

**THE PERMANENT JUDICIAL COMMISSION
OF THE SYNOD OF THE PACIFIC
OF THE PRESBYTERIAN CHURCH (U.S.A.)**

Rev. Wilbert Tom, HR, Rev. David Hawbecker,)	
HR, and Thomas Conrad,)	
)	FINAL DECISION AND ORDER
Complainants,)	
)	Remedial Case 11-01
v.)	
)	
The Presbytery of San Francisco,)	
Respondent)	
)	
)	

ARRIVAL STATEMENT

This remedial case came before the Synod Permanent Judicial Commission (this Commission or SPJC) filed by the Complainants the Rev. Wilbert Tom, HR, Rev. David Hawbecker, HR, and Thomas Conrad (Complainants), regarding action taken by the Presbytery of San Francisco (Presbytery) at a meeting on November 9, 2010.

JURISDICTIONAL STATEMENT

The Preliminary Questions posed in D-6.0305 were all answered in the affirmative.

HISTORY

On September 15, 2009, Presbytery adopted the "Policy for Dismissing Churches," also known as the Gracious Dismissal Policy (GDP). This policy was adopted for the purpose of providing guidance to the Presbytery when dealing with a request by a church to be dismissed from the Presbytery and from the PC(USA). The GDP provided for a Presbytery Engagement Team (PET) to act as the Presbytery interface with any church beginning the process of a dismissal request.

On February 2, 2010, the Session of the Community Presbyterian Church of Danville (CPC Danville) voted to seek dismissal from the PC(USA) and the Presbytery pursuant to provisions of the GDP. A PET was formed by Presbytery at its regular meeting on April 13, 2010 to engage with CPC Danville regarding the matter of dismissal from the denomination to the Evangelical Presbyterian Church (EPC). Names of the members of the PET were presented to Presbytery at that same meeting. After meeting several times in various formats with leadership and congregation members of CPC Danville, the PET and CPC Danville were unable to identify mutually acceptable avenues of reconciliation. On September 12, 2010, the congregation of CPC Danville voted to affirm the action of its Session to request dismissal from

the Presbytery and the PC(USA). A special informational meeting of Presbytery was held on October 12, 2010 to discuss PET recommended Terms of Dismissal in advance of the vote scheduled for November 9, 2010.

At its regular meeting on November 9, 2010, Presbytery received the final report of the PET and took three actions relevant to these recommendations. First, the Presbytery voted to suspend the GDP for future potential applications following the CPC Danville case. Second, consistent with provisions of the GDP, Presbytery voted with a two-thirds majority to limit debate and amendments or tabling. Third, Presbytery voted by written ballot (167 yes, 41 no, 4 abstain) to accept the terms of dismissal negotiated by the PET. Terms included payment of \$108,640 by CPC Danville to Presbytery in lieu of future declining per capita and a commitment by CPC Danville to pay an annual amount of \$42,500 for five years in quarterly installments to maintain support for PC(USA) missionaries, ministries, and ministers.

The original complaint was filed by Complainants on February 2, 2011, in response to a vote of the Presbytery on November 9, 2010, to approve the dismissal of the CPC Danville from the PC(USA) to the (EPC).

Subsequent to the filing of the complaint, the Preliminary Questions (D-6.0305) were answered in the affirmative by the Moderator and Clerk of the SPJC on March 5, 2011. The case was accepted for trial.

In July of 2011, at the request of the parties, the case was continued to allow exploration of mediation to settle the dispute raised by Complainants. Mediation proved to be unsuccessful and the case was scheduled for trial in March of 2012.

Complainant filed an Amended Remedial Complaint on September 29, 2011 (received by the SPJC on October 5, 2011). After review, the Moderator and Clerk of the SPJC determined the Amended Remedial Complaint would only be considered if re-written in a clarified form to correct inconsistencies in form. The First Amended Complaint as Clarified was received by the SPJC on October 17, 2011. The Moderator and Clerk of the SPJC ruled that the Amended Remedial Complaint as Clarified would be accepted on the condition that it was clarification of the original complaint, not a new version of the complaint.

The Committee of Counsel for Presbytery filed a Motion to Dismiss the First Amended Remedial Complaint as Clarified on November 14, 2011. At the Pre-Trial Conference on November 29, 2011, the Moderator and Clerk informed the parties the Motion to Dismiss would be considered by the whole SPJC at the time of trial.

