

Supplement to the Covenants and Gracious Dismissal Policy Presbytery of San Diego

The Purpose of the Supplement

On November 19, 2013, the Presbytery of San Diego adopted a policy entitled “Covenants and Gracious Dismissal” in which the Presbytery declared that if a congregation and the Presbytery followed the designated Practice, a request by a congregation for dismissal would not be seen as schism.

In working through this Practice, the Presbytery has a fiduciary responsibility to the PC(USA) under the Trust Clause (G-4.0203) of our Constitution. As interpreted and applied in the GAPJC ruling in Tom v Presbytery of San Francisco, this fiduciary responsibility includes:

“... the presbytery must consider the interest of the PC(USA) as a beneficiary of the property. Payments for per capita or mission obligations are not satisfactory substitutes for valuations of property held in trust.”

“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.”

This Supplement to the Covenants and Gracious Dismissal policy adds to the Practice outlined in the November 19, 2013 document and will guide the Presbytery and congregation considering dismissal.

Additions to the Practice

1. For the meetings between the Session and representatives of the Presbytery, the Session will provide a written document as a basis for discussion and discernment. The document will address these topics:
 - a. Provide a clear statement of the reasons for requesting a dismissal to another reformed denomination.
 - b. How have these factors impeded or will impede the mission and ministry of the congregation?
 - c. How will the ministry of the congregation be enhanced by dismissal to another congregation?
 - d. How will the ministry of the congregation be negatively impacted by dismissal?
 - e. What impact is anticipated on the mission of the Presbytery of San Diego and the PC(USA) if the congregation is dismissed?
 - f. How does the request for dismissal impact the covenantal ties with previous generations of saints, the current community of Presbyterians, and future generations of the family of faith?
2. The Session will provide the information requested in Appendix A for determining the financial position of the church and the value of the property at stake.
3. The Presbytery of San Diego declares that its fundamental interest in negotiating the financial terms of dismissal under the Gracious Dismissal Policy is that the Presbytery

seeks the financial resources sufficient to undertake a new church development. The Presbytery will identify what would reasonably be needed for the Presbytery contribution to establish and charter a congregation over a period of five years. Based upon financial resources and property values of the church seeking dismissal, the Presbytery will negotiate with the congregation seeking dismissal its ability to pay all or part of Presbytery's financial requirements for funding a new church development.

4. The negotiated financial terms of a dismissal are a prerequisite for calling a congregational meeting to vote on motion to request dismissal as described in The Practice 1.c of the Covenants and Gracious Dismissal Policy
5. Every request for dismissal will be considered on its individual merits.

Appendix:

A — Factors in Determining Value to the PC(USA) for the Purpose of Discernment when a Congregation seeks to be dismissed

B — Extract from *Wilber Tom, David Hawbecker, and Thomas Conrad v. Presbytery of San Francisco* (Remedial Case 221-03, 2012)

APPENDIX A

Factors in Determining Value to the PC(USA) for the Purpose of Discernment when a Congregation seeks to be Dismissed

Name of Congregation: _____

City: _____

Year formed: _____ Year Chartered: _____

1. What is the current replacement value insurance coverage on this piece of property?
2. What is the current insured value of the contents?
3. What, if any, are the insurance riders on high-value items of the contents?
4. What is the identification of and assessed value of the "property" (e.g., buildings and land)?
5. What is the current amount of indebtedness secured by the property?
6. What is the current amount any other indebtedness?
7. What is the current amount of "cash" investments? (e.g., bonds, certificates of deposit, stock, money market accounts, mutual funds)
8. What is the current value of any "non cash" assets? (e.g., non- contingent property, restricted gifts, personal property, vehicles, art)
9. Has the congregation transferred any assets to another legal entity in the past five years?
10. As information permits, what were the sources of funding for original purchase of property? (e.g., Board of National Mission, synod, General Assembly, presbytery, living members fund drive, deceased members' bequests)
11. How much money did the denomination invest in providing a new church development pastor and any expenses of the congregation prior to its being chartered as a congregation? (e.g., presbytery or synod new church development grants, General Assembly grants for any reason, donations received from other churches of the presbytery)
12. Has the denomination provide any low cost or below-market interest loans for any construction or improvements?
13. Has there been a Presbytery Investment Lending Program (PILP) loan for the property? If yes, is there an outstanding balance?
14. Has the denomination provide any assistance in the form of capital campaign consultants?
15. Has the denomination ever provided: a) subsidy for pastoral compensation; b) forgiven any loan payments that were due; c) grants or subsidies for any staff; d) assistance with legal services; or, e) grants to pastor?
16. Has the congregation received any program and/or ministry grants from the presbytery, synod or denomination in the past 25 years?
17. What is the current financial position of the church? (i.e., audit reports or full financial reviews by an independent accounting firm for past three years)
18. Has the church paid its per capita for each of the past three years?
19. How much has the church contributed to General Assembly, synod, and presbytery mission funds in each of the past five years?
20. How much has the church invested in capital improvements to its real property (i.e., building(s) and land) identified in questions 4 and 8, above, in the past 20 years?

21. Are the session and corporate records for the past three years consistent with the responses to the above questions?
22. How much has the congregation contributed to PC(USA) Mission in the past three years, other than amounts identified in question 19, above (*e.g.*, One Great Hour of Sharing, Christmas, Peacemaking, Disaster Relief, specific mission personnel, East Africa)?
23. When was the church chartered? How many charter members are still active members?
24. What percentage of the membership has joined in the past 10 years?

APPENDIX B

Extract from *Wilber Tom, David Hawbecker, and Thomas Conrad v. Presbytery of San Francisco* (Remedial Case 221-03, 2012)

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-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.

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.

