

DECISION 1286

IN RE: Review of a Bishop's Decision of Law in the Eastern Pennsylvania Conference Regarding the Eligibility of Certain Members of the Board of Ordained Ministry to Serve in Light of Judicial Council Decision 980 and ¶ 341.6

DIGEST

The Bishop's decision of law is reversed. It is not the "opinion of the chair" but the "decision of law by the Bishop" that Judicial Council Decision 980 is irrelevant to the matter raised in the request. It is not a potential unwillingness by a clergy member to adhere to the *Discipline*, but a specified act of misconduct or a chargeable offense specified in the *Discipline* that can lead to ecclesiastical sanctions. It is not permissible for some moot or hypothetical matter to become the basis of church law.

STATEMENT OF FACTS

On May 15, 2014, during the session of the Eastern Pennsylvania Annual Conference, a clergy member submitted the following request for a decision of law by the Bishop:

In light of the fact that there are presently members of the Board of Ordained Ministry who have made conscientious statements in public that they cannot and will not uphold the Discipline, namely those who participated in the Arch Street same-gender wedding on November of 2013, is it legal for such persons to be or to remain members of or advisers to the Board of Ordained Ministry, which is a committee whose members are responsible to uphold the Discipline in the administration and oversight of all clergy matters? I refer you to Judicial Council Decision 980 (2003), which held that persons who would not uphold the Discipline were ineligible to serve on the Committee on Investigation or in a jury pool.

The Bishop issued a decision of law during the conference session on May 16, 2014. In its entirety, the Bishop's decision reads as follows:

It is the opinion of the chair that Judicial Council Decision 980 does not apply to the nominations process. Decision 980 involved the judicial process where the accused party would receive due process. The committee on nominations cannot exclude possible nominees arbitrarily. Any person who cannot carry out the Disciplinary duties of their committee should consider not accepting the nomination in accordance with Decision 980.

Upon hearing the reading of the Bishop's decision, a clergy member of the conference offered a motion to appeal the Bishop's ruling to the Judicial Council. The motion was seconded and was supported by a majority of the annual conference, far more than the threshold of twenty percent of the conference required in ¶ 2609.7 of the *2012 Discipline* to support an appeal.

JURISDICTION

The Judicial Council has jurisdiction under ¶¶ 51 and 56.3 of the Constitution and ¶ 2609.6 of the *2012 Discipline* as modified by Decision 1244.

ANALYSIS AND RATIONALE

The record of the annual conference session clearly shows that a member of the annual conference submitted a request for a decision of law, that the Bishop delivered a decision while the annual conference was still in session, and that the annual conference voted in sufficient numbers to appeal the decision of the Bishop to the Judicial Council. But the record does not clearly show that there was any action taken or to be taken by the annual conference on a matter specifically related to the request for a decision of law. There is no evidence in the record that any specific nominees for the Board of Ordained Ministry had lost their status as members of the annual

conference in good standing. Instead of delivering a substantive ruling as a decision of law on the matter, the Bishop should have ruled that the request for a decision of law was improper.

Previous decisions by the Judicial Council have established that a request for a decision of law must meet a certain threshold in church law. Among them is the determination in Judicial Council Decision 799, which said

A so-called "question of law", though properly presented, must relate to the business, consideration or discussion of the conference session.

An earlier statement of the same principle, in Judicial Council Decision 33, determined the legitimacy of requests for decisions of law,

...which 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.

There is no evidence in the record that a nomination for the Board of Ordained Ministry or a discussion of the policies governing the nominating process for membership on the Board of Ordained Ministry was before the annual conference. Paragraph 635.1(a) describes the process for nominating and electing members of the board, specifying that nominations are made by the Bishop after requisite consultations. Nothing in the record indicates that the Bishop's nominations had been made or were about to be made. Hence, the request for a decision of law addressed matters that were moot and hypothetical. The request was not proper.

Nevertheless, the Bishop delivered a decision, and the annual conference voted to appeal that decision of law to the Judicial Council. Each of those developments is sufficient to place the matter on the Docket of the Judicial Council. The Judicial Council is obliged to address the bishop's decision of law, both because it was delivered and because it was appealed.

This request for a decision of law is based on an asserted but unsubstantiated relationship between Decision 980 and the process for electing or retaining members of the annual conference Board of Ordained Ministry. The request is also based on some presumed but undemonstrated relationship between public reports about clergy members of the annual conference and actions that those clergy members might take at some point in the future. Such bases, while perhaps deeply felt and boldly expressed by an individual requesting a decision of law, are not a proper basis for submitting a question of law. The procedures in the *Discipline* for determining whether a clergy member of an annual conference remains in good standing must be followed. But, relief cannot be sought through asking a question of law, nor can posing such a question be justified because of some act that a clergy member might commit in violation of church law, hypothetically.

At the same time, the Bishop's decision of law is problematic. It was delivered more as a parliamentary ruling mixed with some pastoral counsel, rather than as a legal judgment. The Judicial Council has noted in some previous decisions the serious implications of a Bishop's decision of law. See Judicial Council Decisions 1220 and 412. As provided in ¶ 2609.6 of the *Discipline*, a Bishop's decision of law is "authoritative" in the case until the Judicial Council has passed upon it and "thereafter it shall become the law of the Church to the extent that it is affirmed by the council." When a Bishop receives and then responds to a request for a decision of law, the episcopal judgment is not only a matter of opinion but also a matter of law for the annual conference in the instant case and (to the extent the Judicial Council affirms it) a matter of law for the entire connection.

This request for a decision of law is moot and hypothetical. Therefore, it was improper, and the Bishop should have so ruled. The request was not germane to an action that had been taken or that was about to be taken by the annual conference. The request, which sought an ecclesiastical sanction for conduct that a clergy member of the conference may take at some future point, is not consistent with church law that governs clergy conduct or complaints about misconduct.

DECISION

The Bishop's decision of law is reversed. It is not the "opinion of the chair" but the "decision of law by the Bishop" that Judicial Council Decision 980 is irrelevant to the matter raised in the request. It is not a potential unwillingness by a clergy member to adhere to the *Discipline*, but a specified act of misconduct or a chargeable offense specified in the *Discipline* that can lead to ecclesiastical sanctions. It is not permissible for some moot or hypothetical matter to become the basis of church law.

J. 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