APPEARANCES

Complainants Tom Conrad, Rev. David Hawbecker, and Rev. Wilbert Tom were in attendance and were represented by Counsel JoAn Blackstone. Kurt Franklin, Linda Lee, and Rev. Joan Huff represented Presbytery as Committee of Counsel.

CHALLENGE TO COMPOSITION OF THE COMMISSION

Complainants challenged Commissioner Kenneth Robbins pursuant to D-7.0401b (2). The remaining members of the SPJC voted to deny the challenge.

MOTION TO DISMISS

At the opening of the trial, the SPJC heard oral argument from the parties regarding Respondent's Motion to Dismiss First Amended Complaint as Clarified (MTD). The SPJC took the matter under submission following oral argument. After considering written and oral argument of the parties, the SPJC denies the motion. The SPJC holds that the MTD, as drafted, seeks dismissal of the entire First Amended Complaint. By its denial of the MTD, the SPJC does not intend to preclude itself from determining at trial whether each individual specification of error states facts sufficient to state a claim.

SPECIFICATIONS OF ERROR

Note 1. All references to the Book of Order in these Specifications of Error are to the 2009-2011 version of the Book of Order.

Note 2. These Specifications of Error refer to those found in the First Amended Remedial Complaint as Clarified submitted by Complainants, dated October 14, 2011 and received by the Synod office on October 17, 2011.

Specification of Error No. 1. Complainants contend that the Presbytery's vote of November 9, 2010, to approve dismissal of the CPCD under terms which included Presbytery's relinquishment of any and all interests of the PCUSA in the Property without compensation in favor of the EPC is an action which is based on an error in Constitutional interpretation, in that the Presbytery does not own the Property but holds the Property in trust for the use and benefit of the PCUSA (G-8.0201).

This specification of error is not sustained.

See rationale under Specification of Error No. 4

Specification of Error No. 2. The Presbytery failed to meet its Constitutional responsibility as trustee in accordance with the Form of Government Part G, Chapter VIII of the Book of Order. As trustee, the Presbytery is obligated to act on behalf of the greater church, to ensure that all property held or used by its particular churches and their respective congregations is held, used and applied in a manner that faithfully advances and serves the ministry and witness of the PCUSA.

This specification of error is not sustained.

See rationale under Specification of Error No. 4

Specification of Error No. 3. Instead of acting as a faithful trustee on behalf of the PCUSA, the Presbytery voted to dismiss the CPCD under terms that provided the Presbytery would execute quit claim deeds and simply give the Property to another denomination without any compensation. Complainants are informed and believe the fair market value of the Property is in the millions of dollars. The agreed payment of \$108,640 from the CPCD was “in lieu of future declining Per Capita,” and the \$42,500 quarterly payment for five years was committed by the CPCD for the support of “targeted PC(USA) missionaries, ministers,” and were in no way associated with the EPC’s purported acquisition of the property.

This specification of error is not sustained.

No admissible evidence was presented at trial to support this specification of error that the property was to be transferred to another denomination.

See further rationale under Specification of Error No. 4

Specification of Error No. 4. The Presbytery acted against the Constitution of the PCUSA in that it failed to hold, use, apply, transfer or sell the Property for the benefit of the PCUSA. G-8.0301 provides:

*“Whenever property of, or held for, a particular church of the Presbyterian Church (U.S.A.) ceases to be used by that church as a particular church of the Presbyterian Church (U.S.A.) **in accordance with this Constitution**, such property shall be held, used, applied, transferred or sold as provided by the presbytery. [Bold emphasis added].*

Taken together, the provisions of Part G Chapter VIII require the Presbytery to act as a faithful trustee on behalf of the PCUSA in exercising its responsibility and power under the above-referenced Chapter and at Part G Chapter XI, to “divide, dismiss, or dissolve churches in consultation with their members” (G-11.0103i). By its vote on November 9, 2010, the Presbytery failed to act as a faithful trustee under the Constitution.

This specification of error is not sustained.

