

Presbytery of Riverside Assembly Gracious Discernment, Dismissal, and Transfer Policy

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Presbytery of Riverside Assembly

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.

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 interests of the Presbytery and the PCUSA include the possibilities of continuing divine worship or other ministry in the real property, but they also include the possibility of transferring the ‘value’ stored in the real property to another ministry that might be more responsive to the needs of the Presbytery’s area.

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

POLICY STATEMENT

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.

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 Assembly 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 Healthy Pastors and Congregations Commission, a representative from the Partners in Ministry Committee. The Moderator of the Presbytery Assembly will appoint a moderator of the Discernment Team. The Presbytery Leader for Mission and Vision/Stated Clerk will be an ex-officio member 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 Presbytery Commission 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 Presbytery Commission 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 minister(s) of the Word and Sacrament, 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 minister(s) of the Word and Sacrament, 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 Minister of the Word and Sacrament, 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 Presbytery Commission 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 Presbytery Leader for Mission and Vision/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 Presbytery Commission 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 ENGAGEMENT 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 invite the congregation to gather for the purpose of considering a vote to request that the Presbytery dismiss the congregation. Notice for the gathering, 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 gathering.
3. A quorum of the equivalent of 66% of members of the congregation 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 vote requesting dismissal passes by the requisite majority, then the Discernment Team will continue the dismissal process with the Session. In the event the vote 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 Presbytery Commission, 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.

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 the Presbytery of Riverside.
2. Any Inquirers or Candidates having membership in a departing congregation will have the opportunity, with the aid of the Commission 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, Synod or other PCUSA entity 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 31st 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 special meeting of the Presbytery shall be called to consider all matters relating to the proposed dismissal and transfer. At the time of the Call, at least 30 days prior to the special meeting, a summary of the conclusions and the process of the Discernment Team (including how the issues listed in Section II.2, above, were resolved), and the negotiated terms of the agreement for dismissal will be made available to all members of the Presbytery for their review. In addition, Presbytery will make available for review, electronically and at the meeting, all disclosed documents listed in Section II.10, above. Presbytery shall vote separately on 1) the dismissal of the congregation under the terms of the Dismissal Agreement; and 2) the membership of the Ministers of the Word and Sacrament.*
- b. If the Presbytery Assembly does not approve the proposed dismissal of the congregation, the Discernment Team and the congregation 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 all required actions as listed in the terms of the Dismissal Agreement, but in any case, *no sooner than sixty (60) days to allow for proceedings under D-6.0100 et seq., and 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 Ministers of the Word and Sacrament 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 Presbytery Leader for Mission and Vision/Stated Clerk of the Presbytery has received official notice from the receiving entity.

Dates of Adoption and revision by the Presbytery of Riverside:

June 9, 2012; February 23, 2013; September 12, 2015; March 3, 2017; June 10, 2017 (Ratification Date of Presbytery Restructure and republication all governing documents); June 2, 2018.

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**

Appendix B: Permanent Judicial Commission of the Presbyterian Church (U.S.A.) (Tom)

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

**APPENDIX
B**

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

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 28th day of October 2012.

Dated this 28th day of October, 2012.

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

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 28th 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.

Jay Lewis, Clerk
Permanent Judicial Commission of the General Assembly

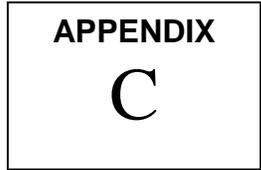
I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the General Assembly of the Presbyterian Church (U.S.A.), sitting during an interval between meetings of the General Assembly, in Louisville, KY on October 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.

Joyce Lieberman, Assistant Stated Clerk

Appendix C: Permanent Judicial Commission of the Presbyterian Church (U.S.A.) (PNYC)

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



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

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.

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.

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

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.

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.

C. Laurie Griffith
Manager of Judicial Process and Social Witness

Appendix D: Permanent Judicial Commission of the Synod of So California & Hawaii (Locke)

**APPENDIX
D**

THE PERMANENT JUDICIAL COMMISSION
of
THE SYNOD OF SOUTHERN CALIFORNIA AND HAWAII THE PRESBYTERIAN CHURCH
(U.S.A.)
DECISION & ORDER

STEPHEN LOCKE,)
RUDOLPH J. KOSITS, RUTH) Case Number: 2016-R-3 MACINNES SWEET,
)
Complainants) Decision of the Permanent Judicial
) Commission of the Synod of Southern
V.) California and Hawaii after Trial
) PRESBYTERY OF SAN DIEGO,)
Respondent)

This is a remedial case which has come before this Permanent Judicial Commission as a result of a complaint filed by the above named complainants against the Presbytery of San Diego, respondent. It is a complaint against the Presbytery of San Diego for six alleged irregularities associated with a vote of the Presbytery on April 12, 2016, to transfer Trinity Presbyterian Church of Spring Valley to ECO The Covenant Order of Evangelical Presbyterians.

On April 28, 2015, the officers of the Permanent Judicial Commission found that the Commission has jurisdiction, that the complainant has standing to complain, that the complaint was properly and timely filed, and that the complaint states a claim upon which relief can be granted. The necessary members of the Commission also granted complainant’s request for a stay of enforcement. The Permanent Judicial Commission met on August 12, 2016 at the Northminster Presbyterian Church in Diamond Bar, California, for a pre-trial conference in accordance with D-6.0310.

The remedial case proceeded to trial on December 2, 2016, at First Presbyterian Church, Orange, California. A quorum of the Permanent Judicial Commission was present, moderator teaching elder Michael D. Haggin, presiding. Complainants Stephen Locke, Ruth MacInnes Sweet, and Rudolph J. Kosits, were present. Respondent was represented by Committee of Counsel members Chris Lenocker, Whitney M. Skala, Esq., and the honorable R. Curtis McKee, Esq. Witnesses were heard, documents were accepted into evidence, and both parties made closing arguments. After deliberation, the Commission reached these findings:

FINDINGS

SPECIFICATION OF COMPLAINT #1: “The action [i.e., the Presbytery’s vote to transfer] is the result of a process that as implemented fails to adequately consider the interests of the Presbytery of San Diego and the PC(USA) in continued ministry in the geographical area encompassed by the Presbytery of San Diego”

This specification of irregularity is sustained by a vote of 6 for and 0 against.

