

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION 1321

IN RE: Request from the General Conference for a Review of Judicial Council Decisions 542 and 544, as well as ¶¶ 16, 33, 304, and 2702

DIGEST

Paragraphs 16 and 33 of the Constitution assign specific authority and responsibility to the General Conference and to the annual conferences in The United Methodist Church. They are not in conflict. Paragraphs 304 and 2702 are legitimate legislative enactments of the General Conference. Decisions 542 and 544 of the Judicial Council are not in conflict.

STATEMENT OF FACTS

On May 17, 2016, the General Conference approved a motion to request that the Judicial Council resolve an apparent conflict between two Judicial Council Decisions and a perceived or possible conflict between certain provisions in the Constitution, which are linked to matters of church law that apply to clergy. The motion was as follows:

I move that this General Conference petitions the Judicial Council to resolve the apparent conflict between Judicial Council decision number 544 and Judicial Council decision number 542, as well as the conflict between paragraph 16 and paragraph 33 of our constitution [sic], as they relate to the practical legal application of paragraph 304 and paragraph 2702 of our Book of Discipline: specifically in reference to the separation of powers between General Conference and Annual Conferences regarding the setting of the minimum standards for ministry, and the voting on ordination and clergy character.

On May 18, the Judicial Council received the text of the motion, the statement by the delegate who made the motion, and four briefs. While not specifically designated as a request for a declaratory decision, the motion as approved is substantively such a request.

JURISDICTION

The Judicial Council has jurisdiction under ¶ 2610.

ANALYSIS AND RATIONALE

On numerous occasions, the Judicial Council has been asked to address perceived or potential conflicts involving provisions in the Constitution, perceived or potential discrepancies involving legislative enactments of the General Conference, and perceived or potential differences of interpretation expressed in Judicial Council decisions. In this case, the General Conference has identified constitutional, legislative, and judicial issues for consideration by the Judicial Council.

Such questions arise, at least in part, because of the connectional nature of United Methodism. Our system of government integrates an interconnected set of authorities that balance and constrain one another. There is neither a hierarchical authority in control of the entire system nor an individual authority that is independent of the system. No single entity has authority for all ecclesial matters. No single entity is isolated from the rest of the connection that balances its authority. *See* Decision 1312.

The constitutional aspects of the instant matter that is before the Judicial Council are perceived or potential conflicts within the Constitution regarding ordained ministry. According to ¶ 16, the General Conference has “full legislative power over all matters distinctively connectional.” In a sub-provision (¶ 16.2), the Constitution gives to the General Conference “authority...[t]o define and fix the powers and duties” of ordained, licensed, and certified ministers. At the same time, in ¶ 33, the Annual Conference has “reserved to it the right to vote...on all matters relating to the character and conference relations of its clergy members, and on the ordination of clergy...”

The Judicial Council has addressed this concern in multiple decisions through the years. In Decision 7, the Judicial Council cited a “well established rule of constructing an instrument as a whole” and said that if constitutional provisions appear to demonstrate a difference “it must be held that two portions of the Constitution in question are not conflicting, but that each applies to separate and distinct matters.” Decision 7 states,

It is inconceivable that the General Conference should have full legislative powers so that it can enact uniform legislation for the whole Church, and that at the same time each Annual Conference could also have the right to enact diverse and conflicting regulations, on the same subject. The reservation of the right to the ministerial members of an Annual Conference to “vote on all matters relating to the character and Conference relations of its ministerial members,” is not a distinctively legislative function but is rather an administrative function. It can only

mean that the Annual Conference has the right as well as the duty to pass upon and determine the facts and apply the laws in all such cases in accordance with the uniform regulations and provisions which the General Conference may enact in reference to the same. In other words, the right reserved to the ministers of an Annual Conference to pass upon the character and Conference relations of its ministers does not mean that it has the legislative right to set up standards to measure the character and Conference relations of the Ministers except insofar as such standards do not contravene or are not covered by provisions enacted for the whole Church by the General Conference.

In Decision 536, the Judicial Council ruled

There is a fine and sometimes not readily discernible line between the full legislative power of the General Conference under Article 15 [now ¶ 16] of the Constitution over all matters distinctively connectional, and the authority of the Annual Conference under Article 37 [now ¶ 33] of the Constitution, as the basic body of the Church to which is reserved the right to vote on all matters relating to the character and conference relations of its ministerial members, and on the ordination of ministers and such other rights as have not been delegated to the General Conference under the Constitution. The requirements for admission into the ministry are a distinctively connectional matter over which the General Conference has authority to legislate, and the Annual Conference may not contravene such legislation.

