

MEMORANDUM 1276

IN RE: Review of an Appeal of the Findings of the Administrative Review Committee of the East Ohio Annual Conference Regarding the Involuntary Retirement of a Clergy Member under ¶358.3

STATEMENT OF FACTS

The records submitted to the Judicial Council revealed the following:

On August 17, 2011, the East Ohio Annual Conference Board of Ordained Ministry voted to place a clergyperson in involuntary leave of absence *ad interim* pursuant to ¶ 355.4 of the *2008 Discipline*. This action was taken after a complaint against the clergy for alleged failure to observe and respond to supervision was referred to the Board of Ordained Ministry. The vote followed a meeting of the Conference Relations Committee of the Board of Ordained Ministry held on May 24, 2011. The clergy and his advocate were in attendance at this meeting. By letter dated August 29, 2011, the clergyperson was informed of the vote of the Board of Ordained Ministry and his right to a hearing before the executive committee of the Board of Ordained Ministry.

The executive committee hearing was conducted on September 13, 2011, and by a letter dated September 20, 2011, the clergyperson was informed of the following:

- i. That the executive committee had confirmed the decision of the Board of Ordained Ministry; and,
- ii. That the Bishop and the cabinet had voted to confirm the decision of the Board of Ordained Ministry.

On June 18, 2012, the clergy session of the 2012 East Ohio Annual Conference approved the Board of Ordained Ministry's decision. For the 2012-2013 and 2013-2014 conference years the clergyperson remained in the status of involuntary leave of absence.

On October 8, 2013, a team of the Board of Ordained Ministry met with the clergyperson to review the issues that caused his placement on involuntary leave

of absence. At said meeting the clergyperson made inquiries as to whether he could request voluntary retirement under ¶ 358.2a of the *2012 Discipline*. By letter dated October 18, 2013, he was informed that this was an option available to him and he was asked to notify the Board of Ordained Ministry before its next scheduled meeting on December 3, 2013, if he wanted to pursue that option.

On November 12, 2013, the cabinet wrote the Board of Ordained Ministry requesting that the clergyperson be placed on involuntary retirement pursuant to ¶ 358.3 of the *2012 Discipline*. On November 25, 2013, the clergyperson wrote a letter to the Board of Ordained Ministry requesting voluntary retirement.

On December 3, 2013, at its scheduled meeting, the Board of Ordained Ministry voted to recommend placing the clergyperson on involuntary retirement effective July 1, 2014. The clergyperson was notified of this decision by letter dated December 6, 2013. Due to an address error the letter had to be resent.

On December 11, 2013, the bishop of the East Ohio Annual Conference, Bishop John L. Hopkins, wrote the clergyperson informing him of the Board of Ordained Ministry's decision.

On December 22, 2013, the clergyperson wrote the Board of Ordained Ministry objecting that he had not been given the required 180 days notice of the intent to recommend that he be involuntarily retired.

On January 8, 2014, the Board of Ordained Ministry informed the Administrative Review Committee of the address error and requested that it make a determination as to whether the error was harmless, and to make any remedy that can be made.

On February 3, 2014, the Administrative Review Committee responded to the Board of Ordained Ministry's January 8, 2014, letter and informed the Board of Ordained Ministry that it would address the issue after it completed the clergy fair process hearing.

On February 5, 2014, the clergyperson was notified to attend a fair process hearing on March 3, 2014. The letter also informed him that the documentation

to be used in the fair process hearing would be available for pick up at the bishop's office by February 17, 2014.

On February 10, 2014, by e-mail, the clergyperson asked for a number of questions and clarifications concerning the fair process hearing of the chairperson of the Conference Review Committee. On February 11, 2014, by email the chairperson responded to the questions.

Again on February 13, 2014, the clergyperson sent a second e-mail to the chairperson requesting her to rule on the following:

1. Which of the five actions noted in the December 6, 2013 letter were administrative in nature and which are judicial in nature?
2. Which of the five actions are under the purview and authority of the March 3, 2014 hearing by the Conference Review Committee and which are not?

On March 2, 2014, one day before the fair process hearing, the clergyperson sent an email to the chairperson requesting a continuance of the hearing because he had not been able to find anyone to accompany him to the hearing. The request was denied.

At the fair process hearing on March 3, 2014, the clergyperson submitted a "Request for a Ruling of Law by the Hearing Chair." This request was similar to the request contain in his email of February 13, 2014. He also submitted written motions for dismissal on the following grounds:

1. That the 180 day notice period of ¶358.3 was not met;
2. The failure to provide him with a copy of the private reprimand that was to have been issued in August 2011;
3. The failure of the Board of Ordained Ministry to conduct regular oversight and annual review of the remedial action plan during 2011 and 2012;
4. The failure to provide pastoral care to him and his family.

