

Presbytery of the Cascades

Gracious, Just and Responsible Dismissal Policy

Note: The moratorium on church dismissals was extended by presbytery to January 1, 2017

These policies relate to congregations which may seek to withdraw from the Presbytery of the Cascades and the Presbyterian Church (USA) [PC(USA)]. The presbytery desires to create a gracious process that is simple in administration. The Stated Clerk shall be informed by the leadership of the presbytery when it becomes aware, either through formal congregational action or through informal contacts with church leaders or members, that a congregation is in serious disagreement with the denomination. Discovery of a disagreement may come through a Commission on Ministry, an executive presbyter, or direct communication from the congregation to the office of the Stated Clerk.

STEP ONE: FACT-FINDING

The initial fact-finding process shall be carried out in a confidential manner, sensitive to the possibility that rumors of unrest in a congregation may be unfounded and that indiscreet queries could add to rumors rather than dismiss them as un-factual. The presbytery shall recruit and train teams of ruling and teaching elders, ready at the direction of the Presbytery Leadership Commission (PLC) chair to be a Fact-finding Team of at least three persons. Teams shall investigate the alleged disagreement with the denomination, and are empowered to contact the pastor, members of the session, and members of the congregation. If the Fact-finding Team determines there is substantial disagreement with the denomination, it shall ensure that this policy is in the hands of congregational leadership and that the session and pastor are aware of information in Attachments 2 and 3 of this policy. The team shall in a timely manner report back to the chair of the PLC on the disagreement, if there be any, and recommend a course of action.

STEP TWO: PRESBYTERY LEADERSHIP ACTION

Upon receiving the report of the Fact-finding Team, the PLC shall consider an appropriate response. Alternatives which the fact-finders may recommend to PLC include the following:

- do not proceed (reports received by PLC were not factual);
- work towards reconciliation;
- form a Resolution Team charged with settlement negotiations; or
- form an Administrative Commission.

In the case of congregations considering dismissal from the Presbyterian Church (USA) the PLC shall either appoint a Resolution Team to work with the congregation on a settlement or an Administrative Commission, based on the facts presented.

Resolution Team or Administrative Commission

The presbytery may, by rule, grant the PLC authority to authorize the chair of the PLC to appoint a Resolution Team (RT) or Administrative Commission (AC) at the time PLC considers a fact-finder's report. If an AC is appropriate, it shall be given all powers for presbyteries enumerated in G-3.0109b.

The RT or AC shall include an equal number of teaching and ruling elders, with at least one of its members having expertise in church finance and property and another with the skills to prepare written documentation of team findings. If possible, appointees to the RT or AC shall include at least one member of the Fact-finding Team. The congregation's session shall be invited to name a negotiating team of equal number to an RT.

The RT, at its discretion, may bring in a neutral mediator to assist in negotiations.

All pertinent information assembled by the Fact-finding Team shall be made available to all negotiators or administrative commissioners at the time of their appointment.

The RT or AC shall strive for arriving at a proposed settlement within 120 days of its appointment, seeking an extension from PLC if it does not appear a settlement can be ready in that time. Where dismissal to another reformed denomination or dissolving of the congregation appears the ultimate outcome, the report shall provide for a polling of members of the congregation to ensure pastoral care for those choosing to remain with the denomination. The report shall describe how polling will be accomplished. The proposed settlement report shall make appropriate findings using the checklist at Attachment 1. The RT shall report to PLC and furnish a review copy to the Board of Trustees. The AC shall report to the Stated Clerk and furnish a review copy to the Board of Trustees.

STEP THREE: PRESBYTERY ACTION

RESOLUTION TEAM: When the RT is in substantial agreement with the congregation's negotiators on a report and proposed terms of settlement 1) PLC shall be asked to docket time for presbytery to consider the recommendation; and 2) the proposed settlement shall be presented at an information meeting of the congregation at which no vote is taken on accepting or rejecting the proposal. The RT may modify the proposed settlement based on that meeting before taking it to presbytery.

Presbytery shall consider the proposed settlement and if it wishes to take action, shall vote by written ballot to accept or to return it to the RT with specific direction for modification.

