

Recommendation from the Synod Commission of Assembly to Presbyteries of the Synod of
Southern California and Hawaii concerning Congregation Dismissal Decisions

Approved by Commission of Assembly on May 10, 2016

Rationale for the Recommendation: Why Should the Synod Be Concerned with Dismissal Decisions?

The primary responsibility for considering the dismissal of a church from the denomination (with or without its property) rests with each presbytery. Accordingly, over the past several years, the Synod (as a council) has taken a hands-off position as to the adoption of gracious dismissal policies (“GDP” although often called by other names) by its presbyteries and as to how those policies have been applied in individual cases.

Unfortunately, the past few years have led to an inordinate level of conflict coming from these presbytery dismissal decisions, arising both from (perceived or real) inadequacies in a presbytery’s GDP and from (perceived or real) defects in the application of the policy. This has imposed extensive administrative burdens on the presbyteries and churches themselves and on the Synod staff and Synod PJC. In addition, this heightened level of conflict has seriously detracted from the intended “graciousness” of the entire process.

In addition to the Synod’s overall power and responsibilities over the presbyteries within its bounds, the Synod also “may direct the lower council to reconsider and take corrective action if matters are determined to be out of compliance.” (G-3.0108c.) The Synod also has review authority over a presbytery as to warning or bearing witness against error in doctrine or immorality in practice within its bounds. (G-3.0401c.) While the Synod (as a council) previously has not stepped into the dismissal processes of its presbyteries, it has the power and (potentially) the responsibility to do so.

Rather than suggesting a regulatory approach to addressing these challenges, however, the Synod Commission of Assembly authorizes distribution of educational materials to each of our presbyteries, including a checklist of necessary elements of each GDP and of each dismissal decision.

This document originated with the Synod Finance Committee after they began detailed consideration of these issues in the context of the Littlerock (San Fernando Presbytery) church dismissal decision where the Synod currently retains legal title (and the Finance Committee also recognized equivalent concerns where the Synod would need to consent to the release of recorded trust clause or reversionary language). As a result, the Finance Committee recommended consideration of these issues for all church dismissals within its bounds. The Finance Committee did not believe, and the Synod Commission of Assembly agrees, that a church dismissal should be treated differently by the Synod based upon the anomaly of whether the Synod still retains a recorded interest in the property.

The Synod Finance Committee Recommended that the Synod Commission of Assembly Adopt the Following and Share This with the Presbyteries of the Synod; the Synod Commission of Assembly Adopted This on May 10, 2016.

What do GA PJC Decisions Dictate?

The *Annotated Book of Order* provides the following summaries with respect to the two recent, seminal GA PJC decisions about church dismissals with property:

PJC (2014, 221-08, *NYC Pby v McGee et al*):

- (1) The Constitution reserves as a direct act of the presbytery the authority to dismiss a church.
- (2) A self-implementing dismissal rooted in a congregational decision is a violation of that exclusive right and responsibility of the pby to dismiss a congregation.
- (3) A predetermined, formulaic mechanism for dismissal of a congregation runs counter to constitutional provisions for mutual dialogue and particular discernment.
- (4) The Trust Clause creates an express trust in favor of the PC(USA) as a whole. Pby, acting as trustee, must exercise due diligence that its determination is both reasonable and evident in the record. Pby is entitled to deference in decisions under Trust Clause, but is limited by fiduciary obligations owed to the whole church.
- (5) Fiduciary nature of the Trust Clause requires individual determination of the facts and circumstances related to dismissal of any church. Timed, individual, unique determination of the circumstances applicable to any church requesting dismissal is required.
- (6) Fiduciary duty must be carried out during the course of discernment of church's request for dismissal. Concern about conflict and litigation cannot justify abandonment of constitutional mandates.
- (7) Pby is obligated to determine if one of the factions is entitled to the property because it is the 'true church within the Presbyterian Church (USA),' majority notwithstanding. Any negotiation and decision about the disposition of property must consider interest of the true church.
- (8) Upon dismissal of a congregation the minutes and registers of the session become the property and responsibility of the presbytery.

PJC (2013, 221-03, *Tom v San Francisco Pby*):

- (1) A presbytery's authority to determine property rights must be guided by the pby acting as a fiduciary for the benefit of the PCUSA.
- (2) The fiduciary duty requires that pby exercise due diligence as regarding the value of the property of a congregation seeking dismissal.
- (3) Due diligence will include not only the spiritual needs of the congregation but an examination of the financial position and the value of the property of the congregation. Payments for per capita or mission obligations are not satisfactory substitutes for valuations of the property held in trust.

It is critical that each GDP be evaluated by the presbytery with respect to the full texts of these two GA PJC decisions (and not just these summaries). Copies of both decisions are attached. Compliance with the mandates of these GA PJC cases is required by PC(U.S.A.).

