

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION 1244

IN RE: Review of a Bishop's Decision of Law in the Southwest Texas Annual Conference Regarding the Meaning, Effect, and Application of ¶¶ 313 and 635.2 in Regards to the Discontinuance of a Certified Candidate

DIGEST

The amendment adopted by the 2012 General Conference to ¶ 2609.6 stating “when such appeal has been made by one-fifth of that conference present and voting” is unconstitutional because it modified ¶¶ 51 and 56.3 of the Constitution. Therefore, the amendment is null, void and of no effect. This decision is effective immediately.

Finding the amendment of ¶ 2609.6 unconstitutional does not prevent the Judicial Council from ruling on the Bishop's decision of law.

The Bishop's decision of law is reversed. The matter was properly before the Annual Conference as business of the Annual Conference pursuant to ¶ 33. The matter is remanded to the bishop for a decision on the questions presented. His submission is to be submitted to the Secretary of the Judicial Council within 60 days of this notification. The Judicial Council retains jurisdiction.

STATEMENT OF FACTS

The Southwest Texas Annual Conference convened on June 6-8, 2013 in Corpus Christi, Texas. On June 6, 2013, the Bishop called the Clergy Session to order. The chair of the Board of Ordained Ministry informed the Clergy Session of the decision of the Board of Ordained Ministry (BOM) to remove the name of a candidate from the list of

candidates under Question 19.a. The removal was pursuant to ¶¶ 666 and 304.4 of the *2012 Discipline* and Decision 844.

The candidate in 2008 was certified as a candidate for ordained ministry on the deacon track. In April 2013 the District Committee on Ordained Ministry voted to recommend the candidate to the Board of Ordained Ministry. The candidate was on schedule to be interviewed by BOM during its upcoming interview sessions. Prior to the Annual Conference convening, the candidate had received conflicting reports regarding BOM revoking her certification.

An elder in the Clergy Session moved to reinstate the name of the candidate as a certified candidate. The motion was seconded. During the discussion of the motion the question was asked if BOM could decline to comply with ¶¶ 635.2h and 635.2j, which requires the candidate to be interviewed before a decision is made regarding the candidate's ability to proceed in the ordination process. The chair of the committee explained that the decision of BOM to remove the candidate's name was pursuant to the reasons stated above and that the candidate is a self-avowed, practicing lesbian. The District Superintendent of the district where the candidate is a member explained to the body that when the District Committee on Ordained Ministry interviewed the candidate she stated she has a partner that she lives with, and acknowledged that the relationship is an "active lesbian" relationship. The question regarding reinstatement was called for with a vote of 119 in favor and 124 opposed. Motion failed.

During the afternoon plenary session on June 7, 2013 an elder requested in writing a decision of law of the bishop regarding ¶¶ 635.2h and 635.2j. The elder

explained the action that was taken during the clergy session of the Annual Conference the day before.

The bishop explained to the Annual Conference the procedure for the elder's request, as the bishop understood it.

“That any member of the annual conference has the right to request a ruling of law of the Bishop in regard to any matter that has come before the annual conference. Rev. Elford is making such a request. And what happens is that I receive this request in the respectful way in which it has come to me. And what I will do is take the request and I will examine the actions that were taken in relation to this matter and I will also be in consultation with our annual conference chancellor. I will, within the next 30 days, the Discipline gives me a 30 day period through which I can be in a period of reflection and prayer and discernment regarding offering of a ruling on this matter has been requested of me. I will then offer that ruling in writing. We will post it on the annual conference website when it has been submitted and I will submit it to the judicial council as is the requirement of all rulings of law that Bishops are asked to render automatically go to our judicial council for review and once I have offered that ruling then they will review it and either uphold it or not. So that is the matter that has come to us. It is not any matter that requires or that allows for any debate. **It does not need any kind of motion.** [emphasis added] There is nothing before the body but a request that is made of me for matters that have come before the conference. And in this case, the matter that is referred to came before the clergy session. **But the clergy session is part of the annual conference.**”[emphasis added]

On Saturday, June 8, 2013 the bishop stated that his interpretation of ¶ 2609 of the *2012 Discipline* was incorrect. After consulting with the annual conference chancellor, the General Counsel of the General Council on Finance and Administration and chancellors in other conferences the Bishop decided that the requirements of ¶ 2609 did change. The bishop read the following section of ¶ 2609.6 of the *2012 Discipline*: “when such an appeal has been made by one-fifth of that conference present and voting in the regular business of the session.” The Bishop added, “And so what that means, of course, is that I need to ask you if one-fifth of you would be willing to support the

request for ruling of law regarding the matter that was brought before us.” The Annual Conference after discussion did vote with the requisite one-fifth to support the request for a bishop’s decision of law of ¶¶ 635.2h and 635.2j.

