

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

MEMORANDUM NO. 1350

IN RE: Petition for Declaratory Decision from the Greater New Jersey Annual Conference concerning the constitutionality, application, meaning, and effect of *The Book of Discipline 2012* ¶¶ 355, 362.2, 363, 636, and 2701 regarding the placing of a clergy member on involuntary leave of absence without a fair process hearing.

STATEMENT OF FACTS

On May 21, 2017, during the clergy session of the Greater New Jersey Annual Conference, a clergy member [hereinafter Petitioner] made the following motion:

Bishop, I move that the Greater New Jersey Annual Conference request a declaratory decision from the Judicial Council on the following matter regarding the involuntary leave of Jisun Kwak:

What is the constitutionality, application, meaning and effect of Paragraphs 636 and 362.2 of the 2012 Book of Discipline in regard to ensuring ‘that the disciplinary procedures for discontinuance of..., involuntary leave of absence (Para 355),...are properly followed’ in the case of the Rev. Dr. Jisun Kwak where her numerous objections were dismissed by the Administrative Review Committee without a fair process hearing with her or her counsel, where the results were not given to her until the meeting of the clergy session seven months after she entered her request for review with them and after reminders from her on two further occasions that she had presented her objections for review?

Challenges and objections presented included, but are not limited to (a copy is available):

the challenge by the respondent that Bishop Schol held a supervisory meeting on June 6th, exerted coercive influence on her by giving her a proposed resolution that was presented to her at the meeting, and by giving her only 3 days to execute the resolution, without having even filed a complaint, in violation of previous Judicial Council rulings; included also was the objection that Bishop Schol admittedly held ex parte meetings with members of the Board of Ordained Ministry Executive Committee and the Board of Ministry itself prior to their hearings, in direct violation of prohibitions set forth in Paragraph 362.2d; included also was the challenge that Bishop Schol failed to handle the matter in a timely manner as required in Paragraph 362.2 and 363.1b, by first suspending the respondent and then seeking an involuntary leave of absence, without having his

chosen Counsel for the Church file a complaint as of May 21, 2017, and further noting that Judicial Council decision number 973 clearly indicates that making a request for an involuntary leave of absence does not constitute the filing of a complaint.

Further, what is the constitutionality, application, meaning, and effect of the various paragraphs and Judicial Council Decisions cited in the objections individually or collectively presented by Rev. Dr. Kwak to the Administrative Review Committee with respect to being sufficient grounds to overturn the recommendation for involuntary leave of absence?

Further, we request from the Judicial Council a declaratory decision on the constitutionality, application, meaning and effect of Paragraphs 355.2a (2012 Book of Discipline) as used in the putting of Rev. Dr. Jisun Kwak onto involuntary leave of absence without a fair process hearing, particularly in light of the entire process being based on untested allegations, in violation of the presumption of innocence until such time as a fair process could only be completed with the filing of a complaint, the findings of the Committee on Investigation, and a trial as set forth in Paragraph 2701 (2012 and 2016 editions) and elsewhere in the Book of Discipline, and in accordance with provisions set forth in Paragraphs 2701 to 2716 in the 2012 edition and 2701 to 2719 in the 2016 edition, in light of the fact that Paragraph 362.1a was violated by the respondent being denied fair hearing prior to the final decisions on her status.

Further, we request from the Judicial Council a declaratory decision on the constitutionality, application, meaning and effect of the requirements of separation of powers as noted in Judicial Council decisions 915, 1156, 1216 and elsewhere, particularly in light of the fact that the entire process was led by the bishop, based merely on allegations and that the Administrative Review Committee report indicated that its focus was merely on timelines in the process, and the entire process was not reviewed by the Administrative Review Committee as required by paragraph 636 of the Book of Discipline.

The motion passed. Petitioner filed requests for oral hearing for Docket Nos. 1017-2 and 1017-4 separately. The Petitioner requested oral hearings for Docket Nos. 1017-2 and 1017-4 separately. Due to the related nature of these matters, a combined oral hearing was held on October 24, 2017 in Los Angeles, California. Robert Costello and Marjorie Costello appeared on behalf of the elder and Evelyn S. Caterson, Myrna Bethke and Bishop John Schol appeared on behalf of the Greater New Jersey Annual Conference.

