

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION NO. 1361

IN RE: Petition for Declaratory Decision from the Council of Bishops regarding the constitutionality, meaning, application, and effect of ¶¶ 2718.3 and 2718.4 of *The Book of Discipline 2016*.

DIGEST OF CASE

Paragraphs 2718.3 and 2718.4 of *The Book of Discipline 2016* afford the right to file an interlocutory administrative appeal prior to and without the requirement of a final action of the clergy session. Until the completion of the appellate process, claims of procedural errors are not resolved and the disciplinary question is not sufficiently clear to allow the clergy members in full connection of an annual conference to make a fair and informed decision. The clergy session is barred from voting on a recommendation for involuntary change of status when the appellate process has not yet been completed. An administrative appeal filed in a timely manner stays a recommendation for involuntary leave of absence, administrative location, involuntary retirement but not for discontinuance from provisional membership. A clergy member remains in good standing and is entitled to an appointment pending the outcome of the appellate process, except when the challenged action is in relation to discontinuance from provisional membership.

STATEMENT OF FACTS

On July 27, 2017, the Council of Bishops [hereinafter COB] voted to request a declaratory decision and, acting through its secretary at the time, Bishop Cynthia Fierro Harvey, filed it on the same day. It was not included in the October 2017 Docket because the filing date had already passed. Due to the cancellation of the regular Spring 2018 meeting, this docket item was automatically deferred to the Fall 2018 session of the Judicial Council.

The Petition states in relevant part:

A. Paragraph 2718.3 of the *2016 Book of Discipline* provides as follows:
The order of appeals on questions of procedures in an administrative process shall be as follows: from the decision of the conference relations committee to the administrative review committee who has original jurisdiction over the administrative matter, and from the administrative review committee to the central conference or jurisdictional appeals committee in which the appellant holds membership, and from the jurisdictional appeals committee to the Judicial Council.

B. Paragraph 2718.4 of the *2016 Book of Discipline* provides as follows in relevant part:

When an appeal is made on questions of procedure in an administrative process:

(a) In all cases of appeal, the appellant shall within thirty days give written notice of appeal and at the same time furnish to the officer receiving such notice a written statement of the grounds of appeal, and the hearing in the appellate body shall be limited to the grounds set forth in such statement.

(b) The appellant body shall return to the convening officer of the administrative hearing and to the appellant a written statement of the grounds of its action.

...

(e) The right to prosecute an appeal shall not be affected by the death of the person entitled to such right. Heirs of legal representatives may prosecute such appeal as the appellant would be entitled to do if living.

...

(g) The appellate body shall determine one question only: Were there such errors of Church law as to vitiate the recommendation and/or action of the administrative body? This question shall be determined by the records of the administrative process and the arguments of the official representatives of all parties. The appellate body shall in no case hear witnesses. It may have legal counsel present for the sole purpose of providing advice to the appellate body.

(h) If the appellate body determines that any error has occurred, it may recommend to the appropriate person or body that action be taken promptly to remedy the error, decide the error is harmless, or take other action. The appellate committee shall not reverse the judgment nor remand the case for a new hearing on account of error plainly not affecting the result. All decisions of the appellate committee shall require a majority vote.

...

C. The Council respectfully requests a decision of law on the following questions:

Requested Decision No. 1: Do ¶¶ 2718.3 and 2718.4 allow an administrative appeal on a question of procedure before there is action by the clergy session of annual conference either approving or disapproving the recommendation for involuntary change of status?

Requested Decision No. 2: If an administrative appeal is allowed pursuant to ¶¶ 2718.3 and 2718.4 before any action on the recommendation for involuntary change of status by the clergy session and an administrative appeal is timely filed, does the

appeal automatically stay the recommendation pending a decision by the appellate committee(s)?

Requested Decision No. 3: If an administrative appeal pursuant to ¶¶ 2718.3 and 2718.4 is taken, does the clergy person remain in good standing and therefore entitled to an appointment pending the outcome of an appeal?

An oral hearing was conducted on October 23, 2018 at the Placid Hotel in Zurich, Switzerland. Appearing on behalf of the COB were Bishops Kenneth H. Carter and Cynthia Fierro Harvey and William Waddell, Esq., and other Interested Parties were Rev. Robert F. Zilhaver and Rev. Kimberly D. Reisman.

