

Processes for use by presbyteries in responding to congregations seeking to withdraw

I. FOCUS ON OUR OVERRIDING PRINCIPLES

A. Who we are

The Presbyterian Church (U.S.A.) strives to be a church modeled on the body of Christ so well articulated in I Corinthians:12. That is, a church made up of many different parts, all of which are "... necessary for its mission to the world, for its building up, and for its service to God." (G-1.0100b.)

1. We gather together in congregations.

"... [T]he several different congregations of believers, taken collectively, constitute one Church of Christ" (G-1.0400)

"A particular church consists of those persons in a particular place, along with their children, who profess faith in Jesus Christ as Lord and Savior and who have been gathered for the service of God as set forth in Scripture, subject to a particular form of church government." (G-4.0103)

a. A particular Presbyterian Church is an unincorporated association of believers created by or received into the PC(USA).

"Each particular church of the Presbyterian Church (U.S.A.) shall be governed by this Constitution. Its officers are ministers of the Word and Sacrament, elders, and deacons. Its government and guidance are the responsibility of the session. It shall fulfill its responsibilities as the local unit of mission for the service of all people, for the upbuilding of the whole church, and for the glory of God." (G-4.0104)

b. The corporation of a particular church is a civil body created by the state.

"Whenever permitted by civil law, each particular church shall cause a corporation to be formed and maintained. Only members on the active roll of the particular church shall be members of the corporation and eligible for election as trustees. The elders in active service in a church who are eligible under the civil law shall, by reason of their office, be the trustees of such corporation, unless the corporation shall determine another method for electing its trustees. Any such alternate method shall provide for a nominating committee elected by the corporation, and for terms for trustees the same as are provided for elders. Any particular church which is not incorporated may select trustees from the members on the active roll of the church. The power and duties of such trustees shall not infringe upon the powers and duties of the session or of the board of deacons. (G-10.0102, G-6.0402)" (G-7.0401)

2. Church property is at service for mission.

a. "The great ends of the church are 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." (G-1.0200)

b. The purpose of the Trust Clause (G-8.0201) is to support the purposes and mission of the particular church as a part of the Presbyterian Church (U.S.A.) within

**Exhibit 23 to
Dardenne
Petition**

the *Constitution* of the Church.

"All property held by or for a particular church, 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 particular church or of a more inclusive governing body 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-8.0201)

B. How we make decisions

1. Discerning Christ's will

Through our theology we understand that "[p]resbyters are not simply to reflect the will of the people, but rather to seek together to find and represent the will of Christ." (G-4.0301d.)

a. Majority rule

"Decisions shall be reached in governing bodies by vote, following opportunity for discussion, and a majority shall govern." (G-4.0301e.)

b. Always reforming

At the same time, the church is committed to being open to voices sharing minority opinions. At some points in our history minority views eventually became those of the majority. Thus, the *Constitution* recognizes "'The church reformed, always reforming,' according to the Word of God and the call of the Spirit." (G-2.0200)

2. If we disagree

Presbyterians have always celebrated and recognized significant differences of opinion on issues that matter. This ethos is currently noted in the historic language found at G-1.0305: "... [W]e 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 both of private Christians and societies to exercise mutual forbearance toward each other."

a. How we allow dissent

The Office of the General Assembly recognizes that currently there are deep and profound differences of conviction on a variety of topics in the church. When it comes to voicing those differences, we have previously drawn a clear distinction between dissent, which is always constitutionally protected; and defiance, which is never, ever protected.¹ The *Constitution* provides ways to register disagreement and to propose change.

1) Any governing body member may surely dissent (G-9.0303) and/or protest (G-9.0304) a particular action of that body.

2) Sessions (G-10.0102p.(6)) and presbyteries (G-11.0103t.(3)) may overture higher governing bodies for changes in policies or even changes in the *Constitution* itself.

¹ See Advisory Opinion #2

b. How we behave in disagreement

1) Our covenant demands that we strive to work together in peace and unity, even in the midst of our diversity. This foundational Presbyterian principle is found in many places within our *Constitution* (G-10.0302a.(3)(a), G-11.0413, D-1.0101, D-1.0103) The duty is always to attempt to bring the estranged member back into the covenant community. We promise to carry out that duty in our ordination vows.²

2) There are also times when an individual finds it impossible to go along with the majority. "... [W]hen any matter is determined by a majority vote, every member shall either actively concur with or passively submit to such determination." If an individual officer finds that his [her] "...conscience permit him [her] to do neither, he [she] shall, after sufficient liberty modestly to reason and remonstrate, peaceably withdraw from our communion *without* attempting to make any *schism*." (italics added) (Endnote 1, Chapter VI) Dissent cannot constitutionally become advocacy for defiance, nor for schism.

