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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

THE PRESBYTERY OF SEATTLE, a
Washington nonprofit corporation; THE
FIRST PRESBYTERIAN CHURCH OF
SEATTLE, a Washington nonprofit
corporation,

Plaintiffs,

v.

JEFF SCHULZ and ELLEN SCHULZ, as
individuals and as the marital community
comprised thereof,

Defendants.

No. 16-2-03515-9 SEA
No. 16-2-23026-1 SEA
Consolidated

DECLARATION OF SCOTT
LUMSDEN IN SUPPORT OF
PLAINTIFFS' AMENDED MOTION
FOR SUMMARY JUDGMENT IN
PRESBYTERY II

I, Scott Lumsden, pursuant to RCW 9A.72.085, declare as follows:

1. I am over the age of eighteen, have personal knowledge of the matters set forth in this declaration, and am competent to testify about them.

2. I am an ordained Minister of Word and Sacrament and teaching elder in the Presbyterian Church (U.S.A.) (the "Church"). I am the Executive Presbyter of the Presbytery of Seattle, also known as Seattle Presbytery, and I have held that position since 2008. My responsibilities as Executive Presbyter include serving as a pastor to some 50

1 congregations in the greater Seattle area and their pastors (also known as teaching elders)
2 and ruling elders.

3 3. I earned a Bachelor of Arts degree in Biblical Literature from Azusa
4 Pacific University and a Master of Divinity degree from Princeton Theological Seminary.

5 4. In my capacity as teaching elder and Executive Presbyter, I am familiar
6 with the *Constitution of the Presbyterian Church (U.S.A.)*, which consists of the *Book of*
7 *Confessions (Part I)* and the *Book of Order (Part II)*. The *Book of Order* provides the
8 ecclesiastical law of the Church.

9 5. Last year I submitted three declarations in support of plaintiffs' motion for
10 partial summary judgment in the case captioned *Presbytery of Seattle v. Schulz, et al.*,
11 King County Superior Court No. 16-2-03515-9 (*Presbytery I*). In those declarations I
12 described several provisions of the *Book of Order* that are pertinent to the work of the
13 Administrative Commission for First Presbyterian Church of Seattle (the "Administrative
14 Commission"), and I attached to my initial declaration Chapter Three in *The Foundations*
15 *of Presbyterian Polity*, titled "Principles of Order and Government," as well as the
16 complete text of the Form of Government, both found in the *Book of Order*.

17 6. In this declaration I reaffirm and, as appropriate, incorporate by reference
18 everything that I said in those three declarations.

19 7. A foundational constitutional and ecclesiastical principle of the Church is
20 that "[t]he particular congregations of the [Church] wherever they are, taken collectively,
21 constitute one church" (F-3.0201).¹ The Church is governed by presbyters, consisting of
22 ruling elders and teaching elders (F-3.0202), who come together in a hierarchy of councils
23 consisting, in ascending order, of sessions (pastors and elders of the local congregation),
24 presbyteries (composed of all pastors and at least one elder from each of the congregations

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¹ All references are to the *Book of Order 2015-2017*.

1 within a district), synods (composed of representative pastors and elders from the
2 presbyteries within a geographical region), and the general assembly (composed of
3 delegations of pastors and elders from the presbyteries).

4 8. Seattle Presbytery is the presbytery with jurisdiction over First Presbyterian
5 Church of Seattle (“FPCS”). FPCS is an historic church in downtown Seattle. For several
6 years the co-pastors of FPCS were Jeff and Ellen Schulz.

7 9. On December 16, 2015, Seattle Presbytery received a letter from Jeff and
8 Ellen Schulz. Attached as **Exhibit A** is a true copy of this letter. In their letter the
9 Schulzes renounced the jurisdiction of the Church. Under G-2.0509, renunciation of
10 jurisdiction removed the Schulzes from membership in the presbytery and terminated the
11 exercise of their ministry. This left FPCS without a pastor. At a meeting of Seattle
12 Presbytery on January 19, 2016, the stated clerk reported the Schulzes’ renunciation of
13 jurisdiction, and their names were stricken from the roll.

14 10. On February 16, 2016, the Administrative Commission made findings and
15 took actions, including the assumption of original jurisdiction over FPCS. But the
16 Schulzes and other former leaders of FPCS refused to recognize the jurisdiction of
17 Administrative Commission or to comply with its directions, prompting the filing of
18 *Presbytery I*.

19 11. Discovery in *Presbytery I* revealed that the former leaders had entered into
20 memoranda of understanding with the Schulzes in November 2015 purporting to grant
21 them certain rights in the event that their pastoral relationships were severed by Seattle
22 Presbytery. I have reviewed these memoranda and an accompanying resolution by the
23 “Board of Trustees” of FPCS. Seattle Presbytery was not asked to approve, and did not
24 approve, the resolution or the memoranda. Seattle Presbytery has never approved any
25 arrangement for severance pay to the Schulzes.

1 12. I have reviewed the minutes of congregational meetings conducted at FPCS
2 since 2014. Those minutes reflect that the FPCS congregation was not asked to approve,
3 and did not approve, the memoranda of understanding with the Schulzes or the change in
4 the terms of call that they reflect.

5 13. The Administrative Commission considered these memoranda of
6 understanding and determined that they were invalid, ineffective, and inoperative.

7 14. The Administrative Commission cited a variety of ecclesiastical authorities
8 in its Supplemental Report.

9 15. Attached as **Exhibit B** is a true copy of *Saurbaugh v. Pby. of Great Rivers*,
10 Remedial Case 206-13. This decision was rendered by the highest ecclesiastical court in
11 the Church, the General Assembly Permanent Judicial Commission.

12 16. Attached as **Exhibit C** is a true copy of *Baumann and Griffiths v. Session*
13 *of Bellefield Church*, Remedial Case 202-1. This decision was also rendered by the
14 General Assembly Permanent Judicial Commission.

