

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION NO. 1331

IN RE: Review of a Bishop's Decision of Law in the New England Annual Conference concerning questions related to the trial court decision in *Florida Annual Conference v. Rev. Errol Leslie* (¶ 33 Article II, ¶ 2719.1).

DIGEST

A bishop may not make a substantive ruling on a request for Decision of Law, which in essence is a petition for Declaratory Decision. Questions pertaining to the constitutionality of an act of General Conference that fall within the jurisdiction of the Judicial Council, are beyond the scope of episcopal authority. The bishop's Decision of Law is reversed.

STATEMENT OF FACTS

At the Clergy Session of the New England Annual Conference on Friday, June 17, 2016, a report was received concerning clergy status, which listed a clergy member of the New England Annual Conference as having his conference membership terminated by trial. This clergy person was tried by the Florida Annual Conference in January of 2016 and found guilty of three charges. The penalty imposed on him was termination of his membership in the New England Annual Conference. The clergy person was serving in a cross-conference appointment at the time the complaint was brought. He was tried in the Florida Annual Conference under the provisions of ¶ 2719.1 of *The Book of Discipline 2012* [hereinafter *The Discipline*]. The New England Annual Conference clergy session had no authority to vote on the matter and merely received the report. A clergy member raised the following five-part Question of Law:

1. Is the section of ¶ 2719.1 that makes an exception to the requirement that a member be subject to judicial proceedings in his or her own annual conference in conflict with ¶ 33 of the Constitution of the United Methodist Church?
2. Do not Judicial Council Decisions 1210, 1244 and 1318, among others, establish the principle that the General Conference cannot delegate powers that are constitutionally reserved to one body to another body without amending the constitution?
3. Does the Constitution authorize an annual conference to revoke the membership of a clergy member of another annual conference?
4. If the bishop determines that the cited section of ¶ 2719.1 is in conflict with ¶ 33 of the Constitution, and is thus, by definition,

unconstitutional, what will be the status of Rev. Leslie pending review of this decision of law by the Judicial Council?

5. If Rev. Leslie is determined to be a member in good standing of the New England Annual Conference while review of this decision of law is pending, is he entitled to receive an appointment in the interim?

Within thirty days, on July 14, 2016, Bishop Sudarshana Devadhar issued the following Decision of Law:

I rule that Par. 2719.1 is constitutional and therefore, a clergy member tried, convicted and sentenced by trial court assembled in a different annual conference from the one in which the clergy holds his membership, can have his membership terminated in his conference of membership.

It has been argued that Par. 33 which states in pertinent part: “The annual conference is the basic body in the Church and as such shall have reserved to it the right to vote...on all matters relating to the character and conference relations of its clergy members...”, means that an annual conference where a clergy is not a member, cannot vote on his conference relations. I disagree with that interpretation as it applies to the trial situation.

Par. 33 specifically refers to the annual conference’s reserved right to **vote** on these matters, (emphasis added). In the instance of a trial and imposition of penalty, no annual conference **votes**. Even if the trial of the clergy at issue had taken place in New England and the same penalty had been imposed, the clergy session of annual conference still would not have had the right to **vote** to affirm or reject the penalty.

Par. 2711 describes the powers of the trial court. Clearly, the annual conference either as a full body or by its clergy sessions is not a part of this voting or decision making in trial matters.

Additionally, the Judicial Council has affirmed the finality of a trial court ruling in Judicial Council Decision 1201 which states: “The meaning of the *Discipline* is clear in Par. 2711. ‘The trial court shall have full power to try the respondent.’ It does so within the boundaries of *The Discipline* for determining guilt, and the trial court alone has the authority to reach a determination with regard to a penalty in the circumstance where it has made a finding of guilt. Only the trial court has the authority to set a penalty, and it must do so within the range of options specified by *The Discipline* (Par. 2711.3). No other entity outside of the operations of the trial court can usurp it, modify it, supplant it, or enter a suggestion into the decision by the trial court as *The Discipline* makes clear.”

Par. 2719.1 does not describe an action at all similar to those actions ruled unconstitutional in Judicial Council Decisions 1210, 1244, and 1318. Rather it simply provides a venue which has been agreed to by the bishops of both conferences invoked and the respondent. That is exactly what occurred in the instant matter. There was no usurping of authority from the New England Annual Conference in violation of Par. 33.

My decision that Par. 2719.1 is constitutional makes the remaining questions moot. If, however, the Judicial Council rules Par. 2719.1 unconstitutional, then I believe that all trials ever held under this provision must be ruled invalid, and new trials must be granted to all respondents whose trial occurred in an annual conference other than the one where the respondent had his/her membership.

JURISDICTION

The Judicial Council has jurisdiction pursuant to ¶¶ 51 and 56.3 of the Constitution and ¶ 2609.6 of *The Discipline* as modified by Judicial Council Decision [hereinafter JCD] 1244.