II. IF SCHISM IS A RISK FOR A PARTICULAR CONGREGATION

The Office of the General Assembly is aware of Presbyterians who feel compelled not only to abandon their vows³ and promises, but who are willing also to rend the fabric of the church and sinfully threaten the peace and unity of Christ's Church. We are concerned that some seem willing to take for themselves the *authority* to ascribe within which "certain bounds ... of the Reformed faith" (G-6.0108b.) *we all* must live. In our history this too often has led to schism, a right of no Presbyterian.⁴ The term *schism* is "always interpreted in connection with and in the context of specific factual situations."⁵

When faced with information that a congregation is intent upon or at risk of departing from the PC(USA), we suggest the following measured approach:

A. Use a team to gather information.

1. This could be a team appointed by the Council (G-9.0902a., G-11.0103v., via G-9.0501a.)

"A committee is appointed either to study and recommend appropriate action or to carry out directions or decisions already made by a governing body. It shall make a full report to the governing body that created it, and its recommendations shall require action by the governing body." (G-9.0501a)

2. It could be a team from the Committee on Ministry (G-11.0503, G-11.0502c. [triennial visit], G-11.0502i.,j.)

² G-14.0207g. and G-14.0405b.(7) Do you promise to further the peace, unity, and purity of the church?

³ G-14.0207e. and G-14.0405b.(5) Will you be governed by our church's polity, and will you abide by its discipline?

⁴ Second Helvetic Confession 5.162 "all schismatic seeds should be removed." and 5.141 "Furthermore, we diligently teach that care is to be taken wherein the truth and unity of the Church chiefly lies, lest we rashly provoke and foster schisms in the Church."

⁵ PCUS *Minutes* 1968, p. 108

a. "The committee shall be open to communication at all times with the ministers, elders who are members of sessions, sessions of the presbytery, and Certified Christian Educators within the bounds of the presbytery." (G-11.0503)

b. "It shall visit with each session of the presbytery at least once every three years, discussing with them the mission and ministry of the particular church and encouraging the full participation of each session and congregation in the life and work of presbytery and of the larger church. (W-1.4002)" (G-11.0502c)

c. "It shall serve as an instrument of presbytery for promoting the peace and harmony of the churches, especially in regard to matters arising out of the relations between ministers and churches. Its purpose shall be to mediate differences and reconcile persons, to the end that the difficulties may be corrected by the session of the church if possible, that the welfare of the particular church may be strengthened, that the unity of the body of Christ may be made manifest." (G-11.0502i)

d. "It shall exercise wise discretion in determining when to take cognizance of information concerning difficulties within a church, proceeding with the following steps:" (G-11.0502j)

1) "It may take the initiative to bring the information which has come to it to the attention of the session of the church involved, counseling with the session as to the appropriate actions to be taken in correcting the reported difficulties." (G-11.0502j.(1))

2) "It may offer its help as a mediator in case the session either finds itself unable to settle the problems peaceably or takes no steps toward settlement." (G-11.0502j.(2))

3) "It may act to correct the difficulties if requested to do so by the parties concerned, or if this authority is granted by the presbytery for the specific case. When so doing, the committee shall always hold hearings which afford procedural safeguards as in cases of process, following the procedures outlined in the Rules of Discipline." (G-11.0502j.(3))

3. The team could be appointed by the presbytery trustees.

4. The team might be made up of members from each of the above bodies, and could include others as well.

B. Empower the team to conduct an Administrative Review.

1. Those conducting a special administrative review have certain constitutional authority.

a. "If a higher governing body learns at any time of any irregularity or delinquency by a lower governing body, it may require the governing body to produce any records and take appropriate action (G-12.0102n, G-12.0304, G-13.0103k, n)" (G-9.0408)

Look for what matters in your jurisdiction

b. Authorize the team to look at whatever records may be relevant. (i.e. how money is held, title to property, insurance documents, corporate officers, corporate articles, bylaws, charters - especially changes in any of these) Such a team should be especially careful to look for recent changes or modifications of the articles, bylaws, or deeds. The presbytery is entitled to see such changes in legal documents. (G-9.0408)

c. "In reviewing the proceedings of a lower governing body, the higher governing body shall determine, either from the records of those proceedings or from any other information as may come to its attention, whether: ... " (G-9.0409a)

1) "The proceedings have been faithful to the mission of the whole church," (G-9.0409a.(4))

2) "The lawful injunctions of a higher governing body have been obeyed." (G-9.0409a.(5))

2. Authorize the team to give directives (G-9.0410) on behalf of the presbytery.

a. "It is ordinarily sufficient for the higher governing body to record in its own proceedings, and in those under review, its approval, disapproval, or correction. If necessary, the higher governing body may direct the lower governing body to reconsider and correct an irregularity or cure a delinquency." (G-9.0410)

b. The type of directive will depend on the issues (examples: don't call a congregational meeting, don't transfer assets, don't encumber property, don't elect new officers).

