

DECISION 1275

IN RE: A Request from the Western Pennsylvania Annual Conference for a Declaratory Decision Regarding the Meaning and Application of ¶¶ 413, 2702, 2704, and 2706 in the Process of Review and Dismissal of a Complaint against a Bishop

DIGEST OF CASE

There is no provision for anyone other than the Committee on Investigation [¶ 2706.5(c)(1)] to dismiss a judicial complaint against a bishop. The power to refer a matter as an Administrative Complaint or a Judicial Complaint is granted to the president or secretary of the College of Bishops as the ones with whom the complaint is originally filed (¶ 413.2). Paragraph 413.3(d) permits the president or secretary of the College of Bishops to refer or not to refer the matter as an Administrative Complaint or a Judicial Complaint. If the matter is not referred, it is effectively dismissed.

The other issues raised in the request for a declaratory decision require legislative resolution by the General Conference and are not within the jurisdiction of the Judicial Council.

STATEMENT OF FACTS

On June 7, 2014, the Western Pennsylvania Annual Conference in session at Grove City College, Grove City, Pennsylvania, unanimously adopted P105, as part of the approval of the Conference Consent Calendar. P105 (which follows) raises questions for declaratory decision:

THEREFORE BE IT RESOLVED That the Western Pennsylvania Conference officially petition the Judicial Council for a ruling in the nature of a declaratory decision (¶2610) as to the meaning and application of ¶413, ¶2702, ¶2704 and ¶2706 in regards to the process of the review and a dismissal of a complaint regarding a bishop regarding, namely:

- (1) Upon receipt of a complaint what is the responsibility and process (including timeliness) of the President/Secretary of the College of Bishops is required to take to initiate a supervisory response process under the provisions of ¶413?
- (2) Who has the responsibility to conduct and who has the responsibility to oversee the supervisory response process under the provisions of ¶413? What is the process (including timeliness) and responsibility of those conducting the supervisory process under the provisions of ¶413?
- (3) Does ¶413 allow the action by the College of Bishops to resolve the complaint without a supervisory response to seek a just resolution?
- (4) Is the power to dismiss a complaint, determined by the College of Bishops to be an Administrative Complaint, retained solely by the jurisdictional or central conference committee on episcopacy under the provisions of ¶413?
- (5) Is the power to dismiss a complaint (*sic*), determined by the College of Bishops to be a Judicial Complaint, retained solely by the Committee on Investigation ¶2704 and ¶2706?
- (6) Does ¶413.3.d as read in the context with ¶413.3.e require the College of Bishops to refer the complaint to the jurisdictional or central conference committee on the episcopacy if the complaint is based on allegations of incompetence, ineffectiveness, or unwillingness or inability to perform episcopal duties?
- (7) Does ¶413.3.d as read in context with ¶2704.1.a require the College of Bishops to refer the complaint to the respondent bishop, notify active bishops of the existence and nature of the complaint, and refer the complaint to an elder in full connection within the same jurisdiction or central conference, who shall serve as counsel of the Church?

(8) Has the General Conference in ¶413.3.d or in any action under ¶16.5 given the College of Bishops the power to dismiss complaints or make rulings regarding administrative or judicial processes?

The Western Pennsylvania Annual Conference provided the Daily Proceedings for its morning session of June 7, 2014. The two interested parties who proposed P105 to the Annual Conference submitted a brief in which they suggest answers to the questions raised in the request for a declaratory decision. They also submitted the text of P105 with amendments made by the legislative section before the item was placed on the consent calendar. Another interested party, Bishop Daniel Wandabula, requested an oral hearing on this docket item.

The “whereas statements” that preceded the resolution asking for the declaratory decision referred to matters addressed in Judicial Council Decisions 1238 and 1241. Additionally, the two persons who signed P105 referenced Judicial Council Decisions 1238 and 1241. The digest of Decision 1238 and the text of Memorandum 1241 follow.

Decision 1238

In Re: Request from the Western Pennsylvania Annual Conference for a Ruling on the Legality of Certain Financial Actions and the Complaint Process Regarding the East Africa Annual Conference in Light of ¶¶ 258.4f, 413, and 613.13

DIGEST OF CASE

In response to the three questions posed by the Western Pennsylvania Annual Conference, the Judicial Council finds the following:

First, the responsibility for managing the mission including the expenditure of funds was designed to be a direct partnership between the Western Pennsylvania Annual Conference and the East Africa Annual Conference. There is no legal justification in the record for inferring donor intent from

the evidence presented or for requiring restoration of funds to the donor conference.

