

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION 1304

IN RE: Review of a Bishop's Decisions of Law in the California-Pacific Annual Conference Regarding Rules and Structure of the Annual Conference.

DIGEST OF CASE

The Bishop's Decision of Law is affirmed. The questions presented in the request for a decision of law were not proper questions for a Decision of Law. Some were requests for a declaratory decision/ presented as requests for an episcopal decision of law and therefore moot and hypothetical. Others were hypothetical questions and requests for information and not questions of law.

STATEMENT OF FACTS

According to the record of the June 20, 2015, proceedings of the 31st Session of the California-Pacific Annual Conference, a lay member was recognized at the microphone at 5:12 p.m., and he requested an episcopal decision on a question of law regarding an action taken by the Annual Conference on June 18, 2015, on Proposed Rules Change 15-15: Connectional Table. He had already provided this request in writing. His request follows:

Under the provisions of ¶ 2609.6 of the Book of Discipline, I ask for a decision of law on Rule 15-15, which was adopted by the 2015 California-Pacific Annual Conference:

1) In the discussion and/or debate about the adoption of Rule 15-15 a statement was made that director of connection (sic) ministries is part of the executive branch. Is this an erroneous assumption about the constitutional separation of powers in the Judicial Council Decisions such as 827 and 831 because the director of connection ministry is part of the legislative branch? Does ¶ 608 of the *Book of Discipline* which was used to justify placing the director of connectional ministries in the executive branch violate the constitutional separation of powers when it states the director of connectional ministries - "an officer of the annual conference" (¶ 608.6.b.) - is "amenable to the bishop" (¶ 608.6.b.) instead of the annual conference or one of its bodies?

2) Did the discussion and/or debate for its adoption rely upon an erroneous assumption about the superintending role of the episcopacy in ¶ 414.1 which gives the bishop the responsibility "to lead and oversee the spiritual and temporal affairs of The United Methodist Church"; ¶ 415.2 "to provide general oversight for the fiscal and program operations of the annual conference(s)" and/or ¶ 424.2 "is expected to speak to the conference and for the conference to the spiritual and temporal issues that exist within the region encompassed by the conference" as providing a basis to place the constitutional responsibilities of the legislative branch (¶ 33 and ¶¶ 600-657, and specifically ¶ 608 and ¶ 610) within the executive branch? Does ¶ 414.1 which gives an individual bishop the responsibility "to lead and oversee the spiritual and temporal affairs of The United Methodist Church" violate ¶ 47 of the Constitution which reserves the responsibility to "plan for the general oversight and promotion of the temporal and spiritual interests of the entire church" to the Council of Bishops, not an individual bishop? Does ¶ 415.2 which gives an individual bishop the responsibility "to provide general oversight for the fiscal and program operations of the annual conference(s)" violate ¶ 47 of the Constitution which reserves the responsibility to "plan for the general oversight and promotion of the temporal and spiritual interests of the entire church" to the Council of Bishops, not an individual bishop? Does ¶ 424.2 illegally delegate the power of the annual conference to the cabinet under the leadership of the bishop by authorizing the cabinet under the leadership of the bishop to speak for the annual conference?

3) In the discussion and/or debate for the adoption of Rule 15-15 a statement was made that the director of communications is part of the executive branch. Is this an erroneous assumption that the constitutional separation of powers in the Judicial Council Decisions such as 827 and 831 because the director of communications is part of the legislative branch? Since ¶ 609 is part of the section of the *Discipline* describing the work of the legislative branch, is the director of communications part of the legislative branch, not the executive branch?

4) If adoption of rule 15-15 was based on erroneous statements about unconstitutionality of the Navigation EMT [Essential Ministries Team], is the adoption of Rule 15-15 null and void?

The Bishop issued the following ruling:

Question 1a refers to a statement that was allegedly made during the

discussion/debate that led to the adoption of Rules Change 15-15. It asks if the statement, not the Rule considered and adopted, is based on an "erroneous assumption about the constitutional separation of powers." The specific alleged error is that a statement was allegedly made to the effect that the director of connectional ministries is part of the executive branch. Rules Change 15-15 does not state that the director of connectional ministries is part of the executive branch of the church. In Decision 33, the Judicial Council held that "...requests should be based upon some action taken or proposed to be taken, wherein under the specific facts in each case some doubt may have arisen as to the legality of the action taken or proposed." Since the question pertains to the language and challenges the legality of an alleged statement but not of Rules Change 15-15, it is not an appropriate request for a decision of law as defined by ¶ 609.6 of *The Book of Discipline of The United Methodist Church 2012*, and therefore moot.