C. The team must keep all concerned parties informed.

1. Send letter to session (wording should be measured, but firm).

2. Send letter to all members of congregation (measured, non-threatening, explanatory; presbytery often has been "made out to be" poised to seize the property, etc.).

3. Members of team have "one on one" conversation with the pastor. Be sure she/he understands the consequences of any prohibited actions.

4. Communicate often with council, COM, or body that appointed on progress being made. When the team has reached some conclusions, take recommendations to presbytery for further action, if necessary.

III. IF SCHISM IS LIKELY, USE AN ADMINISTRATIVE COMMISSION

For a congregation bent on attempting to withdraw

A. Why use an administrative commission?

"Commissions appointed by sessions, presbyteries, synods, or the General Assembly may be

either administrative or judicial, except in the case of sessions, which may appoint only administrative commissions. The functions ordinarily entrusted to an administrative commission are: ..." (G-9.0503a)

"to visit particular churches, governing bodies, or other organizations of the church reported to be affected with disorder, and to inquire into and settle the difficulties therein, except that no commission shall have the power to dissolve a pastoral relationship unless such power has been specifically delegated to it by the appointing body;" (G-9.0503a.(4))

B. How to use the administrative commission

1. Many future difficulties can be avoided by a careful evaluation of the presbytery's goals in creating the commission and the powers the presbytery's commission will need to meet those goals.
2. Technically, an administrative commission has the full authority of a presbytery for the limited purposes for which the commission was created. (G-9.0502) This fact suggests that a presbytery should be very careful and deliberate in the authority it delegates to an administrative commission. Careful attention at this stage will be rewarded by a clear focus for the commission and an understanding of the commission's authority by the session and the congregation.
3. It is helpful to note that administrative commissions are **not "all or nothing" propositions**. They may be given authority to "dissolve pastoral relationships" (which must be explicitly given, G-9.0503a(4)) or may be authorized to make only recommendations to the presbytery to dissolve. Commissions may be authorized to "assume original jurisdiction in any case it determines ... the session of a particular church is unable or unwilling to manage wisely the affairs of its church" In fact, many times an administrative commission may persuade a session to agree not to meet without a member of the commission present, as an alternative to assuming original jurisdiction. Then the commission can simply consult rather than govern.
4. Such administrative commissions should always be created by a written motion to the presbytery.

C. Drafting a creating motion and assurance of an "opportunity to be heard"

The careful evaluation of the problems and necessary goals will greatly aid in drafting a clear and concise creating motion. Remember that the commission takes "its marching orders" from this document; the affected session and minister get notice of precisely what is being sought from this motion. Time spent carefully crafting the motion is time well spent. Several necessary components seem clear:

1. **Membership:** The make up of the commission generally should be persons "known and respected" by the congregation. The commission should be representative of the presbytery as a whole.
 - a. How large will the commission be? A presbytery commission must have at least seven members, but can have more if the circumstances merit it.
 - b. What kind of skills and personalities will be necessary? This varies depending

on what the presenting problem is. It is also helpful to note that a presbytery may remove and replace members of its commission. This may be done to give "overworked" members a break and to bring in "new blood" or it may be done to bring in new skills or gifts to the process.

c. It is our opinion that the following persons ought not be appointed to such commissions: the stated clerk, the executive presbyter, the moderator, the moderator of the Committee on Ministry, any member of the presbytery's judicial commission.

2. **Powers:** This is the section where the presbytery lays out what authority it has deemed its commission needs to correct the presenting difficulties.

a. If ever the commission is confused about what authority it possesses, it should not hesitate to **request clarification** from the presbytery.

b. We have advised that the presbytery should be clear that the **commission may assume jurisdiction of the session upon some triggering event or action of the session.** This usually has a dramatic effect on the behavior of all the interested parties.

c. Of course, there are clearly situations where a session already has amply demonstrated that it is "unable or unwilling" to carry out its responsibilities and where the presbytery needs to give its commission authority to **act as the session in all of the G-10.0102 powers.** In that situation a plan to replace individual commission members periodically should be developed at the onset.

3. **Rationale:** The motion should include a fairly detailed rationale section describing the history of the presbytery's intervention in the particular situation.

a. It should answer the question: **why is an administrative commission necessary?** (as opposed to continued Committee on Ministry intervention, for instance)

b. In our experience, the group or person seeking the appointment of an administrative commission in this circumstance needs to be prepared to **answer at least three substantive questions** from presbytery commissioners. Usually compelling responses to those questions is sufficient to convince the presbytery of the necessity of the appointment of an administrative commission.

