

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION 1251

IN RE: Review of a Bishop's Decisions of Law in the Texas Annual Conference Regarding the Appointment of a Pastor and Regarding the Clergy Triad Process

DIGEST

The Bishop's decision regarding a question of a pastor's appointment is affirmed in that the question was not germane because it did not relate to the regular business, consideration, or discussion of the Conference session. Further, the bishop's decision regarding the Clergy Triad Process is affirmed in that a bishop presiding at a session of an annual conference does not have the authority to rule on judicial or administrative procedures. Questions as to fair process, judicial process, and administrative process must be addressed in the appropriate manner and through specific bodies set forth in the *Discipline*. Such inquiries are an improper basis for a decision of law.

STATEMENT OF FACTS

On May 28, 2013, at a regularly scheduled session of the Texas Annual Conference, a clergy member asked the Bishop for two rulings of law.

- (1) The first request was stated as follows: "Was the appointment process in moving Rev. Michael Caldwell from Rusk to Lissie (December 2009-June 2010) in keeping with p. (*sic*) 363, par 421.,1-3, par 430.1, par. 431, par. 432, par. 433.1-5a and with the understanding of fairness in par. 2703.2, par. 362b-e within and of The Discipline of the United Methodist Church?" The bishop stated that the question was in order and that she would respond within thirty days.

In a timely way, on June 17, 2013, the Bishop filed this decision:

The question is improper in that it is not germane. It does not relate to the regular business, consideration or discussion of the conference session and it is moot and

Commented [BJ1]:

hypothetical. Further, the episcopacy has no authority to make substantive rulings on judicial/administrative processes. The question is improper.

The Bishop filed a brief that included the text of the request, excerpts from the minutes of the session at which the question was raised, a document describing the Triad Process, an agenda for the Annual Conference, and the full daily proceedings of the 2013 Texas Annual Conference. The questioner filed a brief (with multiple attachments) that addressed both the instant matter and a second request for a decision of law. The questioner noted that he used the *2008 Discipline* for his references because it was the edition in effect at the time of the appointment in question. The conference secretary provided the full daily proceedings of the 2013 Texas Annual Conference.

(2) The second question was: Is our triad process in keeping with ¶ 361.1(b), 604 and 363 of *The (2008) Discipline*?

The presiding bishop ruled in a timely way on June 17, 2013, that:

The question is an improper question in that it is not germane. It does not relate to the regular business, consideration or discussion of the conference session and it is moot and hypothetical.

While the question is posed as a question of law, it is in fact a request for a declaratory decision. A Bishop has no authority to respond to a declaratory statement posed as a request for decision of law.

The Bishop filed a brief that included the text of the request, excerpts from the minutes of the session at which the question was raised, a document describing the Triad Process, an agenda for the Annual Conference, and the full daily proceedings of the 2013 Texas Annual Conference. The questioner filed a brief (with multiple attachments) that addressed both the first request for a decision of law and the second request.

JURISDICTION

The Judicial Council has jurisdiction under ¶¶ 51 and 56.3 of the Constitution and ¶ 2609.6 of the *2012 Discipline* as modified by Decision 1244.

ANALYSIS AND RATIONALE

The clergy member who requested the decisions of law used as reference the *2008 Discipline* instead of the *2012 Discipline*. His question of law grew out of events that occurred when the *2008 Discipline* was in effect. It was appropriate to use the 2008 edition.

In regard to the first ruling (regarding the appointment of a pastor), it is important to note that in numerous decisions (for example, see Judicial Council decisions 915, 1156, 1216), the Judicial Council has sought to make clear the separation of powers inherent in United Methodist constitutional practice. A bishop presiding at a session of an annual conference does not have the authority to rule on judicial or administrative procedures. The Bishop in the instant case should not rule on the portion of the question regarding ¶¶ 362 (administrative complaint), 363 (disposition of administrative complaints), or 2703 (Composition of committee on Investigation), and she has not done so.

In Decision 1092, the Judicial Council ruled:

Bishops have no authority to make substantive rulings on judicial or administrative matters that are under the purview of judicial or administrative bodies such as the Committee on Investigation, Trial Court, Committee on Appeals or Judicial Council..."

Further, the Judicial Council noted in Decision 1092,

Questions as to fair process, judicial process, and administrative process ought to be dealt with through the appropriate manner and bodies set forth in the *Discipline*. It is

only by vote of an authorized body for a declaratory decision that the matter might be addressed by the Judicial Council on the merits. We trust that annual conferences will be frugal and prudent in their use of such processes.