Question 1b asks if ¶ 608 violates the constitutional separation of powers by making the director of connectional ministries at once "an officer of the annual conference" and "amenable to the bishop." This matter is related to an action of the General Conference under its legislative power granted to it by ¶ 16 of The Constitution of The United Methodist Church. Moreover, the judicial power of a bishop is defined as *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. According to ¶ 610.1, the Judicial Council "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." Since this question challenges the constitutionality of a legislative action of the General Conference, Question 1b does not meet the criteria of a "question of law" under ¶ 2609.6 of *The Book of Discipline of The United Methodist Church 2012*, and is therefore moot.

Question 2 is a multi-layered request involving the issue of whether the discussion/debate of Rules Change 15-15 and its adoption relied upon an erroneous assumption about the superintending role of the episcopacy. More importantly, it questions a number of disciplinary paragraphs pertaining to the authority given to individual bishops in light of the authority given to the collective body of the Council of Bishops, raising the issue along the way of whether these disciplinary paragraphs violate ¶ 47 of

The Constitution of The United Methodist Church. Furthermore, it questions whether ¶ 424.2 "illegally delegate[s] the power of the annual conference to the cabinet under the leadership of the bishop..." Question 2 addresses 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 therefore moot.

Question 3a refers to a statement that was allegedly made during the discussion and/or debate that led to the adoption of Rules Change 15-15. Like Question 1a above, this question does not constitute a true question of law as defined in ¶ 609.6 of *The Book of Discipline of The United Methodist Church 2012*. Since Question 3a pertains to the language and challenges the legality of an alleged statement but not of Rules Change 15-15, it is not an appropriate request for a decision of law as defined by ¶ 609.6, and therefore moot.

Question 3b raises a hypothetical question. According to Judicial Council Decision 1203 quoting Judicial Council Decision 33, "It is not the duty of the presiding Bishop to rule upon any hypothetical question which may be propounded, nor to answer requests for information which involve no legal matter." Consequently, Question 3b does not meet the threshold of a true request for a decision of law as defined in ¶ 609.6 of *The Book of Discipline of The United Methodist Church 2012*, and is therefore moot.

Question 4 makes reference to "erroneous statements about the unconstitutionality of the Navigation EMT [Essential Ministries Team]." Since requests for decision of law must be based on actions taken or proposed by the Annual Conference and *not* alleged statements or opinions of individual members, Question 4 has no legal basis to stand on. Consequently, Question 4 is moot.

JURISDICTION

The Judicial Council has jurisdiction under ¶ 51 and of the Constitution and ¶ 2609.6 of the *The Book of Discipline 2012* as modified by Decision 1244.

ANALYSIS AND RATIONALE

The Bishop's rulings on each of the questions in the request for a decision of law state that the question is moot.

The first two questions are moot and hypothetical because they are requesting a ruling on the constitutionality of several paragraphs in the *Discipline*. Judicial Council Decision 846 states: "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." Paragraph 2610 pertains to declaratory decisions. Paragraph 2610.1 states that the Judicial Council "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." It then lists in ¶ 2610.2 the bodies in The United Methodist Church that are authorized to make petitions to the Judicial Council for declaratory decisions. On that list is "any annual conference on matters relating to annual conferences or the work therein" (¶ 2610.2 [j]) In the instant case, there was no such petition from the California-Pacific Annual Conference.

In her decision on question 2, the 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 therefore moot." This same statement would pertain also to question 1.

Questions 3 and 4 pertain to the discussion of the proposed rule change 15-15. According to the minutes of the second plenary session of the Annual Conference on Thursday, June 18, 2015, this rule change established the Connectional Table (replacing the Navigation Essential Ministries Team). These questions are hypothetical questions and not questions of law. Decision 33 says that the principle guiding the work of the Judicial Council that "Moot and hypothetical questions shall not be decided" applies also to "requests for rulings by the Bishops in an Annual or a District Conference, and that any such request should be based upon some action taken or proposed to be taken by such Conference, wherein under the specific facts in each case some doubt may have arisen as to the legality of the action taken or proposed. It is not the duty of the presiding Bishop to rule upon any hypothetical question which may be propounded, nor to answer requests for information which involve no legal matter." However, Decision 799 states, "The duty of the bishop is to respond with a ruling to all

submitted questions of law. A ruling is required even if the ruling is simply that the question is moot, hypothetical or improperly submitted.” The bishop appropriately submitted a ruling.

