

SUBJECT TO FINAL EDITING

## JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

### DECISION NO. 1360

**IN RE:** Petition for Declaratory Decision from the Council of Bishops regarding the meaning, application and effect of ¶ 14 in relation to ¶ 507 of *The Book of Discipline 2016*.

#### DIGEST

The purpose of the special session of the General Conference 2019 stated in the Bishops' call is limited to receiving and acting upon a report from the Council of Bishops based on the recommendations of the Commission on a Way Forward. Petitions to the special session of the General Conference 2019 may be filed by any organization, clergy member and lay member of the United Methodist Church as long as the business proposed to be transacted in such petition is in harmony with the purpose stated in the call. It is the obligation of the General Conference to determine, in the first instance, through its committees, officers and presiders, acting in accordance with *The Discipline* and the rules and procedures of the General Conference, whether any such petition is "in harmony." However, business not in harmony with the purpose as stated in the call is not permitted unless the General Conference by a two-thirds vote shall determine that other business may be transacted. See ¶ 14.

#### STATEMENT OF FACTS

The 2016 General Conference was facing what was described as an onslaught of 56 distinct legislative petitions proposing scores of distinct "solutions" to the quadrennial debate over human sexuality issues that have dominated General Conference sessions for nearly a half century.<sup>1</sup>

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<sup>1</sup>See *Daily Christian Advocate (DCA)* Vol. 4, No. 1 at 1709, listing all of the human sexuality petitions that the 2016 General Conference had been slated to consider before voting to refer the entire issue to the Council of Bishops and

On Tuesday, May 16, 2016, on behalf of the Council of Bishops, President Bruce Ough brought a special message to the General Conference:

Even as we call for unity of the church, I come before you today to confess that we ourselves as a Council of Bishops are not fully united. And this work, this work of maintaining the unity of the church begins at home and we know it. We are therefore not advancing or advocating any plan of separation or reorganization of the denomination. We clearly understand and respect the constitutional prerogative of this body to propose and act on legislation. It is our job to preside. And as presiders, we are committed to enabling this body, by the grace of God, to perform your legislative function. At the same time, we remain open to new and innovative ways to be in unity. We will remain in dialogue with one another and others about how God may be leading us to explore new beginnings, new expressions, perhaps even new structures for our United Methodist mission and witness.<sup>2</sup>

Later during that Session, Delegate Mark Holland made the following motion:

Bishop, I would like to offer a nonbinding resolution for the 2016 General Conference to respectfully ask the bishops of our church to convene today in order to offer a nonbinding recommendation back to this body tomorrow morning as to how the church might move forward around the issue of human sexuality, and, if I have a second, I'll speak to it.<sup>3</sup>

Holland's motion and his remarks were followed by statements by Delegates Tom Berlin, Sergey Kim, Jerry Paye-Manflor Kulah, Adam Hamilton, and Richard-Christian Hoffman. The presiding Bishop, Janice Huie, interpreted the motion as a motion to refer the matter to the Council of Bishops and called for the vote accordingly. The vote was 428-364 in favor of referral.<sup>4</sup>

In response to the referral from General Conference, the Council of Bishops offered a

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its Commission on a Way Forward

<sup>2</sup>*DCA Vol.4 No. 8, page 2459.*

<sup>3</sup>*DCA Vol. 4 No. 8, page 2458*

<sup>4</sup>*DCA Vol. 4 No.8, page 2478.*

recommendation which it called *An Offering for a Way Forward*," (*An Offering*").<sup>5</sup> The operative language in that document said the following:

We recommend that (i) the General Conference defer all votes on human sexuality and (ii) refer this entire subject to a special Commission, named by the Council of Bishops, (iii) to develop a complete examination and (iv) possible revision of every paragraph in our *Book of Discipline* regarding human sexuality.

\* \* \* \*

We commit to maintain an ongoing dialogue with this commission as they do their work, including clear objectives and outcomes. (v) Should they complete their work in time for a called General Conference, then (vi) we will call a two- to three-day gathering before the 2020 General Conference [Edits added.]<sup>6</sup>

Motions by Adam Hamilton and Chap Temple concerning *An Offering* failed. Delegate George Howard then stepped forward and made this motion:

I would move that we accept the report from the Council of Bishops, and we act on the steps that they have proposed to move The United Methodist Church forward. I believe we've asked our leaders to lead. I believe that they have attempted to put forward in a very short time, a way that would allow

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<sup>5</sup>*DCA* Vol. 4, No. 9, page 2488.

<sup>6</sup>The undertaking of a "complete examination" of the subject of human sexuality presupposes that there will be some kind of report, document or study which supports the "possible revision of every paragraph in our *Book of Discipline* regarding human sexuality," which, in turn, presupposes that the Commission (not the Council of Bishops) will put forth legislation to fix the problem. The special called General Conference is to consider "their work," i.e., whatever the Commission desires to put before General Conference in terms of its "complete examination."