In writing of a bishop's lack of authority to make substantive rulings on judicial or administrative matters, Judicial Council Decision 799 states that for a bishop to make such a ruling "would violate the principle of separation and balance of powers between the legislative, executive and judicial branches as set forth in the Constitution."

The Bishop's decision indicates that the question was not germane. Judicial Council Decision

1214 states:

The Judicial Council has frequently and clearly included certain principles that relate to bishops' decisions of law. The longstanding jurisprudence of the Judicial Council has been that requests for decisions of law shall be germane to the regular business, consideration, or discussions of the annual conference and shall state the connection to the specific action taken, or proposed to be taken, during the conference session.

Especially notable is the language in two decisions, namely 33 and 799. With regard to a request for a bishop's decision of law, Decision 33 says that "...any such request should be based upon some action taken or proposed to be taken by such Conference, wherein under the specific facts in each case some doubt may have arisen as to the legality of the action taken or proposed.

A review of the Daily Proceedings does not reveal any time during the May 2013 session of the Texas Annual Conference that the issue of appointment-making was addressed. The agenda for that session does not indicate any items of business related to appointment-making. The fact that the bishop ruled that it was in order to raise questions of law does not mean that the questions of law were germane to the business of the annual conference.

In regards to the second question (Clergy Triad Process), we note that on its face, the request is clearly improper. The question calls for a substantive answer concerning the administrative and judicial processes of the conference, particularly given that the inquiry focuses on the

disciplinary paragraphs concerning complaint procedures as well as the disposition of administrative complaints. The inquiry is an improper request for a decision of law; Bishops may not issue substantive rulings on judicial and administrative processes.

The Judicial Council reiterated the controlling rule in Decision 1202:

Questions as to fair process, judicial process, and administrative process must be addressed in the appropriate manner and through the specific bodies set forth in the *Discipline*. *In no event may an individual bring those delineated issues to the Judicial Council as a review of a Bishop's ruling on a question of law; to do so circumvents the process set forth in the Discipline and also violates the principle of the separation and balance of powers.* It is only by vote of an authorized body for a declaratory decision that the matter might be addressed by the Council on the merits [*emphasis added*].

The Council also noted in Decision 1092:

Questions as to fair process, judicial process, and administrative process ought to be dealt with through the appropriate manner and bodies set forth in the *Discipline*. It is only by vote of an authorized body for a declaratory decision that the matter might be addressed by the Judicial Council on the merits.

In Decision 799 the Judicial Council reiterated the limitations on the scope and subject matter of a Decision of Law made by an annual conference's presiding Bishop. The Judicial Council emphasized in Decision 799 that:

The bishop has no authority to make substantive rulings on judicial or administrative matters. Such matters are limited to the purview of the judicial or administrative bodies such as Committee on Investigation, Trial Court, Committee on Appeals or Judicial Council. The constitution (§ 18) and the *1996 Discipline* (§§ 358, 2623, and 2626-2628) have placed the authority to resolve such questions in these bodies. To do otherwise *would violate the principle of separation and balance of powers between the legislative, executive and judicial branches* as set forth in the Constitution [*emphasis added*].

Questions which are procedural or substantive matters relating solely to actions in a judicial or administrative process are not proper questions to be addressed in a substantive ruling by a bishop. ... Such questions are not proper questions for the bishop in that *these are not matters concerning the regular business of the Annual Conference. By the Constitution and other paragraphs of the 1996 Discipline, such questions belong to the judicial bodies of the Church* [*emphasis added*].

...
Substantive rulings by a bishop which come under the purview of the judicial and/or administrative process are improper, however a bishop must rule on such matters as improper.
...

The so-called "question of law" though presented properly, which do not relate to business, consideration or discussion of the conference session, are improper and should be so ruled and do not require a substantive answer. Questions involving the supervisory function of the district superintendent under the Discipline under ¶ 520(¶ 421 1996 Discipline) are improper and should be so ruled. Substantive rulings by a bishop which come under the purview of the judicial and/or administrative process are improper; however, a bishop must rule on such matters as being improper.

In light of these precedents in Judicial Council determinations, it is clear that the question regarding the Clergy Triad Process is improper.

There is within the context of these questions legitimate concerns about how the Clergy Triad Process has the potential to intrude on the disciplinary provisions for fair process, administrative, and judicial process. Although it is not appropriate for the presiding bishop to rule on such matters, it is the responsibility of the Texas Annual Conference to insure that the Clergy Triad Process is in keeping with all constitutional and legislative provisions of the *Discipline*.

