

# North Alabama Presbytery

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May 31, 2007

Minister Members and Clerks of Session of NAP:

This email message and three attachments are being forwarded to you, as well as being posted on our website [www.napresbytery.org](http://www.napresbytery.org) to apprise you and others that the civil suit filed by the Central Presbyterian Church of Huntsville against North Alabama Presbytery was settled through Christian mediation on last Thursday, May 24, 2007. After more than twelve hours of deliberations, negotiated by a competent and compassionate mediator, an agreement was signed by representatives of both parties which essentially ends the lawsuit and resolves the dispute (see the Mediation Agreement papers).

Although we grieve the loss of an entire congregation that has journeyed with North Alabama Presbytery and its predecessor presbyteries for a hundred years, we dismiss them with God's blessing and deed them the property. We bid them God's speed as they continue to serve as a part of the Body of Christ in this region of the State.

Please join with me in expressing gratitude to God that a way was finally found to end the lawsuit and resolve our differences without having to rely on a civil court judge's ruling. As you have opportunity, also join me in thanking members of our Administrative Commission for a job faithfully, carefully, skillfully, pastorally and prayerfully performed on our behalf. Few know of the agony of spirit that they each endured in order to insure that the interests of the denomination and of North Alabama Presbytery in particular were honored in the settlement.

Sincerely,

Warner Durnell, Executive Presbyter

**North Alabama Presbytery  
Administrative Commission  
for  
Central Presbyterian Church**

May 30, 2007

To the Pastors and Sessions of North Alabama Presbytery

Dear Brothers and Sisters in Christ:

Attached you will find a proposed "Final Report" to be offered to the Presbytery at its stated meeting on July 17, 2007. As a part of the report, you will see the "Mediation Agreement" concluded by the Commission and representatives of Central Presbyterian Church, on May 24, which agreement will bring to an end the lawsuit brought by the trustees of Central against the Presbytery.

As you will see, the "Mediation Agreement" also will effect the dissolution of the relationship between Central and North Alabama Presbytery and will transfer to Central real estate that is worth approximately \$2.5 million in exchange for payment of 10% of that amount. More important, they and we will no longer be a part of the same denomination, thus ending more than 100 years of ministry together, sadly so, from our perspective.

That said, we want to reiterate that they and we are still part of the holy catholic church, the Body of Christ; and in the sure knowledge of that, we send that congregation on their way with our prayers. It is the Commission's hope that the adversarial nature of this matter and the animosity that has grown out of it can be diluted and eventually healed as we go our respective ways.

Again as will appear in the attached report, the Commission recognizes that some in the Presbytery may not approve of this settlement for one reason or another; but the Commission is convinced that the Spirit was at work in the mediation process and in helping us to craft this solution.

Finally, as chairman, I want to offer a personal yet inadequate word of thanks and commendation to those who served on this Commission. Each member brought particular gifts and insights to the tasks with which we were charged, all of them valuable and helpful in reaching this conclusion. It was a privilege to have served with them in this endeavor.

Sincerely,

William G. Cockrill, Chairman  
North Alabama Presbytery Administrative  
Commission for Central Presbyterian Church

**North Alabama Presbytery  
Administrative Commission  
for  
Central Presbyterian Church**

May 29, 2007

**Final Report to North Alabama Presbytery:**

As you know, on March 10, 2007, North Alabama Presbytery erected this Administrative Commission to manage the lawsuit that had been filed by the trustees of Central Presbyterian Church and to otherwise deal with attempts by the leadership of that congregation to sever ties with our presbytery and the Presbyterian Church (U.S.A.).

In his letter of March 21, Executive Presbyter Warner Durnell recounted well the formation of the commission and developments in this situation to that date. And on May 10, the Commission gave an update of subsequent events as we sought the presbytery's approval for the Commission to enter mediation to attempt to settle the lawsuit and the underlying dispute.

To some extent, this report will restate some of the matters that were mentioned at the May 10 meeting; but the Commission is pleased to report that mediation process concluded in a settlement, as will be detailed herein.

Subsequent to March 10, the Commission met regularly and attempted to fulfill the mandate of its charge, following the constitution of the Presbyterian Church (U.S.A.). There were several, direct, written communications to the congregation and leadership of Central Presbyterian and other indirect communications, too numerous to count, through the attorneys for the respective parties.