The interests of the Presbytery of San Diego and the PC(USA) include the possibilities of continuing divine worship or other ministry in the real property at Trinity Presbyterian Church, but they also include the possibility of transferring the ‘value’ stored in the real property to another ministry that might be more responsive to the needs of the Presbytery’s area. The Task Force that prepared the transfer recommendation for the Presbytery offered opinions about the usefulness of the real property as an active church, but its inquiry appears to have been perfunctory and does not appear to have engaged any of the standing committees of the Presbytery structure charged with forwarding either worship or community service ministries. No consideration seems to have been given to the possibility of transferring the value in the Property to another more promising work.

SPECIFICATION OF COMPLAINT #2: “That the action is irregular because of an inadequate process by the Task Force which did not apply due diligence in taking into consideration the fiduciary need and the interest of the Presbytery of San Diego and the PC(USA). . . . In determining the monetary amount agreed upon the Task Force failed to do due diligence in determining the value of the property in agreement with the trust clause.”

This specification of irregularity is sustained by a vote of 6 for and 0 against.

The evidence at trial showed that the Task Force took a serious interest in comparisons with other congregational transfers across the country, but the inquiry into the value of the Trinity Presbyterian Church property was casual. Several estimates were collected from relevant sources, but the Presbytery and its Task Force did not get a professional appraisal. In setting a payment amount, the principal concern seemed to have been selecting a sum that would be convenient for the congregation, requiring (for example) no indebtedness or appeals to the congregation.

SPECIFICATION OF COMPLAINT #3: “The action also failed to consider the fiduciary responsibility of the Presbytery of San Diego in its intent and ability to continue ministry in that encompassed area of the Presbytery of San Diego.”

This specification of irregularity is sustained by a vote of 6 for and 0 against. See rationales on #1 and #2, above.

SPECIFICATION OF COMPLAINT #4: “The action was based on an incomplete and inadequate Gracious Dismissal Policy of the Presbytery of San Diego (GDP) which does NOT state the responsibility for the Presbytery of San Diego’s fiduciary responsibility under the trust clause, nor the church’s fiduciary responsibility to the Presbytery on behalf of the PC(USA), but only asks the complaining church how its dismissal would ‘affect the mission and ministry of the congregation and of the Presbytery.’ This is not responsible, nor is it adequate to fulfill the duty of the Presbytery under the fiduciary responsibility of the trust clause (G-4.0203) nor the Great Ends of the Church.”

This specification of irregularity is sustained by a vote of 6 for and 0 against.

At trial, Respondent’s witnesses claimed that a presbytery Gracious Dismissal Policy (GDP) need not speak to any issue adequately addressed by the Book of Order. Since the trust clause is clear in the Form of Government, it is not addressed in the GDP. This is not a sufficient or responsible position.

As has become manifest in the Tom and McGee cases, presbyteries across the country have paid little heed to the provisions of the Book of Order in their attempts to effect ‘gracious dismissals.’ This is why the decisions in the Tom and McGee cases were necessary. Neither GA PJC decision directly stopped a congregation from transferring. Each was written to bring certain widely-disregarded provisions of the Book of Order to the fore. Respondent Presbytery had reason to assume that church and session members caught up in the struggle to leave the PC(USA) would rely on the Presbytery GDP as a roadmap to departure. It is not sufficient to excuse the GDP’s silences by saying that they are covered by the Book of Order, properly used.

SPECIFICATION OF COMPLAINT #5: “The action was irregular based on an inadequate GDP of Presbytery of San Diego which fails to provide for a minority congregation of a church schism to retain its property or to allow the presbytery to even look at this scenario.”

This specification of irregularity is sustained by a vote of 6 for and 0 against.

This allegation of irregularity is almost indistinguishable from an allegation of irregularity in the case of Presbytery of New York City, Appellant/Respondent, v. Mildred McGee, *et alia*, Appellees/Complainants (GA PJC remedial case 221-08, 2014). In that case, the GA PJC found that presbytery GDP to be wholly inadequate and unconstitutional, detailing::

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 [inadequate] 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 [inadequate] GDP provisions, there is no attempt to identify the true church within the PC(U.S.A.).

.....

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.

The inquiry required is not an easy one and cannot be done in the perfunctory manner used by the Task Force. Members of congregations can be expected to be very reluctant to identify themselves as differing from their pastors and their session members when their denominational councils and staffs – especially distant ones – are criticized, even vilified. In this respect, the natural bias of church-goers to seek harmony, rather than conflict, makes it challenging for a presbytery to sift the comparatively-satisfied worshipers from the promoters of dissent and dissatisfaction. The inherent difficulty of this task does not excuse the subject Task Force from declining to do it at all.

SPECIFICATION OF COMPLAINT #6: “The Presbytery of San Diego failed to allow the members of presbytery to engage in discerning a proper dismissal by prohibiting amendments to the motion to dismiss under the agreed terms.”

This specification of irregularity is sustained by a vote of 6 for and 0 against.

At the time of the Presbytery vote on April 12, 2016, the presbyters were told that the consideration of the Task Force recommendation would be governed by a ‘rule,’ previously formulated, that would not permit any motions to amend. Respondent claimed at trial that the right of a presbytery meeting to exercise powers equal to that of previous and subsequent meetings was not fatally compromised: the presbyters on April 12, 2016, should have known that by voting down the un-amendable motion, they would have freed themselves to propose a new –effectively, substitute – motion. This is not satisfactory. It is the duty of the officers of a presbytery to organize its business to enable the presbyters to make the decisions they want, not in ways that confuse and ‘trap’ the presbyters into choosing between undesirable options.