4. **Process:** Administrative Commissions need always remember that they act in the name of the Lord. Their work is **not about winning**, or even bringing about change, but about restoring healthy ministry within a certain context. Commission members must always **treat elders, pastors, and members with respect and patience.** Emotions are high, because religion matters!

a. Most commissions will find it helpful to do some **information gathering** of their own. The rationale section of the empowering motion will provide much information, but there is no substitute for first hand information. This can come in the form of interviews, as well as written correspondence. A wise commission will interview all who wish to speak with them, and seek out others suggested by those

who do interview. It may also seek input via written materials when circumstances indicate such a forum will yield helpful feedback.

b. Once the commission determines it has sufficient information, it needs to **evaluate its next steps**. Sometimes the next step will be a report and recommendation to the presbytery, including suggestions for further action by other entities of the presbytery (Committee on Ministry, for instance). Sometimes it will be the removal of the pastor or the assumption of original jurisdiction as described below. "In all cases the commission must seek to assure fundamental fairness of the process. It must not only be fair; it must feel fair to those affected. ..." (see Advisory Opinion #3)

c. Commission are reminded to follow G-9.0505b(1) closely in order to **guarantee fair process and afford an opportunity to be heard** to all those affected. Such a hearing may happen at the presbytery meeting before the final action is taken. "When an administrative commission has been appointed to settle differences within a church, a governing body, or an organization of the church, it shall, before making its final decision, afford to all persons to be affected by the decision fair notice and an opportunity to be heard on the matters at issue. (See G-9.0503a(3), G-9.0503a(5), G-9.0505b-d) Fair notice shall consist of a short and plain statement of the matters at issue as identified by the commission and of the time and place for a hearing upon the matters at issue. The hearing shall include at least an opportunity for all persons in interest to have their positions on the matters at issue stated orally."

D. How best to move forward is dependent to some degree on who is leading the schism.

1. Ministers

Unfortunately, it is often the pastor who leads the congregation into schism. If the presbytery becomes aware of this possibility **early in the process** it may utilize the provisions of G-6.0502 to intervene.

a. "When a church officer, after consultation and notice, **persists in a work disapproved by the governing body** having jurisdiction, the governing body may presume that the officer has renounced the jurisdiction of this church." (G-6.0502)

b. The presbytery can often identify an action that would further steps toward schism and **direct the minister not to do them**. (Examples: instruct the minister not to call a congregational meeting to discuss schism, or direct minister not to send a letter to the congregation or an advocacy or affinity group.)

c. Presbyteries need to carefully follow the processes described in 2004 by the General Assembly in response to Item 05-02, where the Assembly adopted an outline with which to implement G-6.0502:

1) The governing body must **disapprove the work of the officer** (Wilson v. Presbytery of Donegal, Remedial Case 206-8, Minutes, 1994, Part I, p. 149, 11.091).

2) The governing body must **notify the officer** that it has disapproved his/her

work and that he/she is prohibited from engaging in such work as an officer of the church (*Stimage-Norwood v. Presbytery of Southern New England*, Remedial Case 214-7, Minutes, 2002, Part I, p. 344).

3) If the officer engages in the prohibited work after the notice of disapproval and prohibition, the governing body must consult with the officer and notify him/her of the consequences of his/her action, i.e., that his/her persisting in the work may result in a presumption of renunciation of jurisdiction.

4) If the officer persists in the prohibited work after such consultation and notice, the governing body may presume that he/she has renounced the jurisdiction of the church. If the governing body so determines, it shall notify the officer of its decision.

5) The officer has the right to challenge the governing body's determination and to speak on the floor of the governing body in so doing. He/she also has the right to file a remedial case challenging the governing body's determination of renunciation (D-6.0100). (*Minutes*, 2004, Part I, p. 387)

d. But the Assembly drew a sharp distinction between renunciation of jurisdiction and discipline:

"The term 'work disapproved by the governing body' relates to the exercise of the vocation of a minister of the Word and Sacrament or the official conduct of church business for which a deacon or elder was elected. It does not relate to particular acts of ministry, or to behavior, that might be considered an offense under the Constitution (D-2.0203). One can be presumed to have renounced jurisdiction because of persisting in disapproved work following consultation and notice, only if the work is engaged in after the disapproval of the work and if it is persisted in following a warning of the consequences."

e. So, if a minister has *already* engaged in active advocacy of schism (denounced the PC(USA), advocated withdrawal, or somehow violated her/his G-14.0405 vows), then the presbytery must proceed to appoint an investigating committee under the terms of D-10.0102, D-10.0201.