- a. Complainants and Respondent stipulated the trust provisions of G-8.0201 apply to the property of CPC Danville. Under the provisions of the trust clause, property held by a congregation is held in trust for the use and benefit of the PC(USA).
- b. Under G-11.0103i, Presbytery has the authority to dismiss a church in consultation with its members to another reformed body. After the request by the CPC Danville session for dismissal, Presbytery appointed a PET. Following consultation with and a vote by the congregation, and an informational meeting of the Presbytery, the Presbytery voted to dismiss the congregation to the EPC pursuant to the terms agreed upon in the Terms of Dismissal. Among the terms was the obligation of CPC Danville to contribute specific payments to Presbytery for Per Capita and Mission.

c. Concurrent with dismissal, pursuant to G-8.0301, the property of CPC Danville was required to be held, used, applied, transferred, or sold as provided by Presbytery. In the exercise of that discretion, Presbytery, consistent with its policy, determined to transfer by quit claim deed its interest in the CPC Danville property upon dismissal of the church to the EPC.

d. In good faith, Presbytery determined that acceptance of the PET recommendations for dismissal would best serve the overall witness and ministry of the Church of Jesus Christ, thus benefitting the PC(USA).

Specification of Error No. 5. The Presbytery acted contrary to its responsibilities set forth at G-11.0103 (a) and (b) of the Constitution of the PCUSA (Book of Order) in its geographic area in and around Danville, California, in transferring property of the PCUSA without any consideration for the costs involved in starting new ministries for the PCUSA within that geographic area.

This specification of error is not sustained because Complainants did not meet their burden of proof.

Specification of Error No. 6. The Presbytery erred in basing its action on its narrow focus on and understanding of its own flawed “Gracious Dismissal Policy,” thereby failing to seek or obtain appropriate legal counsel or to consider and give appropriate weight to the Constitution of the PCUSA (Book of Order) as authoritatively interpreted with respect to Constitutional duties and responsibilities.

This specification of error is not sustained because it fails to state a claim upon which relief can be granted. In the alternative, the Complainants did not meet their burden of proof.

Specification of Error No. 7. The Presbytery erred in failing to determine or consider the unequivocal legal rights of the PCUSA to the subject Property under applicable state law.

This specification of error is not sustained because it fails to state a claim upon which relief can be granted.

Specification of Error No. 8. The Presbytery erred in voting to dismiss the CPCD to the EPC and include a transfer of PCUSA property with the dismissal. The EPC has a form of government in which church property is owned by individual churches within its denomination. Such a dismissal is therefore tantamount to or part of a process of a Constitutionally impermissible dismissal of a church with “its” property to independent status.

This specification of error is not sustained because it fails to state a claim upon which relief can be granted. In the alternative, the Complainant did not meet its burden of proof.

Specification of Error No. 9. The Presbytery failed to act in a manner consistent with its own policy commitment to openness and transparency in a dismissal process (Page 2 of Exhibit “A”), in that no minutes or other record of meetings between members of its “PET” (Presbytery Engagement Team) and representatives of the CPCD were kept or made available for inspection by members of Presbytery.

This specification of error is not sustained because it fails to state a claim upon which relief can be granted. The specification of error does not identify any authority requiring formal minutes to be kept by the PET.

In the alternative, Complainants did not meet their burden of proof. Both the documentary evidence and testimony at trial showed a consistent and deliberate effort by the PET and Presbytery leadership to communicate in an open and transparent manner. The PET regularly made reports of its meetings to Presbytery.

Specification of Error No. 10. In ignoring the considerable conflict of interest that existed by virtue of the roles of CPCD’s senior pastor in preparing the Presbytery’s Gracious Dismissal Policy, soon thereafter seeking dismissal of the church he serves, and negotiating terms of that dismissal on behalf of his congregation, the Presbytery failed to act in accordance with its responsibility “to provide pastoral care for the churches and members of Presbytery ..” (G-11.0103g), but rather chose to engage in a hurried negotiation of terms of dismissal without first employing a listening process or other means of discernment that would assist in determining whether and to what extent members of the CPCD were misinformed or misled as to the effect of a dismissal from the PCUSA to the EPC.

This specification of error was withdrawn by Complainants during the trial.

Specification of Error No. 11. The Presbytery erred in following a process of “engagement” through which it effectively delegated equal power to the CPCD to determine the terms of its dismissal. As authoritatively interpreted, G-11.0103i does not permit a delegation of a presbytery’s power “to divide, dismiss, or dissolve churches”

This specification of error was withdrawn by Complainants during the trial.