15 17. The business proper to meetings of a congregation is set forth in G-1.0503
16 of the *Book of Order*. The third item is “changing existing pastoral relationships, by such
17 means as reviewing the adequacy of and approving changes to the terms of call of the
18 pastor or pastors”

19 18. The terms of call are addressed in G-2.0804 of the *Book of Order*. In
20 pertinent part, G-2.0804 reads as follows:

21 The terms of call shall always meet or exceed any minimum requirement
22 of the presbytery in effect when the call is made. The session shall review
23 annually the minister’s terms of call and shall propose for congregational
24 action (G-1.0501) such changes as the session deems appropriate,
25 provided that they meet the presbytery’s minimum requirements.

19 19. The relationship between teaching elders and the presbytery is described in
20 G-2.0502 of the *Book of Order*. In pertinent part, G-2.0502 reads as follows:

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As the Lord has set aside through calling certain members to be teaching elders, so the church confirms that call through the action of the presbytery. . . . In the performance of [validated] ministry, the teaching elder shall be accountable to the presbytery. Teaching elders have membership in the presbytery by action of the presbytery itself, and no pastoral relationship may be established, changed, or dissolved without the approval of the presbytery.

20. Attached as **Exhibit D** is a true copy of the Advisory Opinion: Clergy Compensation and Terms of Call (updated October 2012).

21. Renunciation of jurisdiction is addressed in G-2.0509 of the *Book of Order*. In pertinent part, G-2.0509 reads as follows:

When a teaching elder (or authorized representative) submits to the stated clerk of the presbytery of membership a written statement renouncing the jurisdiction of this church, the renunciation shall be effective upon receipt.

* * *

Renunciation of jurisdiction shall remove the teaching elder from membership and ordered ministry and shall terminate the exercise of that ministry. The renunciation shall be reported by the stated clerk at the next meeting of the presbytery, which shall record the renunciation, delete her or his name from the appropriate roll, and take such other administrative actions as may be required by this Constitution, including public communication of such a renunciation.

22. Attached as **Exhibit E** is a true copy of the first four requests for guidance submitted to the 202nd General Assembly (1990) together with the answers to those requests. (The answers were recommended by an advisory committee and approved by the General Assembly.) Request 90-4 begins at the bottom of the second page. The language quoted by the Administrative Commission appears on the third page in paragraph 21.126.

23. The *Book of Order* describes pastoral relationships in G-2.0504, the first paragraph of which states as follows:

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When teaching elders are called as pastor, co-pastor, or associate pastor of a congregation, they are to be responsible for a quality of life and relationships that commends the gospel to all persons and that communicates its joy and justice. They are responsible for studying, teaching, and preaching the Word, for celebrating Baptism and the Lord’s Supper, and for praying with and for the congregation. With the ruling elders, they are to encourage people in the worship and service of God; to equip and enable them for their tasks within the church and their mission in the world; to exercise pastoral care, devoting special attention to the poor, the sick, the troubled, and the dying; to participate in governing responsibilities, including leadership of the congregation in implementing the principles of participation and inclusiveness in the decision-making life of the congregation, and its task of reaching out in concern and service to the life of the human community as a whole. With the deacons they are to share in the ministries of compassion, witness, and service. In addition to these pastoral duties, they are responsible for sharing in the ministry of the church in councils higher than the session and in ecumenical relationships.

24. On August 25, 2016, the Administrative Commission adopted a series of resolutions, the first of which states as follows:

Whereas, the Administrative Commission for First Presbyterian Church of Seattle has assumed original jurisdiction with full power of the session of First Presbyterian Church of Seattle; and

Whereas, the Administrative Commission has appointed the Rev. Scott Lumsden, Executive Presbyter, as business and property manager of First Presbyterian Church of Seattle, with authority to oversee the financial affairs and property management of the church; and

Whereas, the Administrative Commission has received and has evaluated documents purporting to establish the right of the former co-pastors of First Presbyterian Church of Seattle, under specified circumstances, to receive severance payments (the “Severance Agreements”); and

Whereas, the Administrative Commission has found that the Severance Agreements are invalid (having not been properly authorized by the session, the congregation, or the presbytery) and inoperative (the Schulzes having severed their pastoral relationships with FPCS when they renounced the jurisdiction of the church) and has determined that the Severance Agreements presume conditions that have not been and cannot be fulfilled by the Schulzes (e.g., continued “good standing”); and

Whereas, the Administrative Commission has determined that there is no obligation to pay under the Severance Agreements; now, therefore, be it

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Resolved, That the Administrative Commission, acting as the session of First Presbyterian Church of Seattle, directs the Rev. Scott Lumsden, business and property manager of First Presbyterian Church of Seattle, not to pay Jeff or Ellen Schulz anything under the memorandum of understanding that each of them executed on November 10, 2015.

25. The Schulzes and their allies among the former leaders of FPCS vacated the FPCS church property in late July 2016. Since then, the Rev. Dr. Heidi Husted Armstrong has led worship services at FPCS. Jeff and Ellen Schulz are holding worship services at another location, and they refer to their church as “Seattle First Mosaic Church.”

26. The Administrative Commission noted in its initial report of February 16, 2016, that it had received credible reports of improper conduct involving the Schulzes. These reports noted that the Schulzes “were paid amounts not authorized by the congregation” and that “in late 2013 the [Schulzes] took some of their compensation in cash in order to make a better case for financial aid for a college-aged child.” These reports were confirmed when the Administrative Commission took possession of the church around August 1, 2016. In FPCS’s records, I located a memorandum dated January 14, 2014, related to “Accounting for Schulz 2012 cost of living payment” written to Jeff and Ellen Schulz from David Martin. Attached as **Exhibit F** is a true copy of that document.