Second, the funds in the amount of \$3,000 intended for compensation to Isaac Sebit should be paid to him by the East Africa Annual Conference by January 1, 2014, or be returned to the Western Pennsylvania Annual Conference.

Third, the inquiry about the complaint filed against the Bishop is hypothetical at this point and cannot be addressed by the Judicial Council.

Beth Capen and Ruben Reyes were absent. Sandra Lutz, first lay alternate, and Warren Plowden, fifth lay alternate, participated in this decision.

Saturday, April 20, 2013.

Memorandum No. 1241

In Re: Request for Reconsideration of Decision 1238

Saturday, October 26, 2013.

Request denied.

CONCURRING OPINION

We concur with the decision not to reconsider Decision 1238. However, we also understand that the Judicial Council retains jurisdiction on the payment of money indicated in part 2 and in the documentation of the process and outcome of the complaint filed in March 2012 by Mrs. Nancy Denardo and the Rev. John Kiviiri.

On October 22, 2014, in Memphis, Tennessee, the Judicial Council held an oral hearing on this matter. Robert Zilhaver and Nancy Denardo addressed the

Judicial Council in behalf of the Western Pennsylvania Annual Conference and responded to questions from members of the Judicial Council. Bishop Daniel Wandabula reported that he was unable to participate in the oral hearing; he filed a statement that was shared with the Judicial Council.

JURISDICTION

The Judicial Council has jurisdiction in part under ¶ 2610 and lacks jurisdiction in part.

ANALYSIS AND RATIONALE

The Western Pennsylvania Annual Conference has posed a series of questions related to ¶ 413 (Complaints Against Bishops), ¶ 2702 (Chargeable Offenses and the Statute of Limitations), ¶ 2704 (Referral of Original Complaint to Counsel for the Church), and ¶ 2706 (Committee on Investigation—Procedures). Although filed as a separate request for a declaratory decision, the context for this docket item is stated in another docket item: “IN RE: A Request from the Western Pennsylvania Annual Conference Regarding the Legality of Actions Taken in Regard to Judicial Council Decisions 1238 and 1241.” (Otherwise, this request would be moot and hypothetical.) This decision addresses only the issues raised in the following questions:

- (1) Upon receipt of a complaint what is the responsibility and process (including timeliness) of the President/Secretary of the College of Bishops is required to take to initiate a supervisory response process under the provisions of ¶413?
- (2) Who has the responsibility to conduct and who has the responsibility to oversee the supervisory response process under the provisions of ¶413? What is the process (including timeliness) and responsibility of those conducting the supervisory process under the provisions of ¶413?

- (3) Does ¶413 allow the action by the College of Bishops to resolve the complaint without a supervisory response to seek a just resolution?
- (4) Is the power to dismiss a complaint, determined by the College of Bishops to be an Administrative Complaint, retained solely by the jurisdictional or central conference committee on episcopacy under the provisions of ¶413?
- (5) Is the power to dismiss a complaint (*sic*), determined by the College of Bishops to be a Judicial Complaint, retained solely by the Committee on Investigation ¶2704 and ¶2706?
- (6) Does ¶413.3.d as read in the context with ¶413.3.e require the College of Bishops to refer the complaint to the jurisdictional or central conference committee on the episcopacy if the complaint is based on allegations of incompetence, ineffectiveness, or unwillingness or inability to perform episcopal duties?
- (7) Does ¶413.3.d as read in context with ¶2704.1.a require the College of Bishops to refer the complaint to the respondent bishop, notify active bishops of the existence and nature of the complaint, and refer the complaint to an elder in full connection within the same jurisdiction or central conference, who shall serve as counsel of the Church?
- (8) Has the General Conference in ¶413.3.d or in any action under ¶16.5 given the College of Bishops the power to dismiss complaints or make rulings regarding administrative or judicial processes?"

Response to the first question: In that the contexts for the inquiry are complaints filed in July 2011 and March 2012, the answer is to be under the *2008 Book of Discipline*. If these complaints are not the references for the request for a

declaratory decision, the request is moot and hypothetical. Paragraph 413.2 indicates that “for the purposes of this paragraph, the United Methodist bishops of the central conferences shall constitute one college of bishops,” but Judicial Council Decision 1149 declared that provision unconstitutional. The remaining language of ¶ 413 lacks clarity. Paragraph 413.3 calls for the appointment of two persons from the jurisdictional or central conference committee on episcopacy, but does not indicate for what purpose these appointments are made. Paragraph 413.3(b) speaks of the role of the supervising bishop, but gives no definition of who the supervising bishop is. Paragraph 413.3(b) begins with a description of “the supervisory response” as “pastoral and administrative and shall be directed toward a just resolution,” but there is no indication that a supervisory response is mandatory. In fact, the language of the paragraph sometimes implies recommended procedures, not mandatory procedures: “The supervisory response *should* (emphasis added) be carried out in a confidential manner and *should* (emphasis added) be completed within 120 days.” It is not clear when the General Conference has mandated action (shall), recommended action (should), or permitted action (may). Paragraph 413 assumes the requirement of a supervisory response, but the formatting and terminology of the paragraph does not make that clear, thus the Judicial Council cannot with complete assurance answer the inquiry about “the responsibility and process (including timeliness) of the President/Secretary of the College of Bishops is required to take to initiate a supervisory response process under the provisions of ¶ 413.”