Accordingly, this Commission would have respected the Presbytery’s right to make a ‘rule’ to govern the action on the Task Force recommendation if the ‘rule’ had been made at the same meeting by the same presbyters whose choices would have been constrained by it. Otherwise, the previous action of a Presbytery meeting or an executive committee or a Task Force cannot be permitted to forbid a subsequent Presbytery meeting from acting within its normal powers.

FURTHER RATIONALE AND CONCLUSIONS

In the course of addressing each specification of irregularity, the Commission identified some specific instances of deficiency in the Gracious Dismissal Policy of the Presbytery of San Diego. At the same time, the Commission recognized two broad ways in which the GDP is unconstitutional which were not central claims of the specifications of complaint.

First: The Gracious Dismissal Policy, although purporting to be a guide to constitutional action for the Presbytery, is founded on an idea of polity and ecclesiology that is fundamentally congregational or ‘free church’ and not at all Presbyterian. In the words of the Policy, “The congregations of the Presbytery of San Diego have covenanted together to live out the Faith, and to be a relational community Into this covenant each of the congregations have willingly come.” After that beginning, the Policy proceeds to explain the steps by which sessions and “Congregations who want to reexamine their membership in the covenant of the Presbytery of San Diego” move toward withdrawal from the ‘relational community into which they have willingly come.’ The required steps aim to ensure that the congregation and the session are acting with deliberation over time, rather than intemperately and hastily, and that they afford opportunities for people with different opinions to make their cases *to the congregation*. In the penultimate step, the congregation makes the decision for or against withdrawal from the covenant by a super-majority vote which then goes to the Presbytery for ratification. The process is shaped to prepare a case for the sincerity and intensity of the congregation’s desire (or need) to leave the PC(USA). The Policy does admit of the possibility that the Presbytery might vote against ratification/transfer, but the whole process of discernment with regard to the character of the congregation’s life, leadership, and culture and with regard to the congregation’s place in the mission, ministry, and witness of the Presbytery is conducted by a small set of people (in this case, five) whose meetings and explorations with the congregation and with its representatives occur in isolation from the more- broadly participatory councils and committees dealing with the Presbytery’s ‘real’ work.

In contrast, in Presbyterian polity each congregation is a local and temporal expression of the Church

Universal that is simultaneously contextually relevant and spiritually united with the whole, as an organ of a physical body. As an instance of the whole Body of Christ in a particular time and place, a PC(USA) congregation is neither self-constituted nor self-sufficient. As an organ of Christ's body, it does not withdraw itself or change its allegiance. It is called into being by an action of a presbytery. If necessary, it is dissolved by an action of a presbytery. The sole provision in the Book of Order authorizing its transfer to the jurisdiction of another Reformed council identifies that as an action of a presbytery taken "in consultation with its members." (G-3.0301a) The form of that consultation is not spelled out in the Form of Government, but (a) it is mentioned in connection with other presbytery actions traditionally done through or by a Committee on Ministry and (b) the list of Business proper to Congregational Meetings (G-1.0503) says nothing about voting to secede from the PC(USA).

Even in the process of 'discernment' and witness to conscience, the Policy betrays its congregational foundation. A conscience belongs to a person. Poetically we could personify a group of people by speaking of its 'conscience.' In Presbyterianism, the Church is the Body of Christ. Its conscience is a corporate property, well-discussed in chapter 2 of the Foundations of Presbyterian Polity. Ordained officers of the church, in the exercise of their offices, submit their private opinions to formation and education by the community (G-2.0105). Individuals, as persons, can have distinguishable consciences, and the Book of Order recognizes and protects the right of each person to hold and act upon his or her own conscience, even to the point of withdrawing peaceably from membership (F-1.0301). In assuming that a congregation has a theology or a conscience that is distinguishable from that of the Whole Church, however, the GDP breathes a spirit of congregationalism.

Second: The Policy assumes that the ordained officers of the Presbytery and its congregations will walk away from their responsibilities as 'trustees' and act as owners instead. The property of the Church has arisen largely through gifts of its adherents. The law is clear, once you give money away, it is not yours anymore. If you make a conditional gift – retaining the right to take it back in some future circumstances, you cannot take a tax deduction for it. So the property of the Church belongs to the Church and not to any one or set of us. Session members are trustees, pledged to exercise care to preserve and use the property for the benefit of the PC(USA) and its purposes. Those session members can become unhappy and leave the PC(USA), but even in concert they have no right to take the property of the PC(USA) with them when they go. And the members of the Presbytery have a responsibility to preserve the assets of the congregations for the benefit of the PC(USA) and its purposes. This is not especially restrictive. Through the passage of time, a particular building of a certain size and location may cease to be suitable for the direct uses for which it had been built, but it is still a store of value that can make a new mission or ministry possible. The Presbytery of San Diego has declared an intention to bring new worshiping communities into existence in its jurisdiction. In the face of the manifest need for capital for this purpose, the decision to alienate the property of Trinity Presbyterian Church for \$75,000 cannot be justified – except by assigning unjustified ownership rights to the people who want to leave the PC(USA).

Further, 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(USA), 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." (GA PJC decision Wilber Tom, *et al.*, v. Presbytery of San Francisco, remedial case 221-03) Accordingly, the monetary gifts received by congregations are not regarded as given for

the benefit of a single congregation only but are held in trust for this generation and for future generations. The GDP in question, however, accords each particular fellowship in one local time and place and each set of session members at a single point in time a right to lift the life and mission of a church out of one channel and re-direct it to another as if all the work, commitment, and generosity of past Christian disciples were intended for the benefit of this one set of people alone. This is inconsistent with the Reformed tradition's ecclesiology, and it is inconsistent with civil society's notions of trustee responsibility.

