

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION NO. 1454

[Docket No. 1022-17]

IN RE: Review of a Bishop’s Ruling on Questions of Law in the Texas Annual Conference Related to the Legality and Authority of the General Conference to Provide a Specific Window of Opportunity for Qualifying Local Churches to Disaffiliate.

DIGEST

A bishop may not make a substantive ruling on a Petition for Declaratory Decision presented as a request for Decision of Law but must state that it is an improperly posed question. Questions pertaining to the constitutionality, meaning, application, or effect of an act of General Conference come within the jurisdiction of the Judicial Council under ¶ 2610 and, therefore, are beyond the scope of episcopal authority. The decision of Bishop Scott J. Jones is reversed.

STATEMENT OF FACTS

On May 31, 2022, at the beginning of business session of the Texas Annual Conference, a clergy member of the conference [hereinafter Movant] approached the microphone to request the conference to consider sending a Petition for Declaratory Decision to the Judicial Council under ¶ 2610.2(g) pertaining to ¶ 2553.2 of *The Book of Discipline 2016* [hereinafter *The Discipline*] dealing with the time limits of the paragraph. A motion to suspend the rules to consider the motion was made and defeated. Thereafter, the Movant requested a ruling of law. The text of the request for a ruling of law was read to the Conference as follows:

Bishop Jones, in accordance with ¶ 51, Article VII of The United Methodist constitution, I am requesting a ruling of law affecting the work of the Texas Annual Conference in considering future local church disaffiliations utilizing ¶ 2553.2 concerning the following questions:

1. Is establishing an expiration date of December 31, 2023 constitutional?
2. What is considered “sufficient time” considering denomination-wide delays, rescheduling, and cancellations of important meetings including, but not limited to, district, annual, jurisdictional, and general conference meetings

due to the Covid-19 global pandemic?

3. With the passage of this paragraph in February of 2019 affording the time limitations of one working quadrennium, due to the further delay of the 2020 General Conference, should this date be considered December 31, 2027, based the principle of *stare decisis* (based on, but not limited to, JCD 1429) considering the actions of the Council of Bishops, Commission on the General Conference, and the Judicial Council?

On June 29, 2022, Bishop Jones issued the following Decision of Law:

Rationale

Question 1. The General Conference has the right to determine an expiration date, if it so chooses, of legislation that is being considered for enactment. It was within the legislative prerogative of General Conference to set the expiration date of ¶ 2553.2 to December 31, 2023 since it has “full legislative power over all matters distinctively connectional. ... “ ¶ 16 *The Book of Discipline*. The General Conference set the expiration date of ¶ 2553 on December 31, 2023, and it remains constitutional until such time that it is declared to be unconstitutional by Judicial Council.

Question 2. The phrase “sufficient time” in sub-paragraph 2 of ¶ 2553 refers to the amount of time between the choice of the local church to disaffiliate and action of the annual conference in completing the process for the local church to exit the denomination. It does not apply to delays occasioned in the events leading up to the disaffiliation decision.

Question 3. Paragraph 2553 makes no reference to a General Conference later than 2019. Whether the setting of the date on December 31, 2023 was done with the intent of it being after a session of the General Conference is irrelevant. The absence of any such reference in the enacted legislation is decisive. Thus Decision 1429 does not apply. The deadline remains December 31, 2023 and not December 31, 2027. Annual conferences may not legally negate, ignore, or violate provisions of the *Discipline* with which they disagree. Decisions 886. To hold that the expiration date is December 31, 2027 would negate, ignore, and violate the *Discipline*. Changes in church law can be made only by the General Conference.

Ruling

Question 1. It was within the legislative prerogative of General Conference to set the expiration date of ¶ 2553.2 on December 31, 2023 since it has “full legislative power over all matters distinctively connectional” ¶ 16 *The Book of Discipline*. Legislative enactments of General Conference remain constitutional until such time that they are declared to be unconstitutional by Judicial Council.

Question 2. Sufficient time in ¶ 2553.2 refers to the amount of time between the decision of the local church to disaffiliate and action of the annual conference in completing the

process for the local church to exit the denomination. It does not apply to delays occasioned in the events leading up to the disaffiliation decision.

Question 3. The expiration date of ¶ 2553 is December 31, 2023, as stated in the enacted legislation. The Annual Conference may not negate, ignore, or violate the provision of the *Discipline*. Decision 886.

Jurisdiction

The Judicial Council has jurisdiction under ¶ 2609.6 of *The Discipline*.

Analysis and Rationale

According to the official record, the Movant requested a Decision of Law immediately after his motion for Petition for Declaratory Decision had failed. The first question is phrased as a facial challenge to ¶ 2553.2's constitutionality, while the second and third questions ask for the meaning, application, and effect of said provision. The fact that it addresses the constitutionality, meaning, application, and effect of a disciplinary provision indicates that this request for Decision of Law is essentially a Petition for Declaratory Decision, which is governed by ¶ 2610 and subject to the exclusive authority of the Judicial Council.

