

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

MEMORANDUM NO. 1336

IN RE: Request from the Texas Annual Conference for a Declaratory Decision on (a) the constitutionality of lay members on the Board of Ordained Ministry voting on the final disposition of penalty as a consequence of a church trial (¶¶ 33 Article II, 2711.1, 2711.3), and (b) the legality of a final disposition of penalty as a consequence of a church trial being handed down without the respondent being afforded a 30-day period for appeal (¶¶ 2713.5, 2715.1).

STATEMENT OF FACTS

On May 30, 2016, during its regular business session, the Texas Annual Conference voted to petition the Judicial Council for a Declaratory Decision. The motion reads:

- 1) The Texas Annual Conference request the Judicial Council for declaratory decision on the constitutionality of lay members on the Board of Ministry voting on the final disposition of penalty as a consequence of a church trial (¶¶ 33 Article II, 2711.1, 2711.3).
- 2) Furthermore, we request the Judicial Council for declaratory decision on the legality of a final disposition of penalty as a consequence of a church trial being handed down without the defendant be afforded a 30-day period for appeal (¶¶ 2713.5, 2715.1).

The author of the motion gave the following rationale:

- 3) In June of 2015 the Texas Annual Conference Board of Ministry acted as an extension of a church trial in order to terminate [a clergy person's] conference membership by trial as reported to the clergy session of the 2016 Annual Conference on May 30, 2016. This action is in violation of ¶ 33 Article II which limits board of ministry lay involvement in clergy matters to ordination, character, and conference membership. This limited exception does not include the execution of judicial action by church trial. That role remains entirely with the clergy members comprising the trial court which according to ¶ 2711.1 shall be a continuing body until the final disposition of the charge. While the charge may leave open the possibility of termination of conference membership, the execution of that decision shall not reside with the laity. The trial court did not dispose the final penalty of termination in accordance with ¶ 2711.3; rather, an unconstitutionally convened extension of the trail court composed of the lay and clergy members of the board of ministry did.
- 4) [The clergy person's] trial decision placed her on suspension as affirmed by the 2012 clergy session of the annual conference. However, the final penalty of termination of conference membership by trial was levied and subsequently presented to the clergy session of the annual conference on May 30, 2016. ¶

2713.5 and ¶ 2715.1 afford the defendant a 30-day period for appeal at the disposition of the final penalty. Seeing that the appeal was not afforded at the time of final disposition due process was not met and these proceedings were concluded in violation of discipline standards.

There was an oral hearing before the Judicial Council on October 25, 2016. Reverend Jason Burnham appeared on behalf of Petitioner. Associate Chancellor Mary A. Daffin appeared on behalf of the Texas Annual Conference.

JURISDICTION

The Judicial Council has no jurisdiction to consider a judicial matter submitted as a Petition for Declaratory Decision under ¶ 2610.2(j) regarding the final disposition by the Conference Board of Ordained Ministry of penalties imposed by a Trial Court, when the concerned clergy person did not invoke her right of appeal under ¶ 20, Art. IV of the Constitution and ¶ 2715.1 of *The Book of Discipline 2012* [hereinafter *The Discipline*].

ANALYSIS AND RATIONALE

This matter came to the Judicial Council as Petition from the Texas Annual Conference for a Declaratory Decision according to ¶ 2610.2(j). The author of the petition acknowledged that the purpose of the petition is to seek an appeal from the decision of the Conference Board of Ordained Ministry charged with implementing the penalties imposed by the Trial Court. It is undisputed that the underlying issues of the petition are judicial in nature.

The petitioner raised doubt as to when the thirty-day period for filing the notice of appeal was supposed to begin, arguing specifically that it started with the final disposition of the penalty by the Board of Ordained Ministry on June 4, 2015. The Judicial Council settled this issue in Memorandum 826:

Par. 2627.1 of the 1992 *Discipline* [now ¶ 2715.1 of *The Discipline*] has a requirement that within thirty days of the close of the trial the presiding officer of the trial court must be notified of intention to appeal, together with the grounds for appeal. [emphasis added]

The record indicates that the clergy person did not appeal within thirty days of the Trial Court sentence (dated June 21, 2012) pursuant to ¶ 2715.1. It was respondent's duty to file the notice of appeal in a timely manner, which would have been July 21, 2012. There was nothing preventing her from exercising her constitutionally protected right of appeal. ¶ 20, Art. IV Constitution. We are bound by ¶ 2715.4, which states: "The right of appeal, when once forfeited by neglect or otherwise, cannot be revived by any subsequent appellate body" (emphasis added).

In Judicial Council Decision 1114, the Judicial Council stated the principle of jurisdiction as follows:

The Judicial Council has only such jurisdiction as is expressly granted to it by the Constitution and by the General Conference. Our lodestar principle has been that we may not assume jurisdiction to render a declaratory decision unless jurisdiction has been clearly vested in the Judicial Council. *See* Decision 29. Our long-standing policy is to construe our jurisdiction strictly and with restraint. *See* Decisions 255 and 535.

The Petition for Declaratory Decision may not be used as a means to revive a forfeited appeal or create jurisdiction where *The Discipline* provides none. Absent timely and proper appeal by the clergy person, we lack jurisdiction to consider a judicial matter presented as a Petition for Declaratory Decision.

DIGEST

The Judicial Council has no jurisdiction to consider a judicial matter submitted as a Petition for Declaratory Decision under ¶ 2610.2(j) regarding the final disposition by the Conference Board of Ordained Ministry of penalties imposed by a Trial Court, when the concerned clergy person did not invoke her right of appeal under ¶ 20, Art. IV of the Constitution and ¶ 2715.1 of *The Book of Discipline 2012*.

Kabamba Kiboko recused herself.

First clergy alternate Tim Bruster participated in this decision.

Deanell Reece Tacha was not present.

First lay alternate Warren Plowden participated in this decision.