ORDER

The Permanent Judicial Commission of the Synod of Southern California and Hawaii sustains each and all of the alleged irregularities. Accordingly, the action of the Presbytery of San Diego on April 12, 2016, transferring Trinity Presbyterian Church of Spring Valley to ECO The Covenant Order of Evangelical Presbyterians is set aside and of no effect. The stay of enforcement is hereby vacated.

In addition, the Commission advises the Presbytery of San Diego that its Gracious Dismissal Policy, as used in its preparation for the action of April 12, 2016, is inconsistent with requirements of the PC(USA) *Book of Order* and should not be used as a guide for its response to any other particular church seeking to transfer to another denomination.

Ms. Geraldine Tayler took no part in the proceedings in accordance with D-5.0205. Rev. Mickie Choi and Rev. Shelby Larsen were not present and took no part in the proceedings. Mr. Izar Martinez and Mr. Peter Lee were present for and participated in the trial hearing, but they were called away by personal obligations which prevented their participation in the Commission's deliberations and in the determination of the decision.

Dated this 2nd day of December, 2016.

Rev Michael Douglas Haggin
Moderator, Permanent Judicial Commission

Marie Castellano
Clerk *pro tempore*, Permanent Judicial Commission

THE PERMANENT JUDICIAL COMMISSION
Of
THE SYNOD OF SOUTHERN CALIFORNIA AND HAWAII
THE PRESBYTERIAN CHURCH (U.S.A.)
DECISION & ORDER

APPENDIX
E

MICHAEL REGELE, STEVEN MARSH,)	
R. WINSTON PRESNALL,)	
LISSA SMITH, MICHAEL VAUGHN,)	
KIRK WINSLOW, HOWARD PROL,)	
PENELOPE PROL, FRANCES BUCKLIN	)	Case Number: 2016-R-2
Complainants	)	Decision of the Permanent Judicial
	)	Commission of the Synod of Southern
V.	)	California and Hawaii after Trial
)	
PRESBYTERY OF LOS RANCHOS,)	
Respondent)	

This is a remedial case which has come before this Permanent Judicial Commission as a result of a complaint filed by the above named complainants against the Presbytery of Los Ranchos, respondent. It is a complaint against the Presbytery of Los Ranchos for four alleged irregularities associated with a vote of the Presbytery on March 12, 2016, to transfer La Habra Hills Presbyterian Church of La Habra, California to A Covenant Order of Evangelical Presbyterians (ECO) Presbytery of Southern California according to the terms presented in the Joint Solution pending acceptance by the congregation and the session. The initial complaint was received on April 10, 2016.

On April 18, 2016, the officers of the Permanent Judicial Commission found that the Complainants have standing to complain, that the complaint was properly and timely filed, and that the complaint states a claim upon which relief can be granted. On April 22, 2016, the necessary members of the Commission also granted a stay of enforcement.

Complainants filed an amended Complaint on May 13, 2016, alleging that the Presbytery of Los Ranchos failed to take into consideration that, at the time of the action, neither the Presbytery nor the congregation held title to the real property or improvements, and thus had no authority to grant dismissal with the property.

The Permanent Judicial Commission met on August 12, 2016 at the Northminster Presbyterian Church in Diamond Bar, California for a pre-trial conference in accordance with D-6.0310.

Vice Moderator Shelby Larsen presided. Present for the Commission were: Shelby Larsen, Vice Moderator; Izar Martinez, Clerk; Mickie Choi; Larry Lindsay; and Gerry Tayler. A quorum of the full PJC was not constituted.

The parties present were Michael Regele, Steven Marsh, Lissa Smith, Kirk Winslow, Complainants, and Bruce Grubaugh, attorney, counsel for the Complainants.

Present for the Respondents was the Committee of Counsel, Merlin Eelkema, Marilyn Moore, John Holcomb and Forrest Claassen, Stated Clerk of Los Ranchos Presbytery.

With the consent of the participants, the parties stated their positions, in order to discover in this pre-trial proceeding if any grounds for settlement existed or if an action could be recommended, pending acceptance and approval by a quorum of the Permanent Judicial Commission.

In the presentations and questioning, neither party added any argument or claim of fact that did not appear in their filings.

The initial Complaint, received on April 10, 2016, did not include the fact that the property in question was titled to the Synod of Southern California and Hawaii.

At the pre-trial conference both parties claimed that they knew, at the time of the Presbytery action of March 12, 2016, that title to the real property and improvements lay in the Synod of Southern California and Hawaii.

Complainants, in their Amended Complaint, alleged that the Presbytery of Los Ranchos failed to take into consideration the fact that at the time of the action it did not hold title to the property or improvements, and thus had no authority to grant dismissal with property. The Respondent's Answer, dated May 25, 2016, in Section III (5) denies that it has failed to take into consideration the fact that at the time of the action it did not hold title to the La Habra Presbyterian Church property, and denies that it has no authority to grant dismissal with property.

The Synod of Southern California and Hawaii is not a party to this action, and its interests and fiduciary duty to the PC(USA) have therefore not been considered.

Respondents, citing D-4.0102, claim that the Permanent Judicial Commission of Southern California and Hawaii has a conflict of interest, and that this is a case for which "it is desirable or necessary that a higher council decide this case."

The members of the Permanent Judicial Commission of Southern California and Hawaii present at this pre-trial conference agreed.

Therefore, at the pre-trial conference of August 12, 2016, the Commission members informed the parties that they would recommend to the full Commission that the Commission issue a Request for Reference (D-4.0100) to the GAPJC in regards to Regele v. Presbytery of Los Ranchos, Case 2016-R-2.

The Permanent Judicial Commission of Southern California and Hawaii met by telephone conference on Friday, August 26, 2016.

Present were Vice-Moderator Shelby Larsen, Clerk Izar Martinez, members Mickie Choi, Marie Castellano, Peter Lee, and Larry Lindsay.

Also present was Doska Ross, Stated Clerk for the Synod of Southern California and Hawaii. A quorum was declared. A motion to refer the case to the GAPJC was made, and passed unanimously.