Specification of Error No. 12. In approving a dismissal of the CPCD to the EPC, the Presbytery erred in failing to determine whether the receiving body’s organization is conformed to the doctrines and order of the PCUSA, including satisfying itself about whether this is true of a transitional presbytery of the EPC.

This specification of error is not sustained because it fails to state a claim upon which relief can be granted. In the alternative, Complainants did not meet their burden of proof. No evidence was presented at trial indicating that Presbytery failed to satisfy itself as to the eligibility of the EPC to receive CPC Danville.

Specification of Error No. 13. In failing to ascertain CPCD's financial ability to pay and in failing to consider alternatives to an immediate, outright gift of PCUSA property, the Presbytery disregarded both its duty as trustee for the PCUSA (G-8.0201) and its responsibility "to provide pastoral care for the churches and members of presbytery..." (G-11.0103g.)

This specification of error is not sustained.

This specification of error contains two allegations. With respect to the allegation under G-8.0201, see answer to specification of error No. 4. With respect to the allegation under G-11.0103g, Complainants did not meet the burden of proof. The evidence presented at trial suggested that pastoral care was intentionally provided by the PET.

COMMENT

Remarks were made during the trial regarding the potential precedent of this case. The Commission notes from the record that the GDP which provided the basis for this case has been suspended. Efforts are underway to revise the policy and this Commission encourages the completion of that work. This Commission further notes that any succeeding case will be decided on its own facts and the decisions of the SPJC are not binding precedent.

REQUEST FOR RELIEF

Since no specification of error is sustained, the request for relief in the First Amended Complaint as Clarified is denied.

DECISION AND ORDER

IT IS THEREFORE ORDERED that the November 9, 2010 action of the Presbytery to dismiss the CPC Danville pursuant to the Terms of Dismissal is upheld.

IT IS FURTHER ORDERED that the Stated Clerk of the Presbytery of San Francisco report this Decision to the Presbytery at its first meeting following this notice, that the Presbytery enter the full Decision upon its minutes, and that an excerpt from those minutes showing entry of the Decision be sent to the Stated Clerk of the Synod (D-7.0701).

IT IS FURTHER ORDERED that the Stated Clerk of the Synod of the Pacific report this Decision to the Synod at its first meeting following this notice, that the Synod enter the full Decision upon its minutes (D-7.0701).

ABSENCES

Joan Fong, Commissioner from the Presbytery of San Francisco, was recused and took no part in the deliberations of this case.

DATE

Dated this 23rd day of March, 2012.

Signed _____
Ruth Goldthwaite, Moderator
Permanent Judicial Commission of the Synod of the Pacific

Ronald W. McCune, Clerk
Permanent Judicial Commission of the Synod of the Pacific

CERTIFICATES

We certify that the foregoing is a full and correct copy of the decision of the Permanent Judicial Commission of the Synod of the Pacific, Presbyterian Church (U.S.A.), in the Remedial Case 11-01, Rev. Wilbert Tom, et al, Complainants, v. The Presbytery of San Francisco, Respondent, made and announced at San Francisco, CA on March 23, 2012.

Ruth Goldthwaite, Moderator
Permanent Judicial Commission of the Synod of the Pacific

Ronald McCune, Clerk
Permanent Judicial Commission of the Synod of the Pacific

I certify that I did transmit a certified copy of the foregoing to the following persons by certified mail, return receipt requested, directing Wendy G. Warner to deposit it in the United States mail at Modesto, CA, on March 26, 2012.

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The Permanent Judicial Commission of the Synod of the Pacific

I further certify that I did transmit a certified copy of the foregoing to the Stated Clerk of the Synod of the Pacific by delivering it in person to Wendy G. Warner on March 23, 2012.

Ronald W. McCune, Clerk
Permanent Judicial Commission of the Synod of the Pacific

I certify that I received a certified copy of the foregoing, that it is a full and correct copy of the decision of the Permanent Judicial Commission of the Synod of the Pacific, made on March 23, 2012, in Remedial Case 11-01, Tom et al., Complainants, v. The Presbytery of San Francisco, Respondent.

Dated at San Francisco, CA, on March 23, 2012.

Wendy G. Warner, Stated Clerk
Synod of the Pacific