ADMINISTRATIVE COMMISSION: An AC appointed pursuant to this policy shall make its report to the Stated Clerk and furnish a review copy to the Board of Trustees. The Stated Clerk shall report the AC determination and Trustees' comments if any at the next stated meeting of presbytery. Presbytery may rescind or amend an action of the AC. Voting shall be by written ballot in any AC decision involving property held by a congregation.

FINAL ACTION: In order to allow for possible appeals, no settlement or AC decision involving property shall become final until the 91st day after the presbytery vote approving that action¹.

Adopted: July 16, 2016

Attachments

The following attachments are based on the *Tom and Hope*¹ legal standards and are to be amended from time-to-time by the Presbytery Leadership Commission as they become aware of additional relevant Presbytery Judicial Commission or civil court decisions. The checklists are intended to provide guidance for the teams. It is anticipated that, upon the completion of the work of a team, changes to a checklist may be recommended for PLC consideration.

Attachment 1 -- Checklists for fact-finders, resolution teams and administrative commissions

Attachment 2 -- Congregational considerations

Attachment 3 -- Teaching elder considerations

Attachment 1: Checklists for Fact-finders, Resolution Teams and Administrative Commissions

Checklist for Fact-Finders

Working quickly in response to PLC advice of the reported situation, a trained team shall determine relevant facts. It shall write a report and make a recommendation for PLC action. The report will include:

- a. Summaries of conversations with key leaders in the congregation that identify the probable nature of issues raised by those considering leaving the denomination.
- b. An analysis of the extent of the disagreement and whether reconciliation appears probable.
- c. A description of the congregation's current ministry and mission.
- d. An analysis of any discernment efforts the congregation has undertaken.
- e. A summary of the congregation's statistical reports showing recent relevant trends.

Recommendations for action may be:

- a. Not proceeding as there is little factual basis for the reported concern which triggered the fact-finding (the Commission on Ministry should, however, be alerted to the situation).
- b. Engaging in an information-and-reconciliation process.
- c. Creating a Resolution Team of presbytery to negotiate with the congregation toward a settlement and possible dismissal.
- d. Appointing an Administrative Commission which works toward possible dismissal or dissolution.

Checklist for Resolution Teams and Administrative Commissions

1. Working in good faith toward a mutually agreeable resolution means that the Resolution Team as a representative of presbytery and the congregation's clergy and officers:
 - a. Are open and honest in all their dealings with each other;
 - b. Provide all requested relevant information and documents to each other on a timely basis;

- c. Commit to protect the rights of the officers and members, if any, of the church who desire that the congregation remain loyal to the PC(USA), or who desire to remain congregants of another PC(USA) churchⁱⁱ; and
- d. Refrain from any unauthorized unilateral changes in the way their assets are held or managed.
- e. Consider a congregation's financial position and valuation of property and take into consideration the PC(USA)'s use and benefit of the property in every decision concerning the disposition of property.

If the Resolution Team determines that a congregation will not work in good faith according to these criteria or that a mutually agreeable resolution cannot be reached, it will recommend to PLC that an administrative commission be formed immediately.

- 2. A mutually agreeable settlement may result in clarification or mediation of the church's connectional relationship to the presbytery within the limits of the *Book of Order* and other binding requirements existent throughout the PC(USA) and the presbytery; or the mutually agreeable settlement may result in a recommendation to presbytery that the congregation be separated from the presbytery, be divided, dissolved, or transferred to another Reformed denomination within the framework of the applicable Presbyterian requirements with due regard for the rights of and obligations of all interested parties.
- 3. Settlement or AC reports and decisions shall:
 - a. Specify how the proposed action will affect assets and liabilities, including debt liquidations, pension, corporate, and other interests of the parties (including any group within the congregation which wishes to remain within the presbytery) as well as the processes and procedures for the church to join another presbytery or a Reformed denomination.
 - b. Inform the presbytery of a financial analysis of the value of the real and personal property and show that proper consideration of the interests of PC(USA) were given in arriving at a settlement which proposes disposition of property held in trust for the PC(USA)ⁱⁱⁱ. Real property shall be listed by tax lot and the method of valuation described.
 - c. Make a finding that PC(USA) use and benefit of the property are considered in determining property disposition as part of any settlement.
 - d. Describe the congregation's mission and ministry in that community at that particular place and time and analyze how it may be accomplished in the future given the proposed terms of settlement or AC decision.
 - e. Describe the "due diligence" exercised in arriving at its report, mindful that the Permanent Judicial Commission in *Tom V. SF* found that diligence goes beyond property considerations.^{iv}
 - f. In cases of dismissal, include a finding that dismissal is the only viable remedy for the dispute. The presbytery is obligated to serve the interests and guard the rights of the "true church within the PC(USA),"^v regardless of who is in the majority in any session or congregational poll. The presbytery shall determine if one of the factions is entitled to the property because it is the "true church." There shall be a finding in disposition of property that the interest of the true church is considered.^{vi}

