

SUBJECT TO FINAL EDITING

## JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

### DECISION 1484

[Docket 1022-25]

**IN RE: Request for Declaratory Decisions from the Council of Bishops with regard to the constitutionality and legality of several provisions of The Book of Discipline ¶ 413d.**

### DIGEST

The provisions of ¶ 413.3d(ii) and (iv) are constitutional because they do not violate the constitution of the United Methodist Church.

### STATEMENT OF FACTS

The Request from the Council of Bishops asks us to answer the following eight questions:

Question 1: Are the provisions of ¶ 413.3d(ii) and (iv) constitutional since they do not prescribe actual processes to be followed that can be evaluated in light of the fair process provisions of ¶¶ 20, 58, and 361.2 and the constitutional issues discussed in Decisions 1366 and 1383 and Memorandum 1408?

Question 2: Are the provisions of ¶ 413.3d(ii) and (iv) consistent with the guarantees of fair process in ¶ 361.2?

Question 3: Are members of the Council of Bishops who are in retired relation and have no vote allowed to participate in the process of ¶ 413.3(ii) and (iv)?

Question 4: ¶ 413.3d(ii) provides that if within 180 days of the receipt of a complaint against a bishop “the supervisory response does not result in the resolution of the matter, and the president or secretary of the Council of Bishops has not referred the matter as either an administrative or judicial complaint, then the matter will *move* to “a panel of bishops selected by the Council of Bishops as provided therein. (a) Does moving the matter to a panel selected by the Council of Bishops mean that the supervisory response starts anew? (b) Since ¶ 413.3d(ii)2 indicates that the panel of bishops from the jurisdictional conferences “shall then continue the supervisory response process and, within 180 days, either dismiss or refer the complaint, as required above,” (i) does that language define and limit the role and authority of the panel to determining whether to dismiss the complaint or refer the complaint as an administrative or judicial matter; (ii) does that language preclude the panel from negotiating and agreeing to a just resolution of the complaint; (iii) does that

language give final authority for dismissing or referring the complaint and possibly negotiating a just resolution to the panel or must the panel recommend action to the Council of Bishops as a whole for a final decision; and (iv) does the absence of that language in ¶ 413.3d(ii)(1) regarding the corresponding panels in central conferences mean that such central conferences do not have the same authority or limitations on authority that apply to ¶ 413.3d(ii) panels in jurisdictional conferences?

Question 5: Regarding the panels provided for in ¶ 413.3d(ii): (a) may the panels include additional persons such as bishops and laypersons who were already a part of the supervisory response team under ¶ 413.3d or are the panels limited to bishops who were not members of the supervisory response team before the matter was moved to the Council of Bishops panel; (b) if not, may the panel include such persons from the previous supervisory team or others, including laypersons, in the panel's work; (c) may the panels of bishops referred to in ¶ 413.3d(ii)(1) and (2) include bishops who are in the retired relation; (d) may the bishops serving on the panels be members of the same College of Bishops as the respondent bishop; (e) if the entire College of Bishops in which the respondent bishop is a member are also named in the same complaint or a related complaint based on conduct of members of the college involving the respondent bishop, does the requirement of a bishop "from each jurisdictional conference" preclude the use of ¶ 413.3d(ii)(2) since there is no bishop in the respondent bishop's jurisdiction who does not have a conflict of interest; and (f) if subpart (e) above precludes there being a bishop from one jurisdictional conference represented on the panel, does that violate the constitutional guarantees of ¶¶ 20 and 58?

Question 6: To whom do the panels provided for in ¶ 413.3d(ii) refer the complaints and does the Council of Bishops have any role in approving or ratifying the panel's decision? May the Council of Bishops override a decision of the panel?

Question 7: Does the authority given to the Council of Bishops in ¶ 413.3d(iv) have any limitation on when that authority may be exercised? What procedures are applicable under ¶ 413.3d9(iv) if a case is removed by the Council of Bishops? What limitations, if any, are there on the Council of Bishops if the authority under ¶ 413.3d(iv) is exercised? Are the provisions of ¶ 413.3d(ii) applicable if the matter is removed by the Council of Bishops pursuant to ¶ 413.3d(iv)?

Question 8: Does the holding in Memorandum 1450 preclude any appeal by the respondent bishop from any action taken by the Council of Bishops or a panel of the council under the authority provided for in ¶ 413.3d(ii) and (iv)? Does ¶ 523's statement that "any bishop shall have the right of appeal to the Judicial Council" provide a respondent bishop with a right of appeal from any action taken by the Council of Bishops or a panel of the council under the authority in ¶ 413.3d(ii) and (iv)? Does ¶ 2718.3 and .4 give the respondent bishop a right of appeal from any action taken by the Council of Bishops or a panel of the council under authority in ¶ 413.3d(ii) and (iv)?