While this does not have direct bearing on the bishop’s decision of law and our affirmation of that decision, we note that the request for the decision of law uses the term “executive branch.” Although it is common to describe the polity of The United Methodist Church using the analogy of the branches of the United States government, this analogy is limited in usefulness and can even be misleading because the analogy is not exact. It is also worthy to note that the term does not appear in *The Book of Discipline*.

DECISION

The Bishop’s Decision of Law is affirmed. The questions presented in the request for a decision of law were not proper questions for a Decision of Law. Some were requests for a declaratory decision presented as requests for an episcopal decision of law and therefore moot and hypothetical. Others were hypothetical questions and requests for information and not questions of law.

Beth Capen was absent.

Kabamba Kiboko was absent.

Randall Miller, first lay alternate, participated in this decision.

Timothy K. Bruster, first clergy alternate, participated in this decision.

October 24, 2015

CONCURRING OPINION

While I agree that the multiple questions in four sets posed to Bishop Carcano for episcopal ruling were for the most part technically moot, I walk a second mile to address certain aspects which, to me, are too significant to ignore. They call for clarification to illumine on the interplay of Constitutional and Disciplinary provisions and principle invoked for the guidance of all concerned, particularly the California-Pacific Annual Conference.

The first and third sets of questions have identical thrust, asking that the director of connectional ministries (DCM) under ¶608 and the director of communications (DOC) under ¶609 of the Book of Discipline be ruled as part of the legislative branch, not executive branch as erroneously assumed in Rules Change 15-15. If so, is there a violation of the Constitutional concept of separation of powers?

The bishop denied the alleged erroneous assumption, claiming that the change in Rule 15-15 does not state that the DCM and the DOC are part of the executive branch. However, the denial implied that the said directors, as officers of the annual conference, are part of the legislative branch. That they are is obvious, considering that ¶¶608 and 609 are Disciplinary provisions under the Annual Conference.

I am not persuaded that there exists a violation of the separation of powers and that ¶¶608 and 609 under which the twin positions of directors of connectional ministries and communications are created should be declared unconstitutional merely on account of their performance of functions some of which are executive in nature. A parallel example is a bishop who belongs to the executive branch but wields judicial power when presiding over a trial or when deciding a question of law on request of a legislative annual conference. Likewise, a district superintendent, member of the bishop's cabinet, is a voting member of the annual conference and can be voted as delegate to the central, jurisdictional and general conferences (JCD917). In line with our church polity, coordination complements separation of powers.

It is further noted that under ¶608 the director of connectional ministries, although amenable to the bishop, may be either appointed or elected with the further qualifying phrase "in consultation with the appropriate annual conference personnel body." (sub¶6.b) With respect to the communications director under ¶609, a similar coordination of legislative and executive functions can be gleaned which, again, is not repugnant to our system of governance.

Anent Question 2 which lumps up several items, the bishop's ruling that they are all moot, being outside the scope of her judicial powers, is correct also in so far as it relates to ¶415.2 on bishops' general oversight for fiscal and program operations of the annual conference. That is not referenced in the Report on Rule, 15-15, hence, not covered in the regular business of the conference session.

As to ¶414.1 which gives the bishop the responsibility "to lead and oversee the spiritual and temporal affairs of the United Methodist Church and ¶424.2 on the superintending leadership of the cabinet under the bishop's leadership which is "expected to speak to the Conference and for the spiritual and temporal issues that exist within the region encompassed by the conference," nothing is wrong with these provisions. They do not necessarily transfer

legislative function to the bishop in the executive branch. Neither do they unduly delegate general oversight powers from the Council of Bishops (COB) under ¶47 of the Constitution. Nor do they translate to a bishop being allowed to unduly arrogate to himself/herself full powers of the COB. The individual bishop merely exercises executive power inherent to the office and logically represents in a way said Council in the annual conference. That is not an encroachment on the COB powers.

Too, the cabinet led by the bishop needs to perform leadership role in the annual conference by the nature of its functions. On the other hand, the functions of the annual conference boards and agencies are not, need not be, hindered. They are still expected to submit their own reports and recommendations for conference action or approval. When this happens, the ideal partnership of the executive and the legislative arms is reached to fulfill the mission and ministry of the church.

Lastly, for Question 4, since there was no erroneous assumption that the two positions of director of connectional ministries and director of communications belong to the executive branch, there is no violation of separation of powers with the legislative branch. Consequently, the approval of Rules Change 15-15 is valid.

Ruben T. Reyes

Katherine Austin Mahle joins this Concurrence.

October 24, 2015