

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION NO. 1330

IN RE: Review of a bishop's Decision of Law in the New York Annual Conference concerning if the Conference Board of Ordained Ministry is required to ascertain whether a candidate meets the qualifications for candidacy and ordained ministry, including whether or not she or he is exhibiting "fidelity in marriage and celibacy in singleness" or is a "self-avowed practicing homosexual."

DIGEST

The bishop's Decision of Law is reversed in part and affirmed in part. The first two questions of law are proper to rule upon, and the bishop cannot refuse to answer the questions. We affirm the refusal to rule on questions three and four. The request for a Decision of Law is remanded to the bishop for a ruling on questions one and two, and shall be reported back to the Judicial Council before December 31, 2016.

STATEMENT OF FACTS

On June 7, 2016, at the Clergy Session of the 2016 New York Annual Conference, the session had voted in a single vote to approve the 13 candidates for provisional membership. The Clergy Session also voted in a single vote to approve the 14 candidates for full membership as an ordained elder. Both votes passed by more than 2/3 vote as shown in the minutes. The candidates voted upon in both votes were all the candidates put forth by the Board of Ordained Ministry. After the voting, an associate member without vote, requested a Decision of Law on whether certain proceedings and procedures of the Board of Ordained Ministry were in accordance with the stipulations of *The Book of Discipline 2012* [hereinafter *The Discipline*]. The formal request for a Decision of Law also refers to a statement from the New York Annual Conference Board of Ordained Ministry, published on March 1, 2016, stating that the board's policy will be: "We publicly affirm that lesbian, gay, bi-sexual, transgender, questioning, intersexed, and straight candidates will be given equal consideration and protection in the candidacy process." The statement further outlined the board's interpretation of the standard for ministry it would use in evaluating candidates, "These standards are based upon the disciplinary guidelines for the role of clergy (Book of Discipline ¶¶ 329, 340), but are also intentionally augmented through the discernment of the nuances and challenges of each annual conferences [sic] ministry setting(s)"

Four specific questions were presented:

- 1) Is the Conference Board of Ordained Ministry required to ascertain whether a candidate meets the qualifications for candidacy and ordained ministry, including whether or not she or he is exhibiting fidelity in marriage and celibacy in singleness" or is a "self-avowed practicing homosexual?"
- 2) Can the Conference Board of Ordained Ministry legally recommend to the clergy session a candidate whom they believe to be a self-avowed practicing homosexual or otherwise in violation of the fidelity and celibacy standard?

- 3) Are the candidates in question in fact eligible for candidacy, commissioning as a provisional member, ordination as a full elder, and appointment as a United Methodist clergy as defined by *the Book of Discipline*?
- 4) Is an act of commissioning and/or ordaining an ineligible candidate by a United Methodist Bishop a valid act of ministry according to *the Book of Discipline*, even if the candidate is approved by the clergy session?

Bishop Jane Allen Middleton's ruling was:

The request for a decision of law regarding certain proceedings and procedures of the Board of Ordained Ministry is denied inasmuch as such proceedings and procedures of an independent Conference board is not a subject upon which a decision of law can be made, and also in part because certain questions are hypothetical and out of order.

JURISDICTION

The Judicial Council has jurisdiction under ¶¶ 51 and 56.3 of the Constitution and ¶ 2609.6 of *The Discipline* as modified by Judicial Council Decision [hereinafter JCD] 1244.

ANALYSIS AND RATIONALE

Bishop Jane A. Middleton refused to decide on the four questions presented. In her rationale she concludes that on questions 1 and 2

It is improper for the Bishop to issue a substantive decision on the questions presented on which she as Bishop have no power or authority due to the doctrine of separation of powers and thus it is improper for her to make a substantive response, and, as to questions 3 and 4, they are hypothetical, moot and were properly ruled out of order.

The question before the Judicial Council is if the bishop had the right to deny answering questions 1 and 2. Her arguments for denying are primarily based upon ¶ 33 of the Constitution, and JCD 872, and in her brief she states that

it is unconstitutional and violates the principle of separation of powers for a bishop (or the Judicial Council) to interfere in the ordination process of the district or conference boards of ministry or the vote of the clergy session.