On October 5 2016, the Permanent Judicial Commission of the Synod of Southern California and Hawaii was notified that the GAPJC had, in meeting by telephone conference call on October 3, 2016, voted

not to accept the reference of case.

A trial date was set for March 23, 2017 at 10:00 a.m. On that date, the Synod of Southern California and Hawaii Permanent Judicial Commission met in order to hear evidence in the trial.

Members of the Commission present were Vice Moderator Shelby Larsen, Clerk Izar Martinez, Marie Castellano, Mickie Choi, Geraldine Tayler, and Bob Wendel.

Present for the Complainants were Michael Regele, Steven Marsh, Lissa Smith, Kirk, Winslow.

Present for the Respondents were Merlin Eelkema, Marilyn Moore, John Holcomb and Forrest Classen, Stated Clerk of Los Ranchos Presbytery. Each party made their statements and presented their witnesses, and evidence submitted.

Upon questioning by the Commission, both parties stated that neither had taken any further action in relation to the legal title and ownership of the property, nor had either contacted, or attempted to contact, staff or officers of the Synod of Southern California and Hawaii. Furthermore, upon questioning by the Commission both parties agreed that the property is titled to the Synod of Southern California and Hawaii. The Los Ranchos Presbytery cannot, within the laws of the State of California, make a transfer of property it does not own. Therefore, all arguments in favor or against the transfer are moot.

In addition, neither party presented any evidence, testimonial or otherwise, to demonstrate that the interest(s) of the Synod of Southern California and Hawaii, including but not limited to its fiduciary responsibility and obligation to mission, have been taken into consideration. This Permanent Judicial Commission is part of the body of the Synod of Southern California and Hawaii, and taking into consideration a recent ruling in the case of *Llewellyn v. Presbytery of Los Ranchos* (concurring opinion), the Commission considers itself to have a conflict of interest that precludes resolution of the matter until an agreement with the Synod of Southern California and Hawaii regarding the transfer of legal title has been reached.

The Commission recognizes that this dispute has turned into a situation costly in both time and money to both parties. It may also be that the mission of the church, the Presbytery, and the PC(USA) has suffered as resources are absorbed by this case. Mindful of the case of *Llewellyn*, (above) and of *this* body's decision in *Locke v. the Presbytery of San Diego (December 2, 2016)*, the Permanent Judicial Commission by a unanimous vote of Commissioners present moved that the case be continued until such time as:

- I. the appropriate representatives of the Synod of Southern California and Hawaii have been consulted, and
- II. the issue of legal title to the land and real property has been adequately settled, and
- III. attention to fiduciary obligations and responsibilities of the presbytery and synod, and its mission is demonstrated.

The Permanent Judicial Commission ordered that trial be continued until such conditions are met and a decision can be reached. The Rev. Winston Presnall, member of the Commission, took no part in the proceedings in accordance with D-50205

Having been informed that conditions I – III noted above were met, the Permanent Judicial Commission met at the Norwalk Presbyterian Church Norwalk, CA on November 17th 2017 at 11:00AM.

Members of the Commission present were Moderator Shelby Larsen, Clerk Izar Martinez, Marie Castellano, Larry Lindsay, Geraldine Tayler, and Bob Wendel. A quorum of the Permanent Judicial

Commission was present.

After deliberation, the Commission reached these findings:

FINDINGS:

SPECIFICATION OF COMPLAINT #1: The action is irregular because it is the result of a process that, as implemented, fails to adequately consider the interests of the Presbytery of Los Ranchos and PC(USA) in continued ministry in the geographical area encompassed by the Presbytery of Los Ranchos.

This specification of irregularity is sustained by a vote of 6 to 0 against.

The interests of the Presbytery of Los Ranchos and the PC(USA) include the possibilities of continuing divine worship or other ministry in the real property at La Habra Presbyterian Church but they also include the possibility of transferring the “value” stored in the real property to another ministry that might be more responsive to the needs of the Presbytery’s area. The Task Force that prepared the transfer recommendation for the Presbytery offered opinions about the usefulness of the real property as an active church, but its inquiry appears to have been limited. Little consideration seems to have been given to the possibility of transferring the value in the property to another more promising work.

SPECIFICATION OF COMPLAINT #2: The action is irregular because the terms presented in the Joint Solution fail to show a reasonable and fair relationship between the value of the property and the compensation La Habra Hills Presbyterian Church will pay upon dismissal. PJC (*Tom v. Presbytery of San Francisco, 2012*)

This specification of irregularity is sustained by a vote of 6 to 0 against.

In setting a payment amount, the principal concern seemed to have been selecting a sum that would be convenient for the congregation, requiring (for example) no indebtedness or appeals to the congregation.

SPECIFICATION OF COMPLAINT #3: “The action is irregular because the Presbytery of Los Ranchos has failed to take into consideration the PC(USA)’s use and benefit of the property. PJC (*Presbytery of New York City v. McGee, 2014*)”

This specification of irregularity is sustained by a vote of 6 for and 0 against.

The action failed to consider the fiduciary responsibility of the Presbytery of Los Ranchos in its intent and ability to continue ministry in that encompassed area of the Presbytery of Los Ranchos.

SPECIFICATION OF COMPLAINT #4: “The action is irregular because the Presbytery of Los Ranchos has failed to exercise due diligence in the valuation on the property it holds for the benefit of the PC(USA) under the Trust clause. PJC, (*Tom v. Presbytery of San Francisco, 2012*)

This specification of irregularity is sustained by a vote of 6 for and 0 against. See comment in Complaint #1.

