

SUBJECT TO FINAL EDITING

**JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH**

**MEMORANDUM 1450**

**IN RE: In the Matter of an Appeal of a Bishop in the United States**

This case involves a judicial complaint against a bishop. In such context, the second sentence of ¶ 523 means that only after Charges and Specifications have been presented to a trial court which results in an adverse decision against the bishop, and the Jurisdictional Committee on Appeals has rendered an adverse decision against the bishop, does the bishop have the right to appeal to the Judicial Council.<sup>1</sup>

No provision of *The Book of Discipline 2016* and no decision issued by the Judicial Council authorizes the Judicial Council to entertain an interlocutory appeal of a bishop from (1) actions taken by the Jurisdictional Committee on Episcopacy as part of an ongoing supervisory response under ¶ 413.3 or (2) upon the failure of the supervisory response and appointment of Council for the Church, the consideration of a Judicial Complaint by a Jurisdictional Committee on Investigation.

Therefore, the Judicial Council declines jurisdiction in this case.

Luan-Vu Tran recused himself and did not participate in any of the proceedings related to this decision. Timothy Bruster, first clergy alternate, participated in this Decision.

Deanell Tacha was absent. Kent Fulton, first lay alternate, participated in this decision.

October 25, 2022

<sup>1</sup> As of the date of the oral hearing in this matter, the Western Jurisdiction has not established the Administrative Review Committee (ARC) despite the fact that ¶ 539 of the *Discipline* requires it do so. While the pending matter has not and may not reach the ARC, we observe that fair process will require that the ARC be established with members appointed to the same as required by the *Discipline*.

## **DISSENTING OPINION**

The Judicial Council has jurisdiction in this case. The Judicial Council has jurisdiction under ¶ 523 and 2609.10. Paragraphs 408.3 and 523 provide unique and distinctive pathways to Judicial Council review that are neither limited by nor reliant on the completion of some other process. Neither pathway requires the completion of any administrative or judicial process. The Bishop's appeal is based upon ¶ 523 — a provision that has existed in The United Methodist Church since 1968 and in its predecessor denomination since 1939.

Fair process is a bedrock principle of the Church that must be present at every stage of a complaint proceeding. In this case, fair process has been violated. The Bishop's rights have been violated. Therefore, we disagree with the majority opinion and believe that the Bishop is entitled to immediate reinstatement to her episcopal assignment.

October 24, 2022

Kabamba Kiboko

Dennis Blackwell

Beth Capen

Lidia N. Gulele

## DISSENTING OPINION

Pursuant to other and additional issues of interpretation and polity, we further dissent from the majority opinion. The Bishop that brought this appeal has been subjected to a suspension that was extended beyond the Discipline's **maximum period of sixty days**. Said extension is a direct violation of ¶413.3(a). There have been multiple violations of the Discipline and the fair process protections required therein.

The first sentence of the majority opinion is matter-of-fact in its description of this appeal: "*This case involves a judicial complaint against a bishop.*" Unfortunately, the sentence belies the tortuous administrative process that existed during those months prior to a judicial complaint being created. As indicated in the above dissent, this matter is beset with fair process violations and issues. The second sentence of the majority opinion then offers a bit of a contorted interpretation of ¶ 523:

*... the second sentence of ¶ 523 means that only after Charges and Specifications have been presented to a trial court which results in an adverse decision against the bishop, and the Jurisdictional Committee on Appeals has rendered an adverse decision against the bishop, does the bishop have the right to appeal to the Judicial Council. [Majority Opinion herein above, Memorandum 1450]*

This is the actual text of ¶ 523, in its *entirety*:

**¶ 523. Accountability**—Bishops elected by or administering in a jurisdictional conference shall be amenable for their conduct to their jurisdictional conference. **Any bishop shall have the right of appeal to the Judicial Council.**

Judicial Council **Decision 475** illustrates the error in the majority opinion concerning its interpretation of ¶ 523. Paragraph 523 simply confirms that the primary body to which the [US] Bishops are accountable and amendable is the Jurisdictional Conference, not the Council of Bishops, nor any other entity within the denomination. Proof and evidence of this understanding and interpretation of ¶ 523 lies at the heart of Decision 475.

The third sentence of the majority opinion is peculiar because it's importing language into our polity which is not the nomenclature adopted by General Conference at any time. The word “**interlocutory**” is found nowhere in the *Discipline* and should not be used in the Decisions of the Judicial Council because General Conference has not accepted, adopted, nor utilized that terminology, and the Judicial Council should be exceedingly careful to not import legal terminology and create circumstances which result in an unintentional legislative effect. The primary reason for avoiding such language is because it has not been accepted, adopted, nor defined by General Conference and we thereby lose our common understanding. We urge our colleagues to avoid the temptation of using legal nomenclature that has not been accepted, adopted, and used by General Conference in *The Book of Discipline*; it often results in confusion and obfuscation of the issues due to the fact that General Conference itself has not determined whether it actually applies to our polity in the same way and with the same meaning and application as the term is commonly understood in a secular context and application.