27. The January 14 memorandum reflects that the Schulzes were paid outside of payroll in December 2013 in order to reduce their apparent income. The memorandum states that the Schulzes received a cost-of-living adjustment bonus in mid-2013 and that this disbursement “sharply reduc[ed] the potential financial aid available from Princeton University for their eldest son.” The Schulzes asked David Martin “if it was possible to in some manner defer the income to a[n] unspecified future period.” But instead of deferring income, the Schulzes received the income under the table and did not report it.

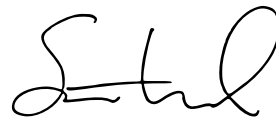
1 28. On November 29, 2016, Ellen Schulz wrote to the FPCS bookkeeper
2 asking FPCS to issue W-2s for 2016 that include \$11,182.20 of income that the Schulzes
3 actually received in 2013. Attached as **Exhibit G** is a true copy of this correspondence.
4 FPCS declined to issue tax documents that did not accurately reflect the income that the
5 Schulzes received in 2016.

6 29. Receiving under-the-table payments to conceal income from the books and
7 records of a church, from taxing authorities, or both is serious misconduct for a
8 Presbyterian pastor. The arrangement that the Schulzes made with Mr. Martin, a former
9 ruling elder of FPCS, to impermissibly defer reporting (but not receipt) of income
10 undermines confidence in the honesty and judgment of the church's leadership. The
11 arrangement also calls into question the integrity of the church's financial recordkeeping,
12 and such integrity is critical to the reputation and financial health of a church.

13 30. The Schulzes' conduct in accepting under-the-table payments and failing
14 to report that income to taxing authorities was likely to cause and, when exposed, did
15 cause reputational detriment to both FPCS and the Schulzes. Members of Seattle
16 Presbytery have told me that they are appalled by the Schulzes' conduct.

17 I declare under penalty of perjury under the laws of the State of Washington that
18 the foregoing is true and correct.

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20 EXECUTED this 19th day of January 2017 at Seattle, Washington.

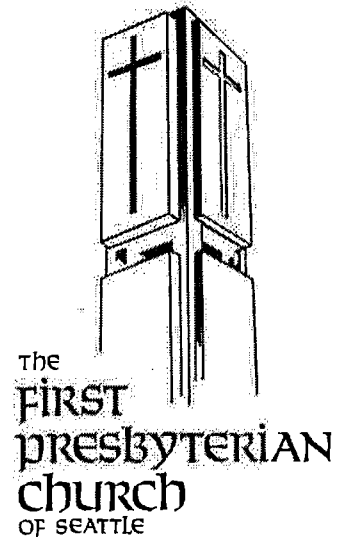
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23 _____
24 Scott Lumsden
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EXHIBIT A

December 7, 2015

Mrs. Karen Breckenridge
Stated Clerk
Seattle Presbytery
1544 South Snoqualmie Street
Seattle, WA 98108



Dear Mrs. Breckenridge,

On November 15, 2015 the congregation of Seattle First Presbyterian Church voted in favor of disaffiliating from the Presbyterian Church (USA).

In alignment with the congregation, effective on this day, December 7, 2015, we, Jeff Schulz and Ellen Schulz, renounce jurisdiction of the Presbyterian Church (USA), per G-2.0509 and G-2.0407 of the Book of Order.

We pray for God's blessing upon you, Seattle Presbytery and the PC(USA).

Grace and peace in Christ,

A handwritten signature in black ink, appearing to be "Ellen A. Schulz".

Rev. Ellen A. Schulz

A handwritten signature in black ink, appearing to be "Jeffrey E. Schulz".

Rev. Dr. Jeffrey E. Schulz

Cc: Session of Seattle First Presbyterian Church
Bruce Leaverton

EXHIBIT B

**Saurbaugh v. Pby of Great Rivers,
Remedial Case 206-13,
11.094**

LORENA SAURBAUGH
Complainant/Appellee
v.
PRESBYTERY OF GREAT RIVERS
Respondent/Appellant

This is a remedial case which has come before the commission on appeal by the Presbytery of Great Rivers from a decision by the Permanent Judicial Commission of the Synod of Lincoln Trails.

The Permanent Judicial Commission finds that it has jurisdiction, that appellant has standing to appeal, that the appeal was properly and timely filed, and that the appeal is in order.

a. History

Approximately ten years ago the Presbytery of Great Rivers established a larger parish, pursuant to a written cooperative working agreement, of the West Prairie Presbyterian Church and three other churches, which three churches later united to form the Scotland Trinity Presbyterian Church. The Cooperative Working Agreement provided in part:

"8. The responsibilities of the Parish Relations Committee shall be . . .

d. Recommending dissolution of the Pastoral call or the Cooperative Agreement. The Parish Relations committee should be responsible for discussing these issues prior to any formal action by any of the four sessions/ congregations. Dissolution of Cooperative Agreement shall require three months notice."

The Agreement further provided:

- D. Dissolution of Pastoral Services*
- 1. How done (51.01) Book of Order*
 - 2. Thirty days notice will be required*

The agreement specified the pastor's compensation and did not specifically provide for any compensation subsequent to dissolution of the pastoral relationship.

Later, Donna K. Medlock was called as pastor to this parish.

In meetings in December, 1992, the Cooperative Parish Council voted to recommend dissolution of the pastoral relationship to the congregations based, according to the presbytery, on Ms. Medlock's perceived incompatibility with the congregations and not on any failure to be an otherwise competent minister.

Upon being informed of the Parish Council's decision, Ms. Medlock chose to resign before the recommendations could be considered by the congregations involved. She requested that her pastoral relationship be dissolved as of February 28, 1993.

Representatives of the respondent's committee on ministry (COM) felt that the resignation was not voluntary and that financial compensation was in order. Representatives of the West Prairie Church now contend that the resignation was voluntary. After deliberation and discussion with members of the COM, the Parish Council decided to propose to the two congregations the following severance

compensation to Ms. Medlock:

That the dissolution be effective February 28, 1993, and that the compensation include continuance of salary, use of the manse, and full payment of pension terms through the end of August, 1993.