Without rehearsing all of these communications, the Commission took the following actions:

- Throughout the course of this matter the Commission has consistently taken the position that, notwithstanding efforts by the leadership of the congregation, the Central Presbyterian Church In the United States of America of Huntsville, Ala. has remained a congregation of the North Alabama Presbytery and the Presbyterian Church (U.S.A.); those leaders, however, and apparently the majority of the members of the congregation have taken the position that they have disaffiliated from the presbytery and the denomination.
- Prior to taking any other action, the Commission attempted to approach this matter pastorally and with concern for the members of the congregation. Our first action was to contact the membership and invite them to meet with representatives of the Commission to discuss any dissatisfaction with the processes which were followed in the calling of the congregational meeting and the vote to disaffiliate from the denomination, or dissatisfaction with the stated purposes of said meeting and vote. Only a few members came to these meetings, however; and subsequently the commission dissolved the session and assumed original jurisdiction.

- The Commission also directed the trustees to dismiss the lawsuit, and made other demands, consistent with the above-stated adherence to the constitution and the presbytery's interest in the property.
- At no time in these proceedings, however, did the Commission engage in activity that involved the use of force and instead relied solely upon our authority under the *Book of Order*; and the Commission specifically granted permission to the congregation to continue to use the property for its ministries during this dispute.
- As was stated at the presbytery meeting of May 10, the parties agreed to try to reach a resolution of this situation through mediation, and obtained former Chief Justice Drayton Nabers as the mediator.
- Prior to the mediation, the Commission also retained the services of appraiser Gene Garrett, who appraised all of the real property occupied by Central Church. It was his determination that the property was worth no more than \$5.1 million; but he cautioned that a sale would likely bring, at best, \$2.5 million because of the limits on property's use in a residential zone and an historic district. In short, most of the property could only be marketed as a church, with a very limited number of potential purchasers.
- As to the Hawthorne trust, the Commission was advised and concluded that, under the terms of the will that created the trust, the likelihood of the Presbytery's becoming a beneficiary of the proceeds was extremely unlikely.
- The mediation took place on May 24, 2007, with all of the commission members present and a number of the leaders of Central Presbyterian Church present, both groups having been authorized by the respective parties to conclude a settlement, if one could be negotiated.
- The negotiations of the mediation itself are subject to a confidentiality agreement; but the results are open to the public and are set forth in the attached "Mediation Agreement". That agreement speaks for itself, but the main points are as follows:
  - The session and pastor of Central Presbyterian Church acknowledge that they did not follow the *Book of Order* in the actions that attempted to separate the congregation from the PC(U.S.A.).
  - Central Presbyterian Church agrees to pay to the Presbytery the sum of \$250,000, in installments as set forth in the agreement, to be fully paid prior to December 31, 2010, said payments to be secured by a mortgage on a portion of the property in the possession of the congregation. Portions of these monies are to be used first to defray the litigation expenses incurred by the Presbytery (approximately \$65,000), with the remainder then to be apportioned between Presbytery operations and Maranatha Camp and Conference Center.
  - Upon the payment of the first installment of \$100,000, within 30 days of the date of the agreement, NAP will convey by quit claim deed its right, title and interest in the real estate

and personal property claimed by Central Presbyterian, including the income interest in the testamentary trust of Marguerite C. Hawthorne.

- NAP agrees to dismiss the congregation, with its property, to the Evangelical Presbyterian Church, or to another Reformed body; and, prior to said dismissal the Presbytery will refrain from exercising further jurisdiction over Central Presbyterian Church.
- Within 3 days of the closing, the lawsuit will be dismissed with prejudice.

The Commission recognizes that, as with all such settlements, some on either side of the dispute will not be satisfied with these results. It is the commission's belief, however, that it is to the advantage of the Presbytery (and the Central congregation) to put this matter to rest now, rather than to pursue protracted litigation, incur additional expenses, and continue to be distracted from our mission, all in an atmosphere of worsening hostility.

Among other factors which the Commission took into account were certain aspects of Alabama law which appear unfavorable to the Presbytery. While the Commission is confident that, were there to have been an unfavorable result in the state trial court, the Presbytery's position would have ultimately been vindicated in appellate courts, such a favorable outcome would have been achieved only after years of costly litigation and other cost, possibly requiring taking the matter to the U.S. Supreme Court.

As we have previously stated, the Commission sees this as a matter of stewardship; but we also believe that this settlement vindicates the constitution as set forth in *The Book of Order*. The Commission also trusts that now that this matter is put to rest, the Presbytery can get on with its mission, undistracted by further dissension and ill will that would have been the inevitable consequence of pursuing this matter further.

The Commission will therefore will ask that Presbytery, at its stated meeting on July 17, dissolve the commission and delegate the oversight of the performance of the mediation agreement to the Business Affairs Ministry Team.

