

SUBJECT TO FINAL EDITING

**JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH**

**DECISION NO. 1355**

IN RE: Review of a Bishop's Decision of Law concerning if the Greater New Jersey Annual Conference is required to retroactively pay full salary and benefits to a clergy member who was placed on involuntary leave of absence.

**DIGEST**

Church law distinguishes between prospective and retroactive actions of the clergy session for the approval of involuntary leaves of absence. The prospective vote needs a two-thirds majority and the retroactive vote a simple majority to pass. These two types of action are separate and independent and cannot be combined; nor can one be substituted for the other. They must be marked distinctly under Disciplinary Question No. 50b on the Board of Ordained Ministry Report, introduced to the clergy session by differently worded motions, and acted upon separately and independently. Equitable minimum compensation is the basis for calculating compensation for the elder in this case placed on involuntary leave of absence, which was rendered invalid when the interim action was not retroactively approved. The bishop's Decision of Law is affirmed.

**STATEMENT OF FACTS**

In May of 2016 while she was serving as the District Superintendent of the Delaware Bay District of the Greater New Jersey Annual conference, an elder was suspended from all her clergy responsibilities when a complaint alleging misconduct was filed against her. The suspension was imposed by the bishop with the consent of the executive committee of the conference Board of Ordained Ministry. The bishop appointed two incumbent district superintendents to cover the Delaware Bay District.

On October 22, 2016, the elder was placed on interim involuntary leave of absence pursuant to ¶ 355.4, *The Book of Discipline 2012* [hereinafter *The Discipline 2012*]. Thereafter, another clergy person was announced as the new district superintendent of the Delaware Bay District.

On May 21, 2017 during the clergy session of the 2017 annual conference, the Board of Ordained Ministry brought forward in its report Disciplinary Question No. 50b, which among other things, sought to continue the elder's involuntary leave of absence. Only one vote was taken, and it was assumed by those in attendance that this vote was being conducted in regards to the continuance of the elder's involuntary leave of absence since the two-thirds majority requirement for an

involuntary leave of absence was assumed to be in effect. The vote failed by 122-137.

However, no vote was taken by the clergy session with respect to the *interim* involuntary leave of absence imposed on October 22, 2016, thus raising the questions of (i) the validity of the interim involuntary leave of absence, which began on October 22, 2016, and (ii) the elder's entitlement to the payment of salary, housing and benefits, and if so, the level of compensation.

On the final day of the Greater New Jersey Annual Conference Session, May 23, 2017, a clergy member submitted the following question of law:

In light of action taken on May 21, 2017 in the executive session of this 2017 Greater NJ Annual Conference Meeting, in which the clergy session acted on Question #50 of the business of the conference, regarding Paragraph 354 (2016 Edition) 355 (2012 Edition) in The Book of Discipline; and in which the clergy turned down the Board of Ordained Ministry's recommendation for an involuntary leave of absence dating back to October 22, 2016; and further in light of Judicial Council Decision 1230, in which a clergyperson was forced to retire involuntarily and that retirement was overturned by the Judicial Council and all compensation was restored: (see also Decision 1270), and

In order to be made whole, should Rev. Dr. Jisun Kwak receive from the conference the full salary, and all pastoral benefits including housing, health Insurance, pension credit and funding and travel expenses that she was receiving in her appointment, from the time her involuntary leave began until she is back in an appointment or until, through appropriate process, she is determined to be ineligible for appointment, and that the rate of such compensation should be at the level she was receiving as of October 22, 2016.

Within thirty days, on June 16, 2017, Bishop John Schol issued his Decision of Law:

The continuation of a clergy person on involuntary leave of absence requires a two-thirds vote (2016 Book of Discipline, paragraph 354.4 and 2012 Book of Discipline, paragraph 355.3). A vote to affirm the interim action to place a clergy person on involuntary leave of absence requires a simple majority vote (2016 Book of Discipline, paragraph 354.5 and 2012 Book of Discipline, paragraph 355.4). There was no vote on the interim action of the Board of Ordained Ministry as required and therefore the Board of Ordained Ministry action is nullified.

Regarding the amount of compensation the elder is entitled to, neither Judicial Council Decisions noted in the request for a decision of law, 1230 and 1270, are on point for reversing an involuntary leave of absence or for assigning compensation. In Decision 1230, a bishop's involuntary retirement was fully overturned because of procedural errors. In the matter at hand, there has been no determination that there were any procedural errors in placing the elder on involuntary leave of absence. Even a clergy vote to reverse that decision, should it have occurred, only reflects a difference of opinion among the clergy, not a finding of procedural error. Also, the compensation awarded in Decision 1230 was for a bishop's salary which the retired bishop returned to the office of bishop

and therefore was entitled to a bishop's compensation.