The congregation of the Scotland Trinity Church overwhelmingly approved the recommendations of the Parish Council at a congregational meeting on the last Sunday of December, 1992.

However, at a congregational meeting on January 3, 1993, the congregation of the West Prairie Presbyterian Church approved the dissolution of the pastoral relationship but not the severance compensation terms. The West Prairie Church approved the dissolution with compensation continuing only until the end of May, 1993, rather than the end of August, 1993, as proposed by the parish council. The vote was reported to be four in favor of the recommendation of the parish council and fourteen against it. The reason presented to the synod's permanent judicial commission (synod PJC) was that the longer period of compensation would seriously detract from the West Prairie Church's financial capability to continue its ministry.

The COM was informed of the actions by the West Prairie Church, and after discussing the issues at meetings on January 5 and February 9, 1993, (with no representatives of West Prairie Church present for consultation), voted to recommend the longer term of compensation to the Presbytery of Great Rivers. The clerks of session of both churches were informed of the COM's recommendation in letters from the stated clerk of presbytery dated February 12, 1993.

Representatives of the West Prairie Church argue they were unable to obtain further consideration of their position prior to consideration and action by the presbytery on February 23, 1993. The presbytery argues that there was further consideration. After discussion, the presbytery voted to approve the COM's recommendation. The COM did include the action of the West Prairie congregation in its presentation to the presbytery.

On March 20, 1993, Lorena Saurbaugh, who was clerk of session and commissioner to presbytery from West Prairie Church, filed a complaint alleging that the action of respondent was irregular in that the terms of dissolution of the pastoral relationship had not been approved by the West Prairie Presbyterian Church. Complainant's brief and testimony at the hearing before the synod PJC stated the complaint was initiated at the request of the Session of the West Prairie Church.

On August 27, 1993, the synod PJC heard the case, but did not arrange for a verbatim recording of the testimony. On September 21, 1993, and September 27, 1993, the vice-moderator and the vice-clerk respectively signed the synod PJC's decision, including the following:

The Permanent Judicial Commission finds that the Presbytery of Great Rivers exceeded its authority when it voted to require the West Prairie Presbyterian Church to provide compensation which had been rejected in a congregational meeting. The Book of Order does not give the presbyteries power to require congregations to pay compensation upon dissolution of pastoral relationships. This authority cannot be inferred from the power to set minimum compensation, approve calls and dissolve relationships.

On October 10, 1993, the Presbytery of Great Rivers filed a notice of appeal.

b. Specifications of Error

The appellant alleges three specifications of error.

(1) An improper interpretation and application of the wrong principles of the *Constitution of the Presbyterian Church (U.S.A.)* led to a mistaken conclusion and decision by the (synod PJC). The appellant holds that a presbytery has the authority to decide financial terms when an involuntary dissolution of pastoral relationship occurs.

This specification is not sustained.

The West Prairie Church was part of a larger parish recognized by the presbytery. *Book of Order*, G-14.0504 has provisions which apply to such situations, among them the following:

When such a call has been issued by a parish council, and approved by the presbytery, each participating church shall be obligated to continue its financial support of the parish for the duration of the pastorate, unless excused by the other participating churches with the approval of the presbytery.

This paragraph makes no reference to an obligation to continue financial support beyond the dissolution of the pastoral relationship.

Nothing in G-14.0602, G-14.0603, or G-11.0103o makes any reference to a power to compel a congregation to pay a former pastor any compensation after a pastoral relationship has been dissolved.

As in the approval of terms of call at the beginning of a pastorate, and as in the approval of changes in those terms from time to time, under the particular facts here, it is the congregation that takes action prior to the concurring approval of the presbytery.

Thus any special terms requiring continuance of salary and benefits after the dissolution of the pastoral relationship in this case required the approval of the congregation.

Appellant asserts: the financial responsibility of a congregation to a pastor continues until released by a presbytery. Appellant's brief cites a particular sentence in this commission's decision in Donald Garton v. Presbytery of Blackhawk, (*Minutes*, 1991, Part I, p. 185): "Presbyteries are responsible for requiring churches to comply with the terms of the call until the pastoral relationship is finally dissolved." In the present case, the pastoral relationship was dissolved on February 28, 1993, and the entire period in question was subsequent to that date. Accordingly the presbytery misinterprets the Garton case. A presbytery may require a congregation to fulfill terms of call unfulfilled at the time of dissolution.

(2) The opinion of the (synod PJC) mistakenly states that "the testimony strongly indicates that the committee on ministry failed to adequately exercise the responsibility stated in G-11.0502i . . ."

This specification is not sustained.

In the absence of a verbatim transcript of the testimony heard by the synod PJC, this commission has no basis on which to overturn the lower court's opinion of what that testimony indicated.

(3) The permanent judicial commission of the synod erred in not providing for "accurately and fully recorded [ing]" (D-9.1100) testimony nor in seeking a waiver in writing of this requirement.

This specification is sustained.

Book of Order, D-8.1800a provides that:

- ... in those remedial cases in which evidence is received, whether at the trial or on appeal, the clerk shall:
- a. Arrange in advance for the accurate verbatim recording of all testimony in question and answer form.

It is possible for all parties to a case to waive the verbatim recording. However, in this case there is no record of such a waiver.

Therefore, the synod PJC erred in not providing for an accurate verbatim recording of testimony. However, this error would not have changed the decision in this case.

c. Order

It is therefore ordered that the decision of the Permanent Judicial Commission of the Synod of Lincoln Trails is sustained. The West Prairie Presbyterian Church is not obliged to pay severance compensation beyond the three-month period approved by its congregation. If they have paid more than that, the Presbytery of Great Rivers is ordered to reimburse the West Prairie Church.

It is further ordered that the stated clerk of the Presbytery of Great Rivers, the appellant, report this decision to the presbytery at its first meeting after receipt, 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 General Assembly (*Book of Order*, D-8.1900).