Further Rationale and conclusions:

In the course of addressing each specification of irregularity, the Permanent Judicial Commission of the synod of Southern California and Hawaii followed the practice of this Synod, as clearly enunciated in *Locke v Presbytery of San Diego (December 2, 2016)*. That is not only the separate parts of the Gracious Dismissal Policy, but also the whole of the policy, be compared to Presbyterian ideals and principles. This practice is consonant with theology in relation to ecclesiology and the Constitution of the PC(USA). While the definitive answers to such a question is beyond the scope of the specific issues

brought before the Commission in this case, it is nevertheless the SPJC' obligation to note whether or not implementation of such a policy is in concert with the basics of the PC(USA). This is especially true when dealing with those policies and rules dealing with what is known as the Gracious Dismissal Policy (GDP). In *Locke*, the Commission identified two broad ways in which the GDP of the Presbytery of San Diego is unconstitutional, although these particular constitutional conflicts were not part of the central complaint. While there may be other considerations besides these two, at the very least *Locke* noted, first, the variance between concepts of ecclesiology and polity, and second, in the nature of the trust relationship and the fiduciary obligations entailed with a trust.

As we look at these allegations of irregularity involving the policy promulgated by the Presbytery of Los Ranchos for those situations where the question of leaving the denomination has arisen, they are similar in purpose if not in detail to those discussed in *Locke* and the SPJC is obligated to give them the same scrutiny.

To the first point, the Reformed Tradition, as honored and practiced by the PC(USA) recognizes that, as stated by the scriptures, we are all part of the Body of Christ. (1 Corinthians 4:27, Eph 4:12). Throughout our history, Presbyterians have voluntarily chosen to affirm that unity, and our place in the Church Universal by voluntarily, as individuals, and as officers and members in a particular congregation, or other body of the church, taken vows that bind us to that unity and communion of saints that exists through time and space, working in love of God, and in the mission of our Lord Jesus Christ.

It is upon these foundational principals that the denomination has promulgated all the varying rules, policies, practices, and requirements as it has felt necessary to allow it to interact with and pursue its mission and message in the world.

Locke explicates the differences between the “freechurch” or “congregational” model of ecclesiology. In that discussion, it is apparent that the trend towards individuality, and divisiveness based thereon, does not necessarily coincide with belonging to the body of Christ, membership in the Church Universal, or the fundamentals of Presbyterianism. When, as the culture around us currently affirms, the individual interpretation over the communal, the calls of Presbyterian polity to be one in the Body of Christ become conflicted: if I have a right to my interpretation of scripture and culture, what then happens to your interpretation? Must you agree with me, or must we separate and be two?

Does the hand of the Body separate itself from the rest, or the foot, and are they then still the Body of Christ, and are they part of the Church Universal, and can the mission be carried out without hand or foot, or either? These are difficult questions for Christians of good conscience, and in a situation contemplating the retraction of vows to God, to the denomination, and to the separation from brothers and sisters in Christ, past, present and future, they are questions not to be ignored or made light of. The PC(USA) and its Presbyteries are making good faith attempts at facing these issues by creating their individual Gracious Dismissal Policies, but that does not lighten the burden of ensuring that mission, the work of Christ, as it is needed in today's culture, is not lost.

Locke directs our attention to a second point. Although not phrased in precisely this way, the subject of what mission is in current times cannot be avoided.

As part of their commitment to the work of Christ in God's world, the saints past and present have made material contributions which are held in trust ultimately for the benefit of the PC(USA). A Trust, as its name implies, is something dedicated to a particular purpose. In the case of Presbyterians, all properties given to a particular congregation, or to the Presbytery, Synod, or denomination itself are held in trust, so that it will be used for the work for which it was given. Various officers act as trustees, that is, caretakers of such assets, dispersing them in ways that in their best judgment, fulfill the requirements

of the trust, in this case the mission of the church.

Again, *Locke* makes a very clear explication of the difference between owners, who can do as they please with whatever property they own, and a trustee, who has a fiduciary duty to use it within the constraints of the trust, regardless of his or her personal opinion.

Thus, each GDP must require that the fiduciary obligations, both missional and financial, of the trust are met. These obligations are not only, or even primarily, financial, despite often being treated as such. The work of the mission of the church, in congregational, outreach, spiritual support, care for others as commanded by Christ and other manifestations of the spread of the Good News are the primary fiduciary obligations of the Presbyterian trustee. It is true, however, that the accomplishment of mission almost always requires some financial support, and so the fiduciary obligations of the trustees to administer the assets contributed to the trust by generations past as well as congregational members present becomes by necessity a management of money and property. All too often we consider a church to be a building wherein people of like mind meet to worship God in ways that are particularly pleasing to them. In many people's minds, the definition of "church" and mission is accomplished by providing this place and programs that emanate from that model. As time, and culture, and neighborhoods and needs change, the viability of the "church" may change. As pointed out in *Locke*, though, even if that original model becomes impractical, there is still "value" in the asset, whether real or personal property.

The PJC has in the past and continues to express concern that the fiduciary duty under the Trust Clause of the PC(USA) unfortunately has and continues to be breached. The PJC is of the opinion that existing GDPs as they relate to fiduciary guidelines need to be reviewed and strengthened in an effort to avoid the existing problems. The Presbyteries are the ones at risk when the fiduciary duty to the PC(USA) has been breached. Therefore, there are specific financial procedures that need to be followed during the dismissal process. All real property should be appraised by an independent professional third party, specifically, an experienced commercial property appraiser, with no relationship to the parties involved. The independent appraiser should determine the fair market value of all real property. If there is a dispute as to the fair market value, this should be resolved by each party obtaining an appraiser, and the two appraisers agree on a third appraiser, who will resolve the differences, and give the final fair market value. The Presbyteries may then dismiss a Church, after receiving the fair market value, for the property, or leasing the property to the Church being dismissed at the fair market value lease rate. The fair market value for a lease should be determined by an independent third party commercial Real Estate Company experienced in the area. The PJC recommends that each team tasked with negotiating a GDP should have as one of its members a financial professional.