2. Sometimes the session will also be actively engaged in schismatic activities.

a. If it is only a group of individual elders, the presbytery might decide to assume original jurisdiction over the session's G-10.0102r powers (discipline) and acting as the session, discipline those individual elders following the *Rules of Discipline*.

b. If the whole, or a majority, of the session is involved in schismatic activity, the presbytery may need to appoint an administrative commission to act in place of, or beside, the session.

c. If the presbytery has information that a declaration of schism is imminent, the empowering motion should give the commission original jurisdiction over the session's G-10.0102 authority to prevent the session from taking actions in furtherance of schism.

d. Often it is a good idea in these settings to condition the assumption of original jurisdiction (G-11.0103s) upon some particular action of the session (i.e. calling a congregational meeting to vote on withdrawing, beginning to transfer assets, etc.)

e. In any case, the session must receive specific notice of the motion coming to the presbytery meeting that creates the administrative commission and gives the power "to assume original jurisdiction in any case in which it determines that a session cannot exercise its authority. Whenever, after a thorough investigation, and after full opportunity to be heard has been accorded to the session in question, the presbytery of jurisdiction shall determine that the session of a particular church is unable or unwilling to manage wisely the affairs of its church, the presbytery may appoint an administrative commission (G-9.0503) with the full power of a session. This commission shall assume original jurisdiction of the existing session, if any, which shall cease to act until such time as the presbytery shall otherwise direct;" (G-11.0103s.)

E. Tasks of the administrative commission: attempting to "settle the difficulties" (G-9.0503a.(4))

1. The first step is to do some fact finding of its own. At this stage the commission will normally interview session members and congregational members to determine if there is a loyal minority to protect. Usually the commission will be given information by the presbytery, but it needs to use that information to assess the level of "difficulties".

2. If the session takes the "forbidden" actions *and* if the session has had notice and an opportunity to attempt to convince the presbytery not to appoint and empower an administrative commission, the commission may decide to assume jurisdiction (G-11.0103s) because the session is "unable or *unwilling* to manage wisely the affairs of its church"

a. As noted above, this is *not* an "all or nothing" proposition. Choose authority carefully. Which of the session's G-10.0102 powers are the "problem"? Which, or all, does the commission need to take on?

"The session is responsible for the mission and government of the particular church. It therefore has the responsibility and power" (G-10.0102)

1) "to receive members into the church upon profession of faith, upon reaffirmation of faith in Jesus Christ, or upon satisfactory certification of transfer of church membership, provided that membership shall not be denied any person because of race, economic or social circumstances, or any other reason not related to profession of faith" (G-10.0102b.)

2) "to lead the congregation in participation in the mission of the whole Church in the world, in accordance with G-3.0000;" (G-10.0102c.)

3) "to challenge the people of God with the privilege of responsible Christian stewardship of money and time and talents, developing effective ways for encouraging and gathering the offerings of the people and assuring that all

offerings are distributed to the objects toward which they were contributed;" (G-10.0102h.)

4) "to establish the annual budget, determine the distribution of the church's benevolences, and order offerings for Christian purposes, providing full information to the congregation of its decisions in such matters;" (G-10.0102i.)

4) "to lead the congregation continually to discover what God is doing in the world and to plan for change, renewal, and reformation under the Word of God;" (G-10.0102j.)

5) "to instruct, examine, ordain, install, and welcome into common ministry elders and deacons on their election by the congregation and to inquire into their faithfulness in fulfilling their responsibilities;" (G-10.0102l.)

6) "to provide for the administration of the program of the church, including employment of nonordained staff, with concern for equal employment opportunity, fair employment practices, personnel policies, and the annual review of the adequacy of compensation for all staff, including all employees;" (G-10.0102n.)

7) "to provide for the management of the property of the church, including determination of the appropriate use of church buildings and facilities, and to obtain property and liability insurance coverage to protect the facilities, programs, and officers, including members of the session, staff, board of trustees, and deacons;" (G-10.0102o.)

8) "to maintain regular and continuing relationship to the higher governing bodies of the church, including" (G-10.0102p.)

a) "electing commissioners to presbytery and receiving their reports; sessions are encouraged to elect commissioners to the presbytery for at least one year, preferably two or three;" (G-10.0102p.(1))

b) "nominating to presbytery elders who may be considered for election to synod or General Assembly;" (G-10.0102p.(2))

c) "in both the above responsibilities, implementing the principles of participation and inclusiveness to ensure fair representation in the decision making of the church;" (G-10.0102p.(3))

d) "observing and carrying out the instructions of the higher governing bodies consistent with the Constitution of the Presbyterian Church (U.S.A.);" (G-10.0102p.(4))

e) "welcoming representatives of the presbytery on the occasions of their visits;" (G-10.0102p.(5))

f) "sending annually to the stated clerk of the presbytery statistical and other

information according to the requirements of the presbytery.”(G-10.0102p.(7))

9) “to serve in judicial matters in accordance with the Rules of Discipline;”
(G-10.0102r.)

10) “to keep an accurate roll of the membership of the church, in accordance with G-10.0302, and to grant certificates of transfer to other churches, which when issued for parents shall include the names of their children specifying whether they have been baptized, and which when issued for an elder or deacon shall include the record of ordination.” (G-10.0102s.)