The untimely death of Harold Densmore, member of the commission, on October 24, 1993, precluded his participation in the proceedings.

EXHIBIT C

**Baumann and Griffiths v. Session of Bellefield Church, Remedial Case
202-1,
11.096**

DWIGHT M. BAUMANN and
ROBERT B. GRIFFITHS,
Complainants/Appellants

v.

SESSION OF BELLEFIELD PRESBYTERIAN CHURCH,
Respondent/Appellee

In 1983 the session of Bellefield Presbyterian Church addressed issues relating to the mishandling of church finances by the pastor/head of staff of that congregation. The problem was first addressed by the personnel committee of session in consultation with the church treasurer. Following a report to the session by the personnel committee, the session contacted George Wilson, director of Ministerial Relations for the Presbytery of Pittsburgh.

Wilson and a committee of elders from the session met with the pastor and a proposal was submitted to the session. Subsequently, George Wilson, the session, and the pastor worked out a plan to try to resolve the problems and an "ad hoc committee on reconciliation" was formed. This committee, after some negotiations, presented a new plan to the session.

The session then took three actions: one, adopted a statement to the congregation on stabilization of relationships; two, adopted a statement of reconciliation between the minister and the session on behalf of the congregation; and three, addressed a letter to Robert B. Griffiths advising him that his attitude was vindictive and abusive and calling on him to "refrain from his activities, repent and publicly confess his sins."

The session directed that the statement of reconciliation ("Confidential Statement") between the pastor and the session on behalf of the congregation be held in confidence and not be revealed to the congregation.

Baumann and Griffiths each filed a complaint against the session in September of 1984 challenging the propriety of holding the statement in confidence. These two complaints were joined for hearing by the permanent judicial commission of the Presbytery of Pittsburgh (Presbytery PJC).

After the first complaint was filed, agreement was reached by the parties that the "Confidential Statement" would be released to the complainants if it were not rescinded. Session subsequently rescinded the agreement, and Complaint #1 was withdrawn.

In the fall of 1985 an administrative commission was appointed by the presbytery to "investigate the unrest and conflict of a long-standing nature within the life of Bellefield Presbyterian Church." This commission, headed by Robert Harvey, recommended to the presbytery that the pastoral relationship be dissolved. In April of 1986 this recommendation was rejected by the presbytery.

Complaint #2 arose indirectly out of the Harvey Commission report. A congregational meeting was called by the session to "more fully inform them of presbytery's actions with recommendations and our ongoing efforts in working to resolve the problems within the church." The session first called the meeting then cancelled it. Six elders then requested that a congregational meeting be called. The session refused, and Complaint #2 was filed with the presbytery in July 1986, complaining of the refusal of session "to inform the congregation of the nature of the investigation

and the findings and the findings [sic] of the investigation inquired into by an administrative commission."

Presbytery PJC dismissed Complaint #2 on the grounds that the complaint did not state a cause upon which relief could be granted. This decision was appealed to the permanent judicial commission of the Synod of the Trinity (Synod PJC). The Synod PJC remanded the case to the Presbytery PJC with instructions to proceed to a trial on the merits or to hold a further pretrial conference. On remand the Presbytery PJC again dismissed the complaint, and a second appeal to the Synod PJC resulted.

Complaint #3 was filed in June of 1987, alleging that the "Confidential Statement" was not totally, but only partially rescinded, and complaining as in Complaint #1 of the secret nature of an agreement entered into on behalf of the congregation while refusing to inform the congregation of the nature of the agreement. Complainants requested that the statement be distributed to the congregation along with an apology from the session for its misguided use of power in producing such a document in the first place.

Complaint #3 was heard by Presbytery PJC in December of 1987 and Presbytery PJC reaffirmed the 1984 decision, holding the documents to be confidential. This was also appealed to the Synod PJC in February of 1988. The Synod PJC upheld the Presbytery PJC's decision at its hearing in April of 1989.

Complaint #4 was filed in July of 1987, complaining that an agreement made with the minister governing the handling of the finances of the church was not being kept. Complaint #4 asked that the presbytery remove the session and replace it with an administrative commission.

Presbytery PJC heard this complaint on December 1, 1987, and found that the complaint failed to state a claim on which relief could be granted.

Synod PJC heard cases two, three, and four at the same time and affirmed all three on the same bases as the decisions of the Pittsburgh PJC.

After fully considering the appeal, the Permanent Judicial Commission of the General Assembly (GA PJC) hereby reverses the Permanent Judicial Commission of the Synod of the Trinity on all three of the cases on appeal.

The pleadings as submitted do not include specifications of error. From the record on appeal the GA PJC identifies the following specifications of error:

1. The Synod PJC was in error in affirming the decision of the Presbytery PJC that the *"Confidential Statement on Reconciliation of the Relationship Between the Session, on Behalf of the Congregation, and the Senior Pastor"* was confidential despite the fact that it was made on behalf of the congregation and in effect changed the terms of call of the pastor.
2. The Synod PJC was in error in affirming the decision of the Presbytery PJC that the charges of fiscal malfeasance, and of prevarication on the part of the pastor were not sufficient for disciplinary action and that the complaint failed to state a claim upon which relief could be granted.
3. The Synod PJC was in error in affirming the decision of the Presbytery PJC, which upheld the actions of the session in refusing to inform the congregation of the findings of the administrative commission even after agreeing to do so.

Each specification of error outlined above is sustained.

We do not remand this case for further judicial process. The GA PJC believes that nothing will be gained by further prolongation of this case. Furthermore, the pastor involved is no longer associated with the congregation.

We believe it appropriate, however, to comment on some of the problems with the judicial process in this case.

The "Confidential Statement" made by the session was admittedly in the name of and for the congregation, and it was not appropriate to withhold this statement from the congregation. In

addition, since the statement could be interpreted as changing the terms of call for the pastor, it would be a matter requiring approval by the congregation.