JURISDICTION

The Judicial Council has jurisdiction pursuant to ¶ 2610.1 of *The Book of Discipline 2016* [hereinafter *The Discipline*]. The COB has standing to request a declaratory decision pursuant to ¶ 2610.2(b) of *The Discipline*.

ANALYSIS AND RATIONALE

The Constitution guarantees to our members the right to trial by a committee and an appeal. Constitution, ¶¶ 20 and 58. “The United Methodist Church has a heritage of concern with the rights of persons. That concern has repeatedly made provision for the protection of the rights of its members and of its ministers.” JCD 351, *aff’d*, JCD 459, 462, 522, 524, 852, 1226.

In Memorandum 1276, the Judicial Council ruled:

The General Conference has established separate procedures for administrative matters and judicial complaints. The Judicial Council acknowledges that although appeal steps in judicial cases are clearly stated (¶¶ 2715-2717), the appeal process in administrative matters is less clearly delineated. However, the General Conference, not the Judicial Council, is the body to address this lack of clarity.

After Memorandum 1276 was issued, the 2016 General Conference enacted ¶¶ 2718.3 and 2718.4, which afford the right of appeal in an administrative process. The matter under consideration calls for interpretation, not constitutional review, of those provisions.

The first question is whether ¶¶ 2718.3 and 2718.4 permit a clergy person to file an *interlocutory* administrative appeal prior to and without the requirement of a final action on the recommendation for involuntary change of status by the clergy session of members in full connection.¹ The COB Brief answered it in the negative, arguing that “allowing interlocutory appeals without action by the clergy session on the clergy person’s status would permit appeals as to issues that may be rendered moot by the vote of the clergy session” and that

¹ “Interlocutory” means provisional, interim, temporary, or not final. Thus, “interlocutory appeal” refers to an appeal of a matter, which does not determine the disposition of a case, but which is necessary for a suitable adjudication of the merits. See Black’s Law Dictionary, p. 815 (6th ed. 1990).

unless there is a requirement that the clergy session approve the recommendation for an involuntary change of status before an appeal is permitted, a clergy person might be able to delay any action the clergy session and thereby delay the change of status by tactically filing one or more appeals before the clergy session can act.²

In other words, the COB's objection is based on the concern for possible mootness of the grounds of appeal and tactical delays engineered by the clergy person.

The annual conference has the constitutional right to vote "on all matters relating to the character and conference relations of its clergy members." Constitution, ¶ 33. But with this right comes the duty of all entities involved—board of ordained ministry, conference relations committee, administrative review committee, and clergy session—to exercise due diligence and care in the determination of a clergy person's status, as highlighted in JCD 777:

It should be emphasized that both the administrative and the judicial processes in the Discipline are carefully and specifically designed to protect the rights of clergy and of the church. The steps set forth there must be followed carefully and explicitly or injustice results. Lack of diligence, integrity, care, or compassion in dealing with a case almost always results in irreparable harm to both individual and church.

In JCD 689, the Judicial Council found that the board of ordained ministry "totally abrogated its responsibility when it failed to follow disciplinary mandates and its own decision," but it also "added to the confusion and misrepresentations when its spokesperson" addressed the 1992 Executive Session of the Iowa Annual Conference. In reviewing the record of the case, the Council came to the following conclusion:

A review of the procedures followed prior to the vote of the Executive Session clearly indicates due process was not followed. The question placed before the Executive Session was not sufficiently clear for the Executive Session to make a fair and informed decision. JCD 689 [emphases added]

This ruling was premised on the operative principle that the clergy session of the annual conference is constitutionally mandated to make fair and informed decisions regarding the character and conference relations of its clergy members but cannot discharge its duty, unless fair process is followed, and the question placed before the body is sufficiently clear.

An objective of ¶¶ 2718.3 and 2718.4 is to have one or two appellate bodies adjudicate claims of procedural errors raised in a timely manner by a clergy person who has been found by the Conference Relations Committee to be deserving of an involuntary change of status. Until the completion of the administrative appellate process, those claims are not resolved and the disciplinary question is not sufficiently clear to allow the clergy members in full connection of an annual conference to make a fair and informed decision. This means that the clergy session is barred from voting on a recommendation for involuntary change of status pending the outcome of the administrative appeal. To allow the clergy session to act on the recommendation at this stage bears the risk of interfering with the appellate process or prejudicing its outcome. The clergy person is entitled to a fair and impartial adjudication of his or her complaints and, at the same time, the members in full connection in the annual conference have the right to know that all outstanding legal issues have been resolved before they vote on the matter.