F. After the administrative commission has taken over:

Presbyteries are advised to remember that property disputes are about effective ministry and not merely about property law - such an approach will make all the difference. This means that a commission will normally need to be doing ecclesial activities (pastoral care, discipline, etc.) while at the same time pursuing some more temporal activities.

1. Freeze the assets.

a. Real Estate - File *Lis Pendens* - Cite the trust clause (G-8.0201 as the basis.

b. Liquid Assets - Send letter to holder of bank and trust accounts. Tell them:

1) We are the Administrative Commission.

2) We are appointed by the Presbytery with jurisdiction over this congregation.

3) Quote the trust clause (G-8.0201) and note that the property is held in trust and that our *Constitution* (G-8.0601) gives the presbytery the duty to determine who “is entitled to the property.”

4) Currently we are trying to evaluate the situation.

5) Please do not release or modify holdings until we have completed our ecclesiastical processes.

c. Building and property – change the locks and secure the grounds if necessary.

2. The commission should try to keep the presbytery in a “defensive” secular legal posture. (Let the schismatics seek Caesar’s help)

3. Organize the loyal minority if the presbytery can identify one. Declare them to be the “true church” and thus entitled to the property.

“The relationship to the Presbyterian Church (U.S.A.) of a particular church can be severed only by constitutional action on the part of the presbytery. (G-11.0103) If there is a schism within the membership of a particular church and the presbytery is unable to effect a reconciliation or a division into separate churches 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 particular church at the time of the schism." (G-8.0601)

a. It falls within the purview of the presbytery to determine whether schism exists within a congregation.⁶ (G-8.0601, G-11.0103) In such a case, the presbytery determines which members represent the true church. (G-8.0601) It is the presbytery that is responsible for confronting advocates of schism. The presbytery has a number of "tools" that the *Constitution* provides:

1) With individuals the presbytery determines whether a person is attempting to "...peaceably withdraw from our communion without attempting to make any schism"⁷ (which is an *individual's* right). If an individual officer advocates schism, a session or presbytery may undertake judicial process and declare such action to be an offense. (D-2.0203b) The officer may be censured, after trial.

2) If the presbytery determines that the pastor is inciting schism within a congregation, it may remove (G-11.0103n.,o.) or authorize its commission to remove (G-9.0503a.(4)) such a schismatic minister of the Word and Sacrament from service to that congregation.

3) When a session has advocated or taken action to effectuate schism the presbytery may declare such action to be irregular. (G-9.0410, D-2.0202a.)

b. These actions should be taken as a "last resort," only after all efforts at restoration and reconciliation have been undertaken. Presbyteries are strongly encouraged to visit each such officer or session so affected.

c. Use "spiritual" language (name "sin" to be "sin", use Scriptural references, call for repentance). People who desire to leave often seek to minimize the commitment to Jesus of those who represent the governing bodies of the church (such as presbytery representatives). Make sure all know this is a *church* dispute!

G. Making property decisions.

1. The presbytery may retain the property for/with a loyal minority.

2. If there is no loyal minority the presbytery may dissolve the congregation (G-8.0401, G-11.0103i) and utilize the assets, real and personal, for another mission of the presbytery.⁸

a. If there has been a "dispersal of its members, the abandonment of its work", the church property may be "applied for such uses, purposes and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed

⁶ "It is the presbytery which determines the true and loyal congregation of a particular church in which a schism exists even if the entire congregation votes unanimously to leave the denomination (G-8.0601). This authority has been a part of Presbyterianism since its inception during the Reformation of the 16th Century." (quoted from response to Request 90-04 (2002 GA Minutes, 1990, p. 249))

⁷ Endnote #1 to Chapter 6 of Form of Government

⁸ The GA PJC recently affirmed a presbytery's right to do so and its right to delegate the implementation to an administrative commission. Remedial Case 217-5, Session, Second Presbyterian Church, Tulsa Oklahoma v Presbytery of East Oklahoma.

of as the presbytery may direct.” (G-8.0401)

b. The decision to dissolve and the decision as to how to utilize the assets should be made on the basis of the presbytery’s strategy for Presbyterian mission within its geographical district. (G-11.0103a, G-11.0103h)

1) For instance, the presbytery could use the assets to begin a new immigrant fellowship in that community.

2) If the presbytery has no such immediate or imminent plan to advance its mission in that region, but expects it might in the future, it could enter into a long term lease with the schismatic group.

a) The presbytery will need to check state real estate law to assure that this is possible.

b) The lease should recite the presbytery’s property interest in the real estate and provide that all improvements become the property of the presbytery. The lease should obligate the schismatic group to maintain and insure the property and should have a process for orderly transition of possession to the presbytery at the occurrence of some identifiable future event.

c. The presbytery may sell to the splinter group.