We submit that it is the majority's use of this imported terminology that takes its analysis outside of the confines of the Discipline. This recent practice within the Judicial Council of changing General Conference's disciplinary nomenclature and terminology is, in and of itself, a violation of the separation of powers and the Constitution of The United Methodist Church. With all due respect to our colleagues in the majority, the rest of the third sentence simply does not have any bearing on the Bishops' right to access and to avail themselves of this special procedural safeguard reserved for the episcopacy ever since its creation by General Conference in or before the publication of the 1939 *Discipline* of The Methodist Church.

Contrary to the position taken in the majority opinion, there are no contingencies, no pre-requisites, no conditions precedent which must occur or exist for a consecrated Bishop in The United Methodist Church to avail him or herself of the safeguards offered in ¶ 523. As such, we respectfully submit that there is no basis in our polity upon which the **majority opinion** can predicate the third sentence:

No provision of *The Book of Discipline 2016* and no decision issued by the Judicial Council authorizes the Judicial Council to entertain an interlocutory appeal of a bishop from (1) actions taken by the Jurisdictional Committee on Episcopacy as part of an ongoing supervisory response under ¶ 413.3 or (2) upon

the failure of the supervisory response and appointment of Council for the Church, the consideration of a Judicial Complaint by a Jurisdictional Committee on Investigation. [**Majority Opinion herein above, Memorandum 1450**]

Contrary to the majority's opinion, General Conference has never set forth any other provisions which eliminate a Bishop's direct appeal to the Judicial Council. This may be a result of the fact that there have been very few episcopal administrative or judicial procedures which became the subject of a Judicial Council Decision or Memorandum. Although we could be mistaken, out of the 1,450 Decisions that currently exist, there appear to be less than **10** Bishops whose cases have come before the Judicial Council since **April of 1940**.

In addition to the long-established right of direct appeal to the Judicial Council under ¶ 523, the 2016 General Conference provided Bishops with the right, prior to *any involuntary action* and *prior to any action being taken* by the Jurisdictional Committee on the Episcopacy, to a fair process hearing by a separate committee **under ¶ 539**.

Yet the majority opinion appears to ignore the plain language in ¶ 523 in an attempt to strip the Bishops of their episcopal fair process safeguards. It further appears that the majority opinion is attempting to subject the episcopacy to the same administrative and judicial procedural process that the Discipline provides for clergy. That position not only violates the provision of the Discipline, but it is contrary to our polity and to Decisions of the Judicial Council.

Note that ¶ 539 sets forth specific provisions for access and timelines as it pertains to Bishops. The process afforded to Bishops is different from the process outlined for clergy in an annual conference. For example, ¶539 permits Bishops to be heard on issues of Fair Process *before any involuntary action* is taken. Whereas ¶ 361.2 limits a clergyperson's right to a hearing prior to a final action.

In addition to the failure to acknowledge long-standing principles of polity, the majority opinion ignores those Judicial Council Decisions which specify that the General Conference has specifically provided certain rights to Bishops which are not applicable to the clergy. For example, in **Decision 763** the Judicial Council noted that the provisions in ¶ 513.2 and ¶ 513.3

[1992 Discipline] are applicable only to members of the Colleges of Bishops. This process has similarities and differences from the process for clergy members of an Annual Conference under ¶ 454. However, ¶ 2622 on the fair process applies to any administrative or judicial process.

**Decision 763** explains that for a clergy member of the Annual Conference, the grievance procedure and related fair processes are under ¶ 454 and other related paragraphs (¶¶ 2622-2628). The appropriate disciplinary statute of limitations (Par. 454.1(a) in the 1992 *Discipline* and **Decision 691**) shall be applied. The specific wording of ¶ 539 is as follows:

¶ 539. [Jurisdictional] **Administrative Review Committee**—The jurisdictional conference shall establish from its membership an administrative review committee of at least three persons who are not members of the jurisdictional committee on episcopacy. Its only purpose shall be to ensure that the disciplinary procedures for any involuntary action recommended by the jurisdictional committee on episcopacy are properly followed. The entire administrative process leading to the action for change of status of the bishop shall be reviewed by the administrative review committee, and it shall report its findings to the jurisdictional committee on episcopacy and the jurisdictional conference prior to any action by those bodies. The administrative review committee shall notify the parties of the review process. The administrative fair process hearing procedures (¶ 361.2) should be followed by the administrative review committee. Prior to its report, if the committee 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 majority opinion also fails to account for the fact *that the Discipline categorizes a Bishop's supervisory process as "administrative,"* and application of the Discipline affords the Bishop the right to have a fair process hearing concerning these egregious violations of the Discipline. The Bishop was entitled to a fair process hearing pursuant to the provisions of ¶ 539 prior to being placed on suspension, and particularly when the **suspension extended beyond the 60-day maximum** allowed by Discipline, all in direct violation of ¶413.3(a).

October 25, 2022

Beth Capen  
Lidia N. Gulele