² Brief of the COB, p. 4 [hereinafter COB Brief].

The Discipline does not permit interlocutory appeals, except in two instances. In those two places, it uses specific and clear language that can hardly be misinterpreted.

The first one is ¶ 2715.10, which states clearly that the Church has *no* right to appeal in a judicial process, *save* where there is an investigation under ¶ 2702, “but no trial is held.” The interlocutory nature of this appeal is evidenced by (1) its placement at the investigative stage *prior* to a trial, (2) the limitation of the grounds of appeal to only “egregious errors of Church law or administration,” (3) the restriction of the judicial remedy to “remand the case for a new hearing,” and (4) the disclaimer “This is not to be double jeopardy.”

The second provision is ¶ 2718.3, which states:

The order of appeals on questions of procedures in an administrative process shall be as follows: from the decision of the conference relations committee to the administrative review committee who has original jurisdiction over the administrative matter, and from the administrative review committee to the central conference or jurisdictional appeals committee in which the appellant holds membership, and from the jurisdictional appeals committee to the Judicial Council.

Essentially, this provision sets forth the order of appeals in an administrative process, which proceeds in three steps:

Step One—*mandatory* review by the administrative review committee of the actions of the conference relations committee pursuant to ¶ 636.

Step Two—*interlocutory administrative* appeal from the administrative review committee to the central conference or jurisdictional appeals committee in which the appellant holds membership. Notably, “original jurisdiction” is placed with the administrative review committee, *not* the clergy session.³ This is another way of saying that this right of appeal accrues *prior* to the decision of the clergy session.

Step Three—*interlocutory administrative* appeal from the central conference or jurisdictional appeals committee to the Judicial Council.

The scope of review is restricted to one question only: “Were there such errors of Church law as to vitiate the recommendation and/or action of the administrative body?” *The Discipline*, ¶ 2718.4(g). This is in contrast to the appeals in judicial matters, where the appellate body has to review and answer two questions. *The Discipline*, ¶ 2715.7. In all three steps referred to above, the grounds of appeal are restricted to “questions of procedures.” The limited grounds of appeal and restricted scope of review are other indicators of the interlocutory nature of the appeal in ¶¶ 2718.3 and 4.

Paragraph 2718.4(a) provides that the appellant “shall within thirty days give written notice of appeal.” Read together with ¶ 2718.3, the thirty-day period begins with the action(s) of the administrative review committee, which “has original jurisdiction over the administrative matter.” Further, ¶ 2718.4(b) states that the “appellant body shall return to the convening officer of the administrative hearing and to the appellant a written statement of the grounds of its action.” [emphasis added] The term “appellant body” refers to the administrative review committee, since ¶ 636 provides that “it shall report its

³ “*Original jurisdiction*. Jurisdiction to consider a case in the first instance. Jurisdiction of court to take cognizance of a case at its inception, try it, and pass judgment upon the law and facts. Distinguished from *appellate jurisdiction*.” Black’s Law Dictionary at 1099.

findings to the clergy session of members in full connection with the annual conference.” In contrast, the clergy session as a body approves or rejects the recommendations of the board of ordained ministry *without* offering a written statement of the grounds of actions or report of its findings. Neither ¶ 2718.3 nor ¶ 2718.4 mentions the clergy session of the annual conference. To read the clergy session into either provision would render meaningless and purposeless the requirement that the appellant body provide a statement of the ground of action. Such a reading would be inconsistent with the rules of statutory interpretation as set forth in JCD 331.

The specific language used and the conspicuous absence of the clergy session in ¶¶ 2718.3 and 2718.4 are evidence of General Conference’s intent to bestow a right to interlocutory administrative appeal *prior* to and *without* the requirement of a final action of the clergy session. The brief submitted by an Interested Party, who served as the chairperson of the Judicial Administrative Legislative Committee of the 2016 General Conference, appears to support this conclusion.⁴ Consequently, the answer to **Requested Decision No. 1** is: YES.

