

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION NO. 1383

IN RE: Request from the Western Pennsylvania Annual Conference for a Declaratory Decision on the Constitutionality, Meaning, Application, or Effect of ¶¶ 20, 33, 327.6, 352, 354, 357.3, and 361 Regarding the Principle of Legality in an Annual Conference's Administrative Matters.

DIGEST OF CASE

Impartiality and independence of decision-making bodies are the hallmarks of due process and bedrock principles of procedural justice in our constitutional polity. No administrative process can be fair and equitable if the body making a request for involuntary change of status is also empowered to determine its merits. The fundamental right to fair and due process of an accused clergy person is denied when individuals who were involved in referring, adjudicating, and reviewing an administrative complaint are also permitted to vote on the final disposition in the clergy session of an annual conference.

Absent specific provisions barring members of the Cabinet, Board of Ordained Ministry, Conference Relations Committee, and Administrative Review Committee from voting in the clergy session on recommendations for involuntary change of status, the entire regulatory scheme lacks safeguards to guarantee an impartial process carried out by an independent body. The provisions in *The Book of Discipline of The United Methodist Church, 2016* setting forth the administrative process leading to involuntary leave of absence (¶ 354), involuntary retirement (¶ 357.3), administrative location (¶ 359), and discontinuance from provisional membership (¶ 327.6) violate the guarantees of a fair and unbiased process in ¶¶ 20 and 58 and are unconstitutional, null and void. The effect of this ruling shall be prospective and shall not affect pending administrative cases that were filed prior to this date.

STATEMENT OF FACTS

On June 8, 2019, the Western Pennsylvania passed Petition P85, entitled "Request for Declaratory Decision on the Principle of Legality in an Annual Conference's Administrative Matters," requesting the Judicial Council to render a declaratory decision on seventeen (17) specific questions, which read (in relevant parts):

THEREFORE IT BE IT RESESOLVED that the Western PA Conference officially petition the Judicial Council for a ruling in the nature of a declaratory decision (¶2610) as to the constitutionality, meaning and application or effect of ¶¶20, 33, 327.6, 352, 354, 357.3, 361.

1. Does the practice of district superintendents voting as a member of the clergy session on final disposition of an involuntary leave per ¶354 violate the principle of legality as presented in Judicial Decision 1366?
2. Does the practice of members of the Conference Relations Committee of the Board of Ordained Ministry voting as a member of the clergy session on final

disposition of an involuntary leave per ¶354 violate the principle of legality as presented in Judicial Decision 1366?

3. Does the practice of members of the Administrative Review Committee voting as a member of the clergy session on final disposition of an involuntary leave per ¶354 violate the principle of legality as presented in Judicial Decision 1366?
4. Does the practice of member of the executive committee of the Board of Ordained Ministry voting as a member of the clergy session on final disposition of an involuntary leave per ¶354 violate the principle of legality as presented in Judicial Decision 1366?
5. Does the practice of the members of the Board of Ordained Ministry voting as a member of the clergy session on final disposition of an involuntary leave per ¶354 violate the principle of legality as presented in Judicial Decision 1366?
6. Does the practice of district superintendents voting as a member of the clergy session on final disposition of an involuntary retirement per ¶357.3 violate the principle of legality as presented in Judicial Decision 1366?
7. Does the practice of members of the Conference Relations Committee of the Board of Ordained Ministry voting as a member of the clergy session on final disposition of an involuntary retirement per ¶357.3 violate the principle of legality as presented in Judicial Decision 1366?
8. Does the practice of members of the Administrative Review 47 Committee voting as a member of the clergy session on final disposition of an involuntary retirement per ¶357.3 violate the principle of legality as presented in Judicial Decision 1366?
9. Does the practice of the members of the Board of Ordained Ministry voting as a member of the clergy session on final disposition of an involuntary retirement per ¶357.3 violate the principle of legality as presented in Judicial Decision 1366?
10. Does the practice of district superintendents voting as a member of the clergy session on final disposition of an administrative location per ¶359 violate the principle of legality as presented in Judicial Decision 1366?
11. Does the practice of members of the Conference Relations Committee of the Board of Ordained Ministry voting as a member of the clergy session on final disposition of an administrative location per ¶359 violate the principle of legality as presented in Judicial Decision 1366?
12. Does the practice of members of the Administrative Review Committee voting as a member of the clergy session on final disposition of an administrative location per ¶359 violate the principle of legality as presented in Judicial Decision 1366?
13. Does the practice of the members of the Board of Ordained Ministry voting as a member of the clergy session on final disposition of an administrative location per ¶359 violate the principle of legality as presented in Judicial Decision 1366?
14. Does the practice of members of the Conference Relations Committee of the Board of Ordained Ministry voting as a member of the clergy session on final disposition of a discontinuance of provisional membership per ¶327.6 violate the principle of legality as presented in Judicial Decision 1366?
15. Does the practice of members of the Administrative Review Committee voting as a member of the clergy session on final disposition of a discontinuance

of provisional membership per ¶327.6 violate the principle of legality as presented in Judicial Decision 1366?