The questions raised before the bishop asking for a Decision of Law, are based on *The Discipline*'s requirements set forth in ¶¶ 16, 161B, 304.2-3, 310.2d, 322.1, 324.9o), 330.5c)(3), 335c)(3), and 604.1, on whether the board's policy and procedures are legal, and is not asking the bishop to interfere in the ordination process of the district or conference boards of ministry or the vote of the clergy session. The question addresses the policies and procedures of the board, ensuring that they are in accord with the requirements of *The Discipline*.

The Discipline gives specific oversight responsibilities to the Council of Bishops related to agencies of the general church and jurisdictional and annual conferences. Paragraph 47, Article III of the Constitution states:

The council shall meet at least once a year and plan for the general oversight and promotion of the temporal and spiritual interests of the entire Church and for carrying

into effect the rules, regulations, and responsibilities prescribed and enjoined by the General Conference and in accord with the provisions set forth in this Plan of Union.

Paragraph 415.2 elaborates on this responsibility under the presidential duties of bishops,

To provide general oversight for the fiscal and program operations of the annual conference(s). This may include special inquiry into the work of agencies to ensure that the annual conference and general church policies and procedures are followed.

In her ruling the bishop describes the Board of Ordained Ministry as an “independent Conference board.” This is not correct. According to the Discipline, the board is directly amenable to the annual conference (§ 635.1b) and is nominated by the bishop (§ 635.1a) and elected by the annual conference. It operates on behalf of the clergy members in full connection, who “have sole responsibility for all matters of ordination, character, and conference relations of clergy” (§ 602.1a). As an agency of the annual conference, the board “may not legally negate, ignore, or violate provisions of the Discipline with which they disagree, even when the disagreements are based upon conscientious objections to those provisions” (JCD 886).

The Judicial Council concludes that the first two questions of law asked at the New York Annual Conference Clergy Session are proper for a bishop to rule upon, and that the said two questions are remanded to the bishop for a ruling. *See* JCD 799 and 1244.

DECISION

The bishop’s Decision of Law is reversed in part and affirmed in part. The first two questions of law are proper to rule upon, and the bishop cannot refuse to answer the questions. We affirm the refusal to rule on questions three and four. The request for a Decision of Law is remanded to the bishop for a ruling on questions one and two, and shall be reported back to the Judicial Council before December 31, 2016.

Beth Capen recused herself.

Dennis Blackwell was absent.

First lay alternate Warren Plowden participated in this decision.

First clergy alternate Tim Bruster participated in this decision.

CONCURRING OPINION

I write this concurrence to address the preliminary issue of legal standing of the requester and to amplify the reasoning of our Decision on the four-fold question.

In essence, Bishop Jane Allen Middleton ruled as follow:

1. Clergy members in full connection “have sole responsibility for all matters of ordination, character and conference relations of clergy.” (§602.1 a).

The question presented concerns the internal activities of the Board of Ordained Ministry. It is improper for the Bishop to issue a substantive opinion, pursuant to Judicial Council Decisions 799 and 872.

Further, the word “ascertain” questions whether some form of investigation is required to be conducted by the board in its process for evaluating candidates. The question is improper. The Constitution does not grant to Bishops “powers and authorities which are reserved to other organizational bodies and divisions in the Constitution.” (JCD 872)

2. This question seeks an improper decision about the internal workings of the ordination process regarding the processes and procedures utilized by the Board. (See JCD 872, 1166)

3. Since the “candidates in question” are not identified and there is no information as to a specific person, this question is hypothetical and out of order. Furthermore and/or in the alternative, the question addresses a candidates’ eligibility which is an internal substantive determination of the Board and is improper for a Bishop’s response.

4. Like Question 3, this question is hypothetical and out of order. (Memorandum 1118). Moreover, the Bishop’s responsibility in the clergy session/ordination is ceremonial only. The Chair of the Board introduces the candidates, indicating all had been interviewed and all Disciplinary requirements followed. Investigation of elders by Bishop occurs only in specific complaints. (2701 ff)

The challenge to the right of the requester to ask for a Bishop’s decision of law because he is merely an associate member, a licensed local pastor, of the annual conference is baseless. Nowhere in the Discipline nor in our jurisprudence is a requirement that limits the legal standing to file request exclusively to full member elders or deacons. True it is that associate members cannot vote on matters of ordination, character and conference relations of clergy (§321.b). But that is another matter. The right to vote does not exclude the right to voice or to raise a question.