1) They may sell the building.

2) They might release money.

3) The decisions depend on the facts; use G-11.0103 as criteria. Again, the “yardstick” is the presbytery’s “strategy for mission.” “The presbytery is responsible for the mission and government of the church throughout its geographical district. It therefore has the responsibility and power” (G-11.0103)

a) “to develop strategy for the mission of the church in its area consistent with G-3.0000;” (G-11.0103a.)

b) “to coordinate the work of its member churches, guiding them and mobilizing their strength for the most effective witness to the broader community for which it has responsibility;” (G-11.0103b.)

c) “to counsel with a particular church where the various constituencies of the congregation are not represented on a session;” (G-11.0103e.)

4) The commission should be given the power to negotiate the property and dissolution decisions, but not the power to act on behalf of presbytery. See *GA Minutes*, 1995, Part I., pp.281-282, paragraph 21.128:“ ... The final approval of a strategic plan, however, is a responsibility that the presbytery ought not to delegate. Included in this decision are: ... i. to divide, dismiss, or dissolve churches in consultation with their members; ...”

PRESBYTERIES MAY RELEASE CONGREGATIONS

A. The authority is found in G-11.0103i and G-11.0103y.

"The presbytery is responsible for the mission and government of the church throughout its geographical district. It therefore has the responsibility and power" (G-11.0103)

1. "to divide, dismiss, or dissolve churches in consultation with their members;" (G-11.0103i.)

2. "to consider and act upon requests from congregations for permission to take the actions regarding real property as described in G-8.0000;" (G-11.0103y.)

a. The property trust clause (G-8.0201) is in favor of presbyteries.

"All property held by or for a particular church; 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 particular church or of a more inclusive governing body 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-8.0201)

b. The presbytery has the power to **decide disposition of real property.** (G-8.0401)
 "Whenever a particular church is formally dissolved by the presbytery, or has become extinct by reason of the dispersal of its members, the abandonment of its work, or other cause, such property as it may have shall be held, used, and applied for such uses, purposes, and trusts as the presbytery may direct, limit, and appoint, or such property may be sold or disposed of as the presbytery may direct, in conformity with the Constitution of the Presbyterian Church (U.S.A.)." (G-8.0401)

B. General Assembly approval is not required. However, the General Assembly has at times issued authoritative statements that may be helpful about this topic.

1. *GA Minutes*: 1988, p.141, paragraph 12.231b:

"A presbytery may dismiss a church with its property pursuant to G-11.0103i and G-11.0103y, provided proper consideration is given to the interests of the Presbyterian Church (U.S.A.) as provided in Chapter VIII. In particular, G-8.0201 recognizes the principle that all property by or for 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. Both traditions in our present denomination have always held that church property of any kind is held in trust for the use and benefit of the denomination as a whole; even though both differed somewhat in its application of this principle to churches wishing to withdraw from the denomination. This implied principle is now explicit in our present Form of Government (G-8.0201) and was also explicitly written into both Constitutions prior to reunion."

2. *GA Minutes*, 1989, p. 226, paragraph 21.194:

“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 expressed 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 the Word and Sacrament.”

3. *GA Minutes*, 1989, p. 226, paragraph 21.195:

“Each request for dismissal should be considered in the light of the particular situation and circumstances involved. If guidelines are established, it should be done with extreme caution. Any guidelines which restrict presbytery in its deliberations and in the exercise of its responsibility and authority might be subject to question in a case of judicial process within the church. Instead of establishing guidelines a presbytery might be better advised to trust its good judgment in particular situations.”

4. *GA Minutes*, 1990, p. 252, paragraph 21.270d

“3. If, after June 10, 1991, a congregation requests to be dismissed with its property, does presbytery have authority under G-11.0103i and G-11.0103y to consider and act on the request?”

5. *GA Minutes*, 1990, p. 252, paragraph 21.270k

“3. Yes. A presbytery has authority under G-11.0103i and G-11.0103y to consider and act on any request of a church to be dismissed with its property.”

C. Give proper consideration to the long term effects. “Each request for dismissal should be considered in light of the particular situation and circumstances involved.” (*GA Minutes*, 1989, p. 226, paragraph 21.195)

1. The “measuring stick”: Would releasing the property advance “the mission and government of the church [PC(USA)] throughout its geographical district”? (G-11.0103)

2. Would releasing the property assist the presbytery “to coordinate the work of its member churches, guiding them and mobilizing their strength for the most effective witness to the broader community for which it has responsibility;”? (G-11.0103b.)

