

Dissolution of Pastoral Call Mediation and Arbitration Process

Adopted by the Commission on Transitional Ministry on June 23, 2020
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Presbytery of Milwaukee of the Presbyterian Church (U.S.A.)

The Compensation Policy for Dissolution of a Pastoral Call During Times of Conflict approved and adopted by the Presbytery of Milwaukee (November 6, 2018) states:

- (1.) When a session, congregation, pastor, or the presbytery determines that a ministry is conflicted,
 - (a.) they first seek to address the problems/concerns with the Commission on Ministry (COM).
 - (b.) Should those efforts prove ineffective and should it be decided that the pastoral relationship must be dissolved, even though the pastor has no new calling, the following policy provides the minimum terms for dissolution.
 - (c.) Cessation of pastoral duties with or on behalf of the congregation begins on the effective date of dissolution...
 - (d.) The above policy reflects the minimum terms of dissolution.
 - (1.) Additional terms may be negotiated,
 - (2.) **or in extenuating circumstances the above terms may be appealed to the COM (now CTM) which has the final say.**
- (2.) Unless otherwise agreed upon at the outset of the pastoral relationship, these terms shall be applied to all contracts and terms of call from the date this policy was approved by the Presbytery of Milwaukee.
- (3.) The requirements of this policy cease to apply- but may continue to serve as guidelines where appropriate- in situations involving legal and/or ecclesiastical judicial proceedings."

Dissolution and Transition of a Pastoral Call of the Commission on Ministry (now Commission on Transitional Ministry) of Presbytery of Milwaukee (May 15, 2018), Policy Dispute Protocol states:

- (1.) In the event that either the congregation or pastor disputes the terms of the compensation policy for any reason,
 - (a.) a member of CTM or designated representative will act as mediator **[mediation]**.
 - (b.) Additional advocates, one each for the congregation and pastor, will also be designated by CTM as support through the dissolution process consisting of individuals not serving on the CTM.
- (2.) While mutual agreement of dissolution terms will be the goal of the mediation process, in the event this is not possible, CTM will make the final determination **[binding arbitration]**.

DISPUTATION: COMPLAINT AND RESPONSES

The complaint must be in writing and must include a statement of the basis for contesting the terms of dissolution submitted within 7 days of the congregation's vote on the terms of dissolution. The complaint must be a "clear narrative" and alleged facts that, if proven, would likely result in the Presbytery Commission to begin the mediation and arbitration policy. A complaint contains one or more allegation that defines some sort of error (if there are multiple, then number them so the Commission and responding body (congregation or session) may answer them each).

The Presbytery Commission conducts a complaint analysis. That is, examine the allegations for exact content and a clear statement. This is called “framing the complaint.” Those filling the complaint do not have to state the standard that was violated, but the standard must be included in the formal call for mediation and arbitration by the Commission (so it would be helpful to the Commission if the complaint did state the standard). Without violation of some standard (a provision of the Book of Confessions, Book of Order, theology, or presbytery standard tied to the Constitution, presbytery policy, etc.) the terms of dissolution are not in conflict.

A properly framed allegation is a single declarative sentence that states who did what to whom, when, where, and in violation of what standard. The word “allege” in all its forms never appears in the allegation. State the allegation itself, not the fact that something was alleged. Do not include any statement of evidence in the allegation. An allegation functions like a true/false question on an examination: if any part of it is false, the entire thing is false. So, as stated above, it is essential to have a separate allegation stated for every part of the complaint. Otherwise one risks confusing the matter and vastly increases that chance that the entire allegation will fail to be substantiated because part of it is false.

Evidence, which consists of not only oral testimony of witnesses but also records, writings, material objects, or other things presented to prove the existence or nonexistence of a fact, may be submitted with the complaint. Evidence must be relevant, and there is no distinction between direct and circumstantial evidence as to the degree of proof required. Have evidence ready for the Commission if the mediation process is not successful. Opinion, hearsay, and speculation may be included in the complaint; however, it shall not be a basis for which the Presbytery Commission issues a call for mediation and arbitration by the Presbytery Commission.

