

JUDICIAL COUNCIL OF THE UNITED METHODIST CHUCH

DECISION 1296

IN RE: A Request from the North Georgia Annual Conference for a Declaratory Decision on the constitutionality of the Deletion of ¶ 2703.2, and modifications of ¶¶ 2704.2 and 2706.2c of the 2008 Book of Discipline in light of ¶ 33 of the Constitution

DIGEST

The action of the 2012 General Conference to delete the role of the Committee on Investigation for clergy members of an annual conference is unconstitutional. The portions of the *Discipline* that relate to the role of the Committee on Investigation for clergy members of the annual conference that existed in the *2008 Discipline* are restored. This decision is prospective and takes effect on April 18, 2015.

STATEMENT OF FACTS

At the North Georgia Annual Conference session on June 12, 2014, the following motion was made by the Committee on Nominations during its presentation to the Annual Conference session. This motion was passed by vote of the Annual Conference, asking for a Declaratory Decision from the Judicial Council:

The Committee on Nominations hereby moves that the Annual Conference, as empowered by ¶2610.2.j of the 2012 *Book of Discipline*, request of the Judicial Council a declaratory decision of the constitutionality of the deletion of ¶2703.2 of the 2008 *Book of Discipline*, the text of which defining the annual conference Committee on Investigation does not appear in the 2012 *Book of Discipline*. Similarly, ¶2704.2 of the Book of Discipline does not contain the references to the Committee on Investigation that were in the same paragraph in the 2008 Book of Discipline, and that paragraph describes the process by which the annual conference conducts the investigation of charges brought against clergy members of the conference. Moreover, ¶2706, which describes the procedure of the Committee on Investigation, has all reference to clergy members of the annual conference that were in the 2008 Book of Discipline deleted there from, despite the fact that ¶2706.2 continues to describe the parties as “the respondent and the Church” without qualifying “respondent” not to include clergy members of the annual conference. This all must be interpreted in the light of ¶33 of the United Methodist Constitution which specifies that the lay and clergy members of the Committee on Investigations are empowered with vote on matters related to ordination, character, and conference relations of clergy,

strongly and necessarily implying that those lay members, as well as clergy members of the annual conference, through their service on the Committee on Investigation, have a role in the investigation of charges against those clergy members.

The minutes indicate that the motion passed by voice vote without opposition.

At its October 2014 session, the Judicial Council deferred deliberation on this request until the Spring 2015 meeting.

A clergy member of the California-Pacific Annual Conference submitted two *amicus curiae* briefs in which he argued that the language in the current *Discipline* is constitutional. The petitioners filed an addendum to their brief.

An oral hearing was held in Columbus, Ohio, on Wednesday, April 15, 2015. Mr. Joe N. Whittemore and The Reverend Dr. K. Edward Tomlinson appeared in behalf of the North Georgia Annual Conference.

The Declaratory Decision request rehearses the complex and somewhat convoluted process by which these changes came about at the 2012 General Conference. They note that the General Board of Higher Education and Ministry submitted a series of 32 petitions which together were “intended to make sweeping changes to the investigation and trial processes of the United Methodist Church.” These were subsequently assigned to two different legislative committees. The decision request notes that

of all the petitions, 15 were rejected by the legislative committee to which they were assigned, and those petitions were not assigned to any calendar....Petitions 20182, 20184 and 20188 all are at issue In this request for declaratory decision and they were all significantly amended by the legislative committee and...adopted in plenary as amended. All four of these petitions deleted references in the 2008 Book of Discipline to the annual conference committee on investigation as it related to the investigatory part of the judicial process when a cleric who is not a bishop is the respondent...Petition 20190 places responsibility for determining commencement of judicial proceedings with counsel for the Church and there is no accountability to the annual conference, only to the counsel who is appointed by the bishop. ..The result of these changes is that the Counsel for the Church now consults with the Conference Chancellor and makes his or her own determination as to whether or not the case should

go to trial, when the respondent is a clergy member of an annual conference.

JURISDICTION

The Judicial Council has jurisdiction under ¶2610 of the *2012 Discipline*.