Decision 1270 refers to a modification by the Committee on Appeals of a clergy's penalty meted by the trial court and that modified penalty specifically says "without compensation" for the period the clergy person was suspended and so the issue of remuneration while serving a penalty was a non-issue in that case. In the matter involving this ruling, the elder's actions are about to go before the Committee on Investigation and then possibly trial at which time the trial court has the authority to address compensation issues based on the facts in this case.

In other Judicial Council decisions leaves of absence, including 777, 806, 915 and 1216, the Judicial Council has ruled that the equitable compensation is to provide the guideline for back compensation. Travel has not been included because it is a reimbursement for actual travel related to ministry. The elder was not under appointment and therefore did not have any travel related to an appointment.

In the Greater New Jersey case, the elder on involuntary leave of absence was a suspended district superintendent. Even if the Board of Ordained Ministry had not suspended and/or placed the elder on involuntary leave of absence, the elder would not have continued as a district superintendent because of the issues and evidence involved in the case. In fact, interim district superintendents were assigned during the suspension and a new district superintendent was announced once the elder was placed on involuntary leave of absence. To award the salary and benefits of a district superintendent would not reflect other Judicial Council rulings that call for equitable compensation. In fact, the elder's appointment that will begin on July 1, 2017 is the elder's equitable compensation.

A vote on the interim action of the Board of Ordained Ministry to affirm the Board's action to place an elder on involuntary leave of absence effective October 22, 2016 was not acted on and therefore the involuntary leave of absence is nullified. The elder is to be paid her equitable compensation which includes salary, housing, pension and health benefits from October 22, 2016 to June 30, 2017.

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The clergy member requesting the ruling filed requests for oral hearing for Docket Nos. 1017-2 and 1017-4 separately. Due to the related nature of these matters, a combined oral hearing was held on October 24, 2017 in Los Angeles, California. Rev. Robert Costello and Marjorie Costello appeared on behalf of the elder and Evelyn S. Caterson, Myrna Bethke and Bishop John Schol appeared on behalf of the Greater New Jersey Annual Conference.

## **JURISDICTION**

The Judicial Council has jurisdiction pursuant to ¶¶ 56.3 and 2609.6 of The Discipline 2016.

## **ANALYSIS AND RATIONALE**

*The Discipline 2012* makes provision for involuntary leaves of absence in ¶ 355 (¶ 354, *The Book of Discipline 2016* [hereinafter *The Discipline 2016*]). Relevant are §§ 3 and 4 of that paragraph (§§ 4 and 5, *The Discipline 2016*):

3. Involuntary leave of absence shall be approved by two-thirds vote of the clergy session of members in full connection with the annual conference. Involuntary leave shall be approved annually upon written request of the district superintendents and shall not be approved for more than three years in succession. [footnote omitted]

4. Between sessions of the annual conference, an involuntary leave of absence may be granted or terminated, with the approval of the bishop and cabinet, by the executive committee of the Board of Ordained Ministry. This interim action shall be subject to the approval of the clergy session of members in full connection with the annual conference at its next session. [emphasis added]

These provisions distinguish between two types of action of the clergy session for the approval of involuntary leaves of absence: *prospective* and *retroactive*.

### **I. Prospective Vote**

Under ¶ 355.3, *The Discipline 2012* and ¶ 354.4, *The Discipline 2016*, the involuntary leave of absence becomes effective upon the action of the clergy session. The clergy members vote on a change of status of their peers that will occur immediately upon the passing of the motion or at a specified time. The requirement of yearly approval and the limitation to “three years in succession” indicate that the action on involuntary leave of absence is future-oriented and must be understood in the prospective sense. The prospective vote on involuntary leave of absence requires a supermajority of the clergy session to pass (“two-thirds vote”).

### **II. Retroactive Vote**

Under ¶ 355.4, *The Discipline 2012* and ¶ 354.5, *The Discipline 2016*, the clergy session votes on the “interim action” of the Board of Ordained Ministry granting or terminating involuntary leave of absence that occurred “between sessions of annual conference.” The action of the clergy session must be understood in the retroactive sense because only an “interim action” taken by the Board in the past can receive approval from the annual conference “at its next session.” In other words, the clergy members in full connection are voting to give their assent *after the fact* to an involuntary leave of absence that is already effective.