Once the complaint has been received by the Stated Clerk, Moderator of the Presbytery Commission, and the appropriate Presbytery staff person assigned to resource the Presbytery Commission, and a complaint analysis has been performed and found to be in order according to the above standard, the complaint is forwarded to the respondent so they may submit a response to the complaint.

If the respondent is a congregation, the congregation shall elect a committee of 2-3 people to be its representatives. It is highly advisable that the congregation also include in its terms that the 2-3 people are empowered to represent the congregation in mediation and arbitration process, and make a decision on their behalf (thus becoming under the Constitution of the Presbyterian Church (U.S.A.) an administrative commission, and as such those elected shall be ordained elders).

The committee or commission of the congregation (respondent) shall respond to the complaint allegations, and follow a similar process regarding evidence, opinion, hearsay, and speculation. The response shall be submitted to the Stated Clerk, Moderator of the Presbytery Commission, and appropriate staff member within 14 days of receiving the complaint. The responses to the allegations shall be transmitted to the complainant.

Once the complaint and response have been received, the Presbytery Commission shall examine the allegations and response and issue a call for mediation and arbitration and set a date and time for the parties to meet with the mediator. The pastoral relationship shall not be dissolved during this process, and the Presbytery Commission may request the pastor be placed on paid leave until the conflict is resolved.

At this time advocates will be designated by the Presbytery Commission to support the congregation representatives and the pastor, per the policy Dispute Protocols.

If any party refuses to participate in the mediation process, or requests to proceed to the mediation process, the dispute then moves into the binding arbitration process.

MEDIATION PROCESS

Mediations can take place in person, telephonically, or by video conference; however, all parties and the mediator must agree with the arrangements. Mediations usually take one day and are scheduled for a time and location mutually agreeable to the parties. During the mediation, the committee or commission of the congregation and the pastor are the sole representatives (i.e. the parties may not be represented by others, such as attorneys).

Before the mediation begins, the mediator will request information related to the case. The mediator may ask for a summary or history of the dispute, arbitration pleadings (if available), or other documents that help tell the story of the dispute.

At the mediation, it may begin with a joint session, which is a meeting where all parties are in attendance. During this meeting, the mediator begins by explaining how the mediation process will proceed, remind parties of their duty of confidentiality in the mediation process, and ask the parties to present the issues in dispute to the mediator and the opposing side. The mediator shall include in their opening to the parties the following:

The mediator will introduce themselves and state they have been appointed by the Presbytery Commission to be the mediator.

The mediator will confirm the names of the parties.

The mediator will explain its role of neutrality. (for example, “I have no opinion or preconceived ideas about the nature of your dispute or how it ought to be resolved. I bring that up is to explain that I am here today as a neutral third party.”)

The mediator will cover in general the mediation process to make sure all parties understand the process, including addressing the issue of confidentiality, the process for caucus, and communicate the schedule and answer any questions of the parties concerning the process.

After opening statements, the parties review the Agreement to Mediate (see appendix) together and make sure that all understand it before the mediation process begins.

As the mediation process continues and depending on the type of case and parties' needs, the mediator may use separate caucuses, which are private meetings with one party at a time. The mediator and the party will candidly discuss settlement expectations, and the mediator can help parties see the strengths and weaknesses of the case.

Through a series of separate caucuses, the mediator will facilitate the exchange of settlement offers, and help parties reach common ground. Some resolutions will truly be “win-win”; others will be just barely acceptable to one or both sides—but better than the prospect of a continued fight.

If the parties come to a consensus, the mediator will outline the terms of agreement which the parties will sign (see appendix).

If parties fail to reach an agreement, the mediator will submit a summation of the mediation deliberations and submit it with their referral of the dispute to the Presbytery Commission for binding arbitration.

BINDING ARBITRATION PROCESS

The Compensation Policy for Dissolution of a Pastoral Call During Times of Conflict approved and adopted by the Presbytery of Milwaukee (November 6, 2018) states that the Presbytery Commission shall have binding determination in disputes on terms of dissolution. Following the principles of fundamental fairness established in the *Book of Order* (G-02.0904 and G-03.0301) and the PC(U.S.A.) General Assembly Permanent Judicial Commission rulings, the following binding arbitration process will be followed.