He also submitted written objection to the proceedings because there was no verbatim record made. He claimed that this violated his right under ¶ 362.2a. He

asked for continuance of the hearing until provision could be made for the making of a verbatim record of the hearing.

The clergyperson also requested for ruling by the chair on the issue of whether the Board of Ordained Ministry violated ¶ 361.1 of the *2008 Discipline* and ¶ 363 of the *2012 Discipline* when it considered information about his hospice work as a performance of ministerial duties in violation of the conditions of his involuntary leave of absence, thereby allegedly acting contrary both to the concept of a just resolution and the presumption of innocence.

On March 5, 2014, the clergyperson made a request for a copy of the minutes of the March 3, 2014, hearing and of the Conference Review Committee's meetings in respect of the hearing and a copy of the Conference Review Committee's decision to the Board of Ordained Ministry. On March 18, 2014, he made a similar request to the Board of Ordained Ministry.

On March 18, 2014, the clergyperson was informed by the Board of Ordained Ministry that the Conference Review Committee had voted to affirm the motion of the Board of Ordained Ministry to recommend involuntary retirement and that the Conference Review Committee's decision had been affirmed by the Board of Ordained Ministry on March 12, 2014. The letter also informed him that the next step in the process would be a review by the Administrative Review Committee, and the findings of the Administrative Review Committee and the Board of Ordained Ministry's recommendation would be placed before the Clergy Executive Session on June 16, 2014.

Subsequently, in April 2014, in response to a request by the chairperson of the Administrative Review Committee, the clergyperson alleged that he had not being provided with a copy of the record of the hearing of the Conference Review Committee or excerpt of the minutes of the Board of Ordained Ministry following the Conference Review Committee's hearings. He contended that withholding of these records violated ¶ 362.2e of the *2012 Discipline* and thus he requested that the matter be remanded back to the Board of Ordained Ministry for the error to be corrected and he be provided with the requested documents.

On May 21, 2014, the chairperson of the Administrative Review Committee notified the clergyperson that the Administrative Review Committee would report

that all appropriate disciplinary procedures were followed by the Board of Ordained Ministry in arriving at its recommendation to be presented to the Clergy Session.

On June 14, 2014, two days before the Clergy Session to be held on June 16, 2014, the clergy sent an email to Bishop Hopkins, the cabinet, and the Board of Ordained Ministry stating “that any letter of request for the Retired Relationship I may have made in 2013 or any previous year is rendered null and void by the decision of the Board of Ordained Ministry, and is no longer valid in any respect, as was also confirmed during my Fair Process hearing on March 3, 2014.”

At the June 16, 2014, Clergy Session of the 2014 East Ohio Annual Conference, the Board of Ordained Ministry’s recommendation and the Administrative Review Committee’s report were presented. A written ballot was taken and 83% of the members voted in favor of the motion. The clergyperson was involuntary retired under the provision of ¶ 358.3 of the *2012 Discipline*.

The affected clergyperson did not make a request for a declaratory decision. However, although no objection was made to findings of the East Ohio Annual Conference Administrative Review Committee, on June 12, 2014, prior to the June 16, 2014, clergy session vote, the clergyperson filed an appeal from the findings of the Conference Administrative Review Committee.

The East Ohio Annual Conference filed a brief. A brief was also filed by Rev. Robert F. Zilhaver, a clergy member of an adjoining annual conference, acting as the appellant’s advocate. An *amicus curiae* brief was filed by Rev. Thomas H. Griffith.

The Judicial Council has no jurisdiction.

DIGEST

In the instant case, the clergyperson reports several ways in which he feels fair process was violated. However, there is no showing in the records supplied that any member of the clergy session asked the presiding bishop for a declaratory decision. Also, there is no showing in the records supplied that any objection was

made to the findings of the East Ohio Annual Conference Administrative Review Committee.

The clergy session was the final administrative body to consider the clergyperson's involuntary retirement, and the record does not show that the clergyperson made any appeal to that body.

The General Conference has established separate procedures for administrative matters and judicial complaints. The Judicial Council acknowledges that although appeal steps in judicial cases are clearly stated (¶¶ 2715-2717), the appeal process in administrative matters is less clearly delineated. However, the General Conference, not the Judicial Council, is the body to address this lack of clarity.

The Judicial Council has only such jurisdiction as is expressly granted to it by the Constitution and the General Conference. Our lodestar principle has been that we may not assume jurisdiction unless jurisdiction has been clearly vested in the Judicial Council. *See* Memorandum 1159 and Decision 29. Our long standing policy is to construe our jurisdiction strictly and with restraint. *See* Memorandum 1159 and Decisions 255 and 535.

Sandra W. Lutz recused and took no part in this decision.

Kabamba Kiboko was absent.

Timothy K. Bruster, first clergy alternate, took part in this decision.

William B. Lawrence, President

F. Belton Joyner, Jr., Secretary

October 25, 2014