Attachment 2: Congregational Considerations

If a Presbyterian Congregation Leaves the PC(USA): Issues for Consideration

- In the historic language found in F-3.0101b, it is clear that our Foundations of Presbyterian Polity respect the right of individual conscience and “the rights of private judgment, in all matters that respect religion, as universal and unalienable.” It is recognized also that Presbyterians may differ in their opinions. In matters of differences of opinion, “a majority shall govern” (F-3.0205). Dissents and protests and proposals for change are permissible, but defiance and schism are not permitted.
- If a congregation seeks to leave the PC(USA), the presbytery must determine that the decision truly and accurately reflects the will of the majority of the members of the congregation and also determine whether there is a “loyal minority” of Presbyterians who do not desire to withdraw.
- It is clear by the PC(USA) Constitution (G-4.0203) that “all property held by or for a particular congregation ... is held in trust ... for the use and benefit of the Presbyterian Church (USA).” An earlier version of that “trust clause” provision has been affirmed by the Oregon Supreme Court. “Property” is considered to be both real and “personal” property held by a particular congregation, including church records, financial assets, and intangible assets. Without the permission of a presbytery the name of a PC(USA) congregation may not continue to be used by a congregation which has withdrawn from the denomination.
- The presbytery is responsible for the government of the church throughout its district and has the power of jurisdiction over the members of dissolved congregations and grants transfers of membership to other congregations. (G-3.0301c).
- A presbytery has authority to divide, dismiss, or dissolve a congregation. A congregation may be released from the PC(USA) to another Reformed denomination, but it may not be released to independent status.
- A presbytery owns the original records (minutes and other record books) of its congregations (G-3.0107). When a congregation is dismissed or dissolved, the congregation will, at its expense, send the original records to the Presbyterian Historical Society for permanent storage with an inventory of those records sent to the office of the stated clerk.
- Practical Considerations:
 - a. Tax Status: A congregation which ceases to be part of the PC(USA) is no longer included in the PC(USA)’s “group revenue ruling” by which a Presbyterian congregation is granted 501(c)(3) non-profit tax-exempt status. Such status is required not only for exemption from tax payments to state and federal authorities and the filing of certain tax forms, but also for real estate tax exemption, for U. S. Postal Service bulk mailing permits, for grant-making foundations, and for the receipt of many forms of grants and bequests. Gifts to a church which does not have valid tax-exempt status may not be claimed as charitable contributions. Legal and other services will be needed to secure new 501(c)(3) status.

- b. Corporate Status: A congregation which ceases to be a PC(USA) church will need to revise its corporate status (which may require the filing of new articles of incorporation and adoption of new bylaws).
- c. Insurance: Change in corporate status means new insurance provisions need to be made. It is an unwise congregation which is uninsured for even a minute.