However, in passing, we note that the question here is whether a special commission created by the General Conference can report to a body other than the General Conference. Specifically, is the Commission on a Way Forward amenable to the General Conference or the Council of Bishops, and can it present its findings and report to the General Conference through the Council? See JCD 424.

There is nothing in the proceedings of the 2016 General Conference suggesting that the Commission on a Way Forward was supposed to submit its recommendations to the Council of Bishops. Similarly, there is no evidence in the legislative debate prior to the vote on the motion indicating that the Council of Bishops would develop specific legislative proposals based on the recommendations of the Commission and present them to the called special session of the General Conference.

The language of *An Offering* strongly suggests that "the work" of the Commission on a Way Forward, and only this body, is the rationale for calling a special session of the General Conference.

us to move forward with dignity that would honor and respect the diversity of our leaders and the diversity of this body. That they hold the totality before them of who we are as The United Methodist Church. That they hold in their hearts as our shepherds, the leadership responsibility, and they can put this together. They can name the team that they would respect and that we would be able to stand behind. I think we're ready. I think we're ready to move forward. This is an action. This is not postponing anything. This is allowing us to move forward with a plan that will keep The United Methodist Church united.

After discussion, including procedural inquiries, Bishop McAlilly called for the vote with the following statement:

We're ready to vote on the recommendation. This is a recommendation from the Council of Bishops that is before us. . . Alright. We have 428 to favor, against 405. The recommendation prevails. Thank you very much.<sup>7</sup>

On October 24, 2016, the Council of Bishops named 32 persons to serve on the Commission on the Way Forward ("CWF"), which included 8 bishops as members and 3 bishops as moderators.

On April 24, 2017, the Council of Bishops issued its call for a special General Conference and stated the purpose as follows:

The purpose of this special session of the General Conference shall be limited to receiving and acting upon a report from the Council of Bishops based on the recommendations of the Commission on a Way Forward.

On February 28, 2018, the Executive Session Minutes (*select portion*) of the Council of Bishops stated that the Council voted to seek a declaratory decision from the Judicial Council "to clarify whether petitions will be accepted prior to the special Session of General Conference 2019." An ADDENDUM to those minutes stated as follows: BY CONSENT TO ACTION WITHOUT FORMAL MEETING, the full Council of Bishops approved by email ballot, the submission to the Judicial Council of a request for a declaratory decision regarding ¶ 14 in relation to ¶ 507 of *The Book of Discipline, 2016*.

On April 9, 2018, Bishop Cynthia Fierro Harvey forwarded the Bishops' request for a declaratory decision to the Secretary of the Judicial Council along with a request that the Council schedule a called session to take up the request.

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<sup>7</sup>DCA Vol.4No. 10, page 2680.

The request for a declaratory decision (minus the lagniappe) is as follows:

If petitions are in harmony with the restricted purpose stated in the Council of Bishops’ call . . . as determined by a two-thirds vote of the General Conference, . . . may organizations of the United Methodist Church, clergy members and lay members submit petitions to the special General Conference session . . . that are not consistent with the “report of the Council of Bishops based on the recommendations of the Commission on a Way Forward” . . . ?<sup>8</sup>

An oral hearing was held on May 22, 2018 in Evanston, Illinois. Rev. Gary W. Graves, Gary George, and Sara Hotchkiss appeared on behalf of the Respondent. Bishop Bruce R. Ough and Bill Waddell appeared on behalf of the Petitioner. The following appeared representing *Amicus Curiae*: Keith D. Boyette, Stephanie Henry, Bishop Scott J. Jones, John Lomperis, and Thomas Starnes.

## JURISDICTION

The Judicial Council has jurisdiction pursuant to ¶ 2610 of *The Book of Discipline, 2016*.<sup>9</sup>

## ANALYSIS AND RATIONALE

The answer to the question posed in the Bishops’ request is Yes and No. Yes, petitions may be filed, but No, petitions must not be inconsistent with the purpose stated in the call.

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<sup>8</sup>The unedited question posed by the bishops reads as follows: “If petitions are in harmony with the restricted purpose stated in the Council of Bishops’ call on April 24, 2017 as determined by a two-thirds vote of the General Conference and if the petitions are postmarked by July 8, 2018, may organizations of the United Methodist Church, clergy members, and lay members submit petitions to the special General Conference that are not consistent with the “report of the Council of Bishops based on the recommendations of the Commission on a Way Forward as stated in the call?” The phrase “. . . as determined by two-thirds vote . . .” in the premise of the Request is misleading as that requirement refers to “other business that may be transacted.” See ¶14, last sentence. See also JCD 227.