The request for Episcopal decision is premised on, among others, the existence of current Disciplinary provisions that self-avowed practicing homosexuals are not to be certified as candidates, ordained as ministers, or appointed to serve in the United Methodist Church (§304.3), that the requirements of candidacy and clergy membership include “fidelity in marriage and celibacy in singleness (§394), that the official website of the New York Conference has openly stated that the Board of Ordained Ministry’s policy will be, “We publicly affirm that lesbian, gay, bi-sexual, transgender, questioning, intersexed, and straight candidates will be given equal consideration and protection in the candidacy process. xxx. These standards are based upon the disciplinary guidelines for the role of clergy (Book of Discipline §329, §340), but are also intentionally augmented through the discernment of the nuances and challenges of each annual conferences [sic] ministry setting[s].” Also, two candidates, one for provisional membership and one for full membership as elder recommended by the Board and approved by the clergy session have openly avowed their homosexuality.

On the first two questions, the Bishop correctly cites that clergy members in full connection have sole responsibility for all matters of ordination, character and conference relations (§602.1). However, Clergy is devoid of powers to define their standards for admission and ordination. It is the General Conference that is empowered to define the powers and duties of elders, deacons and other church workers (§16.2), annual conferences and other bodies and how those standards are to be implemented (§16.3). The standards are clearly defined in the Discipline legislated by the General Conference.

Specifically, the Board is tasked to examine all applicants as to their fitness for the ordained ministry and make “full inquiry as to the fitness of the candidate for xxx (3) election to provisional membership and (4) election to full conference membership.” (§635.2h, emphasis supplied)

But even before the clergy session took place, the NYC Board official website had publicly declared its above mentioned policy veering away from, and negating, ignoring and violating the Disciplinary standards cited in the premises of the request, i.e., §604.1, §304.2, §304.3, among others.

Given the uncontroverted statement that two of the candidates are self-avowed practicing homosexuals, it can be assumed that the Disciplinary standards have not been complied with and the Board was remissed in its duty. The Bishop was not powerless to do something about it. She should have answered the request for a ruling, even after the fact, that the Board was required to ascertain that all the recommended candidates meet the qualifications prescribed by the Discipline, else the recommendation and the Conference approval of candidates who did not meet the Disciplinary norms are questionable.

In our polity, the bishops “carry the primary responsibility for ordering the life of the church”, to see that all matters, temporal and spiritual, are administered in a manner... faithful to the mandate of the church. (§401). More to the point, they are duty-bound to uphold the discipline and order of the Church by consecrating, ordaining, commissioning, supervising and appointing persons in ministry to the church and the world. (§403.1f)

It is wrong to rationalize that the bishop’s role in ordaining and commissioning clergy is plainly ceremonial. At all times, the bishop in presiding over an annual conference, must ensure compliance with the Discipline. When that is done, it is not undue interference or intervention in the power of other church bodies or agencies.

In this instance, a ruling of law is sought on whether certain requisites for ordination of two clergy members were complied with. It is within the power and duty of the bishop to provide the response in accord with prevailing Church Law.

Our Discipline is the law of the Church which regulates every phase of the life and work of the Church. As such, annual conferences may not legally negate, ignore or violate provisions of the Discipline with which they disagree, even when the agreements are based upon conscientious objections to those provisions (JCD 96 and 886).

The 2012 Discipline provides that the Board “shall be directly amenable to the annual conference.” (§635.1). Thus, the annual conference presided by the bishop should ascertain that every candidate for election to provisional and full membership is not a self-avowed practicing homosexual or a violator of the fidelity and celibacy standard. The bishop has the right and duty to at least ask from the Board if the requisite of full inquiry has been complied with.

Elsewise stated, the first two questions are proper for the bishop to answer substantively, not evasively, because they pertain to standards which the Board must observe in their inquiry before recommending a candidate to the clergy session and to the conference for approval. As to the third and fourth questions, since the two alleged self-avowed practicing homosexuals are unnamed and there is a separate process for challenging or charging them individually, the bishop is correct in ruling that the matters are hypothetical and improper for a bishop’s decision.

Ruben T. Reyes
October 27, 2016