The major problem identified by the complainants in this case was a failure to inform the congregation in an adequate manner of matters affecting the life of the congregation. The recommendation a presbytery commission to the presbytery to sever a pastoral relationship is a matter seriously affecting the spiritual life of the congregation, and it is irregular to withhold this information from them.

The government of the Presbyterian Church (U.S.A.) is representative (*Book of Order*, G-6.0107). A session should keep the congregation advised of its actions in so far as reasonably possible.

The complainants sought by appropriate means to raise issues involving disciplinary process. The Rules of Discipline are not only to restrain wrongdoing but also to vindicate the innocent from the shadows of unresolved accusations.

The hearing process submitted to this PJC is woefully lacking in the basic elements of process required by the *Book of Order*. At every level of the judicial process in this case, rules of procedure were either ignored or unfairly administered. The General Assembly PJC reminds the parties that our tradition of dealing with the joys and problems of our faith decently and in good order is a worthy heritage.

The Permanent Judicial Commission of the General Assembly instructs the session of Bellefield Presbyterian Church in consultation with the appropriate presbytery body, to call a congregational meeting prior to April 1, 1990, for the purpose of public reading of this decision and to provide an opportunity for any member of the congregation to receive a full and adequate response to any questions concerning this order.

Upon completion of compliance with this instruction, the stated clerk of presbytery will notify the moderator of the Permanent Judicial Commission of the General Assembly of the session's compliance with this order.

The GA PJC sends to you our fervent prayers for the parties' spiritual healing and reconciliation.

Margaret J. Thomas, Moderator
Milton S. Carothers, Clerk

EXHIBIT D

ADVISORY OPINION:
CLERGY COMPENSATION¹ AND TERMS OF CALL

WHO DETERMINES THE TERMS OF CALL OF A NEW PASTOR?

Determining the terms of call is an important conversation between the pastor, congregation and the presbytery.² The terms of call often reflect a wide variety of issues ranging from salary and housing allowance, annual and study leave, pension and benefits, to moving costs and dental insurance, etc.³ Given the importance of these issues, all parties should enter the call process with a spirit of prayerful discernment, practicality and wisdom. Further, the pastor and congregation should be aware of the policies and guidelines of the calling presbytery and recognize that “no pastoral relationship may be established, changed or dissolved without the approval of the presbytery.”⁴ Additionally, it is important that the pastor and congregation be aware that, “the terms of call shall always meet or exceed any minimum requirement of the presbytery in effect when the call is made.”⁵

MUST THE TERMS OF CALL INCLUDE PARTICIPATION IN THE BENEFITS PLAN?

Yes. “The call shall include participation in the benefits plan of the Presbyterian Church (U.S.A.), including both pension and medical coverage...”⁶ This means that all pastors, co-pastors, and associate pastors must be enrolled for coverage in the benefits plan administered through the Board of Pensions.

WHO HAS THE RIGHT TO DETERMINE CHANGES TO THE TERMS OF CALL?

“The session shall review annually the minister’s terms of call and shall propose for congregational action (G-1.0501) such changes as the session deems appropriate, provided that they meet the presbytery’s minimum requirements.”⁷ Along these lines, business proper to a congregational meeting includes, “changing existing pastoral relationships, by such means as reviewing the adequacy of and approving changes to the terms of call of the pastor or pastors.”⁸ The congregation may modify the session’s recommendations if it chooses to do so. The session must then reallocate the line items in the budget to reflect such changes.

MUST A CONGREGATION BE PROVIDED FULL INFORMATION EACH YEAR ON THE TERMS OF CALL AND TOTAL COMPENSATION PACKAGE FOR A PASTOR, CO-PASTOR OR ASSOCIATE PASTOR?

Yes, full information must be provided to the congregation and there can be no confidential terms.⁹ G-1.0503c further affords the congregation the right not only to review changes to the terms of call, but also to review the “adequacy of” the terms of call.¹⁰ Accordingly, the congregation must have the opportunity to approve the adequacy of the terms of call, even if there has been no change in terms from the previous year.

WHAT IS THE ROLE OF THE PRESBYTERY IN APPROVING THE TERMS OF CALL?

Annually, the presbytery must approve the terms of call and ensure that the terms of call always meet or exceed any minimum requirement of the presbytery in effect when the call is made.¹¹

DOES THE SESSION HAVE THE AUTHORITY TO REALLOCATE THE DISTRIBUTION OF THE COMPENSATION PACKAGE IF THE TOTAL AMOUNT REMAINS THE SAME?

Yes. The session, in consultation with the minister, may allocate the terms of call approved by the congregation so long as those allocations do not exceed the total package approved by the congregation. In order to be recognized by the Internal Revenue Service, exclusions from income must be properly treated by the employer.¹² With regard to housing allowance, it must be designated in advance by the proper employing body.¹³ With regard to other forms of compensation that do not affect cash salary (i.e., study leave, mileage, etc.), an accountable plan as defined by the Internal

Revenue Code and regulations should be adopted by the employer so that such amounts are not deemed taxable income to the minister.

WHEN A CALL IS BEING TERMINATED AND THERE IS A SEVERANCE PACKAGE IS THIS A CHANGE IN THE TERMS OF CALL?