<sup>9</sup>¶ 2610. Declaratory Decisions. — 1. The Judicial Council, on petition as hereinafter provided, shall have jurisdiction to make a ruling in the nature of a declaratory decision as the constitutionality, application, or effect of *The Discipline* or any portion thereof any act or legislation of a General Conference; and the decision of the Judicial Council thereon shall be as binding and effectual as a decision made by it on appeal. 2. The following bodies of the United Methodist Church are hereby authorized to make such petitions to the Judicial Council for declaratory decisions: . . . (b) The Council of Bishops. . . .

The purpose of the special session of the General Conference 2019 stated in the Bishops' call, is limited to receiving and acting upon a report from the Council of Bishops based on the recommendations of the Commission on a Way Forward.

Paragraph 507 of *The Book of Discipline, 2016* permits any organization, clergy member or lay member of the United Methodist Church to file a petition to General Conference if it meets the criteria set forth therein. It makes no distinction as to whether such petitions are to a regular or special session of General Conference.

Division Two, Section II, Article II of the Constitution (§ 14) does not place any restriction on the filing of petitions to a special session of the General Conference as long as the business proposed to be undertaken in such petition is in harmony with the purpose stated in the call. Therefore, petitions which are in harmony with any business which may be proposed in the Bishops' Report are allowed.

### **RULING**

The purpose of the special General Conference 2019 stated in the Bishop's call is limited to receiving and acting upon a report from the Council of Bishops based on the recommendations of the Commission on a Way Forward. Petitions to the special General Conference 2019 may be filed by any organization, clergy member and lay member of the United Methodist Church as long as the business proposed to be transacted in such petition is in harmony with the purpose stated in the call. It is the obligation of the General Conference to determine, in the first instance, through its committees, officers and presiders, acting in accordance with *The Discipline* and the rules and procedures of the General Conference, whether any such petition is "in harmony." However, business not in harmony with the purpose as stated in the call is not permitted unless the General Conference by a two-thirds vote shall determine that other business may be transacted. See

¶ 14.

Deanell Tacha recused herself and did not participate in any of the proceedings related to this decision.

First Lay Alternate, Warren Plowden, participated in this decision.

May 24, 2018

### Concur In Part, Dissent In Part

Although I concur with my colleagues on some points, I write separately because I believe that the scope and application of the law is a bit more narrow than that of the majority. For the purpose of clarity hereunder, I will restate only a few of the salient facts along with the controlling Disciplinary provisions:

The Constitution of The United Methodist Church authorizes special sessions of the General Conference in ¶14 as follows:

¶ 14. Article II.—The General Conference shall meet in the month of April or May once in four years at such time and in such place as shall be determined by the General Conference or by its duly authorized committees.

A special session of the General Conference, possessing the authority and exercising all the powers of the General Conference, **may be called by the Council of Bishops, or** in such other manner **as the General Conference may from time to time prescribe**, to meet at such time and in such place as may be stated in the call. Such special session of the General Conference shall be composed of the delegates to the preceding General Conference or their lawful successors, except that when a particular annual conference or missionary conference [Amended 1976] shall prefer to have a new election it may do so [see JCD 221, 226, 228, 238, 302]. **The purpose of such special session shall be stated in the call, and only such business shall be transacted** as is in harmony with **the purpose** stated in such call unless the General Conference by a two-thirds vote shall determine that other business may be transacted [see JCD 227]. [Emphasis added]

The 2016 General Conference requested and authorized the Council of Bishops to call a special session of the General Conference pursuant to the anticipated creation and work of a “Commission On A Way Forward”

The Bishops’ subsequent Call to the 2019 Special Session of the General Conference states:

The purpose of this special session of the General Conference shall be limited to receiving and acting upon a report from the Council of Bishops based on the recommendations of the Commission on a Way Forward.

Thereafter, a request for a Declaratory Decision was made by the Council of Bishops as follows:

If petitions are in harmony with the restricted purpose stated in the Council of Bishops’ call on April 24, 2017 as determined by a two-thirds vote of the General Conference and if the petitions are postmarked or received by July 8, 2018, may organizations of the [sic] United Methodist Church, clergy members, and lay members submit petitions to the special General Conference session called for February 23-26, 2019, that are not consistent with the “report from the Council of Bishops based on the recommendations of the Commission on a Way Forward” as stated in the call?

In answering the question, I believe that it is more helpful to be direct and exacting when possible. Thus, given that:

1. the call to the special session has already issued; and
2. the purpose specified in the call is “limited to receiving and acting upon a report from the Council of Bishops based on the recommendations of the Commission on a Way Forward”; and
3. the Constitution limits a special session’s business to the purpose stated in the call

It, therefore, follows that the 2019 special session of General Conference will not be receiving petitions because its purpose is limited to the report emanating from the work of the Commission on a Way Forward.