D. But a congregation may not be released to “independence”; it may only be released to another *reformed* denomination. (*Strong and Bagby vs. Synod of Mid South*: *GA Minutes*, PCUS, 1976, p. 92; *Anderson vs. Synod of Florida*, *GA Minutes*, PCUS, 1974, p. 119)

1. *Strong and Bagby vs. Synod of Mid South*: *GA Minutes*, PCUS, 1976, p. 92
 “... This leads to the second question. Assuming that some form of delegation of the dismissal power by presbytery to an administrative commission might be permissible, to what ecclesiastical bodies might presbytery authorize it to make dismissals? Clearly presbytery could not authorize a commission to effect dismissals which presbytery itself could not effect. There are constitutional limits on presbytery’s power here. They were expressed in 1974 by the General Assembly in the case of *Harvard A. Anderson vs. The*

Synod of Florida, Minutes of the 114th General Assembly, pp. 119-121 (1974). That case, decided after adoption of the resolution in question, held that a presbytery could not constitutionally dismiss its churches to "independency" nor to any specified body except another presbytery of this denomination or of ecclesiastical bodies with which union with this denomination is permitted by the Book of Church Order. These latter include, in addition to certain specifically identified denominations, BCO 31.1, any other ecclesiastical body "whose organization is conformed to the doctrines and order of this Church." BCO 18-6(13),(17). This case remains the law of the Church, and it would clearly prohibit the delegation by presbytery (even were delegation generally permissible) of carte blanche power to an administrative commission to dismiss to ecclesiastical bodies not falling within the stated category. Whether another ecclesiastical body does fall within the general classification mentioned is itself a matter of judgment which must be determined by the dismissing authority as a precondition to dismissal. No such determination was formally made by the Presbytery of East Alabama in this case, nor did it require either its administrative commission or the sessions or congregations of its churches to make any such determination. In this broader respect also, the action of the presbytery is in violation of the law of the denomination as declared in the *Anderson* case. . . ." (*Minutes*, PCUS, 1976, Part I, *Strong and Bagby vs. Judicial Commission of the Synod of the Mid-South*, pp. 94-95)

2. *Anderson vs. Synod of Florida*, GA Minutes, PCUS, 1974, p. 119

"... This policy likewise forbids the dismissal of a church without specifying where it goes. An "independent" or "congregational" Presbyterian church is an anomaly which runs counter to the notion that we are a "family" of churches and dismissal must therefore be made to another church within the family group. We hold, therefore, that BCO § 16-7(8) restricts a presbytery in dismissing a church to the necessity of doing so to another ecclesiastical jurisdiction and forbids dismissal to independency.

"Accordingly, the preliminary judgment of the Permanent Judicial Commission is that the Presbytery of Florida erred in dismissing the three churches to independent status. We therefore affirm the action of the Synod of Florida sustaining the report of its Judicial Commission and denying Mr. Gwaltney's complaint thereto.

"A presbytery clearly has the constitutional right to dismiss a church to another presbytery. Complaint of W.H. Sory and J.B. Long vs. Presbytery of Eastern Texas, Digest of the Acts and Proceedings of General Assembly of Presbyterian Church U.S., 1861-1965, Judicial Case No.44, 324-25 (1966). We further hold that a presbytery can dismiss a church to the ecclesiastical bodies with which union is permitted. These bodies include churches within our own denomination, the United Presbyterian Church of the United States, the Reformed Church in America, (BCO § 311) or any other ecclesiastical body "whose organization is conformed to the doctrines and order of this church." BCO § 18-6(13), (17). Although presbytery has great latitude in the exercise of its dismissal jurisdiction, it does not have an absolute and unlimited power. The Florida Presbytery had no constitutional right to dismiss the three churches to independent status.

"Accordingly, the proper procedure for any Presbytery to which request is hereafter made for dismissal "to independency," or without any designation, or to any institution other than one described in this opinion is to decline to entertain the request as lying beyond its constitutional powers. . . ." (*Anderson vs. Synod of Florida*, GA Minutes, PCUS, 1974, p.119)

E. If a congregation is dissolved, its records belong to the presbytery and the presbytery should take care to assure that it has control of those records before dissolving or releasing a congregation. (G-9.0406)

F. *Article 13* (Procedure For Dismissal of a Congregation with its Property) is no longer applicable. The period for a decision of congregation to depart with its property has expired.

V. Finally, the Office of the General Assembly reminds the church that not once in our history has schism *ever* advanced the Gospel, but rather, *always* has diminished it. The Reunion Assembly of 1869 noted: Reunion "buries the suspicions and rivalries of the past, with the sad necessity of magnifying our differences in order to justify our separation. It banishes the spirit of division, the natural foe of true progress. In this union are seen the outflashing of a divine purpose to lead us on to greater self-sacrifice and a more entire consecration to the evangelization of the world. God has elevated us to this commanding position, that we may see his glory, and in the strengthened faith it inspires devote our united resources more directly and efficiently to the salvation of men [and women]."⁹

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⁹ Digest, Part II, p. 1333