Judicial Council Decision 823 quoted substantially from Decision 313 and Decision 318 to show consistent interpretation of the Constitution on this matter and to demonstrate relevant precedents:

In Judicial Council Decision 313 the council stated: The power to establish standards, conditions and qualifications for admission to the ministry is a matter of distinct connectional importance and is initially placed by the Constitution in the General Conference. This constitutional authority must be honored. An Annual Conference cannot establish requirements in conflict with the standards, conditions and qualifications established by the General Conference. In cases where the General Conference clearly states that standards, conditions and qualifications are minimal, the Annual Conference may under ¶ 31 [now ¶ 33] of the Constitution expand these requirements but these requirements cannot conflict or eliminate the standards of the Discipline. Judicial Council Decision 318 stated that: An Annual Conference may not add to or subtract from the basic ministerial obligations established by act of the General Conference.

Decision 823 added

The authority of the Annual Conference, as the basic body of the Church, under Article 31 [now ¶33] of the Constitution, includes the right to vote on all matters relating to the character and conference relations of its ministerial members, and on the ordination of ministers and such other rights as have not been delegated to the General Conference under the Constitution. Clearly, however, in exercising its rights, an Annual Conference cannot take an action which negates General Conference legislation.

There have been arguments advanced that, because the annual conference alone has authority to vote “on all matters relating to the character and conferences relations of its clergy members, and on the ordination of clergy...” and because clergy membership is in an annual conference, the conference membership of clergy is thus not “distinctively connectional.” But that issue was addressed in Judicial Council Decision 544, which also cited multiple precedents.

The Constitution, Par. 15 [now ¶ 16], gives the General Conference the power to fix the basic requirements for ministry, while it becomes the responsibility of the Annual Conference, as set forth in Par. 36 [now ¶ 33], to measure, evaluate, and vote upon candidates, as regards the minimum standards enacted by the General Conference. Ordination in The United Methodist Church is not local, nor provincial, but worldwide. While each Annual Conference is a door through which one may enter the ministry of the entire church, the Annual Conference cannot reduce nor avoid stipulations established by the General Conference which must be met by the church's ministry everywhere. An Annual Conference might set specific qualifications for its ministerial members, but does not have the authority to legislate in contradiction to a General Conference mandate or requirement. Judicial Council Decisions 313, 318, 325, and 513 speak to the authority of the General Conference, under Par. 15 [now ¶ 16] of the Constitution, to establish standards, conditions, and qualifications for admission to the ministry. In Decision 536, we held that "An Annual Conference may not subtract from the disciplinary requirements for conference membership, but it may under certain circumstances adopt additional requirements not in conflict with disciplinary provisions or their spirit or intent." This was again underscored in Decision 542 at the May 1984 General Conference. "Under Paragraph 37 [now ¶ 33] of the Constitution, however, it is the Annual Conference, as the basic body of the church, that decides whether those standards have been met."

The same issue was also addressed in Judicial Council Decision 542, which again cited multiple precedents.

As we have said in Decisions 313, 318 and 513, the General Conference under Par. 15 [now ¶ 16] of the Constitution has the power to establish standards, conditions and qualifications for admission to the ministry. Under Par. 37 [now ¶ 33] of the Constitution, however, it is the Annual Conference, as the basic body of the church, that decides whether those standards have been met.

... The Annual Conferences have the authority to decide whether candidates for ordination meet the disciplinary requirements.

The matter that was referred to the Judicial Council in this instant case posited a perceived, potential conflict between Decisions 542 and 544. Seen in isolation from the longer history of the Judicial Council jurisprudence, these decisions may appear to be conflicting. But seen in the full history of numerous Judicial Council Decisions on these constitutional matters, it is clear that no conflict exists either within the Constitution (see ¶¶ 16 and 33) or between the two aforementioned Decisions of the Judicial Council.

The legislative enactments of the General Conference in ¶¶ 304 and 2702 of the 2012 *Discipline* clearly fall within the authority of the General Conference with its “full legislative power over all matters distinctively connectional” [¶ 16] and they assign to the annual conferences facets of their constitutional responsibility for the “character and conference relations” as well as the “ordination” of clergy [¶ 33]. The legislation in the *Discipline* that appears as ¶ 304 assigns to the annual conferences the responsibility for making the determinations that are within its realm regarding admission to the ministry of the clergy. The legislation in the *Discipline* that appears as ¶ 2702 assigns to the annual conferences the responsibility for handling complaints and charges filed against clergy.