Respectfully submitted,  
North Alabama Presbytery Administrative  
Commission for Central Presbyterian Church  
William G. Cockrill, Chairman

## MEDIATION AGREEMENT

Central Presbyterian Church in the United States of America of Huntsville, Ala., an Alabama non-profit corporation ("Central Presbyterian"), on the one hand, and North Alabama Presbytery, an Alabama non-profit corporation (the "Presbytery"), on the other hand, hereby enter into the following Mediation Agreement, on this the 24<sup>th</sup> day of May, 2007.

WHEREAS, Central Presbyterian commenced an action against the Presbytery in the Circuit Court of Madison County, Alabama, styled Central Presbyterian Church in the United States of America of Huntsville, Ala. v. North Alabama Presbytery, Case No. CV2007-166-JPS, (hereinafter the "Lawsuit"); and,

WHEREAS, Central Presbyterian and the Presbytery desire to settle fully and finally this Lawsuit and to resolve any and all disputes or other matters of any nature, whether legal or ecclesiastical, with each other, including, without limitation, all acts or omissions by and between Central Presbyterian and the Presbytery that may have occurred at any time up to and including the date of this Mediation Agreement.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed between Central Presbyterian and the Presbytery as follows:

1. This Mediation Agreement is entered into because Central Presbyterian and the Presbytery, and their respective attorneys, have concluded that it is in the best interests of the parties to enter into the Mediation Agreement on the terms set forth herein. Central Presbyterian and the Presbytery wish to avoid the further expense, delay, inconvenience, burden and uncertainty of continued litigation (including appeals from any verdicts), and, therefore, have agreed to settle the Lawsuit.

2. Consideration. As consideration for this Mediation Agreement, the parties agree as follows:

- (a) Central Presbyterian shall pay to the Presbytery the total sum of \$250,000.00, to be paid as follows:
  - i. \$100,000.00 at closing (\$65,000.00 of which may be utilized for legal and other costs and expenses of the Presbytery and \$35,000.00 of which shall be designated for Camp Maranatha);
  - ii. \$75,000.00 on or before December 31, 2008 (\$37,500.00 of which shall be designated for Camp Maranatha and \$37,500.00 of which is undesignated); and

- iii. \$75,000.00 on or before December 31, 2010 (\$37,500.00 of which shall be designated for Camp Maranatha and \$37,500.00 of which is undesignated).

Central Presbyterian will provide security in the form of a standard mortgage on the "Cooper property" during the period that Central Presbyterian has not paid any of the payments specified in section 2(a)(ii and iii).

- (b) The Presbytery shall quit claim all its right, title and interest in and to any real or personal property, and any present or future interest therein, now or hereafter claimed by Central Presbyterian, including, without limitation, the real property that is the subject matter of the Lawsuit or otherwise claimed by Central Presbyterian, the income from that certain New York trust created under the Last Will and Testament of Marguerite Cartwright Hawthorne dated September 28, 1984 referenced in the Lawsuit, and any and all other personal or real property presently in the possession, custody or control of Central Presbyterian.
- (c) The session and pastor of Central Presbyterian Church in the United States of America of Huntsville, Alabama acknowledge that they did not follow the Constitution and polity of the Presbyterian Church (U.S.A.), as set forth in the Book of Order, regarding a congregation's request for dismissal; and that Central Presbyterian Church in the United States of America of Huntsville, Alabama did not request to be dismissed. The Presbytery shall dismiss Central Presbyterian Church in the United States of America of Huntsville, Alabama to a Presbytery of the Evangelical Presbyterian Church, or another Reformed body, with any and all real and personal property, including, without limitation, the real property that is the subject matter of the Lawsuit or otherwise claimed by Central Presbyterian, the income from that certain New York trust created under the Last Will and Testament of Marguerite Cartwright Hawthorne dated September 28, 1984 referenced in the Lawsuit, and any and all other personal or real property presently in the possession, custody or control of Central Presbyterian.

The Presbytery asserts that it has continuing jurisdiction under the Book of Order over Central Presbyterian, Central Presbyterian denies the Presbytery has any such continuing

jurisdiction over it. The Presbytery hereby represents, warrants and agrees that neither it nor the Synod of Living Waters, the General Assembly of the Presbyterian Church (U.S.A.) or any other person or entity associated with the Presbyterian Church (U.S.A), including, without limitation, any Administrative Commission, shall attempt to exercise in any manner the jurisdiction it asserts over Central Presbyterian and its agents, representatives, trustees, members, or other persons or entities acting on its behalf or in its stead, or acting in concert with it from the date of this Mediation Agreement until Central Presbyterian's affiliation with a Presbytery of the Evangelical Presbyterian Church, or another Reformed body. Central Presbyterian shall proceed in good faith and with reasonable diligence to affiliate with a Presbytery of the Evangelical Presbyterian Church, or another Reformed body, chosen in Central Presbyterian's sole discretion.

