

**SUBJECT TO FINAL EDITING**

**JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH**

**DECISION NO. 1318**

**IN RE: Referral from Judicial Administration Legislative Committee  
Regarding ¶¶ 363.1, 2701.5 and 2706.5c3**

**DIGEST**

The three amended paragraphs, 363.1, 2701.5 and 2706.5c3, as acted upon by the Judicial Administration Legislative Committee are unconstitutional.

**STATEMENT OF FACTS**

The Judicial Council received a referral on May 17, 2016 from the Judicial Administration Legislative Committee. On May 14, 2016, this committee had voted to adopt amended Petition #60804, Just Resolution ¶ 363.1, Petition #60806, Just Resolution ¶ 2701.5, and Petition #60807, Just Resolution ¶ 2706.5(c)3. After approval of these three pieces of legislation, they voted to refer these petitions to the Judicial Council for review. The vote to refer was more than 1/3 of the members meeting the requirement for referral in ¶ 2609.4.

In relevant part, each of the petitions states that:

“...When the complaint is based upon chargeable offenses found in 2702.1 within the statute of limitations, and the clergyperson against whom the complaint was made acknowledges to the bishop within the course of the process seeking a just resolution, that he or she did in fact commit a chargeable offense (2701.2), then any final just resolution must include the clergy person being suspended without pay, for no less than one full year, from all ministerial duties and functions, including membership, staff position or formal leadership role in any district, annual conference, or general church board, agency, committee, commission, council, or office, for a period of

prayerful reflection in his or her covenantal vows to God and to The United Methodist Church...

In addition to the referral from the chair of the Judicial Administration Legislative Committee, nine members of the Judicial Administration Committee filed a brief.

## **JURISDICTION**

The Judicial Council has jurisdiction under ¶ 2609.4 of the *2012 Discipline* and under the precedence of Judicial Council Decision 887.

## **ANALYSIS AND RATIONALE**

The full paragraphs under consideration as amended are requesting a mandatory penalty when a just resolution is sought under *any* (emphasis added) judicial complaint found listed in ¶ 2702.1 and the person acknowledges to the bishop that he/she did in fact commit a chargeable offense. The authority for setting the penalty would rest with the bishop in each instance. Paragraph 20. Article IV. of the Restrictive Rules of the Constitution asserts:

The General Conference shall not do away with the privileges of our clergy of right to trial by a committee and of an appeal; neither shall it do away with the privileges of our members of right to trial before the church, or by a committee, and of an appeal.

Paragraph 2711.3 gives the trial court the authority to set the penalty. The fair process provisions of ¶ 2701 provide the limits of this responsibility. Unless the respondent voluntarily agrees to a Just Resolution to promote healing among all parties, a penalty may only be affixed after the respondent has been found guilty of an offense by a trial court. Judicial Council Decision 1201 makes it clear that the right to assess penalties resides only with the trial court.

Under ¶ 363.1, a just resolution is the goal of the bishop during the supervisory response process at the start of the complaint process. "A just

resolution is one that focuses on repairing any harm to people and communities, achieving real accountability by making things right in so far as possible and bringing healing to all parties.” The supervisory response process is not part of any judicial process and does not include legal counsel or a verbatim record. The complaint at this point in the process is considered as an allegation. (¶ 363.1b) The concluding paragraph of ¶ 363.1(c) states: “A process seeking a just resolution may begin at any time in the supervisory process or complaint process. This is not an administrative or judicial proceeding.” Thus, to add a specific penalty for any complaint at this point in the process is not constitutional as it denies the right to trial and appeal (¶ 20).

Just Resolutions can be initiated at any point in the judicial complaint process as stated above. A Just Resolution process is an attempt by the church to deal with each complaint in a fair way and with the guarantee of confidentiality. Each Just Resolution takes into account the particularities of the individual case. A Just Resolution at the start of Judicial Proceedings is defined in ¶ 2701.5. The goal is to repair any harm to people and communities, to achieve accountability by making things right, and bring healing to all parties. A Just Resolution may be sought to prevent the situation from going to trial. “Church trials are to be regarded as an expedient of last resort”(¶ 2707). A Just Resolution is an alternative way of handling chargeable offences.

In the proposed amended versions of ¶ 2701.5 and ¶ 2706.5c3 the call for a specific penalty in creating a just resolution is also unconstitutional as it denies the clergy person the specific right to trial and appeal. Additionally, since the amended versions of the petitions refer to all the chargeable complaints under ¶ 2702.1 and require the same penalty to be assessed, the ability to deal individually with each chargeable offense listed is denied. This same right for trial needs to be offered in the process of establishing a Just Resolution at all phases of the trial process.

Under provisions of this proposed legislation the bishop becomes the “trier of fact”, unilaterally determining a violation of church law and imposing the proposed penalty. Judicial Council Decision 1296 clarifies the process that includes the Committee on Investigation. Just Resolutions are not intended to produce monolithic decisions, but, rather, conclusions to which all parties agree. The mandatory dimension of the petitions compromises the intent of the Just Resolution process. *See also* Judicial Council Decisions 799 and 1156 for further interpretation of separation of powers.

Further, ¶ 33 of the Constitution states that “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 related to the character and conference relations of its clergy members...”. The change of status of the clergy person (suspension) required by these petitions clearly negates the authority of the clergy session of the annual conference. These petitions transfer that authority from the annual conference to the General Conference and that transfer is unconstitutional.

### **DECISION**

The three amended paragraphs, 363.1, 2701.5 and 2706.5c3, as acted upon by the Judicial Administration Legislative Committee are unconstitutional.