DECISION

The Bishop's decision regarding a question of a pastor's appointment is affirmed in that the question was not germane because it did not relate to the regular business, consideration, or discussion of the conference session. Further, the bishop's decision is affirmed in that a bishop presiding at a session of an annual conference does not have the authority to rule on judicial or administrative procedures. Questions as to fair process, judicial process, and administrative

process must be addressed in the appropriate manner and through specific bodies set forth in the *Discipline*. Such inquiries are an improper basis for a decision of law.

Dennis Blackwell was absent.

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

William B. Lawrence, President

F. Belton Joyner, Jr., Secretary

October 26, 2013

CONCURRENCE

I concur with the controlling opinion in this Decision of the Judicial Council. In doing so, I write to put additional emphasis upon the note of caution that Decision 1251 provides in regard to the “Clergy Triad Process.” As the subject of one of the two requests for decision of law that occasioned this matter, the “Clergy Triad Process” in the Texas Annual Conference was included in a review by the Judicial Council as we passed upon and affirmed the Bishop’s decisions of law, as required by the Constitution (§§ 51 and 56.3) and the *Discipline* (§ 2609).

Parties in this case provided in the record a document that described the design and procedures of the “Clergy Triad Process” as it is used in the Texas Annual Conference. The document clearly outlines the steps that are followed in a Triad, identifies the roles of the participants, discusses goals, and describes the anticipated outcomes from the convening of a Triad.

However, the document also demonstrates the risks that are inherent in establishing and using a Triad.

First, there is a substantial imbalance of power in the design of the Triad Process. The Bishop and the Cabinet determine when a Triad is to be convened, leading to the impression that a clergy person is summoned to a meeting. In a typical Triad, two district superintendents and the conference staff executive who holds a position as Director of Clergy Excellence are in the room with the clergy person, who apparently is notified that a Triad is being called. Only the Cabinet and the Bishop can initiate a Triad, and the clergy person is simply expected and directed to attend. Because of advance preparation by the two district superintendents and the conference executive, three persons in the room have the clergy person more than outnumbered. They also have the clergy person at a distinct disadvantage based on the quantity of information the three of them have assembled before the event begins. A clergy person who is directed to meet with a Triad is not permitted to have a friend or silent observer in the room. While this power differential may not be designed to create a “punitive” environment, it seems unlikely to create a pastoral one.

Second, the issues that might “necessitate a Triad” range from local church “conflict” to “misconduct.” The risk here, as Decision 1251 is clear to show, is the potential “to intrude on the disciplinary provisions” which ensure fair process in administrative and judicial matters. It is not clear how or where the Triad honors the boundaries that the *Discipline* is careful to define around the methods for managing complaints, for example. Should some reference be made in the Triad to a form of clergy misconduct, there may be no clarity about whether the clergy person is to respond or how fair process is to be ensured.

Third, the design of the Triad risks creating confusion about the way an appointment, including consultation about an appointment, is handled. The *Discipline* includes the description

of the “Cabinet” in ¶ 424 as one of the expressions of superintendency, naming district superintendents as the explicit constituents of the “cabinet” along with the Bishop, and allowing others to meet with the “cabinet” when program matters warrant (¶ 424.6). One can presume from the description of the “Clergy Triad Process” that a primary consideration in having a Triad is the clergy person’s effectiveness in a pastoral appointment. Indeed, conflict in the local church is explicitly cited as one reason for a Triad to meet. But, by design, the Triad includes and is led by a conference executive who is neither a superintendent nor the Bishop and, therefore, is not a member of the Cabinet. The clergy person may then be drawn into confusion about the way that “consultation” (¶ 426) is occurring in the matter of making appointments and also with whom. Moreover, as the *Discipline* says, “Consultation is not merely notification.” Yet, in a Triad, outcomes are—as the text of the Texas Annual Conference document says—“more often than not, ‘non-negotiable.’ ” It is not easy to discern whether there is a distinction between a “non-negotiable” position (which the Clergy Triad Process has expressly taken) and a “notification” position (which the *Discipline* clearly prohibits).

I concur with my Judicial Council colleagues in Decision 1251, but I have interest in the part of this Decision that offers a cautionary word about the Clergy Triad Process. As the text of the Decision says, “all constitutional and legislative provisions of The Book of Discipline” must be honored with our procedures.

William B. Lawrence

The following persons join this concurrence:

Beth Capen

Katherine Austin Mahle

Angela Brown

Timothy K. Bruster

October 26, 2013