

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION 1440

(Docket No. 1021-20)

IN RE: Review of a Bishop's Ruling on a Question in the North Carolina Annual Conference Concerning the Legality of Requiring the Members of Annual Conference to Vote to Accept or Reject the "Special Standing Rules of Order For Annual Conference 2021", Without Opportunity for Debate or Amendment, Prior to the Convening of the Annual Conference Session.

DIGEST

An annual conference may not approve changes to its standing rules or conduct any other business prior to the opening session as defined in ¶ 605.1. The bishop's ruling is reversed in part. This holding shall be prospective and not affect any actions taken by the North Carolina Annual Conference at its 2021 session.

STATEMENT OF FACTS

Due to the need to meet virtually during an ongoing pandemic, the members of the North Carolina Annual Conference approved in May 2021 by electronic vote the standing rules to allow the 2021 session to be held in that mode. That electronic process was limited to a vote up or down but did not include opportunities for debate, questions, or amendments. When the annual conference convened on June 17, 2021, for its 2021 session, a clergy member made the following request for a ruling of law:

I wish to request a bishop's ruling of law on the approval of the standing rules for this year's annual conference. My question is, "Can the annual conference approve standing rules prior to the annual conference actually being in session?"

We were sent the standing rules by email and told we had to approve them with an up or down vote by May 14, 2021. The annual conference was not even in session then. The session of the 2021 annual conference did not begin until June 17.

Furthermore, the mechanism for approving the standing rules this year did not provide any opportunity to debate, amend, or discuss the standing rules. It is clear that the 2020 standing rules applied only to the 2020 annual conference.

Therefore until the annual conference, while properly in session, approves new standing rules I believe the 2019 rules still apply and they do not give the ability to approve rules between sessions of annual conference. I do not believe the standing rules have properly been presented to the annual conference and therefore have not been properly approved. I would like to request a bishop's ruling on that.

Bishop Hope Morgan Ward rendered, on July 19, 2021, the following Decision of Law:

On June 17, 2021, at the opening of the 2021 Session of The NC Annual Conference, I was asked for a ruling of law by The Reverend Timothy Russell, elder in the [North Carolina] Conference. The question was whether or not the annual conference can approve special rules for conducting its business before the Call to Order. Because of the need to meet virtually due to the COVID pandemic our conference leadership ([District Superintendants] and the [North Carolina] Conference Rules Committee) had approved a request of the Annual Conference Planning Committee, Conference Secretary and myself to ask the Annual Conference to modify our standing rules to allow the 2021 Session to be held in that mode. That request was submitted to electronic vote in May 2021 and the result was a 98% approval of the change in rules (Appendix A). The attached brief stands in support of that action. I ruled that it was permissible by The Discipline and the NCC's Standing Rules of Order to take the electronic ballot in advance of the Session; in addition, as The NC Conference is incorporated under NC law and said law allows for electronic meeting/balloting of corporations, we also meet the state mandate for proper procedure.

Jurisdiction

The Judicial Council has jurisdiction pursuant to ¶ 2609.6 of *The Book of Discipline 2016* [hereinafter *Discipline*].

Analysis and Rationale

The Constitution states that a “bishop presiding over an annual conference, central, or jurisdictional conference shall decide all questions of law coming before the bishop in the regular business of a session, provided that such questions be presented in writing...” Const., ¶ 51 [emphasis added]. Although the request was duly submitted by the clergy member during the opening session and properly recorded in the minutes of annual conference, the bishop's decision went beyond the scope of the Question of Law in addressing *another* issue—the legality of online annual conference meetings under ecclesial and civil laws—contrary to that provision. We can review only what was submitted by the clergy person and recorded in the official minutes. Not at issue here is whether the laws of the Church or the state of North Carolina permit an annual conference session to be conducted virtually. The question properly before the Judicial

Council is whether an annual conference may approve standing rules prior to the annual conference being called to order.

The Discipline sets forth the parameters for conducting an annual conference session in ¶ 605, of which only §§ 1 and 4 are pertinent to this case:

¶ 605. *Business of the Conference*—1. The session shall open with a period of devotion, followed by a call of the roll, including the roll of the local pastors.

4. The business of the annual conference shall include receiving and acting upon reports from district superintendents, officers, standing and special committees, boards, commissions, and societies and also making such inquiries as the Council of Bishops shall recommend by the provision of a supplemental guide.

Changes to the standing rules of an annual conference are commonly proposed in the report of the rules committee, which is a standing committee in the North Carolina Annual Conference. The approval of such rules, like any other action item, is part of the “business of the annual conference” as defined in ¶ 605.4. This provision, however, is predicated on ¶ 605.1, which determines *when* the “business of the annual conference” commences. Under ¶ 605.1, an opening session always precedes the business delineated in ¶ 605.4 because an annual conference session, to be *in order*, must be *called to order* first. Anything else would be tantamount to proverbially ‘putting the cart before the horse.’