ORDER

The Permanent Judicial Commission of the Synod of Southern California and Hawaii sustains each and all of the alleged irregularities. Accordingly, the action of the Presbytery of Los Ranchos on March 12, 2016, transferring La Habra Hills Presbyterian Church of La Habra to A Covenant Order of Evangelical Presbyterians (ECO) Presbytery of Southern California is set aside and of no effect. The stay of enforcement is hereby vacated.

The Permanent Judicial Commission orders this decision and order be transmitted to all of the Presbyteries of the Synod of Southern California and Hawaii and that this decision be read at the next Presbytery meeting.

Rev. R. Winston Presnall and RE Pat Niles took no part in the proceedings in accordance with D-5.0205. Rev. Peter Hintzoglou and Mr. Peter Lee were not present and took no part in the proceedings.

Dated this 2nd day of December, 2017

Rev. Shelby Larsen
Moderator, Permanent Judicial Commission

Izar A. Martinez
Clerk, Permanent Judicial Commission

THE PERMANENT JUDICIAL COMMISSION OF
THE SYNOD OF SOUTHERN CALIFORNIA AND HAWAII
THE PRESBYTERIAN CHURCH (U.S.A.) DECISION & ORDER

APPENDIX
F

ROBERT G. SPITZER)	
Complainant	)	Case Number: 2017-R- 2
	)	Decision of the Permanent Judicial
V.	)	Commission of the Synod of Southern
	)	California and Hawaii after Trial
PRESBYTERY OF RIVERSIDE)	
Respondent)	

This is a remedial case which has come before this Permanent Judicial Commission as a result of a complaint filed by the above-named Complainant against the Presbytery of Riverside, Respondent. It is a complaint against the Presbytery of Riverside for four alleged irregularities associated with a vote of the Presbytery on March 18, 2017, to transfer Idyllwild Community Presbyterian Church of Idyllwild, CA to A Covenant Order of Evangelical Presbyterians (ECO) Presbytery of Southern California according to the terms presented in the Gracious Discernment, Dismissal and Transfer Agreement. The initial complaint was received on June 6, 2017.

On June 15, 2017, the officers of the Permanent Judicial Commission found that the Complainant has standing to complain, that the complaint was properly and timely filed, and that the complaint states a claim upon which relief can be granted.

A trial date was set for October 13, 2017. However, the Complainant requested a continuance as his witness was not available on this date.

A trial date was set for December 29, 2017. At 11:00 a.m. on that date, the Synod of Southern California and Hawaii Permanent Judicial Commission met in order to hear evidence in the trial. Members of the Commission present were Moderator Rev. Shelby Larsen, Elder. Marie Castellano, Elder Peter K. Lee, Elder Larry Lindsay, Elder Pat Niles, Rev. R. Winston Presnall, and Rev. Bob Wendel, Clerk Pro Tem. A quorum was present.

Present for the Complainant was Elder Robert Spitzer. The witness for the Complainant was Rev. Bradley Copeland.

Present for the Respondents were: Committee of Counsel, Rev. Neal Neuenschwander and Rev. Cheryl Raine. The witness for the Respondents was Elder Melodee Kistner.

Each party made their statements and presented their witnesses and evidence.

FINDINGS

SPECIFICATION OF COMPLAINT #1: “The Presbytery’s vote and subsequent action to transfer the

property of Idyllwild Community Presbyterian Church is a result of a process that as implemented failed to adequately consider the interests of the Presbytery and the PC(USA) in continued ministry in the geographical area currently served by the Idyllwild Community Presbyterian Church.”

This specification of irregularity is sustained by a vote of 7 for and 0 against.

The Agreement failed to identify any other Presbyterian, or Reformed Church in the geographical area of the San Jacinto Mountain currently served by Idyllwild Community Presbyterian Church.

The officers and members of Idyllwild Community Presbyterian Church breached their fiduciary duty under the Trust Clause of the Constitution of the Presbyterian Church (USA).

The Presbytery of Riverside, and its delegates breached their fiduciary duty under the Trust Clause of the Constitution of the Presbyterian Church (USA).

Both parties were in breach of the requirements of *Locke v The Presbytery of San Diego, 2016- R-3* that the issue of valuation of personal and real property did not follow the specific directions of *Locke*

The parties were in error when they allowed the exchange of compensation (\$75,000 for the property assessed at \$1,400,000) prior to the dates of expiration for challenges to the transaction. The interests of the Presbytery of Riverside and the PC(USA) include the possibilities of continuing divine worship or other ministry in the real property at Idyllwild Community Presbyterian Church, but they also include the possibility of transferring the ‘value’ stored in the real property to another ministry that might be more responsive to the needs of the Presbytery’s area. The Task Force that prepared the transfer recommendation for the Presbytery offered opinions about the usefulness of the real property as an active church, but its inquiry appears to have been limited. Little consideration seems to have been given to the possibility of transferring the value in the property to another more promising work.

SPECIFICATION OF COMPLAINT #2: “In determining the monetary amount agreed upon to justify the transfer of real property to the departing congregation, the Presbytery ignored its own Gracious Discernment, Dismissal and Transfer Policy and its fiduciary responsibilities under the “trust provision” to the PC(USA) and the other churches within the Presbytery.”

This specification of irregularity is sustained by a vote of 7 for and 0 against.

The action is irregular because the terms presented in the Gracious Discernment, Dismissal and Transfer Policy agreement fail to show a reasonable and fair relationship between the value of the property and the compensation Idyllwild Community Presbyterian Church will pay upon dismissal. GAPJC, (Tom v. Presbytery of San Francisco, 2012)

In setting a payment amount, the principal concern seemed to have been selecting a sum that would be convenient for the congregation, requiring, for example, no indebtedness or appeals to the congregation.

The Presbytery of Riverside’s Gracious Discernment, Dismissal and Transfer Policy needs to take into account the SPJC’S decision in *Locke v Presbytery of San Diego, 2016 R-3* and needs to permanently include a copy of that decision as an appendix to their policy.