Response to the second question: The same limitations delineated in response one apply here. Paragraph 413.3 does not specify who has the responsibility to oversee the supervisory response. In terms of timeliness, there are deadlines that are suggested (“should”), deadlines that are permitted (“may”), and deadlines that are mandatory (“shall”). In light of this, no single timeline would be applicable in all cases.

Response to the third question: Although the language of ¶ 413 assumes a supervisory response, it does not make clear that this is a requirement rather

than an option. The paragraph leaves unclear how a complaint is to be resolved apart from a supervisory response.

Response to the fourth question: The jurisdictional or central conference committee on episcopacy has the authority to dismiss an administrative complaint [¶ 413.3(e)]. However, if “unsatisfactory performance of ministerial duties” means “incompetence, ineffectiveness, or unwillingness or inability to perform episcopal duties,” ¶ 413.2 does not distinguish between judicial and administrative complaints. Nevertheless, there is a separate paragraph [¶ 413.3(e)] dealing with administrative complaints. This dual approach needs to be resolved by the General Conference.

Response to the fifth question: Judicial Council Decision 1149 declared ¶ 2704.1(d) to be unconstitutional, thus the College of Bishops referenced in ¶ 2704 is the College of Bishops in which the respondent bishop is a member. There is no [provision for anyone other than the Committee on Investigation [¶ 2706.5(c)(1)] to dismiss a judicial complaint against a bishop.

Response to question six: Paragraph 413.3(d) is permissive: “If the supervisory response does not result in resolution of the matter, the president or secretary of the College of Bishops *may* (emphasis added) refer to matter as an Administrative Complaint (¶ 413.3(e) or a Judicial Complaint (2704.1). Paragraph 413.3e is mandatory: “...the president and secretary of the College of Bishops...*shall* (emphasis added) refer the complaint to the jurisdictional or central conference committee on episcopacy.” The General Conference is the body to clarify the conflict. See Judicial Council Decision 557.

Response to question seven: Paragraph 413.3(d) permits the president or secretary of the College of Bishops to refer or not to refer the matter as an Administrative Complaint or a Judicial Complaint. If the matter is not referred, it is effectively dismissed. Paragraph 2704.1a describe the process for handling a complaint that is referred as a judicial complaint. If the matter has not been referred, ¶ 2704.1a is not applicable.

Response to question eight: Paragraph 413.3(d) indicates that “...the president or secretary of the College of Bishops *may* (emphasis added) refer the matter as an Administrative Complaint [¶ 413.3(e)] or a Judicial Complaint [¶ 2704.10].” This provision does not grant that authority to the entire College of Bishops. The power is granted to the president or secretary as the ones with whom the complaint is filed (¶ 413.2).

In summary, the Judicial Council notes that there are portions of ¶ 413 that lack clarity and which, in fact, give contradictory processes. In the instant case, the point of reference is the *Discipline 2008*, but these murky areas have not been addressed by the 2012 *Discipline*. There would be value if a future General Conference harmonized this paragraph. Judicial Council Decision 557 says that when two options are presented, “Neither Par. 455.1 nor Par. 2623.3(b) [1984 *Book of Discipline*] is assured of precedence. The district superintendent who first receives the grievance or accusation may determine which process shall be initiated, depending on the nature of the grievance or accusation and the surrounding circumstances.” This determination applies in the instant case.

DECISION

There is no provision for anyone other than the Committee on Investigation [¶ 2706.5(c)(1)] to dismiss a judicial complaint against a bishop. The power to refer a matter as an Administrative Complaint or a Judicial Complaint is granted to the president or secretary of the College of Bishops as the ones with whom the complaint is originally filed (¶ 413.2). Paragraph 413.3(d) permits the president or secretary of the College of Bishops to refer or not to refer the matter as an Administrative Complaint or a Judicial Complaint. If the matter is not referred, it is effectively dismissed.

The other issues raised in the request for a declaratory decision require legislative resolution by the General Conference and are not within the jurisdiction of the Judicial Council.

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