- (d) Within three (3) business days of the closing date of this settlement, the Lawsuit shall be dismissed, with prejudice, with each party bear its own costs, including attorney fees.

The closing date shall be thirty (30) days from the execution of this Mediation Agreement.

3. General Release and Waiver. The parties shall execute a full and complete General Releases on or before closing.

4. Specific Release and Waiver. The Claims RELEASED and WAIVED by Central Presbyterian and the Presbytery for which accord and satisfaction are hereby acknowledged below, include, but are not limited to:

- (a) All Claims which were raised or could have been raised in the Lawsuit, through claim, counterclaim (compulsory or permissive) or otherwise;
- (b) All Claims arising under federal and/or state laws, and regulations;
- (c) All equitable claims or actions of any kind whatsoever;
- (d) All Claims at common law, including, without limitation, breach of contract, slander of title, fraud and fraud in the inducement; and
- (e) All Claims arising under or related to any denominational constitution or governing laws and regulations, including, without limitation, any provision of the Book of Order; and

- (f) Any Claim or assertion of right, however characterized, which one may have against the other.

5. Covenant Not to Sue. Central Presbyterian and the Presbytery further agree, promise and covenant that neither they, nor any person, organization or any other entity acting on their behalf will file, charge, claim, sue or cause or permit to be filed, charged or claimed, any action for damages or other relief (including injunctive, declaratory, monetary relief or other) against the other party, involving any matter occurring in the past up to the date of this Mediation Agreement or involving any continuing effects of actions or practices which arose prior to the date of this Mediation Agreement, or involving and based upon any claims which are the subject of this Mediation Agreement, other than the mortgage contemplated herein, or enforcement of this Mediation Agreement.

6. Accord and Satisfaction. The receipt of the consideration provided for herein shall constitute full and complete accord and satisfaction for all claims, rights, duties, actions, damages, grievances, investigations, commissions, causes of action of any type (whether legal or ecclesiastical), by and between Central Presbyterian and the Presbytery.

7. Non-Admission. Central Presbyterian and the Presbytery expressly acknowledge and agree that nothing contained in this Mediation Agreement is, or shall be, construed as an admission of liability.

8. Acknowledgement. Central Presbyterian and the Presbytery represent and acknowledge that:

- (a) They have carefully read this Mediation Agreement;
- (b) They have been given a reasonable period of time in which to consider this Mediation Agreement and have had the opportunity to consult with their legal counsel regarding the provisions of this Mediation Agreement;
- (c) They understand and acknowledge that this Mediation Agreement releases and waives known and unknown claims and rights and has other important legal consequences; and
- (d) They acknowledge and agree that this Mediation Agreement is voluntarily entered into by each of them as the result of arms'-length negotiations.

9. Merger. Central Presbyterian and the Presbytery represent and acknowledge that no promise, inducement or agreement other than is expressed herein has been made. This Mediation Agreement contains the entire understanding and

agreement of Central Presbyterian and the Presbytery. This Mediation Agreement supersedes all prior representations and understandings, whether written or verbal, not contained specifically in this Mediation Agreement.

10. Governing Law. Central Presbyterian and the Presbytery agree that this Mediation Agreement shall be governed by and interpreted pursuant to the laws of the State of Alabama.

11. Counterparts. The parties specifically agree that this Mediation Agreement may be executed in counterparts each of which shall be considered part of one written document.

12. Authority. Central Presbyterian acknowledges that it has the full and complete authority of its trustees, members, and any other persons or entities required to enter into this Mediation Agreement. The Presbytery acknowledges that it has the full and complete authority of the Presbyterian Church (U.S.A.), the Administrative Commission, the Presbytery's members, and any other persons or entities, including all governing or decision-making bodies within the Presbyterian Church (U.S.A.), required to enter into this Mediation Agreement.

IN WITNESS WHEREOF, the undersigned hereby execute this Mediation Agreement on this the \_\_\_\_ day of May, 2007.

Central Presbyterian Church in the United States of America of Huntsville, Ala.

By: [Signature]  
Its: Trustee

[Signature]  
Counsel for Central Presbyterian Church in the United States of America of Huntsville, Ala.

North Alabama Presbytery

By: [Signature]  
Its: Chairman, Administrative Commission

[Signature]  
Counsel for North Alabama Presbytery

[Signature]