16. Does the petition before the Western PA Conference named “P 82 Addressing the Principle of Legality: Clergy,” restoring language similar ¶454.2 of the Discipline, ed. 1992, address the issues of Legality in Judicial Decision 1366 as presented in questions 1-15?

17. Does the petition before the Western PA Conference named “P 81 Addressing the Principle of Legality: Bishops,” restoring language similar ¶454.2 of the Discipline, ed. 1992, address the issues of Legality in Judicial Decision 1366 for ¶¶408, 410, 422?

During the same session, the Western Pennsylvania Annual Conference passed Petitions P81 and P82 requesting the 2020 General Conference to take specific actions. Entitled “Addressing the Principle of Legality: Bishops,” P81 concerns the procedural rights of bishops and reads (in relevant parts):

THEREFORE IT BE IT RESOLVED that the Western PA Conference Petition the 2020 General Conference of The United Methodist Church to change the Book of Discipline as follows:

Add new paragraph ¶422.5.b.(vii) Prior to the start of the administrative hearing by the Conference Relations Committee the bishop may choose to have a trial. This choice must be made in writing and submitted to the chair of the Conference Relations Committee prior to the start of the administrative hearing. The procedures are provided for in ¶¶2707-2712.

BE IT FURTHER RESOLVED that the Western PA Conference provide the following rationale for this Petition: “This legislation addresses the principle of legality raised in JD 1366 by restoring language and procedures used prior to 1996 Discipline. This language was found to meet the principle of legality in Judicial Council Decision 351 and ¶20 of the Constitution.

Reverend Robert F. Zilhaver, as an interested party, and Revs. Jerry Eckert and Peter Milloy, as *amici curiae*, filed briefs in support of the Petition.

JURISDICTION

The Judicial Council has 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.” ¶ 2610.1. Under ¶ 2610.2(j), an annual conference has standing to request a declaratory decision if the petition deals with “matters relating to annual conferences or the work therein.”

Questions 1-15 ask us to review certain provisions in *The Book of Discipline of The United Methodist Church, 2016* [hereinafter *The Discipline*] as they relate to administrative matters and the work of specific annual conference bodies and, therefore, come within the jurisdictional grant of ¶ 2610. Although addressing “matters relating to annual conferences or the work therein,” Questions 16 and 17 concern two actions of the Western Pennsylvania Annual Conference (P81 and P82), which are essentially legislative proposals for the 2020 General Conference to consider and enact. From the clear language of ¶ 2610.1, it follows that only portions of *The Discipline*, an act, or legislation of the General Conference may be subject

to scrutiny. Legislative proposals do not constitute proper objects for a declaratory decision under said provision. The only two bodies authorized to request a constitutional review of proposed legislation are the General Conference and the Council of Bishops under the provision of ¶ 2609.2.

Consequently, only Questions 1-15 are properly before us.

ANALYSIS AND RATIONALE

The Petition incorrectly frames the issues in terms of “the principle of legality” by quoting from the digest of JCD 1366. The quoted section deals with the constitutional right to fair and due process, *not* the principle of legality explicitly. This principle is not mentioned until the subsequent paragraph in the digest, beginning with “As a tenet of United Methodist constitutionalism, the principle of legality means...” JCD 1366 at 3. The confusion may have caused the author of the Petition to consistently invoke the principle of legality, instead of the right to fair and due process. Although incorrectly designating the seventeen questions as pertaining to the principle of legality, the petitioner built his case essentially on fair process as interpreted in JCD 1366. Such misnomer is immaterial and does not affect the determination of this case.

The Petition challenges the constitutionality of the disciplinary provisions mandating the involvement of members of the Cabinet, Conference Relations Committee, Administrative Review Committee, Board of Ordained Ministry as well as executive committee of said Board in administrative processes, while allowing them to vote as members of the clergy session on recommendations for involuntary change of status. At issue is whether the right to fair and due process guaranteed in ¶¶ 20 and 58 prohibits the commingling of roles in administrative proceedings leading to involuntary leave of absence, involuntary retirement, administrative location, and discontinuance from provisional membership. Specifically, do fair process guarantees prohibit members of the aforementioned conference bodies from voting on the final disposition of administrative cases in which they have been involved?

“The United Methodist Church has a heritage of concern with the rights of persons. That concern has repeatedly made provision for the protection of the rights of its members and of its ministers.” JCD 351, *aff’d*, JCD 524, 852, 1226. “Fair process is a constitutional, as well as a disciplinary, right and is protected by the judicial process. Fair process applies to administrative action as well as judicial process.” JCD 830. Particularly, in JCD 1366, the Judicial Council said: Impartiality and independence of decision-making bodies are the hallmarks of due process and bedrock principles of procedural justice in our constitutional polity. No process can be fair and equitable if the body bringing the complaint is also empowered to determine its merits. The fundamental right to fair and due process of an accused bishop is denied when the complainants are also among those tasked with reviewing and making the final decision.¹

As “an extension of the office of bishop,” district superintendents play an important role in the administrative process. ¶ 419. They initiate requests for involuntary leave of absence (¶ 354.1), involuntary retirement (¶ 357.3), administrative location (¶ 359), and are required to consent to a request of the Board of Ordained Ministry for involuntary retirement. ¶ 357.3. At the same time, district superintendents are also elders in full connection. ¶ 417. “Clergy members in