Once the referral is made by the mediator to the Presbytery Commission through the Stated Clerk, Moderator of the Presbytery Commission, and Presbytery staff resource person, the Commission shall communicate to the parties within 24 hours the members on the Presbytery Commission which shall serve as the arbitration board.

Once the referral is made, members of the Presbytery Commission shall recuse themselves based upon known conflicts of interest.

Both parties may file an arbitrator challenge within 24 hours of receiving the Presbytery Commission list of members to the Stated Clerk for particular members to be excluded based on conflict in interest. The following list, though not exhaustive, shows examples of circumstances where a challenge for cause would likely be granted. Generally, absent good cause, a party's ability to challenge an arbitrator(s) may be deemed waived if the challenge is not timely filed after a new disclosure is discovered by a party.

Cause for recusal: Opinion and Bias; Personal Relationships; Business Relationships; Current Involvement (Arbitrator is averse to a party, or Arbitrator is a party to or the subject of a complaint, arbitration, or litigation); Previous Involvement; and Financial Interest.

If an arbitrator is challenged, they shall respond to the challenge. If there are grounds for recusal, the arbitrator shall recuse themselves and provide notice to the Stated Clerk and the Presbytery Commission Moderator. There shall be a minimum of three members of the Presbytery Commission to serve as the arbitration board. If no member of the Presbytery Commission can serve, then the conflict is moved to a called Presbytery meeting for a binding vote.

The arbitration board shall be set within 3 days of the referral by the mediator.

After confirmation of the arbitration board, the preliminary hearing conference call with the parties and the arbitrators will be scheduled and held. During this call, preliminary issues are addressed, the exchange of information between the parties is scheduled and a hearing date is set. After the call is held, the arbitration board will issue a written document called a "scheduling order", which confirms all important dates and specifics discussed on the call.

At the hearing, the parties present their case to the arbitrators. This process can take place in person, over the telephone, by video conference, or by the parties submitting written documents. The complainant states their case, followed by a response of the respondent. The respondent states their case, followed by a response by the complainant. Arbitrators may then ask questions of the complainant and/or respondents. Additional hearing sessions may be scheduled by the arbitrators and the parties. The arbitration board may request parties to submit written arguments following the hearing.

After the hearing is completed and the arbitrators determine no more evidence will be presented, the hearing is closed and a date for the issuance of the award is set (shall be within 7 days of the hearing closing). The arbitrators render a written award that decides the outcome of the case and is sent to the parties. An award will contain the following information:

- Names of the parties;
- Names of the parties' advocates, if any;
- An acknowledgment by the arbitrators that they have each read the pleadings and other materials filed by the parties;
- A summary of the issues;
- Damages and other relief requested;
- Damages and other relief awarded;
- A statement of any other issues resolved;
- Name(s) of the arbitrator(s);
- Dates the claim was filed and the award rendered;
- The number and dates of the hearing session(s);
- Location of the hearings; and
- Arbitrator signatures.

The parties may appeal the decision only to the full Presbytery, as the original ecclesiastical jurisdiction, which votes to confirm or vacate the Presbytery Commission's arbitration decision.

BACKGROUND

The Presbytery Commission on Transitional Ministry (CTM) has been delegated the authority by the Presbytery to oversee the Dissolution of Pastoral Call Mediation and Arbitration Process based on the aforementioned Presbytery policy, as well as under the Presbytery's Manual of administrative Operations. CTM is commissioned on behalf of the presbytery to: "Take the initiative to mediate, reconcile, and act to correct difficulties if requested to do so by the parties concerned or granted by the Presbytery Assembly;" and "In accordance with Book of Order (G-2.0904) act on behalf of the presbytery to dissolve pastoral relationships without the request of either pastor or congregation provided that the CTM has met with the pastor and the session and has offered to be available to consult with the congregation (in accordance with GAPJC 1988, 200-7, Campbell, Jr. et. 433 al. v. Pby of Atlantic). These actions of this Administrative Commission shall be taken at duly constituted meetings and reported to the next stated meeting of the presbytery."