ANALYSIS AND RATIONALE

As the North Georgia Annual Conference request notes, the change in the *Discipline* that occurred at the 2012 General Conference raises serious questions about both fair process and balance between the episcopal and other clergy processes. As Judicial Council Decision 1226 notes, “fair process procedures, trials and appeals are integral parts of the privilege of our clergy of right to trial by a committee and of appeal.” And, the annual conference brief continues “historically, ‘a thorough process of investigation’ has included the requirement that the Counsel for the Church present the result of his or her investigation to a Committee on Investigation consisting of peers and laity, as recently provided, prior to taking the case to trial.” The North Georgia Annual Conference request further notes that the change in the process for clergy has no pre-trial work by the Committee on Investigation, a requirement remaining in place for bishops, diaconal ministers, and laity, thus establishing a significantly different process.

While one could argue the new process for clergy members is simple, less time-consuming, and less labor intensive, the comments of Bishop S. Clifton Ives, cited by the North Georgia Annual Conference, are helpful. Following his term as a presiding officer of a March 2014 trial court, he noted:

In its effort to streamline the judicial process and to bring clergy swiftly to trial, the General Conference unfortunately eliminated the Committee on Investigation. While the previous Committee on Investigation process was cumbersome, it did provide for an investigating body to hear from and question a complainant. Those responding to a complaint had a body of peers to help determine if sufficient evidence existed to bring a charge in preparation for trial. For a Presiding Officer, the transcript of a Committee on Investigation’s work provided evidence of what was done before a complaint became a charge. In the current *Discipline*, the investigating agents are the Bishop’s appointed Counsel for the Church and the Presiding Officer of the trial, who has no record of what has happened before.

I believe that the Committee on Investigation should be restored in some form to the judicial process for clergy. It is a glaring inconsistency in *The Book of Discipline* to maintain the Committee on Investigation for all others except clergy members of an annual conference. Without it, Presiding Officers preparing for trials of clergy members

are forced to make decisions about pre-trial motions on the basis of very limited information. When trial court members know that another body of peers has found reasonable grounds for a trial, they can reasonably assume that they are involved in ‘an expedient of last resort.’

Judicial Council Decisions 698 and 704 note that consistent record is required for “fair process,” including Board of Ordained Ministry, Committee on Investigation, Trial Court, and Appeals procedures.

If one tracks the complaint through trial process as specified in the *2012 Discipline* compared to that in the *2008 Discipline*, the inconsistencies and critical omissions become apparent. The Trial Court and the Committee on Investigation are clearly two distinct bodies, constituted by separate processes and functioning at different times in the complaint through trial process. The trial court serves the same function as in the *2008 Discipline*. The investigative function of the prior Committee on Investigation is no longer part of the process for clergy members of the Annual Conference. To eliminate this step in the process is to call into question whether the clergy members have been granted fair process, an unconditional guarantee.

The Constitution of The United Methodist Church in Division Two, Section VI, Article II (¶ 33) establishes the existence of the Committee on Investigation for clergy members of the annual conference. Paragraph 33 states:

The annual conference is the basic body in the Church and as such shall have reserved to it the right to vote on all constitutional amendments, on the election of clergy and lay delegates to the General and the jurisdictional or central conferences, on all matters relating to the character and conference relations of its clergy members, and on the ordination of clergy and such other rights as have been delegated to the General Conference under the Constitution, with the exception that the lay members may not vote on matters of ordination, character, and conference relations of clergy except that the lay members of the conference board of ordained ministry and the *committee on investigation* (emphasis added) may vote on matters of ordination, character, and conference relations of clergy, with the further exception that lay members of the district committee on ordained ministry be full participating members of the district committee on ordained ministry with vote. It shall discharge such duties and exercise such powers as the General Conference under the Constitution may determine.

However, the action of the 2012 General Conference removed the enabling legislation for this committee. That action is unconstitutional.

Further, the principle of fair process requires that clergy members of an annual conference have a Committee on Investigation for a review as bishops, diaconal ministers, and lay persons do. By removing the enabling legislation that provides a Committee on Investigation for clergy members of an annual conference, the 2012 General Conference created a violation of fair process.