### **III. Simple Majority Requirement**

The question is whether the retroactive vote requires a simple majority or supermajority. Judicial Council Decision [hereinafter JCD] 782 was cited in support of the latter. In that decision, we stated that, under *The Book of Discipline 1992* the involuntary leave of absence required a two-thirds vote of the clergy members in full connection. Significantly different in terms of language

and structure, *The Discipline 1992* did not separate retroactive from prospective actions of the clergy session but combined them under the same provision in ¶ 448.1. This long section contained at the end the sentence “Involuntary leaves of absence shall be approved by two-thirds vote of the clergy members in full connection at a session of the Annual Conference” (¶ 448.1), leading to the conclusion that the interim action needed a supermajority for approval. However, *The Discipline 2012* makes this distinction by placing prospective actions in ¶ 355.3 (¶ 354.4, *The Discipline 2016*) and retroactive votes in ¶ 355.4 (¶ 354.5, *The Discipline 2016*). Notably, the two-thirds vote is mentioned in the former but not latter provision. The fact that the 2008 General Conference decided to separate them and to add the supermajority requirement to the prospective but not retroactive vote is a strong indication that a simple majority is required for the approval of interim actions. For this reason, JCD 782 must be differentiated and cannot serve as precedent in this case. Consequently, we agree with the bishop that “a vote to affirm the interim action to place a clergy person on involuntary leave of absence requires a simple majority vote” (Decision of Law, *supra*).

#### **IV. Requirement of Two Separate and Independent Actions**

Given their distinct language, structure, and location in *The Discipline 2012* and *2016*, ¶¶ 355.3, 355.4 and ¶¶ 354.4, 354.5, respectively, require that prospective and retroactive votes of the clergy session be two separate and independent actions. Specifically, the two types of vote must be marked distinctly under Disciplinary Question No. 50b on the Board of Ordained Ministry Report, introduced to the clergy session by differently worded motions, and acted upon separately and independently. They cannot be combined or comingled; nor can one action be substituted for the other.

The legal consequence of the failure to conduct a retroactive vote on the elder’s interim involuntary leave of absence at the 2017 clergy session rendered the interim involuntary leave of absence invalid. *The Discipline* makes it abundantly clear that the interim voluntary leave of absence must be dealt with by the annual conference at its next session. See ¶ 355. 4, *The Discipline 2012*; ¶ 354.5, *The Discipline 2016*. The failure to vote one way or the other answers the question as to its validity: none. The question of the elder’s entitlement to the payment of salary, housing, and benefits is answered in the affirmative, taking us to the next issue in this case, which is the rate at which she is to be compensated.

#### **V. Level of Compensation**

Citing JCD 1230, the clergy member making the request argued that the elder should be compensated “at a rate of back compensation equal to the levels at the time of the beginning of her involuntary leave of absence,” i.e. at the level of district superintendent (Brief of Interested Party, p. 11-12). We find no basis for this argument. In that decision, the bishop who was wrongfully placed in involuntary retirement relationship was “entitled to be made whole” because he was “reinstated to his rightful status as an active bishop of The United Methodist

Church” (JCD 1230).

There is no question as to the fact that the elder performed no ministerial duties as a district superintendent beginning in May of 2016 when the complaint was filed against her and she was placed on suspension under ¶ 363.1(d), *The Discipline 2012*. Likewise, there is no question that her appointment as a district superintendent ended on October 22, 2016 when she was placed on involuntary leave of absence and another clergy person was appointed district superintendent of the Delaware Bay District, the legal consequence being that the rate she should be paid for the period of the invalid involuntary leave of absence is that of an equitable minimum compensation elder.

### **RULING**

Church law distinguishes between prospective and retroactive actions of the clergy session for the approval of involuntary leaves of absence. The prospective vote needs a two-thirds majority and the retroactive vote a simple majority to pass. These two types of action are separate and independent and cannot be combined; nor can one be substituted for the other. They must be marked distinctly under Disciplinary Question No. 50b on the Board of Ordained Ministry Report, introduced to the clergy session by differently worded motions, and acted upon separately and independently. Equitable minimum compensation is the basis for calculating compensation for the elder in this case placed on involuntary leave of absence, which was rendered invalid when the interim action was not retroactively approved. The bishop’s Decision of Law is affirmed.

Dennis Blackwell was absent.

First clergy alternate Timothy Bruster participated in this decision.

October 26, 2017