The Stated Clerk's advised process is based on the Presbytery and CTM policy which notes in times of terms of dissolution dispute, there shall be mediation and, if necessary, binding arbitration. The advised process is based on current mediation and arbitration basic standards as exemplified by the Association for Conflict Resolution, the American Arbitration Association, and Financial Industry Regulatory Authority. The Stated Clerk is a National Certified Professional in Mediation (National Association of

Certified Mediators) and Financial Industry Regulatory Authority Dispute Resolution Arbitrator (rostered in the Milwaukee, WI area), as well as a member of Association for Conflict Resolution; Wisconsin Association of Mediators, and FINRA Dispute Resolution Arbitrators.

APPENDIX

We agree to allow _____, to serve as the mediator in the dispute between the parties

And

_____.

We also agree to cooperate in this mediation process for the purpose of working toward a settlement of the dispute.

The parties understand that this mediation is a voluntary process. Any party can decide to terminate the mediation at any time. No one will be forced to agree to any settlement. Agreements will only be signed if all the interested parties voluntarily agree to the terms of the agreement. If any party decides at any time in the process to not participate in the mediation process, then under the Presbytery Pastoral Dissolution policy, the matter will be referred to the appropriate Presbytery Commission for binding arbitration. If through mediation the parties cannot agree to a resolution, the matter will then proceed to binding arbitration.

The parties accept the responsibility for representing themselves in this mediation session. The mediator will not be engaging in the practice of law and is not representing any of the parties present at the mediation. The mediator does not serve as an attorney in this process.

The parties understand that they are not giving up any legal rights or options by engaging in this mediation process. If the parties are unable to resolve this case, they are in the same position that they would have been in had they not engaged in this mediation. The parties agree not to sue the appointed mediator or persons or organizations related to him for anything arising out of this mediation.

The parties agree not to subpoena the mediator, the records of the mediation session(s), or any of the other persons or organizations connected to the mediator or the Presbytery of Milwaukee of the Presbyterian Church (U.S.A.). The Federal and Wisconsin Rules of Evidence generally provide that anything mentioned or stated in mediation cannot be used against the opposing party in court.

The parties agree that the mediator may have private sessions, also known as caucuses, with the other party or parties.

The mediator accepts NO responsibility for the terms of the agreement reached. The mediator will not impose the terms of the agreement on any party.

The mediation process is private and confidential. Anything discussed is confidential from any future judicial and administrative proceeding. Please be aware, however, that the mediator, as an ordained minister or elder in the Presbyterian Church (U.S.A.), and under Wisconsin law, is required to report incidences of bodily harm and other criminal activity or the future threat of bodily harm and other criminal activity made by or on behalf of either party. This includes incidents or threats made against the mediator, either party, or persons not present at the mediation table, and any allegations of child or elder abuse.

I HAVE READ AND UNDERSTAND THIS MEDIATION AGREEMENT AND, BY MY SIGNATURE, AGREE TO ABIDE BY ITS TERMS.

Signature Printed Name Date

Signature Printed Name Date

Signature Printed Name Date

Signature Printed Name Date

Signature Printed Name Date

MEDIATION SESSION:

Date: Place:

Time Started: Time Ended:

AGREEMENT REACHED: YES NO

MEDIATION SETTLEMENT AGREEMENT

Date: Mediator:

Settlement Agreement between

and

pertaining to the specific or general dispute or conflict:

The Agreed Terms/Responsibilities:

The parties to the above-referenced case understand and agree that this Settlement Agreement is admissible in evidence to prove its terms, that it is enforceable against and binding between the parties, and that it may be disclosed for purposes of its enforcement, all in accordance with Wisconsin Statutes (§904.085). The parties further understand and agree that this Settlement Agreement is enforceable by motion of any party pursuant to Wisconsin law.

I HAVE READ AND UNDERSTAND THIS MEDIATION SETTLEMENT AGREEMENT AND, BY MY SIGNATURE, AGREE TO ABIDE BY ITS TERMS.

Signature	Printed Name	Date
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Signature	Printed Name	Date
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Witnessed by:

Signature	Printed Name	Date
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Mediator:

Signature	Printed Name	Date
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