In previous cases, the Judicial Council held that a “bishop is not required to respond to a declaratory statement when improperly posed as a request for an episcopal decision of law but must state that it is an improperly posed question.” JCD 846, *aff'd*, JCD 1304. Further, a “bishop may not make a substantive ruling on a request for Decision of Law, which in essence is a petition for Declaratory Decision. Questions pertaining to the constitutionality of an act of General Conference that fall within the jurisdiction of the Judicial Council, are beyond the scope of episcopal authority.” JCD 1331.

Consequently, we find that the bishop erred in making a substantive ruling on an improperly presented question.

Decision

A bishop may not make a substantive ruling on a Petition for Declaratory Decision presented as a request for Decision of Law but must state that it is an improperly posed question. Questions pertaining to the constitutionality, meaning, application, or effect of an act of General Conference come within the

jurisdiction of the Judicial Council under ¶ 2610 and, therefore, are beyond the scope of episcopal authority. The decision of Bishop Scott J. Jones is reversed.

Deanell Tacha recused herself and did not participate in any of the proceedings related to this decision.

February 28, 2023

Dissenting Opinion

The prohibition against Bishop's proving a substantive answer on a question of law as referenced in the majority opinion comes from a very specific line of cases. The prohibition exists in relation to questions of law asked of a presiding Bishop concerning matters related to judicial, administrative, supervisory, and fair processes procedures. When a question is asked on those matters, the Bishop must simply rule that it is improper for a bishop to substantively rule on the question posed. The Judicial Council has not prohibited other subject matters in this way. Only questions which are procedural or substantive matters relating solely to actions in a judicial or administrative process are not proper questions to be addressed in a substantive ruling by a bishop.

In Decision 799 the Judicial Council set forth:

...The bishop has no authority to make substantive rulings **on judicial or administrative matters**. Such matters are **limited to the purview** of the judicial or administrative bodies such as Committee on Investigation, Trial court, Committee on Appeals or **Judicial Council**. The constitution (¶ 18) and the **1996 Discipline (¶¶ 358, 2623, and 2626-2628)** have placed the authority to resolve such questions in these bodies. To do otherwise would **violate the principle of separation and balance of powers between the legislative, executive and judicial branches** as set forth in the Constitution [emphasis added].

In Memorandum 1188, as well as Memorandums 1166 and 1167, the Judicial Council noted that there continues to be confusion concerning the issue of that which is appropriately asked by an individual of a presiding bishop as a question of law and that which is improper. The confusion may perhaps be the result of the fact that until October 1999 the church had operated under a paragraph in the Discipline that permitted bishops so to rule. Paragraph 2628.1(j) of the *1996 Discipline* had specifically provided:

Errors or defects in judicial proceedings shall be duly considered when present on appeal. (1) In regard to cases where there is an investigation under ¶ 2626, but no trial is held as a result thereof, errors of Church law or administration committed by those in charge of the investigation are to be corrected by the presiding officer of the next conference on request in open session, and in such event the conference may also order just and suitable remedies if injury resulted from such errors. (2) Errors of Church law or defects in

judicial proceedings that are discovered on appeal are to be corrected by the presiding officer of the next conference upon request in open session, and in such event the conference may also order just and suitable remedies if injury has resulted from such errors. [1996 Book of Discipline ¶ 2628.1(j)]

However, in October 1999 the issue of the constitutionality of this paragraph came before the Judicial Council. In Decision 872 the Judicial Council ruled:

This paragraph grants to a bishop and an annual conference powers and authority which are reserved to other organizational bodies and divisions in the Constitution.

For the foregoing reasons ¶ 2628.1(j) is determined to be unconstitutional and is ruled to be so.

Questions as to fair process, judicial process, and administrative process must be addressed in the appropriate manner and through the specific bodies set forth in the *Discipline*. In no event may an individual bring those delineated issues to the Judicial Council pursuant to a **review of a bishop's ruling on a question of law**; to do so circumvents the process set forth in the *Discipline* and also violates the principle of the separation and balance of powers. It is only by vote of an authorized body [*Annual Conference*] for a declaratory decision that the matter might be addressed by the Judicial Council on the merits.

...

In Memorandum 1188 the Judicial Council provided further clarification and precision, regarding the ongoing requests made of presiding Bishops to issue substantive rulings on questions of fair process, and judicial, administrative, and supervisory processes and procedures. In 1188 the Judicial Council clarified that the primary issue regarding this specific type of question is that it involves subject matter that a Bishop is not permitted to rule upon. Thus the phrase “improper question” was implemented long-ago to distinguish this subject matter which one may not *properly* ask of a bishop. The Judicial Council referred to this as an “improper question” for a substantive ruling from a presiding Bishop. The Judicial Council would occasionally frame the matter as, “an improper question, although properly presented [or posed]...”

The questions presented were **not moot and hypothetical; they were *relevant* but *improper* as questions of law to a Bishop.**

The questions of law presented to the Bishop during the 2010 regular session of the Rocky Mountain Annual Conference are questions that concern **procedural or substantive matters relating to judicial or administrative process**. These are **not proper questions to be addressed in a substantive ruling by a bishop**. Since the Bishop does not have the authority to decide issues related to a judicial or administrative matter, the Bishop's decisions are vacated.

Thus, as to the matter before us, it is my opinion that the presiding Bishop ought to have been affirmed given that our polity does not preclude him from answering those questions in the manner and substance reported herein.

Beth Capen
February 28, 2023