Attachment 3: Teaching Elder Considerations

If a Teaching Elder Should Seek to Leave the PC(USA): Issues for Consideration

- A teaching elder of the PC(USA) is under the ecclesiastical authority of a presbytery. The teaching elder's ecclesiastical status is determined and approved by a presbytery and may not be "independent" of a presbytery.
- A Presbyterian teaching elder's employment by a particular church may be only by a three-way contractual agreement between a teaching elder, a congregation, and a presbytery (in cases of called-and-installed pastoral relationships) or between a teaching elder, a session, and a presbytery (in cases of temporary pastoral relationships). The concurrence of all three bodies is required for an official pastoral relationship to exist.
- While it is permissible for a Presbyterian teaching elder to be granted permission to labor outside the bounds of the presbytery or beyond the jurisdiction of the church, as in temporary service in another denomination (G-3.0306), "[w]hen a teaching elder of this church accepts or continues membership of any character in another denomination, except as provided in this, the presbytery shall record the fact and delete the teaching elder's name from the roll." (G-2.0509)
- The Presbytery may remove a teaching elder from its rolls if it determines (1) that the teaching elder is no longer in a validated ministry nor fulfills the requirements for membership-at-large or (2) the teaching elder is not honorably retired.
- If a teaching elder makes application to be removed from the rolls of presbytery, the presbytery may remove that teaching elder from the rolls provided that (1) no allegations of offense have been received by the Stated Clerk (D-10.0101, (2) no inquiry has been initiated pursuant to D-10.0201, and (3) no charges have been filed against the teaching elder. If the teaching elder submits a written statement to the Stated Clerk renouncing the jurisdiction of this church, then the teaching elder will be removed from the rolls.
- Practical Considerations:
 - a. Pension: A teaching elder's pension benefits are "vested," and a member (or survivor of a member) of the Presbyterian Board of Pensions' plan has a non-forfeitable right to receive a retirement pension based on contributions and increases once pension credits are vested.
 - b. Medical Insurance/Death-and-Disability: The Board of Pensions' major medical plan and death-and-disability provisions require active participation in the plan. Participation is not available to teaching elders who are not on the rolls of a presbytery. A member may be eligible to purchase continuation of medical benefits for a limited duration. Life (death) insurance and disability insurance policies are available commercially at varying rates.

- c. Tax Issues: A teaching elder is entitled to certain income-tax benefits and provisions due to his/her ecclesiastical status in the PC(USA). An “independent” clergy person may or may not be entitled to such benefits and provisions.
- d. Insurance: A teaching elder no longer serving a PC(USA) congregation or no longer on the rolls of the PC(USA) should make arrangements for professional liability insurance coverage if continuing to engage in professional ministry.

End notes

ⁱThe *Book of Order* allows a 90-day period for a complaint alleging irregularities by a presbytery (D-6.0202a). Such a complaint in many cases would stay the challenged action. It is prudent to wait for the 91st day following presbytery approval before any settlement involving real or personal property becomes final.

ⁱ *Tom v Presbytery of San Francisco* PJC Remedial Case 221-03, October 28, 2012; *Hope Presbyterian v Presbyterian Church (USA)*, SC S 059584, November 29, 2012

ⁱⁱ **CAN A CONGREGATION VOTE TO SEEK DISMISSAL? DOES A CONGREGATION HAVE A UNILATERAL RIGHT TO DEPART FROM THE PC(USA)?**

No. There is not a unilateral right of a Presbyterian Church (U.S.A.) congregation to depart from the denomination or its presbytery of membership. Withdrawal from the Presbyterian Church (U.S.A.) is not a matter that can be considered at a congregational meeting.ⁱⁱ No authority is given to a congregation or to session to vote to leave the denomination.ⁱⁱ While a presbytery may consult with a congregation about dismissal in the form of listening sessions, hearings, or other consultations, these consultations are merely for the benefit of informing the presbytery as it considers a request for dismissal.ⁱⁱ Along these lines, our church has long recognized that “by giving to presbytery rather than to session or congregation the power to dismiss a church, the constitution of this denomination guarantees a formal meeting of presbytery as the forum in which loyalist minorities of whatever size might press their claims that they were sufficient in numbers and dedication to continue a church in its connectional relationship within this denomination.”ⁱⁱ Further, in seeking to negotiate with a congregation seeking dismissal, presbyteries have an obligation to see that secular litigation is used as a last resort.ⁱⁱ

Here, it is also important to note that freedom of conscience is limited for teaching elders, ruling elders and deacons under G-2.0105 and does not encompass the calling of congregational meetings to seek dismissal, moving churches to seek dismissal from the denomination or obstructing constitutional governance of the church.ⁱⁱ There may not be any secret acts by the pastors and sessions diminishing a church's connection to the Presbyterian Church (U.S.A.). Further, congregations that fail to abide by the principles of Gracious Separation “have breached important responsibilities and duties.”ⁱⁱ *PJC Advisory opinion on trust and gracious separation*. February 2014.

ⁱⁱⁱ 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.

^{iv} 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. *Tom, ibid*.

^v Any negotiation and decision about the disposition of the property must consider this interest of the true church. *McGee et al v NYC* Remedial Case 221-08 (2014) See G-4.0207.

^{vi} 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(USA) as the beneficiary under the Trust Clause, such determination must be reasonable and based on documented facts. *McGee, ibid*