Yes. The session, congregation and presbytery must approve the severance package as it is considered a change in the terms of call.¹⁴

UPDATED OCTOBER 2012

¹ For additional information related to this subject *see also* "Legal Resource Manual for Presbyterian Church (U.S.A.) Middle Governing Bodies and Churches," Third Edition (2010), sections 6 and 8 at: <http://www.pcusa.org/resource/legal-resource-manual/>

² *See* "Having a Conversation about Terms of Call" at: <http://www.pcusa.org/resource/having-conversation-about-terms-call/>

³ For additional resources and information on this subject matter *see*: "The 2011-2013 Advisory Handbook for Ministry Committees/Commissions" at: <http://www.presbyterianmission.org/ministries/ministers/committee-ministry-advisory-handbook/>

⁴ G-2.0502

⁵ G-2.0804

⁶ G-2.0804

⁷ G-2.0804

⁸ G-1.0503c

⁹ *Baumann and Griffiths v. Session of Bellefield Church (Minutes, Part I, 1990, p. 140, 11.096).*

¹⁰ G-1.0503c

¹¹ G-2.0502; G-2.0804

¹² For more detailed information on clergy tax issues *see* "Tax Guide for Ministers" provided by The Board of Pensions at: <http://web.pensions.org/Publications/pensions/Home/Forms%20&%20Publications/Booklets%20&%20Brochures/tax-000.pdf>; *see also* Richard R. Hammar, *2012 Church and Clergy Tax Guide* (Christianity Today: 2012).

¹³ Along these lines, if the session acts to approve an increase in housing allowance by \$100 per month in July, the minister may exclude only \$600 (6 months x \$100) with regard to the increase for that particular calendar year and the reporting form (i.e., W-2) issued by the employer should only reflect such amount.

¹⁴ *See* G-2.0502; For a resource related to these issues, *see* "Calling a New Installed Pastor" at: <http://www.pcusa.org/resource/calling-new-installed-pastor/>

EXHIBIT E

Requests

30. Request 90-1. ON AN INTERPRETATION OF MEMBERSHIP ON A PRESBYTERY COUNCIL (*Minutes*, 1990, Part I, p. 254)

1990 21.111 [GA approved recommendation, see page 38.]

Request 90-1, from the stated clerk of the Presbytery of Boise, asks whether a Presbyterian who is not an elder may serve on presbytery council. The inquiry arises from the inclusion of persons on a presbytery council who are there either by reason of their office, e.g. , as a moderator of a men's or women's group, or by election as a director or trustee of the civil corporation should the council also serve as the trustees or directors of the civil corporation of the presbytery.

21.112

The advisory committee recommends to the 202nd General Assembly (1990) that it answer *Request 90-1* as follows:

All voting members of presbytery must be elders, who become members upon their election as commissioners, or ministers who are continuing members (See G-11.0101). The presbytery elects members to its council, and the council may be authorized to act for presbytery (See G-11.0103v). Clearly the intent is that participation in presbytery actions be limited to ministers or elders. When presbytery delegates any of its stated responsibilities to a committee, commission, or council, the delegated body must be as qualified as the presbytery; that is, it must be composed of elders and ministers. If non-elders are members of the council, they serve as corresponding members with voice but no vote and they may not vote on actions for the presbytery.

21.113

If the members of the council are to be designated as the directors or trustees of the civil corporation of the presbytery, non-elder directors or trustees may participate and vote when the corporation is meeting or acting on corporate non-ecclesiastical matters. Under civil law, the actions of the corporate board members or trustees in non-ecclesiastical matters need not be referred to presbytery unless the charter or articles of incorporation require such approval.

31. Request 90-2. CONCERNING THE EMPLOYMENT OF STAFF (*Minutes*, 1990, Part I, p. 254)

1990 21.114 [GA approved recommendation, see page 39.]

Request 90-2, from the stated clerk of the Presbytery of Kendall, asks the question, "Is it permissible not to hire a person because of his/her religious preference?"

21.115

The advisory committee recommends to the 202nd General Assembly (1990) that it answer *Request 90-2* as follows:

There is nothing in the *Book of Order* that prohibits religious discrimination by churches in the employment of lay employees. The *Book of Order* stresses a recognition and an affirmation of

diversity and the need for inclusiveness in all areas of the life of the church; in its witness, in its worship, and in the ordering of its corporate work (See G-4.0401-.0403).

21.116

Section 703 of the Civil Rights Act of 1964, 78 Stat. 255, as amended, 42 U.S.C., Section 2000e-1 exempts religious corporations from Title VII's prohibition against discrimination in employment on the basis of religion. As a result, churches are permitted to discriminate on that basis in the employment of lay personnel. Churches, however, may not discriminate on other grounds, such as race, color, sex, or national origin.

21.117

Nevertheless, unless a religious viewpoint directly impacts upon work performance, the church must be mindful that "[o]ur unity in Christ enables and requires the church to be open to all persons and to the varieties of talents and gifts of God's people, including those who are in the communities of the arts and sciences" and that the church "shall give full expression to the rich diversity within its membership and shall provide means which will assure a greater inclusiveness leading to wholeness in its emerging life" (G-4.0402 and .0403).

32. Request 90-3. ON THE PROCESS FOR THE CALLING OF AN ORGANIZING PASTOR TO THE POSITION OF PASTOR OF A NEW CHURCH (*Minutes*, 1990, Part I, p. 254)

1990 21.118 [GA approved recommendation, including an amended 21.120, pages 62, 86.]

Request 90-3, from the organizing pastor for the Church in the Hills, Bellaire, Michigan, asks for clarification of the process by which an organizing pastor is employed to organize a new church and is subsequently called to be the pastor of the new church.

21.119

The advisory committee noted that the same question was before the 201st General Assembly (1989) in *Overture 89-38* from the Presbytery of Cayuga-Syracuse. The General Assembly answered *Overture 89-38* "by commending the Presbytery of Cayuga-Syracuse for bringing this matter to the attention of the advisory committee and that the Advisory Committee on the Constitution retain this overture for further study and drafting of amendments" (*Minutes*, 1988, Part I, p. 221).

21.120

The advisory committee recommends to the 202nd General Assembly (1990) that it answer *Request 90-3* regarding *Overture 89-38* by asking the Advisory Committee on the Constitution to retain this request for further study and drafting of amendments to G-14.0501 on the calling of an organizing pastor to the position of pastor and to report to the 203rd General Assembly (1991).