When a legislative action by the General Conference is ruled unconstitutional by the Judicial Council it is important that the remedy be applied prospectively, not retroactively. See Judicial Council Decisions 47 and 691 and further in Decision 331 as quoted in Decision 704: “Judicial construction or interpretation of a law should be prospective for application, but not retroactive.”

DECISION

The action of the 2012 General Conference to delete the role of the Committee on Investigation for clergy members of an annual conference is unconstitutional. The portions of the *Discipline* that relate to the role of the Committee on Investigation for clergy members of the annual conference that existed in the 2008 *Discipline* are restored. This decision is prospective and takes effect on April 18, 2015.

Beth Capen was absent.

Warren Plowden, third lay alternate, participated in this decision.

Dennis Blackwell was absent.

Timothy K. Bruster, first clergy alternate, participated in this decision.

April 18, 2015

CONCURRING OPINION

It appears uncontroverted that at the 2012 General Conference, the General Board of Higher Education and Ministry (GBHEM) submitted a package of petitions (Nos. 20168-20199) intended to make sweeping changes in the investigations and trial processes of the Church. Of the 32 petitions, 15 were rejected by the legislative committee. Of those that were carried to adoption, Petitions 20180, 20182 and 20188 were significantly amended and assigned to the legislative committee on judicial administration (the last three under Calendar Items 304, 305, 306). All said four petitions deleted references in the 2008 *Book of Discipline* to the annual conference committee on investigation (COI), as it related to the investigatory part of the judicial process when a cleric, who is not a bishop, is the respondent. They were eventually adopted by the 2012 General Conference.

Petition 20180, as adopted, changed the commencement of judicial proceedings from when the matter at issue in a case is referred to the Committee on Investigation (COI) to when it is referred to the counsel for the Church.

Petition 20182, as adopted, deleted ¶2703.2 of the *2008 Discipline*, which defined the annual conference COI tasked with the investigation of charges brought about against a clergy member of the annual conference.

Petition 20184, as adopted, deleted the requirement in ¶2704.2 of the *2008 Discipline* that where the respondent is a clergy member of the conference, the counsel for the Church must present the complaint to the annual conference COI. It defined the role of counsel for the church, making said counsel, in consultation with the conference chancellor, solely responsible for directly forwarding the complaint to the person assigned to preside over a subsequent trial.

Petition 20188, as adopted, deleted the role of the annual conference COI, from ¶2706 of the *2008 Discipline* when the respondent is its clergy member.

Resultantly, the COI has replaced the trial court, retaining its name but shedding off its investigation function prior to trial. It is now a misnomer.

However, the other proposals to eliminate the pool of candidates, the trial court, the committee on appeals of the jurisdictional and central conferences, were not adopted by the General Conferences, hence, there is still no direct appeal from a trial to the Judicial Council.

The Judicial Council has jurisdiction under 2610.1 and 2.j of the *2012 Book of Discipline*.

Prior to the questioned elimination, the Committee on Investigation (COI) of an annual conference functioned as an investigating body where the respondent is a clergy member. It could hear and question a complainant. The respondent had a body of peers to help determine if sufficient evidence existed to bring a charge preparatory to trial. Members of the Committee had voting rights in matters of ordination, character and conference relations of a clergy. There was plain assurance of a fair process. Now, because of the legislative deletion of COI, the fate of the clergy respondent whether or not a charge is forthcoming, is left to the sole discretion of the Bishop-appointed Counsel for the Church, albeit in consultation with the Chancellor. Said Counsel has no accountability to the conference. There is no more thorough, let alone fair, process of investigation and hearing. Nor is there a screening of the evidence prior to its presentation at the trial. There is no record or transcript of what transpired before a trial

commences. Consequently, those who preside at the trial would be hard-pressed resolving pre-trial issues given the limited information on hand.