¹ JCD 1366 at 3.

full connection shall have the right to vote on all matters in the annual conference...and shall have sole responsibility for all matters of ordination, character, and conference relations of clergy.” ¶ 602.1(a). By implication, members of the Cabinet—the body bringing an administrative complaint to the Board of Ordained Ministry—are also voting members of the clergy session of an annual conference. In JCD 917, the Judicial Council held that the doctrine of separation of powers and the provisions of fair process in administrative hearings prohibit the district superintendent...from participating in the deliberations of the board of ordained ministry, and its committees, and voting in such bodies, on the administrative processes.²

If it is inappropriate for district superintendents to participate in deliberations and voting in those bodies, it is equally improper for them to do so in the clergy session. The fundamental right to fair and due process of an accused clergy person is denied when the complainants are also among those tasked with reviewing and making the final decision.

Responsible for adjudicating administrative matters, the Conference Relations Committee hears requests for discontinuance of provisional members, involuntary leave of absence, administrative location, involuntary retirement and reports its decision to the Board of Ordained Ministry. ¶¶ 361.1, 363.1. The clergy members of the committee are not only adjudicators but also, like district superintendents, voting members of the clergy session of an annual conference and, therefore, final arbiters in administrative matters.

The proposed legislation under review in JCD 1366 created a Council Relations Committee [hereinafter CRC] to resolve administrative complaints brought by the Council of Bishops against individual bishops. The Judicial Council highlighted the problems of this arrangement:

Not only is the CRC elected *by* and composed *of* members of the COB, but also the legislation does not explicitly bar a CRC member from voting on a COB motion to refer a complaint or from joining six other active members to recommend involuntary leave of absence or involuntary retirement; nor does the provisions contain any regulations regarding conflict of interests and recusal of CRC members.³

Absent specific provisions barring members of the Conference Relations Committee from voting in the clergy session, their prior involvement in resolving administrative complaints poses significant dangers to a clergy person’s right to a fair and unbiased determination of her or his case. There are no safeguards put in place to guarantee an impartial process carried out by an independent body. JCD 1366.

Composed of and elected by members of the clergy session, the Administrative Review Committee’s role is to ensure that the disciplinary procedures for involuntary administrative actions are properly followed and “to report its findings to the clergy session of members in full connection with the annual conference prior to any action of the annual conference.” ¶ 636. Its members review administrative procedural matters but also, like Conference Relations Committee members, vote as clergy persons on the final disposition of recommendations for involuntary actions, thereby casting doubt on the independence and impartiality of the clergy

² JCD 917 [emphases added].

³ JCD 1366 at 32 [emphases in original].

session. Procedural guarantees are ineffective without structural protections to ensure the right to have one's case heard and decided by an impartial and independent body. JCD 1366.

Carrying out adjudicative responsibilities, the Board of Ordained Ministry refers requests for involuntary change of status to the Conference Relations Committee and affirms or reverses decisions of said committee. ¶¶ 354.1, 359, 363.1. Similarly, the executive committee of the Board of Ordained Ministry reviews and approves requests for interim involuntary leave of absence. ¶ 354.5. It is also the Board's duty to bring to the clergy session recommendations for involuntary change of status. ¶ 352. The impartiality and independence of the clergy session are questionable at best and compromised at worst when members of the executive committee and Board of Ordained Ministry are also voting members of the clergy session acting in the dual capacity of adjudicators and final arbiters in administrative matters. It is constitutionally objectionable for clergy persons to vote on the resolution of administrative cases in which they have been involved as members of the Board of Ordained Ministry or its committees. JCD 1366.

Therefore, our answer to Questions 1-15 is: **YES**. We defer to the General Conference as the legislative branch of the Church to fix these problems.

RULING

Impartiality and independence of decision-making bodies are the hallmarks of due process and bedrock principles of procedural justice in our constitutional polity. No administrative process can be fair and equitable if the body making a request for involuntary change of status is also empowered to determine its merits. The fundamental right to fair and due process of an accused clergy person is denied when individuals who were involved in referring, adjudicating, and reviewing an administrative complaint are also permitted to vote on the final disposition in the clergy session of an annual conference.

Absent specific provisions barring members of the Cabinet, Board of Ordained Ministry, Conference Relations Committee, and Administrative Review Committee from voting in the clergy session on recommendations for involuntary change of status, the entire regulatory scheme lacks safeguards to guarantee an impartial process carried out by an independent body. The provisions in *The Book of Discipline of The United Methodist Church, 2016* setting forth the administrative process leading to involuntary leave of absence (¶ 354), involuntary retirement (¶ 357.3), administrative location (¶ 359), and discontinuance from provisional membership (¶ 327.6) violate the guarantees of a fair and unbiased process in ¶¶ 20 and 58 and are unconstitutional, null and void. The effect of this ruling shall be prospective and shall not affect pending administrative cases that were filed prior to this date.

Lidia Romao Gulele was absent.

Warren Plowden, first lay alternate, participated in this decision.

November 1, 2019