Although there are aspects of this process that blur the boundaries of roles and authority of the Episcopacy (executive branch) and the General Conference (legislative branch), upon a thorough review of the transcripts of the daily proceedings for Tuesday, May 17, and Wednesday, May 18, and Friday, May 20, and especially after a careful viewing of the archived live feed (videos) of each of those plenary sessions, it is evident that this unique request for this unusual quasi-participatory role of the Episcopacy, was initiated by the General Conference delegates.

On Tuesday morning, in response to increasing expressions of mounting anxiety and pain stemming from informal discussions, briefings, and media coverage about potential imminent schism within the denomination, a pastoral message of unity and hope was offered to the body by the Council of Bishops. DCA pp 2458-2459.

On Tuesday afternoon the Bishop’s pastoral message from the morning session was specifically referenced by General Conference delegates while making motions and engaging in debate, and at times, literally pleading for the Council of Bishops help and guidance.

The maker of the first motion stated:

... I would like to offer a nonbinding resolution for the 2016 General Conference to respectfully ask the bishops of our church to convene today in order to offer a nonbinding recommendation back to this body tomorrow morning as to how the church might move forward around the issue of human sexuality, and, if I have a second, I’ll speak to it. ....

Bishop, I appreciated the heart that Bishop Ough shared with us today and the dilemma that the bishops face of being divided around these issues. I think now, more than ever, we need the leadership of our temporal and spiritual leaders to move into Holy Conferencing and model for this body how a divided body moves forward for the good. There’s a lot of talk about church splitting. There’s a lot of talk about what that’s gonna look like. There’s a lot of energy around petitions that are coming in the next few days that could be potentially explosive, and I think if we would offer our invitation to the bishops— they are not bound by us, the bishops could say no, and we are not bound by the work of the bishops, we could ignore what they say—but it would be beneficial, I believe, if we could hear from those who have been consecrated for leadership in our church about what a way forward might look like and empower their leadership to come back in the morning. I would suggest they could convene today. Except for the presiding officers, the bishops do not have a role in the legislative process and could use this good time to prayerfully and thoughtfully model Holy Conferencing for the rest of us. I think it’s time to do something new that’s gonna allow us to move forward hopefully and respectfully with one another. I hear their call for unity, and a call for unity without a path towards unity is not gonna get us there. Thank you. [DCA pp 2476-2477].

The delegate that spoke next offered the following:

...I’m a pastor in the Virginia Annual Conference. Bishop, this morning Bishop Ough said that at General Conference, the role of the bishop was to preside. Quite frankly, Bishop, we think it’s your role to lead. We would like— (applause) [t]he council to lead. We have— ... A very difficult, we have a very difficult and painful situation, and in various ways many people are experiencing great pain around, especially, the issues of human sexuality. We would like you all to lead us, which is why you’ve been elected. We are asking for your leadership, and if you could bring us some concrete proposal, which might include a called General Conference, which is within your authority, I think it would be a blessing to the body and to the church. Thank you. [DCA p 2477].



Then, three speakers later, another motion and plea:

...Thank you, Bishop. We are in a stuck place at this General Conference. We, in theory, could find ourselves leaving on Friday, still stuck and wounded. You are our leaders. You are our spiritual leaders. I concur with Mark Holland, with Tom Berlin. We need you. It would be so helpful for us for you to come together prayerfully to consider what might be a way for us to move forward as a church, and, again, that's nonbinding. You are making recommendations as our spiritual leaders across the world to help us in moving forward as a denomination, and I concur with Tom's suggestion that could include, you have the right to call, a special General Conference to focus on this particular issue of how do we find, how do we reorder our lives so that we have a chance to move forward, whatever that looks like. We need you. We need your help. We need you to spend time contemplating this, praying about this as I know you already have, and then coming back to us with a suggestion for how we move forward so we don't leave Friday, like we did four years ago, having accomplished very little and finding ourselves still stuck as a denomination. I'm pleading with you. Please help us. [DCA pp 2477-2488].

Thus, the context, impetus, and initial speeches that lead to the General Conference action authorizing the work and that which is to culminate with the 2019 Special Session of General Conference.

In keeping with actions and debate which then followed these initial motions, I am reluctant to go beyond the narrow scope of the question presented for a Declaratory Decision in light of the dynamics of this unusual General Conference action which might fairly be perceived as having been an organic response by the General Conference delegates to the dynamics surrounding the delegates of the 2016 General Conference.

Assuming that the Commission's work and proposals will be incorporated into the report that will be made to the 2019 Special Session of General Conference, and likewise assuming that the Commission will be present and fully participating in the presentation of the report, particularly as it relates the Commission's process, work, and findings, then under those circumstances the concerns raised in the majority opinion concerning the General Conference and Episcopacy roles and authority ought to be allayed.

Respectfully submitted,

Beth Capen  
May 24, 2018