Fair process is an integral part of our clergy right not only in trial (JCD 1226) but also in investigation or pre-trial. The requirement of an annual conference Committee on Investigation composed of peers before a cleric is brought to trial has been enshrined in the *Discipline* since 1940 (¶631). In fact, in 2008 the General Conference, with the support of 2/3 vote of the membership of all annual conferences, amended ¶33 of the Constitution to provide laity voting members on the clergy COI. (¶¶602.6 and 2703.2)

More importantly, the Committee on Investigation is specified in ¶33 of the Constitution stating, *inter alia*, “that the lay members of the conference board of ordained ministry and the Committee on Investigation may vote on matters of ordination, character, and conference relations of clergy.” Although the word used is the usually permissive may, how can the lay members vote if the clergy COI is taken out of the provision? Hence, the General Conference cannot eliminate it or change its function in the judicial process by mere legislation. Unless and until said constitutional provision is properly amended, the COI must remain as a structural part of the annual conference. Obviously, the retention of the name of the COI despite the change of its function from investigation to trial work was done to circumvent the rigorous process of amending ¶33 of the Constitution as prescribed by ¶59 which requires a two-thirds majority of the General Conference present and voting and a two-thirds affirmative vote of the aggregate number of members of the several annual conferences present and voting.

Further, the deletion has created an imbalance in the treatment of respondents, clergy, bishop and laity. While the COI for clergy has been eliminated, those for bishop and laity have been retained. The rights of a clergy respondent are sacrificed at the altar of speedy investigation mistaken as a streamlined procedure.

Accordingly, I respectfully hold that the 2012 amendments to ¶¶2703.2, 2704.2 and 2706 eliminating and/or changing the function of the Annual Conference Clergy Committee on Investigation are void and unconstitutional. The provisions of said paragraphs in the *2008 Book of Discipline* must be restored and maintained.

Ruben T. Reyes

April 18, 2015

DISSENTING OPINION

The action of the General Conference to delete ¶ 2703.2 from the *2008 Discipline* was constitutional. The question of the wisdom of doing so is a legislative matter and is beyond the purview of the Judicial Council.

There are three constitutional provisions that need to be considered.

Paragraph 58 is clear in giving the General Conference authority to institute a judicial system for the Church as long as the right to trial and appeal is maintained. (In ¶¶ 2708-2014, this committee for trial is called “trial court.” Although the term is not the one used in the Constitution, the function is the same. In ¶ 27.6 of the Constitution, “trial court” is referred to as “trial committee.”) In terms of ¶ 58, that judicial system could be with or without a committee on investigation. At this point, the Constitution leaves the legislative expression of that right to the General Conference.

Paragraph 16.7 grants the same power to the General Conference to provide a system and method of judicial procedure, but with the proviso that there might be limits prescribed elsewhere in the Constitution.

The question now is: “Are such limits contained in ¶ 33?”

That constitutional article is clear that if there is a committee on investigation, any lay members may vote “on matters of ordination, character and conference relations of clergy.” Does it require a committee on investigation when a complaint is filed against a clergy person other than a bishop?

There are places within the Constitution that go into effect only if the operative circumstances occur. For example, ¶ 4 indicates that “...All persons without regard to race, color, national origin, status,⁴ or economic condition, shall be eligible to attend its worship services, participate in its programs, receive the sacraments, upon baptism be admitted as baptized members, and upon taking vows declaring the Christian faith, become professing members in any local church in the connection....⁵ (emphasis added) That constitutional provision is in place even if no one makes such vows. If such a tragic year occurred, there would be no application of this provision, but it would still be there for such a time as it would apply.

Another example is ¶ 22 that requires: “The General Conference *shall not appropriate the net income of the publishing houses, the book concerns, or the Chartered Fund* (emphasis added) to

any purpose other than for the benefit of retired or disabled preachers, their spouses, widows, or widowers, and children or other beneficiaries of the ministerial pension systems.⁴³ That constitutional provision is in place even if the net income in a particular year is negative and there are no funds to distribute. In such a circumstance, there would be no application of the article, but it is still there for such years when it would be applicable.

The same pattern applies in the case of ¶ 33. If there is no committee on investigation dealing with “matters of ordination, character and conference relations of clergy,” the article is not applied; if there is a committee on investigation dealing with “matters of ordination, character and conference relations of clergy,” the article gives lay members of such a committee the right to vote.

Consequently, ¶ 33 does not require a committee on investigation, but dictates the rights of lay members if such a committee exists.

F. Belton Joyner, Jr.

N. Oswald Tweh, Sr.

April 18, 2015