SPECIFICATION OF COMPLAINT #3: “The Gracious Discernment, Dismissal and Transfer Policy, the actions of Vision Coordinating Team and the parliamentary procedures in place at the March 18, 2017 meeting failed to provide the Presbytery with the information upon which it could intelligently and deliberately exercise its non-delegable fiduciary duties as trustee over the Idyllwild Community Presbyterian Church property.”

This specification of irregularity is sustained by a vote of 7 for and 0 against.

The information regarding the assessment of the community, the preferences of the members (as opposed to the vote of those in attendance on March 18, 2017 meeting of the Presbytery), the details over the last five years of the financial standing of the congregation, as well as the factors affecting the widely varying monetary value of the property were not presented at the meeting of Presbytery, and, insofar as can be determined, were collected in one place, known as the Big Notebook. Said notebook may have been available for examination at the Presbytery Office, and may have been in the room during debate on March 18, 2017. However, information in it was never summarized or distributed to Commissioners to Presbytery by means of posting on the website, power point presentations, letters, or other means of communication

In addition the failure of the team and presbytery officers to inform the Presbytery of the complete *Locke v Presbytery of San Diego, 2016 R-3* decision hindered the Presbytery from being prepared to make an informed decision. This lack of due diligence is demonstrated by the fact that the Presbytery changed their Gracious Discernment, Dismissal and Transfer Policy the same day that the team presented their report, and told the Presbytery that the one change was all that was needed to have their policy be compliant with *Locke*.

The action is irregular because the Presbytery of Riverside has failed to take into consideration the PC(USA)'s use and benefit of the property. GAPJC (Presbytery of New York City v. McGee, 2014)

SPECIFICATION OF COMPLAINT #4: “The Gracious Discernment, Dismissal and Transfer Policy, the actions of Vision Coordinating Team and the parliamentary procedures in place at the March 18, 2017 meeting failed to provide the Presbytery with the information upon which it could reasonably determine what members of the Idyllwild Community Presbyterian Church congregation represented the “true church” and were thus entitled to possession of the church property.”

This specification of irregularity is sustained by a vote of 7 for and 0 against.

The Gracious Discernment, Dismissal and Transfer Policy Team report lists seven members who wished to remain in the PC(USA) and no report of eleven members who did not vote. There is no report of the interest of these eleven members in remaining in the PC(USA).

Also see comments under specification#3 ADDITIONAL COMMENTS

“The polity of Presbyterianism--- with its strong insistence on the rule of the majority and the rights of the minority--- is indeed the way in which Presbyterians affirm their unity amid their diversity. This polity not only organizes dissent and diversity, it is itself a product of dissent, diversity, compromise and creative resolution of bitter conflict.” (Historic Principles, Conscience, and Church Government, adopted by 195th General Assembly (1983), Presbyterian Church U.S.A. p. 1)

The Presbytery of Riverside in its meeting on March 18, 2017 acted contrary to the historic principle of “conscience” to dismiss Idyllwild Community Presbyterian Church to ECO by denying a thirty (30) day allowance for commissioners to file a stay of enforcement (D- 6.0103a). The action of Presbytery to dismiss the Idyllwild Community Presbyterian Church property was consummated a mere 13 days later (March 31, 2017) by the deed of transfer.

Indeed, the Gracious Discernment, Dismissal and Transfer Policy for the Presbytery which was last revised on March 18, 2017 imposes a time to complete a dismissal of “no more than ninety (90) days after the vote of the Presbytery.” (Effective Date of Dismissal, p.10) There is no limitation on the Presbytery to dismiss a congregation in less than thirty (30) days. To dismiss a church with property within thirty (30) days is to expend the matter of conscience and render moot a rule of Church Discipline (D-6.0103a), which protects the rights of the minority to file a stay of enforcement along with a complaint. The action by the Presbytery of Riverside to dismiss Idyllwild Community Presbyterian Church to ECO in a matter of thirteen (13) days demonstrates very little “insistence” on the rights of the minority.

It is grievous that the action of the Presbytery cannot be overturned and the property retained for a future decision by the Presbytery of Riverside. However, at the least the Gracious Discernment, Dismissal and Transfer Policy should be revised to deny any transfer of church property before thirty-one (31) days and the Presbytery to act on no dismissal of a church with property until such time as the policy is revised to reflect the change.

DECISION AND ORDER

The Permanent Judicial Commission of the Synod of Southern California and Hawaii sustains each and all of the alleged irregularities. While the precipitate action of the church and the Presbytery prevents us from recovering the wrongly transferred property, except by civil action, the Commission can provide the appropriate order under ecclesiastical authority. Accordingly, the action of the Presbytery of Riverside on March 18, 2017, transferring Idyllwild Community Presbyterian Church of Idyllwild, CA to A Covenant Order of Evangelical Presbyterians (ECO) Presbytery of Southern California is set aside and is of no effect.

It is also ordered that the Gracious Discernment, Dismissal and Transfer Policy should be revised to deny any transfer of church property before 31 days and the Presbytery to act on no dismissal of a church with property until such time as the policy is revised to reflect the change.

FURTHERMORE, the Permanent Judicial Commission of the Synod of Southern California and Hawaii hereby orders all churches and presbyteries under its jurisdiction, to rely on the Constitution of the PC(USA) as it conducts its business. In particular, the churches and presbyteries that comprise the Synod of Southern California and Hawaii are to use caution in exercising their fiduciary duties, and to be cognizant of the fact that breach of fiduciary duty can result in civil and criminal liability, both corporate and individual.

Rev. Mickie Choi and Elder Izar Martinez took no part in the proceedings in accordance with D-5.0205. Rev. Peter Hintzoglou and Elder Geraldine Tayler were not present and took no part in the proceedings.

Dated this 29th day of December, 2017.

Rev. Shelby Larsen
Moderator, of the Permanent Judicial Commission

Rev. Bob Wendel
Clerk Pro Tem of the Permanent Judicial Commission