The bishop submitted the following decision within the thirty-day deadline:

“It is my ruling that the question, as asked, is moot and hypothetical. Therefore, the request is improper and no decision on the substance of the request will be given. This determination is based on the Rules of Procedure of the Judicial Council. “Questions of law shall be germane to the regular business, consideration, or discussion of the conference session and shall state the connection to a specific action taken, or the question must be raised during the deliberation of a specific issue of a matter upon which the conference takes action.”

Judicial Council Decisions 33 and 799 uphold these standards.

The question posed has nothing to do with the discussion, consideration, or business of the annual conference. It also raises no issue of any specific matter upon which the conference took action asking only a hypothetical question. The request raises issues related only to the work of the Board of Ordained Ministry.”

JURISDICTION

The Judicial Council has jurisdiction under the Constitution ¶¶ 51 and 56.3 of the *2012 Discipline*.

ANALYSIS AND RATIONALE

CONSTITUTIONALITY

The extended accounting in the minutes of the action of the Southwest Texas Annual Conference in relation to ¶ 2609.6 allows the Judicial Council to examine and clarify the paragraph under discussion. General Conference 2012 made a very significant change to ¶ 2609.6. The *2008 Discipline* paragraph read, in relevant part, as follows:

¶ 2609.6. The Judicial Council shall pass upon and affirm, modify, or reverse the decisions of law made by bishops in central, district, annual, or jurisdictional conferences upon questions of law submitted to them in writing in the regular business of a session; and in order to facilitate such review, each bishop shall report annually in writing to the Judicial Council on forms provided by the council all the bishop's decisions of law.

As changed by General Conference 2012, this paragraph now reads, in relevant part, as follows, with emphasis highlighting the new text:

¶ 2609.6. The Judicial Council shall pass upon and affirm, modify, or reverse the decisions of law made by bishops in central, district, annual, or jurisdictional conferences upon questions of law submitted to them in writing *when such appeal has been made by one fifth of that conference present and voting* in the regular business of a session; and in order to facilitate such review, each bishop shall report annually in writing to the Judicial Council on forms provided by the council all the bishop's decisions of law.

This change was made with the adoption of Petition 20985, which was submitted by the Association of Annual Conference Lay Leaders, approved without amendment by the Judicial Administration Legislative Committee on a vote of 45 to 2, assigned to Consent Calendar A05 as Calendar Item 300, and adopted on May 1, 2012 by a vote of 889 to 20 (Daily Christian Advocate 2012 p. 2429). Because the amendment was passed on the Consent Calendar there was no plenary debate to establish legislative intent.

The constitutional provision for episcopal decisions of law is found in ¶ 51 of the *2012 Discipline*, which states, the following:

¶ 51. Article VII. - A bishop presiding over an annual, central, or jurisdictional conference shall decide all questions of law coming before the bishop in the regular business of a session, provided that such questions be presented in writing and that the decisions be recorded in the journal of the conference. Such an episcopal decision shall not be authoritative except for the

pending case until it shall have been passed upon by the Judicial Council. All decisions of law made by each bishop shall be reported in writing annually, with a syllabus of the same, to the Judicial Council, which shall affirm, modify, or reverse them.

The Constitution also delineates the authority of the Judicial Council in ¶ 56.

Article II – “The Judicial Council shall have authority to: . . . 56.3. To pass upon decisions of law made by bishops in annual conferences,” and in ¶ 56.2: “To hear and determine any appeal from a bishop’s decision on a question of law made in the annual conference when said appeal has been made by one fifth of that conference present and voting.”

The constitutional provisions governing questions of law and the role of the Judicial Council in The United Methodist Church are found in ¶¶ 51 and 56 of the Constitution, which in relevant parts were quoted above. Paragraph 2609.6 is derivative law, which is to say that it derives its authority from the Constitution. It derives most of the language from the Constitution. In fact all the other subparagraphs of ¶ 2609, the setting of thresholds for getting actions before the Judicial Council, enshrine the requirements of ¶ 56. Importantly, under all the other subparagraphs of ¶ 2609, where there is a threshold vote required in the Constitution, that same threshold is maintained in ¶ 2609. This is not the case with the 2012 amendment found in ¶ 2609.6. There is no threshold set in ¶ 56.3. The 2012 amendment becomes an unconstitutional restriction on ¶ 56.3.

