GDP contains no procedures to encourage early discussion with the PNYC about a congregation's perceived differences. As indicated in F-3.0204 "Presbyters are not simply to reflect the will of the people, but rather to seek together to find and represent the will of Christ." Without dialogue there cannot be a mutual understanding of the will of the people. Without joint discernment councils can misunderstand the will of Christ. The SPJC rightly concluded it was important that the PNYC "ensure that dismissal is the only viable remedy for the relevant theological differences."

*Specification of Error No. 4: The SPJC erred in constitutional interpretation by holding that the GDP did not provide an opportunity for the minority of a church in schism to retain the property of a congregation, in violation of G-4.0207.*

This specification of error is not sustained.

The PNYC GDP ignores the constitutional requirement under G-4.0207 to "determine if one of the factions is entitled to the property because it is identified by the presbytery as the true church within the Presbyterian Church (U.S.A.)." The GDP process is initiated when the PNYC receives a written notice from the session. At that point, the PNYC automatically surrenders its constitutional obligation to determine whether a loyal faction exists and is entitled to the property. Under the GDP provisions, there is no attempt to identify the true church within the PC(U.S.A.). A fully implemented GDP effectively guarantees the property for those seeking dismissal.

It is clear what a presbytery must do when confronted with a property issue. Under G-4.0207, a presbytery is obligated to serve the interests and guard the rights of the "true church within the Presbyterian Church (U.S.A.)," regardless of who is in the majority of any session or congregational vote. The presbytery shall determine if one of the factions is entitled to the property because it is the "true church within the Presbyterian Church (U.S.A.)," majority notwithstanding. Any negotiation and decision about the disposition of the property must consider this interest of the true church. The GDP failed to comply with G-4.0207.

*Specification of Error No. 5: The SPJC erred in constitutional interpretation by holding that the GDP allowed a dismissed congregation to retain its records, in violation of G-3.0107.*

This specification of error is not sustained.

According to G-3.0107, when a congregation is dismissed to another denomination its session ceases to exist as a council of the PC(U.S.A.). The successor to a former church council is the presbytery and upon dismissal of the congregation the minutes and registers of the session become the property and responsibility of the presbytery. The presbytery may make provision for the departing congregation to retain copies of the records for historical purposes.

### **Decision**

For the reasons set forth above, this Commission finds that The Permanent Judicial Commission of the Synod of the Northeast did not err and affirms its decision.

### **Order**

IT IS THEREFORE ORDERED that the Decision of the Synod of the Northeast Permanent Judicial Commission is hereby sustained in its entirety and that the Gracious Dismissal Policy of The Presbytery of New York City be set aside and shall have no force or effect.

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Northeast report this Decision to the Synod of the Northeast at the first meeting after receipt, that the Synod of the Northeast enter the full Decision upon its minutes and 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 Presbytery of New York City report this Decision to the Presbytery of New York City at the first meeting after receipt, that the Presbytery of New York City enter the full Decision upon its minutes and an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the General Assembly.

### **Absences and Non-Appearances**

Commissioner Mary Charlotte McCall did not participate in the hearing or deliberations.

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## 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 Remedial Case 221-08, The Presbytery of New York City, Appellant (Respondent), v. Ruling Elder Mildred McGee, Teaching Elder Flora Wilson Bridges, Ruling Elder Douglas Howard, Teaching Elder Lonnie Bryant, Ruling Elder Daniel Amiot Priso, Teaching Elder Phillip Newell, Ruling Elder Emmanuel Gouad Njayick, Teaching Elder George Todd, Ruling Elder Estella Taylor, and Ruling Elder Norita Chisolm, Appellees (Complainants), made and announced at San Antonio, TX this 4th day of May, 2014.

Dated this 4th day of May, 2014.

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Bradley C. Copeland Moderator  
Permanent Judicial Commission of the General Assembly

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Jay Lewis, Clerk  
Permanent Judicial Commission of the General Assembly

I certify that I did transmit a certified copy of the foregoing to the following persons by Federal Express Next Day Air, directing C. Laurie Griffith to deposit it in the mail at San Antonio, TX this 5th day of May, 2014.

John M. Griem, Jr., Committee of Counsel for Appellant (Respondent)  
Trina Moore, Counsel for Appellees (Complainants)  
Stated Clerk, Synod of the Northeast  
Stated Clerk, Presbytery of New York City  
General Assembly Permanent Judicial Commission

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A.) by delivering it in person to C. Laurie Griffith, on May 4, 2014.

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Jay Lewis, Clerk  
Permanent Judicial Commission of the General Assembly

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 General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly, in San Antonio, TX on May 4, 2014, in Remedial Case 221-08, The Presbytery of New York City, Appellant (Respondent) v. Ruling Elder Mildred McGee, Teaching Elder Flora Wilson Bridges, Ruling Elder Douglas Howard, Teaching Elder Lonnie Bryant, Ruling Elder Daniel Amiot Priso, Teaching Elder Phillip Newell, Ruling Elder Emmanuel Gouad Njayick, Teaching Elder George Todd, Ruling Elder Estella Taylor, and Ruling Elder Norita Chisolm, Appellees (Complainants) and that it is the final judgment of the General Assembly of the Presbyterian Church (U.S.A.) in the case.

Dated at San Antonio, TX on May 4, 2014.

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C. Laurie Griffith  
Manager of Judicial Process and Social Witness