The second question is whether an administrative appeal filed in a timely manner under ¶¶ 2718.3 and 2718.4 stays the recommendation for involuntary change of status pending the decision by the appellate committee(s). The COB Brief requests a ruling declaring that an appeal does not automatically stay the recommendation with the argument that it would allow the clergy session to determine a clergy person’s status and to decide whether he or she is entitled to an appointment pending the outcome of the appeal.⁵

With respect to the judicial process, ¶ 2711.3 provides in relevant part:

The penalty fixed by the trial court shall take effect immediately unless otherwise indicated by the trial court. Should any penalty fixed by a trial court be altered or reduced as a result of the appellate process, the respondent shall be restored and/or compensated as appropriate... [emphases added]

Read in conjunction with ¶ 2715, this provision means that an appeal in a judicial process does not stay the imposed penalty. Only the trial court, *not* the appeal, can delay the entry into effect. Otherwise, there would be no reason to state in ¶ 2711.3 that “as a result of the appellate process, the respondent shall be restored and/or compensated as appropriate.”

The Discipline does not have an equivalent provision for the administrative process. Paragraphs 2718.3 and 2718.4 are completely silent as to whether or not the recommendation for involuntary action takes effect when an appeal is filed. Therefore, we have to examine the

⁴ Brief of Kimberly D. Reisman, p. 7-8 [hereinafter Reisman Brief]:

The Judicial Administration Committee was diligent in vetting this legislation. The sub-committee *unanimously* recommended that the entire committee pass the petition. The committee as a whole then had ample opportunity to amend the petition that went on to become ¶¶2718.3 and 2718.4. However, no amendments were offered giving the clergy session the power to vote on the recommendation for involuntary change of status *prior* to the conclusion of the appeal process. No amendments were offered giving the clergy session the power to determine that a clergy person is not in good standing *prior* to the conclusion of the appeal process.

[emphasis in original]

⁵ COB Brief at 4-5 (“Such a ruling will allow the annual conference to address the status of a clergy person who has been determined to be deserving of an involuntary change of status while still allowing for any procedural complaints by the clergy person to be decided on appeal.”)

disciplinary paragraphs related to each type of involuntary action—(1) discontinuance from provisional membership (§ 327.6), (2) involuntary leave of absence (§ 354.5), (3) administrative location (§ 359.2), and (4) involuntary retirement (§ 357.3)—to determine separately *when* and *how* a board action/recommendation becomes effective.

First, under § 327.6, a provisional member may be discontinued by the board of ordained ministry without his or her consent on the recommendation of the conference relations committee. “A report of the action will be made to the full board for final action.” *The Discipline*, § 327.6 [emphasis added]. The final action of the board takes effect immediately and does not require approval of the clergy session. An administrative appeal delays consideration by the clergy session but does not prevent the board action from becoming effective.

Second, pursuant to § 354.5, the executive committee of the board of ordained ministry, upon request of bishop and cabinet, is authorized to place a clergy person on involuntary leave of absence. This interim action takes effect immediately but is “subject to the approval of the clergy session of members in full connection with the annual conference at its next session.” [emphases added] In JCD 1355, the Judicial Council emphasized that for involuntary leaves of absence there are two steps. First is an interim involuntary leave of absence, which must be confirmed retroactively by a simple majority of the clergy session “at its next session.” Second is an involuntary leave of absence for the coming year, which must be approved by a two-thirds vote of the clergy session before it takes effect. Since final action by the clergy members in full connection is barred pending the outcome of the administrative appeal, the interim action is rendered ineffective absent retroactive confirmation by the clergy session.⁶

Third, under § 359.2, the board of ordained ministry may place a clergy member on administrative location between sessions of the annual conference. “This interim action shall be subject to the approval of the clergy session of members in full connection with the annual conference at its next session.” [emphases added] By analogy, since final action by the clergy members in full connection is barred pending the outcome of the administrative appeal, the interim action is rendered ineffective absent retroactive approval by the clergy session “at its next session.”

Fourth, pursuant to § 357.3, a recommendation to place a clergy person in involuntary retirement status requires a two-thirds vote of the clergy session to become effective. The board of ordained ministry does not have the authority to take interim action. Since final action by the clergy members in full connection is barred pending the outcome of the administrative appeal, the recommendation does not take effect absent approval by the clergy session.

The Discipline requires the clergy session to give final approval to a recommendation of the board of ordained ministry for involuntary change of status. Only in the case of discontinuance from provisional membership does the board action take effect without the requirement of final approval by the clergy session. The implication is that an administrative appeal under §§ 2718.3 and 2718.4 has the effect of staying a recommendation related to *any* type of involuntary change of status, *except* for discontinuance from provisional membership. Further, it does not affect or limit the authority of a trial court to try a clergy person and to impose penalties under § 2711.

