Item 07-13. Transfer of Ministers and Congregations to Transitional Presbyteries-
From the General Presbyter/Stated Clerk, Presbytery of Charlotte.

[The assembly approved Item 07-13, Recommendation 1. See pp. 14, 15.]

1. The Advisory Committee on the Constitution recommends that the 218th General Assembly (2008) answer Item 07-13 with the following recommendation:

   With respect to the first question presented, the Advisory Committee on the Constitution finds that the question presents a matter in which interpretation of G-11.0103i and G-15.0203a and b is advisable. The Advisory Committee on the Constitution recommends that the 218th General Assembly (2008) respond to the question with the following interpretation:

   "Presbyteries may dismiss congregations to other ecclesiastical bodies of this denomination, and to denominations whose organization is conformed to the doctrines and order of the Presbyterian Church (U.S.A.). No congregation may be dismissed to independent status, or to the status of a nondenominational congregation. It is the responsibility of the dismissing presbytery to determine whether the receiving body meets these standards, and this responsibility cannot be delegated to any other entity within the presbytery (such as an administrative commission). Thus the General Assembly may not determine in advance whether a particular denomination or its constituent bodies qualify under these standards.

   "The provisions of G-15.0203 a and b do, however, require that the General Assembly, as the highest governing body of this denomination, advise its presbyteries in this matter. The 218th General Assembly (2008) therefore advises the presbyteries that they must satisfy themselves concerning the conformity with this denomination of a transitional presbytery of the Evangelical Presbyterian Church (EPC) in matters of doctrines and order. Presbyteries may facilitate the exploration of conformity by means of an administrative commission, although such commissions may not be empowered to approve the dismissal of the congregation. In exploring this matter, presbyteries should consider such questions as whether the receiving EPC presbytery is

   "* doctrinally consistent with the essentials of Reformed theology as understood by the presbytery;
"• governed by a polity that is consistent in form and structure with that of the Presbyterian Church (U.S.A);

"• of sufficient permanence to offer reasonable assurance that the congregation is not being dismissed to de facto independence.

"Failure on the part of the presbytery thoroughly to explore and adequately to document its satisfaction in these matters may thus violate, however unintentionally, the spirit of the polity of the Presbyterian Church (U.S.A.)"

Rationale

The Book of Order grants to the presbytery the power to “divide, dismiss, or dissolve churches, in consultation with their members” (G-11.0103i). While the language of this provision is quite broad, there are important limitations imposed by two judicial cases from the polity of the Presbyterian Church in the United States, and by the provisions of G-15.0203a and b.


In 1973, the Presbytery of Florida (Presbyterian Church in the United States) dismissed three congregations from its membership without specifying the ecclesiastical body to whose membership they were transferred. A remedial complaint was filed against the presbytery with the Synod of Florida, which ruled that the presbytery had acted in violation of the Book of Church Order, 16-7(8). The case was appealed to the Permanent Judicial Commission of the PCUS, which sustained the synod’s ruling. In its finding, the PCUS Permanent Judicial Commission stated:

The language of BCO § 16-7(8) is unspecific and does not expressly spell out the limitations on the powers of presbytery in dismissing a church. Nevertheless we feel that the authority of presbytery is not an absolute and unqualified one.

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 § 31-1) or any other ecclesiastical body “whose organization is conformed to the doctrines and order of this church.” BCO § 18-
Although presbytery has great latitude in the exercise of its dismissal jurisdiction, it does not have an absolute and unlimited power.

Anderson is usually interpreted to mean that a presbytery may not dismiss a congregation to “independency.” In fact, Anderson also limits the denominations to which a Presbyterian Church (U.S.A.) congregation as those “whose organization is conformed to the doctrines and order of this church.” It is thus incumbent on the dismissing PC(USA) presbytery to determine whether the denomination to which the congregation proposes dismissal meets this standard.

Furthermore, Anderson imposes on the presbytery the obligation to inquire fully into the circumstances under which the request for dismissal is made. The commission’s reasoning speaks as eloquently to the present question as it did to the circumstances of 1973:

An ecclesiastical court is no more required than is a civil court “to fail to know what the whole world knows.” It may take judicial notice of facts not a formal part of the record before it which lie within the common stock of knowledge. We know that this case arises out of the tragic dissidence that exists within some parts of the church. One of the tactics of the dissident elements is to seek to have churches in which they are members dismissed as entities. They perceive certain benefits in this which might not be realized by orderly individual withdrawals followed by reassociation in other ecclesiastical bodies. This judgment says that this course is not constitutionally possible under the procedures of this church.

Strong and Bagby v. Synod of the Mid-South (Minutes, PCUS, 1976, Part I, pp. 92–96)

Three years later, the PCUS Permanent Judicial Commission rendered a second decision regarding the limitations on a presbytery’s right to dismiss congregations. The Bagby decision overturned the action of East Alabama Presbytery to form an administrative commission to which it then delegated broad powers to dismiss congregations to the Continuing Presbyterian Church (later the Presbyterian Church in America). Bagby underscored the decision of Anderson, and then went on:
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.

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.