Without passing judgment on any other part of the bishop’s ruling, we reverse the following sentence found to be in error: “... it was permissible by The Discipline and the NCC’s Standing Rules of Order to take the electronic ballot in advance of the Session.”

Decision

An annual conference may not approve changes to its standing rules or conduct any other business prior to the opening session as defined in ¶ 605.1. The bishop’s ruling is reversed in part. This holding shall be prospective and not affect any actions taken by the North Carolina Annual Conference at its 2021 session.

March 28, 2022

Concurrence

I join my colleagues in holding that no business may be conducted prior to the official commencement of the regular session of annual conference. We only differ in that I do not perceive an error regarding the scope of the Bishop's report of her episcopal ruling. I interpret the Bishop's report as providing the contextual framework of the events which precipitated the request for a ruling on a matter of law.

In circumstances such as these — wherein the request for an episcopal ruling involves questions regarding matters such as the illegality, non-compliance, or violation of standing rules and/or Disciplinary provisions that govern regular or special sessions of annual conference — Judicial Council decisions reflect that it is not impermissible for the presiding bishop to set forth the context and the circumstances which existed and may have been the cause or contributing factors to those issues upon which the questions of law were predicated. Indeed, there have been cases wherein the Judicial Council has specified that the presiding bishop ought to have set forth the context upon matter upon which he or she is issuing the ruling so as to enable the Council members to be well informed and cognizant of various considerations such as intended or unintended consequences of an episcopal ruling, or potential applications of an episcopal ruling which might have unforeseen and unanticipated implications. Thus contextual information can inform the decision making process in certain circumstances.

There is, however, one specific subject matter area where it is critical that a bishop say virtually nothing. Unlike the case herein, the subject matter which requires bishops to refrain from any comments whatsoever, including contextual statements, are those matters involving or relating to issues that can effect the status of a clergy member's conference relationship or the candidacy of a person who is in process; virtually everything that is addressed in the clergy session is related to the very subject matter upon which presiding bishops are precluded from issuing a substantive ruling; such questions of law are improper questions for rulings by bishops, but they are proper questions for those Disciplinary bodies or officers that are compose and oversee the procedures related to the investigative, judicial, and administrative processes and proceedings.

Our denominational system of checks and balances includes various safeguards to ensure that the exclusive authority vested by our Constitution in particular bodies over specific matters,

is uncompromised, not usurped, and remains fully functional, operational, and in tact despite institutional struggles. The Discipline mandates that when and if a bishop issues a ruling on a questions of law that any ruling of law then the bishop is required to report his or her ruling to the Judicial Council in writing. Likewise, the Discipline mandates that the Judicial Council must review and rule upon every ruling of law that is reported to the Judicial Council by the Bishops. Neither the Bishops nor the Judicial Council have any discretion. The bishops must report to the Judicial Council and the Judicial Council must review, evaluate, and issue a written ruling on every episcopal ruling. This is but one example of the institutional safeguards that was built into our United Methodist system of governance.

Therefore, through its decisions, the Judicial Council cautions and reminds bishops of that improper subject area for episcopal rulings. The Judicial Council has further explained that if those subject areas do get raised in a request for an episcopal ruling then it is critical that the Bishop say absolutely nothing about the clergy person, candidate, or process. Instead, the presiding bishops should simply and only state that it is improper for a bishop to issue a substantive ruling on the matters posed in the question of law.

The report of the episcopal ruling here is wholly unrelated to those Judicial and Administrative procedures which would trigger the requirement that a presiding bishop say nothing beyond the statement that it is improper for the presiding bishop to issue a substantive ruling in said matters [actual or potential Judicial proceedings or Administrative proceedings]. Here the Bishop was not constrained by a question concerning those clergy issues, processes, and procedures which are improper topics for an episcopal ruling. Thus, the Bishop was not acting under the constraints and restrictions that exist when a question involves, for example, issues related to the status of a clergy person's conference relationship. Thus, the in her report to the Judicial Council regarding the request that was made of her for a ruling of law, she provided and explained the contextual framework for the activities and procedures that normally would not have occurred or existed absent the pandemic. The context does not excuse nor permit actions that violate Disciplinary provision, but it does enable a more comprehensive understanding of the circumstances under which the Disciplinary violations occurred. Thus, the question posed was not improper and the *scope* of the reported ruling was not inappropriate.

Beth Capen
March 28, 2022