It is important to note that the Constitution establishes a specific limit on the rights of annual conferences in these and other matters. Paragraph 33 grants to the annual conferences “such other rights as have not been delegated to the General Conference under the Constitution...” Only to the General Conference has the Constitution delegated “legislative” authority.

The annual conferences have clear authority under the Constitution. But that authority does not and constitutionally cannot intrude into the authority of the General Conference.

DECISION

Paragraphs 16 and 33 of the Constitution assign specific authority and responsibility to the General Conference and to the annual conferences in The United Methodist Church. They are not in conflict. Paragraphs 304 and 2702 are legitimate legislative enactments of the General Conference. Decisions 542 and 544 of the Judicial Council are not in conflict.

F. Belton Joyner, Jr., Secretary

William B. Lawrence, President

May 20, 2016

CONCURRING OPINION

I agree that ¶ 16 and 33 of the constitution are not in conflict, although my analysis and application to the non-constitutional paragraphs raise other concerns. However, I write this concurrence to emphasize the following portions of Decisions 542 and 544:

“... Neither ordination nor appointment of self-avowed practicing homosexuals is necessarily precluded by the words "fidelity in marriage and celibacy in singleness" as added to Pars. 404, 414, 420, 423, and 431 of the Discipline. The Annual Conferences have the authority to decide whether candidates for ordination meet the disciplinary requirements.” Decision 542 [Emphasis Added]

In Decision 536, we held that "An Annual Conference may not subtract from the disciplinary requirements for conference membership, but it may under certain circumstances adopt additional requirements not in conflict with disciplinary provisions or their spirit or intent." This was again underscored in Decision 542 at the May 1984 General Conference. "Under Paragraph 37 of the Constitution, however, **it is the Annual Conference, as the basic body of the church, that decides whether those standards have been met.**" The phrase "or appointed to serve in The United Methodist Church" is related to the powers and duties of the episcopacy ... **Because the legislation lacks specific definition regarding avowal and practice of homosexuality, and because of Methodism's long-standing and continuing principle that ministerial members of an Annual Conference shall receive an annual appointment (Par. 422, 1984 Discipline), care must be taken in applying Par. 402.2 to follow due process, protecting the rights of ministerial members. The Annual Conference must make any determination which would effect a change in ministerial standing.** Decision 544 Concurring Opinion [Emphasis Added]

Beth Capen

May 20, 2016

SEPARATE OPINION

With due respect to my colleagues who supported the outcome and outright promulgation of the foregoing Decision, I take a different stand. It is not necessarily on the content and conclusion reached, although I have some reservations; it is more on the **timing** of coming out with such a ruling on the last day of this Holy Conferencing. I see no urgency nor prudence in it.

I am for deferment of Judicial Council determination of the request, which rises to the level of a petition for a declaratory decision, to its next meeting in October, 2016 or a later date for the following considerations:

First: The petition concerns the delicate, contentious matter of clergy appointment/ordination of self-avowed practicing homosexuals which needs careful, thorough study, given the predictable wide-ranging impact our Decision will make.

Second: Two apparently variant Constitutional provisions, ¶ 16 and ¶ 33, are sought to be clarified dealing with the respective powers of the General Conference, on one hand, and the annual conference, on the other. The pertinent footnotes alone in the 2012 Book of Discipline indicate over a

dozen and a half pertinent previous Judicial Council decisions of various implications.

Third: Two allegedly conflicting Judicial Council Decisions, 542 and 544, are asked to be resolved. Both are of 1984 vintage, promulgated 32 years ago. A wider hard look at them, to say the least, is imperative.

Fourth: Of the five, mostly two-page, papers submitted within the short 3-hour notice for filing, only one argues against the petition. The basic tenet of fairness warrants that both sides be given ample opportunity to be fully heard. A matter of this significance further deserves an oral hearing, which is not feasible at this time, last day of the General Conference.

Fifth: The Council of Bishops, in response to a request of the General Conference to lead the Church, has just issued a statement titled "AN OFFERING FOR A WAY FORWARD," recommending that "the General Conference defer all votes on human sexuality and refer this entire subject to a special Commission, named by the Council of Bishops, to develop a complete examination and possible revision of every paragraph in our Book of Discipline regarding human sexuality."

While that call is addressed to the legislative body of the Church and the Judiciary is not legally bound by it, the Judicial Council should not be perceived, albeit mistakenly, as working at cross-purposes with its co-equal branches. It will not discredit or detract from its guarded independence if a temporary hold on a non-urgent, highly controversial matter is taken.

As I pointed out in my concurring opinion is JCD 1304 last year: “In line with our Church polity, coordination complements separation of powers.”

Ruben T. Reyes

May 20, 2016