Synod Recommendations to Help Reduce the Likelihood of Remedial Complaints:

In light of the wisdom and guidance of these cases, along with the collective experiences of many individuals who have been part of a presbytery dismissal team (“Dismissal Team” – although it may have other names), the Synod Commission of Assembly provides the following checklist for any GDP policy – and its application in any particular case:

- Early in the discernment process, obtain a preliminary title report for all real property owned or used by the church seeking dismissal. If the Synod (including under its original corporate name “Presbytery of Los Angeles”) is in the title or is involved in any fashion in the language of any recorded reversionary deed (or similar document), the Synod must be contacted immediately, in order to be adequately involved in the process. In such a circumstance, no dismissal decision can be finalized without Synod approval.
- Obtain from a title company a chain of title (along with copies of all recorded documents effecting title transfers) back to the point before each portion of the real property was first owned by an entity of the Presbyterian Church (U.S.A.) (including its predecessor denomination(s)). It is critical that the involvement of any council of the connectional church in acquisition of the real property and growth of the church be acknowledged.
- Obtain an appraisal for any real property. (The county property tax assessed value is not an appraisal, nor is the insured value of any improvements.)
- Obtain at least three years of full financial statements, along with the most recent audit or financial review.
- Evaluate in detail any financial assets (in addition to the real property), all of which must be considered during negotiations.
- Separately identify and evaluate any accounts being held by the Presbyterian Foundation. Based upon the restrictions of each gift, the interest entitlement will be redirected to an appropriate PC(U.S.A.)-related entity.
- Prepare a dismissal report that expressly acknowledges (as part of the presbytery’s fiduciary duty) consideration of the value of the contributions (not just financial, but any other benefits of having been part of the connectional organization) of the denomination

(including financial contributions from all levels) to the individual church and its property. While a presbytery may elect to not require recoupment of any or all such financial contributions made by the denomination (particularly if made many decades before), at a minimum, recognition of those contributions is essential.

- Evaluate delinquent and future per capita and mission giving. As part of its fiduciary duty to PC(U.S.A.), a presbytery must share any amounts of per capita and mission giving (both past and future) paid by a church being dismissed proportionately with the Synod and G.A.
- Separately evaluate the value of all of the congregation's property (real property and other assets). A set formula in a GDP is not appropriate. While no particular result is required (what is required is an "evaluation"), a token evaluation (e.g. setting a nominal value for the property) is not constitutionally adequate.
- The presbytery itself must conduct adequate due diligence (or at least evaluate the facts that have been gathered, exercising independent judgment). It is not sufficient for a presbytery to simply accept the facts asserted by the church or rubber stamp the conclusions of the Dismissal Team – particularly if the Dismissal Team is controlled or too heavily influenced by individuals overly sympathetic with the church seeking dismissal.
- The Dismissal Team's minutes – and the presentation to the Presbytery – must state:
 - The exact number of congregation members and the exact vote by the congregation, along with consideration of the interests of any portion of the congregation that does not wish to leave PC(U.S.A.). If there are such individuals, the Presbytery itself (not the Dismissal Team) must make a determination as to the "true church," and determine property ownership accordingly in a manner that is responsible to that "true church."
 - An acknowledgement that each of these factors were considered (both as specified in *Tom* and *McGee* and as described above), also laying out in detail the rationale for the determination of the price (including factors such as whether the presbytery could use the property for mission in the area, the proximity of other PC(U.S.A.) churches, and the capacity of the church being dismissed to make present and future payments).
- An orderly process getting to the actual dismissal is an implicit part of the presbytery retaining full control over the dismissal process, as required by the *McGee* case:

- Specify in a prescribed written agreement all actions that are preconditions to the effectiveness of the dismissal, laying out a specific closing process.
- All original session and congregational records (minutes, registers) must be provided to the presbytery.
- The PC(U.S.A.) name and trademarks must be removed entirely from the church being dismissed.
- A careful process must be included for communicating with all church members before the dismissal is effective; some may wish to remain within PC(U.S.A.). (Even if a congregational vote was unanimous, there may be members who did not attend the congregational meeting who wish to remain with PC(U.S.A.).)
- In California, a recorded reversionary deed is the only legally effective documentation that provides cost-effective enforceable remedies for any defaults (both monetary obligations and the obligation to remain within an acceptable reformed denomination) by the church to be dismissed after the dismissal occurs. A minimum 10-year term is desirable for such a recorded reversionary deed.
- The effective date of the dismissal should fall at least 90 days after the last-to-occur of presbytery approval and satisfaction of the other conditions to closing, to allow an adequate opportunity for the filing of a remedial complaint.

Even where the Synod does not hold a recorded interest in the property, prior to the presbytery approval of a dismissal, the Synod should be provided with the following documentation and a reasonable opportunity to review the documentation in order to be able to raise any concerns:

- A copy of the real property appraisal;
- A summary of all of the financial assets of the church seeking dismissal;
- The Dismissal Team's minutes and the planned presentation to the presbytery (addressing the points above);
- A copy of the proposed written closing process agreement;
- A copy of the proposed reversionary deed; and
- A copy of any other documentation or information that the Dismissal Team anticipates would be helpful for the Synod's review.