ANALYSIS AND RATIONALE

Under our Constitution, bishops have a limited judicial function. They “shall decide all questions of law coming before the bishop in the regular business of a session” of the annual conference (¶ 51 Const.). Paragraph 56.2 of the Constitution specifically refers to “a bishop’s decision on a question of law made in the annual conference,” and ¶ 56.3 speaks of “decisions of law made by bishops in annual conferences.” *The Discipline* sets forth this authority in ¶ 2609.6 as modified by JCD 1244:

The Judicial Council shall pass upon and affirm, modify, or reverse the decisions of law made by bishops in central, district, annual, or jurisdictional conferences upon questions of law submitted to them in writing...in the regular business of a session. [emphasis added]

Bishop Devadhar ruled that ¶ 2719.1 passed constitutional muster and, therefore, the clergy person could legally be tried and sentenced in a different annual conference and have his conference membership terminated.

The question arises as to the scope of episcopal authority. More specifically, does Church law grant a bishop the authority to review a provision of *The Discipline* for constitutionality? Paragraph 2610.1 states in part:

The Judicial Council, on petition as hereinafter provided, shall have jurisdiction to make a ruling in the nature of a declaratory decision as to the constitutionality, meaning, application, or effect of the *Discipline* or any portion thereof or of any act or legislation of a General Conference... [emphasis added]

This paragraph makes it clear that, whenever a request for a ruling contains questions pertaining “to the constitutionality...of the Discipline or any portion thereof,” the Judicial Council, and only this body, has jurisdiction to make a ruling. In JCD 463, the Council established two criteria that trigger jurisdiction under ¶ 2515 of *The Book of Discipline 1976* (now ¶ 2610.1 of *The Discipline*):

Par. 2515 requires that in order for the Judicial Council to have jurisdiction, two facts must exist. 1) The question must involve the constitutionality, meaning, application or effect of the Discipline or any portion thereof... 2) It must relate to the Annual Conferences or the work therein.

This is clearly the case here. The Question of Law a) involves the constitutionality of ¶ 2719.1 of *The Discipline* and b) relates to the revocation of membership of a clergy person in the New England Annual Conference, and by virtue of that, to the work therein.

To qualify as “question of law” under ¶ 2609.6, a request must not contain anything described in ¶ 2610.1. This issue was settled in JCD 1304, in which the Judicial Council affirmed the ruling of a bishop declaring a question to be moot because it challenged the constitutionality of a legislative action of the General Conference and, therefore, did not meet the criteria of a “question of law” under ¶ 2609.6. In particular, the Council put its stamp of approval on the bishop’s rationale:

[T]he Bishop rightly ruled that “concerns pertaining to actions of the General Conference that are not under the judicial power of a bishop since such power of a bishop is defined and limited to questions of law coming before the bishop in the regular business of a session of an annual, central, or jurisdictional conference as per Constitution ¶ 51, and is [sic] therefore moot.” (JCD 1304, emphasis added)

Consequently, questions pertaining to the constitutionality of an act of the General Conference, as in this case ¶ 2719.1 of *The Discipline*, are beyond the scope of episcopal authority.

Further, the fact that it challenges the constitutionality of a disciplinary provision reveals that this request for Decision of Law is in essence a petition for Declaratory Decision. In JCD 846, the Judicial Council ruled: “When a request for a declaratory decision is presented as a request for an episcopal decision of law the bishop may rule that the request is moot and hypothetical.” Quoted and affirmed in JCD 1304. Therefore, the bishop may not make a substantive ruling when the request is essentially a petition for Declaratory Decision.

DECISION

A bishop may not make a substantive ruling on a request for Decision of Law, which in essence is a petition for Declaratory Decision. Questions pertaining to the

constitutionality of an act of General Conference that fall within the jurisdiction of the Judicial Council, are beyond the scope of episcopal authority. The bishop's Decision of Law is reversed.

Deanell Reece Tacha was not present.

First lay alternate Warren Plowden participated in this decision.

CONCURRING OPINION

I generally concur with my colleagues and also strongly believe that the time is ripe for a long overdue close examination and critical constitutional analysis of fair process rights as currently expressed in the Discipline (2012 and 2016) and clarified and controlled by Judicial Council Decisions (see, *e.g.*, 698, 836, 1296, 1318). Furthermore, given that the 2016 General Conference passed legislation which would permit a direct appeal to the Judicial Council during Administrative and Judicial proceedings, it would presumably behoove us to engage in this constitutional inquiry as soon as possible particularly as to whether and what extent the intended purpose of the supervisory response (for a just resolution) has been undermined by conflicting Disciplinary provisions and misapplication thereof, and the extent to which it has become a mechanism that serves to further deprive individuals of their fair process rights.

Respectfully Submitted,

Beth Capen