⁶ A scenario could be foreseen in which an interim involuntary leave of absence is not confirmed by the clergy session because it is under appeal. In such a case, salary and benefits that would accrue to the clergy person could be put into an escrow account for payment should the appeals prevail. But such interim involuntary leave of absence presently not confirmed by the clergy session does not preclude approval of an involuntary leave of absence for the same clergy person for the coming appointment year if approved by the clergy session after proper procedures.

On the basis of the foregoing examination, the answer to **Requested Decision No. 2** is differentiated as follows:

- NO, if the board action is related to discontinuance from provisional membership under ¶ 327.6.
- YES, if the board recommendation is related to involuntary leave of absence under ¶ 354.5.
- YES, if the board recommendation is related to administrative location under ¶ 359.2.
- YES, if the board recommendation is related to involuntary retirement under ¶ 357.3.

The third question is whether the clergy person who has filed an administrative appeal remains in good standing and is, therefore, entitled to an appointment pending the outcome of the appellate process. The COB Brief asked us to answer this question in the negative.⁷ Interested parties opposed this position on the grounds that it would enable bodies created by the Constitution and the General Conference to determine church policies and their own functions contrary to Church policies.⁸

Whether a clergy person remains in good standing and, thus, is entitled to an appointment pending the outcome of the appellate process hinges on the question regarding effectiveness of the action recommending an involuntary change of status, and whether the administrative appeal stays the recommendation. As previously discussed, the answer depends on the type of involuntary change of status because *The Discipline* provides different solutions to this issue. We noted above that an administrative appeal under ¶¶ 2718.3 and 2718.4 stays a recommendation for all types of involuntary action, except discontinuation from provisional membership. Therefore, a clergy member remains in good standing and is entitled to an appointment pending the outcome of the appellate process if the recommendation is in relation to involuntary leave of absence (¶ 354.5), administrative location (¶ 359.2), or involuntary retirement (¶ 357.3). Conversely, a clergy person does not remain in good standing and is not entitled to an appointment if the action is in relation to discontinuation from provisional membership (¶ 327.6).

This conclusion is consistent with JCD 1341 in which the Judicial Council held, “Until the completion of the administrative or judicial process, the bishop remains in good standing.” With respect to **Requested Decision No. 3**, we differentiate our answer as follows:

- NO, if the board action is related to discontinuance from provisional membership under ¶ 327.6.
- YES, if the board recommendation is related to involuntary leave of absence under ¶ 354.5.
- YES, if the board recommendation is related to administrative location under ¶ 359.2.
- YES, if the board recommendation is related to involuntary retirement under ¶ 357.3.

⁷ COB Brief at 5 (“Therefore, the Council [of Bishops] also respectfully requests that the Judicial Council declare that the clergy person does not remain in good standing if the clergy session may act on the recommendation for involuntary change of status pending an appeal and approves the recommendation.”).

⁸ See Brief of Robert F. Zilhaber, p. 23 (“These bodies are not free to transfer functions or change internal structures that have been specified in the Discipline through legislative enactments of the General Conference.”). See also Reisman Brief at 6 (arguing that “Constitutional and Disciplinary offices and bodies function independently of one another, may not determine new policies for the Church, and may not determine their own functions except when consistent with actions already taken by the General Conference.”)

The Judicial Council recognizes that this ruling could result in many more appeals being filed simply to delay the implementation of the involuntary action. The ultimate solutions for this matter are in the hands of General Conference.

DIGEST

Paragraphs 2718.3 and 2718.4 of *The Book of Discipline 2016* afford the right to file an interlocutory administrative appeal prior to and without the requirement of a final action of the clergy session. Until the completion of the appellate process, claims of procedural errors are not resolved and the disciplinary question is not sufficiently clear to allow the clergy members in full connection of an annual conference to make a fair and informed decision. The clergy session is barred from voting on a recommendation for involuntary change of status when the appellate process has not yet been completed. An administrative appeal filed in a timely manner stays a recommendation for involuntary leave of absence, administrative location, involuntary retirement but not for discontinuance from provisional membership. A clergy member remains in good standing and is entitled to an appointment pending the outcome of the appellate process, except when the challenged action is in relation to discontinuance from provisional membership.

Ruben Reyes was absent.

Warren Plowden, first lay alternate, participated in this decision.