33. Request 90-4. ON AN INTERPRETATION OF SEVERAL SECTIONS OF THE BOOK OF ORDER (*Minutes*, 1990, Part I, p. 255)

1990 21.121 [GA approved recommendation, see page 86.]

Request 90-4, from the Office of the Stated Clerk, asks for answers to the following questions:

1. Should one assume that G-6.0501, concerning renunciation of jurisdiction, intends that if the officer is a minister who is a pastor, then the pastoral relationship is dissolved and the pulpit is vacant? A statement to this effect is explicitly included in D-10.0600.

21.122

2. Should one assume that renunciation of jurisdiction in accord with G-6.0500 is of such import that the provision of D.10.0700 should be implied to apply as though G-6.0501 included the sentence, "A report of renunciation by a minister shall be sent to the Stated Clerk of the General Assembly who shall make a quarterly report of all such information to every presbytery of the church."

21.123

3. Is the action taken by a minister in G-11.0416, namely, accepting membership of any character in another denomination, equivalent to renouncing the jurisdiction of the church, so that one may rightfully imply the addition to G-11.0516 of the sentence, "In taking this action, the minister has renounced the jurisdiction of the church, and the provisions of G-6.0500 apply"? Note that for a church member, G-10.0302b.(4) seems to equate joining another church without regular transfer and renouncing the jurisdiction of the church.

21.124

4. Section D-5.0300 speaks of the end of jurisdiction in judicial process. It states that jurisdiction in judicial process ends when a church officer or a member renounces the jurisdiction of the church in writing to the clerk or stated clerk. Does this section intentionally narrow the renunciation of jurisdiction to one of the means of such renunciation of jurisdiction set forth in G-6.0501, or does D-5.0300 call forth a broader interpretation? A broader view would be equivalent to a rewriting for the section to read, "Jurisdiction in judicial process ends when a church officer or a member renounces the jurisdiction of the church in accord with the provisions of G-6.0500, G-11.0416, or G-10.0302b.(4)."

21.125

The advisory committee recommends to the 202nd General Assembly (1990) that it answer these questions in *Request 90-4* as follows:

21.126

1. If a pastor of a particular church renounces the jurisdiction of the church under G-6.0501, the pastoral relationship is thereby dissolved, and the pulpit is vacant.

21.127

2. While the import is serious, an amendment to G-6.0501 requiring that a report be sent to the Stated Clerk of the General Assembly is not needed.

21.128

3. The continuation of or accepting membership of any character in another denomination by a minister of this church is equivalent to renouncing the jurisdiction of the church.

EXHIBIT F

Memorandum

To: Jeff & Ellen Schulz

Cc: Mansour Khajehpour

From: Dave Martin

Date: January 14, 2014

Regarding: Accounting for Schulz 2012 cost of living payment

Session discussed possible cost of living adjustment for the pastors and the failure to make any adjustments in the prior six years during the 2013 budget review. Session decided to give the Schulz a \$15,000 one-time payment with \$5,000 of that amount contingent upon development of a strategic plan. The contingency was cleared with submission of the strategic plan in 2013.

Session made the funds available in 2012 with the payment date at a time selected by the Schulz. The funds were disbursed in mid-2013.

The 2013 disbursement increased the Schulz 2013 taxable income thereby sharply reducing the potential financial aid available from Princeton University for their eldest son. The Schulz asked me if it was possible to in some manner defer the income to a unspecified future period. I suggested and they agreed to defer their salaries for December 2013 to a future period.

The December salary was accrued in the church's accounting records with an offsetting amount recorded as a liability. The Schulz were issued non-payroll checks on December 15th and 31st for the approximate net checks they would have received except for the deferral. The offsetting entries for these checks were to the accrued liability previously discussed. The balance in the accrual is the approximate amount of withholdings that will be eventually due when the Schulz decide to recognize the income.

The correct amount of salary has been, or will be, reported on the Schulz W-2s and reported to the denomination for pension computation.

EXHIBIT G

Redacted

From: finance@firstpres.org <finance@seafirstpres.org>
Date: Tue, Nov 29, 2016 at 1:15 PM
Subject: Fwd: Realizing the balance of our 2013 Deferred Income
To: ellenschulz@outlook.com
Cc: Scott Lumsden <scott.lumsden@seattlepresbytery.org>

Hello Ellen:

Per Scott's review below email, we are going to forward this issue to the attorneys.

Hongyan

----- Forwarded message -----

From: <hdu2004@gmail.com>
Date: Tue, Nov 29, 2016 at 11:01 AM
Subject: Fwd: Realizing the balance of our 2013 Deferred Income
To: finance@seafirstpres.org

Hi Hongyan.

I hope you and your family are well.

Re. our 2013 deferred income – this year we plan to realize the remaining balance, which is \$11,182.20.

Therefore, please include in Jeff and my 2016 W-2's, the remaining balance (\$11,182.20) of our 2013 deferred income.

As the finance office records indicate, we received a one-time bonus (a combined total of \$15,000,) dispersed in three separate checks, in the summer of 2013. The combined one-time bonus of \$15,000 was reported to the BOP in July 2013. We realized \$2,817.80 (of the \$15k) through Jeff's paychecks in December 2013. We deferred the remaining \$12,182.20. In early December, 2014, we requested that \$2,000 be realized, but the finance office was unable to do so, and requested that we notify the finance office by late November. In 2015 we realized \$1,000 more of the deferred income. Now we are requesting that the full balance of \$11,182.20 be realized in 2016.

Thank you for your help with this matter.

You and your family remain in our prayers.

Gratefully,

Ellen

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Hongyan Du

Accounting

First Presbyterian Church of Seattle

NEW Email: finance@seafirstpres.org

[206-624-0646](tel:206-624-0646)

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Scott Lumsden

Executive Presbyter, [Seattle Presbytery](http://SeattlePresbytery.org)

scott@seattlepresbytery.org | 206.569.8510