The Council of Bishops authorized the filing of this request on December 21, 2022. A copy of the minutes authorizing this action was attached to the request.

## **Jurisdiction**

The Judicial Council has jurisdiction under ¶ 2610 (2)(b) of the 2016 *Discipline*.

## **Analysis and Rationale**

The questions posed by the Council of Bishops concerning the constitutionality of ¶ 413.3d(ii) and (iv) since they do not prescribe actual processes to be followed that can be evaluated in light of the fair process provisions of ¶¶ 20, 58, and 361.2 and the constitutional issues discussed in Decisions 1366 and 1383 and Memorandum 1408 are valid. However, ¶ 413.3d(ii) and (iv) are not unconstitutional. The issues raised about ¶ 413.3d(ii) and (iv) seek to further clarify the details of the process that the provisions provide which state:

If the supervisory response results in the resolution of the matter, the bishop in charge of the supervisory response and the two episcopacy committee members appointed to the supervisory process (¶ 413.3) shall monitor the fulfillment of the terms of the resolution. If the supervisory response does not result in resolution of the matter, the president or secretary of the College of Bishops may either dismiss the complaint with the consent of the College of Bishops and the committee on episcopacy, giving the reasons therefore in writing, a copy of which shall be placed in the bishop's file, refer the matter to the committee on episcopacy as an administrative complaint pursuant to ¶ 413.3e, or refer the matter to counsel for the Church pursuant to ¶ 2704.1 to prepare a complaint to forward to the committee on investigation.

(ii) If within 180 days of the receipt of the complaint by the president or secretary of the College of Bishops (as specified in ¶ 413.2), the supervisory response does not result in the resolution of the matter, and the president or secretary of the College of Bishops has not referred the matter as either an administrative or judicial complaint, then the matter will move to:

(1) In the case of a bishop from one of the central conferences, a panel of three bishops, one from each continent, as selected by the Council of Bishops, or

(2) In the case of a bishop from one of the jurisdictional conferences, a panel of five bishops, one from each jurisdictional conference, as selected by the Council of Bishops, who shall then continue the supervisory response process and, within 180 days, either dismiss or refer the complaint, as required above.

(iii) All costs associated with actions taken pursuant to paragraph (ii), above, will be paid by the Episcopal Fund.

(iv) The Council of Bishops may, at any time in the process, after a complaint is filed, including after a just resolution, remove the complaint from the College of Bishops to the Council of Bishops with a two-thirds vote by the Council.

The details of ¶ 413.3d(ii) and (iv) in no way violate the constitution of the United Methodist Church. The request for clarification on disciplinary provisions from the Council of Bishops is beyond the purview of the Judicial Council. In Memorandum 1276 the Judicial Council ruled when there is a lack of clarity in disciplinary provisions, “The General Conference, not the Judicial Council is a body to address lack of clarity.” See also JCD 1275, 1276 and 1287. The Judicial Council has held consistently that the General Conference is the body that addresses such matters. Until the General Conference changes the provisions of ¶ 413.3d(ii) and (iv), it is the law of The United Methodist Church. The weight of evidence in the 2016 Book of Discipline provides a pathway to remedy complaints for lay, clergy and Bishops, which may involve input from their peers. (See ¶¶ 2701-2718 in the 2016 *Discipline*)

### **Decision**

The provisions of ¶ 413.3d(ii) and (iv) are constitutional because they do not violate the constitution of the United Methodist Church.

Luan-Vu Tran recused himself and did not participate in any of the proceedings related to this decision. Diane DeWitt, third clergy alternate, participated in this Decision.

April 25, 2023

### **Dissenting Opinion**

We respectfully dissent. We would have found that ¶¶ 413.3e(ii) and (iv) are unconstitutional. The relevant constitutional analysis requires only that we look to amended ¶ 50 of the Constitution and the full discussion of the requirements of due and fair process discussed fully in JCD 1366 from pages 31-34 of that decision. Taken together this constitutional provision and the relevant decisions of the Judicial Council require that all persons affected by the various administrative and judicial processes of the United Methodist Church are entitled to the protections of due and fair process. These provisions fail that test. As written, ¶¶ 413.3e(ii) and (iv) are unconstitutionally vague and do not contain a process that safeguards the due process rights of a bishop under complaint.

Deanell Reece Tacha  
Øyvind Helliesen

April 25, 2023