In its supporting rationale, the commission grounded this finding in the connectional nature of the church:

In this denomination the different courts in their regular order of gradation “are not separate and independent tribunals” but “have a mutual relation” which is designed to “express the unity of the church.” This mutual relation is exactly ordered by the specific constitutional allocations of original and appellate jurisdiction. ... It is critical to the maintenance of this form that the various courts exercise the specific jurisdiction conferred upon them, neither usurping that not given them nor declining to exercise that given, whether by default or by attempted delegation. This connectional form of government is imbedded in our Constitution and can only be altered, generally or specifically, by formal amendment of that Constitution. ... Within this constitutional system exclusive original jurisdiction to dismiss churches, BCO 16-7(8), and to dismiss ministers, BCO 16-7(13), is vested in presbytery.

The thrust of the Bagby decision is twofold: (1) it upholds Anderson in prohibiting a presbytery from dismissing a congregation to autonomy, and (2) it requires that the decision to dismiss be reserved to the presbytery itself, and not delegated to a commission or other entity of the presbytery.

The Bagby decision can be distilled into four areas of concern that presbyteries should consider in determining whether to dismiss a congregation to another denomination. The four areas are:

a. The nature of the ecclesiastical body to which the congregation is dismissed,
b. The disposition of the property of the dismissed congregation,
c. The status of any pastors or associate pastors of the dismissed congregation, and

d. The transfer and status of members of the congregation, including both those who wish to be transferred and those who wish to retain membership in the PC(USA).

G-15.0203 a and b

The provisions of G-15.0203a define the procedures by which a PC(USA) presbytery may receive a congregation from a presbytery or similar governing body of another Christian denomination. Those procedures include (1) verification that the congregation has been regularly dismissed by the governing body of jurisdiction, and (2) receipt of “the advice of the highest governing body of that denomination dealing with relations between denominations.”

By requiring that “similar procedures shall be followed in dismissing a particular church from this denomination to another,” G-15.0203b mandates that presbyteries receive and consider the advice of the General Assembly concerning relations between the Presbyterian Church (U.S.A.) and the denomination to which the congregation proposes to be dismissed.

Transitional Presbyteries

By action of its 27th General Assembly (June 2007), the Evangelical Presbyterian Church created “transitional presbyteries,” which exist for a limited time (June 2007 to June 2012), and which are empowered to receive congregations from other denominations. The action leaves a great many questions unanswered regarding the future of congregations received into such entities.

Does the theology of the EPC “conform to the doctrines … of this denomination?” The EPC General Assembly action requires that

All churches and pastors entering the EPC on a transitional basis must affirm “Essentials of our Faith” without any reservations.
In both our polity and in the theology on which it is founded, we have long recognized that “reservations” and points of disagreement in some matters of faith are not only inevitable but ultimately nourishing for the health of the church. Moreover, we have resisted listing the “essential tenets of the Reformed faith” (W-4.4003c), precisely because such lists tend to confine the theology of the church within the narrow strictures of the historical moment in which the list was created, robbing it of its life and liveliness. For this reason, we have deemed it wise to have not one confessional statement but a Book of Confessions (Part I of this denomination’s constitution), in which are registered multiple statements of faith that stand in both mutual support and occasional tension. Can such theological suppleness be said to characterize the doctrines of the Evangelical Presbyterian Church?

Does a polity that contains such presbyteries “conform to the ... order of this denomination?” At the very least, the presbyteries so created appear to be operating under an understanding of presbytery membership that does not visibly conform to that of the PC(USA). According to the statement approved by the 27th General Assembly of the EPC, the purpose of transitional presbyteries is not to receive congregations into full membership in the EPC, but to provide a means by which congregations or associations and groups of congregations from other denominations and their pastors within the Reformed family of churches may become members of the EPC on a transitional basis toward the goal of full membership.2

Membership in such presbyteries is designed to allow existing presbyteries and transitional member churches and pastors the time and opportunity to fully assess the mutual expectations doctrinally, missionally, legislatively and financially before committing to full membership.3

The meaning of “transitional membership” and its differentiation from “full membership” is not fully clarified, leaving open the question of whether there are limits on the nature of congregational participation in the life of the EPC during the transitional period.
What happens to congregations in transitional presbyteries that elect not to be received into full EPC membership? When the five-year sunset date for the provisions is reached,

all congregations and ministers not received into full membership shall be dismissed. Transitional congregations and ministers may request dismissal from transitional membership at any time according to and following the provisions of the Book of Government including 5-6.4

Neither the EPC Book of Government or the enabling actions of the 27th General Assembly contain any property trust provisions; indeed, both maintain absolute congregational ownership of church property. This appears to mean that congregations dismissed from membership in EPC transitional presbyteries at or before the sunset date for transitional presbyteries may thereby attain independent status. It thus appears quite possible that a congregation seeking membership in an EPC transitional presbytery may be, in effect if not in actual intent, seeking dismissal to independent status. Such an eventuality would result in the loss of the investment of the time, money, energy, and faithfulness of generations of Presbyterians to the witness of the Reformed faith. It would certainly violate the spirit, if not the letter, of the Anderson and Bagby decisions.