JURISDICTION

The Judicial Council has no jurisdiction to consider a judicial matter submitted as a Petition for Declaratory Decision under ¶ 2610.2(j) of *The Book of Discipline 2016* [hereinafter *The Discipline*] while it is still pending.

DIGEST

We are presented with a petition for declaratory decision that, in most, part raises issues of a

judicial nature. In their briefs, Petitioner, the Bishop, and his Dean of Cabinet indicated that (1) the concerned clergyperson is under complaint, (2) a Counsel for the Church has been appointed and is expected to file a judicial complaint with the Committee on Investigation sometime in the Fall of 2017, and (3) it is a matter of time until this case goes to trial since all attempts at a just resolution have failed.

In JCD 1336, we declined jurisdiction in the Petition for Declaratory Decision from the Texas Annual Conference because the concerned clergyperson did not appeal the trial court decision within thirty days as required by ¶ 2715.1 of *The Book of Discipline 2012*. The purpose of the petition was “to seek an appeal from the decision of the Conference Board of Ordained Ministry charged with implementing the penalties imposed by the Trial Court.” (JCD 1336).

In the instant case, the matter is still pending and has not yet been adjudicated by the proper judicial bodies. It must go through the requisite judicial and appellate processes first before coming to us as the body of last resort. The petition for declaratory decision is not the appropriate way to litigate a pending judicial matter. Therefore, it is improper for the Judicial Council to take up a matter that is currently the object of a judicial process in the Greater New Jersey Annual Conference.

Dennis Blackwell was absent.

First clergy alternate Timothy Bruster participated in this decision.

CONCURRING OPINION

I concur for additional reasons to remind petitioners for declaratory decisions.

The Judicial Council has no jurisdiction because, first of all, the minutes of the Clergy session is uncertain and insufficient. The lengthy motion to request a declaratory decision was verbally made on May 21, 2017. It was allegedly passed then and there but the written version was submitted only on May 23 or after the adjournment of the Conference. There is no showing that the verbal motion approved is exactly the same as the written one. This is analogous to the matter treated in Memorandum 1219 where the written question was not presented prior to the conclusion of the regular business of the annual conference. The Judicial Council declined jurisdiction.

In Memorandum 1145, it was held that the official minutes should include an exact statement of the entire request for a declaratory decision submitted to the annual conference. Thus, the Judicial Council refused to take jurisdiction for failure to comply with its rules of practice and procedure.

Besides, there is no real constitutional issue (JCD 1186). None of the disciplinary provisions raised is clearly shown to be in irreconcilable conflict with a specific part of the Constitution. The burden of proof rests on the petitioner and this burden has not been discharged. In essence, what is claimed in the four-

fold request is that fair[hereinafter JCD] process was not followed in dealing with the elder placed on involuntary leave. Elsewise stated, the questions put forth are errors committed in procedure, not infirmity in the provisions of the Discipline. (Paragraph No. 1, Relief Sought).

Said errors are addressed in the related case (JCD 1355), hence, the request at bar is also moot, duplicitous and redundant. The elder's advocate concedes this in the second and third paragraphs of Relief Sought both referring to the period and back compensation arising from the involuntary leave.

The fourth prayer for relief seeks an order for immediate cessation of practice of placing elders on leaves without their consent through processes set forth in ¶ 2701-2719 or through legislation of the General Conference. We have no jurisdiction on matters for legislation. It is a long-standing principle that the Judicial Council will not enter into legislative relief. Changes in church law can only be made by the General Conference. (JCD 1274).

As further relief sought, the only one petitioner suggests is for a declaratory decision . . . providing acknowledgment of errors made by Conference officers and bodies, thereby issuing instruction to the Church on how to and how not to proceed in the handling of complaints, thus hopefully clarifying ambiguous and contradictory sections of the Book of Discipline that allow the current process of handling contested allegations to become the basis of denial of fair process. [emphasis added]

This partakes of a request for advisory opinion which, as a rule, the Judicial Council is not tasked to render. (JCD 193, Memoranda 996, 1129, and 1186). Moreover, it is the General Conference which is the proper body to address lack of clarity in administrative matters (Memorandum 1276).

All told, the request for declaratory decision does not comply with the pertinent requisites of *The United Methodist Book of Discipline* ¶ 2610 of both 2012 & 2016, our settled decisions, and rules of practice and procedure.

Ruben T. Reyes
October 27, 2017