Historically, Decisions 33 and 799 set the principles by which declaratory decisions are rendered and by which a bishop’s decisions of law are reviewed by the Judicial Council. No place in the *Discipline* outlines which questions of law a bishop is

required to rule on. All questions of law require a decision as affirmed in Decision 799. Paragraph 2609 sets forth the jurisdiction of the Judicial Council on questions of law. The Judicial Council has previously ruled that bishops need not rule substantively on questions of law that are moot or hypothetical (Decisions 33 and 799). However, ¶ 2609.6 may not legally limit the constitutional authority given to the Judicial Council to “pass upon decisions of law made by bishops in annual conferences” as bishops carry out their constitutional function found in ¶ 51. This is an unconstitutional restriction on the authority granted by ¶ 56.3 by imposing a one-fifth vote requirement upon such jurisdiction where none is present in the Constitution.

General Conference cannot take action that limits the constitutional authority of the Judicial Council. Thus, the effect of the changes wrought in ¶ 2609.6 is to amend the Constitution by simple legislation. When the Constitution establishes a process and procedure, General Conference does not have the authority to modify that process and procedure without amending the Constitution. The amendment to ¶ 2609.6 by the 2012 General Conference is unconstitutional.

DECISION OF LAW

Judicial Council Decisions 33 and 799 are the grounding principles for bishops’ decisions of law. Decision 33 states that the principle of not ruling on moot or hypothetical questions “applies to requests for rulings by a Bishop in an Annual Conference, 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.” Decision 799 reaffirms that principle that “A so-called “question of law”, though properly presented, must relate to the business, consideration or discussion of the conference session.”

In the instant case, the bishop reviewed the actual question as written and presented in the record of the Annual Conference:

“In response to the Southwest Texas Conference Board of Ordained Ministry’s decision to remove Mary Ann Kaiser from the candidacy process at their June 6, 2013 meeting (A decision sustained by the Clergy Session), I request a ruling of law as to whether a Board of Ordained Ministry can discontinue the candidacy of a certified candidate for ordained ministry who has been appropriately recommended by a District Committee on Ordained Ministry without an interview and examination by the Board of Ordained Ministry. Paragraphs 31, 635.2, 2012 *Book of Discipline*.

The Bishop’s decision was that the substance of the question of law was moot and hypothetical because “the question posed has nothing to do with the discussion, consideration, or business of the annual conference. It also raises no issue of any specific matter upon which the conference took action, asking only a hypothetical question.”

Yet, the bishop during his explanation of the decision of law request stated, “the matter that is referred to came before the clergy session. But the clergy session is part of the annual conference. So I do believe at this point that it is in order.” It is clear from this statement that the Bishop believed that the action taken during the clergy session was also a part of the annual conference business. The inclusion of matters from the clergy session is supported by ¶ 33 which states in part: “The annual conference is the basic body in the Church and as such shall have reserved to it the right to vote . . . on all

matters relating to the character and conference relations of its clergy members, and on the ordination of clergy . . . It shall discharge such duties and exercise such powers as the General Conference under the Constitution may determine.” The removal of a candidate’s name from the list of candidates proceeding forward in the ordination process is clearly a matter that falls within the purview of the business of the annual conference regarding the ordination of clergy.

DECISION

The amendment adopted by the 2012 General Conference to ¶ 2609.6 stating *“when such appeal has been made by one-fifth of that conference present and voting”* is unconstitutional because it modified ¶¶ 51 and 56.3 of the Constitution. Therefore, the amendment is null, void and of no effect. This decision is effective immediately.

Finding the amendment of ¶ 2609.6 unconstitutional does not prevent the Judicial Council from ruling on the Bishop’s decision of law.

The Bishop’s decision of law is reversed. The matter was properly before the annual conference as business of the Annual Conference pursuant to ¶ 33. The matter is remanded to the bishop for a decision on the questions presented. His submission is to be submitted to the Secretary of the Judicial Council within 60 days of this notification. The Judicial Council retains jurisdiction.

Dennis Blackwell was absent.

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

October 26, 2013