

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION 1310

*IN RE: Request for a Declaratory Decision from the Council of Bishops Regarding Legislation
Called "Plan UMC Revised" Proposed for the 2016 General Conference*

Digest

Plan UMC Revised contains components that fail the test of constitutionality and components that are, as stated, entirely constitutional. The appropriateness of the constitutionally adequate portions of Plan UMC Revised as an action of the General Conference is a legislative matter left to the processes of the General Conference.

Statement of Facts

An individual submitted to the 2016 General Conference a petition known as "Plan UMC Revised." The Council of Bishops, meeting in Berlin, Germany, on May 5, 2015, voted to request a declaratory decision from the Judicial Council on that proposed legislation. The Council of Bishops stipulated that "The action taken (requesting a declaratory decision) was in no way in support or opposition of Plan UMC but made in order to better facilitate the work of GC 2016."

The request stated:

The Council of Bishops requests a declaratory decision whether the proposed legislation entitled "Plan UMC Revised" would be unconstitutional if enacted, including, but not limited to, (a) whether the proposed legislation violates ¶¶ 16.8, 16.9, 47 & 49 of the

Constitution; (b) whether it unlawfully delegates legislative authority reserved to the General Conference; (c) whether it unconstitutionally interferes with the general oversight authority of ¶¶ 45—49 of the Constitution; and (d) if any part of Plan UMC Revised is unconstitutional, whether there are other parts of the proposed legislation that may be constitutionally implemented if the legislation is enacted.

Several persons submitted briefs on the matter. On October 21, 2015, in St. Louis, Missouri, the Judicial Council conducted an Oral Hearing on this request. Bishop Gregory Palmer spoke for the Council of Bishops, as the petitioner. The Rev. Dr. Clayton Oliphint and Mr. Lonnie D. Brooks spoke on behalf of the proposed legislation.

On October 24, 2015, the Judicial Council released its decision to defer the matter until the Spring 2016 meeting of the Judicial Council. (See Judicial Council Decision 1303.) In part, the Analysis and Rationale portion of that decision said:

While a proper request from the Council of Bishops has clearly been delivered to the Judicial Council, there remains a subtle but important consideration about the merits of rushing quickly to assess the constitutionality of one piece of proposed legislation when other proposed legislation may also exist on the same issues that the “Plan UMC Revised” seeks to address.

The originator of Plan UMC Revised filed a brief addressing issues raised at the October 21, 2015, Oral Hearing. Two persons, who identified themselves as “opponents” of Plan UMC Revised, jointly submitted a brief. An *amicus curiae* provided a brief in reply to the “opponents.” There were no additional requests made for Judicial Council judgment on any other legislation proposed for the 2016 General Conference.

Jurisdiction

The Judicial Council has jurisdiction under ¶ 2609.2 of the *2012 Discipline*.

Analysis and Rationale

The roots of Plan UMC Revised are an action of the 2012 General Conference and a subsequent decision of the Judicial Council.

On May 2, 2012, by a vote of 567 in favor and 384 against, the 2012 General Conference adopted the legislative proposal referred to as “Plan UMC” (*2012 DCA*, p. 2639). By a vote in excess of one-fifth, the General Conference voted to request a declaratory decision as to the constitutionality of Plan UMC, with particular reference to ¶¶ 16.8 and 16.9. On May 3, 2012, the Judicial Council conducted oral hearings on the matter and began its deliberations. On May 4, 2012, the Judicial Council released its decision. That decision is as follows:

Under the Constitution, the creation and establishment of general Church boards and agencies, the fixing of their structure, the determination of their functions, duties and responsibilities, and the establishing of Church priorities are legislative functions reserved to the General Conference alone. These legislative functions may not be delegated. The Constitution limits the General Conference in the authority it may delegate to the boards and agencies it creates. This authority is limited to the work of promotion and administration. Such boards and agencies as the General Conference establishes under its constitutional authority may not determine policies of the Church, nor may they determine their own functions except as such action is consistent with actions already taken by the General Conference. These boards and agencies are not free to transfer functions or change internal structures that have been specified in the *Discipline* through legislative enactments of the General Conference. Plan UMC is unconstitutional.

The Council of Bishops became aware of a petition (Plan UMC Revised) submitted to the 2016 General Conference. The Council of Bishops made its request for a declaratory decision before Plan UMC Revised was assigned to legislative committees of the 2016 General Conference. Based on the advice of the General Conference Petitions Secretary, a planning group for Plan UMC Revised re-submitted Plan UMC Revised with a portion of the sixty-five page document being sent to six different legislative committees: Discipleship, Financial Administration, Faith and Order, General Administration, Independent Commissions, and Ministry and Higher Education/Superintendency. The General Conference will have to determine if this process is in compliance with ¶ 507.2.

A proponent of Plan UMC Revised stated in a brief “No substantive differences exist between the petition as it was originally submitted in April and as it was submitted in parts in November.” Nevertheless, the request from the Council of Bishops was based on the original submission as one complete document, so the Judicial Council must base its judgments on that material and not on the text as it was redacted for legislative committee work.

The request from the Council of Bishops was in accord with ¶ 2609.2 which authorizes the Council of Bishops to seek such a declaratory decision. As expressed in Judicial Council Decision 1303, there is concern that this provision could potentially give privilege to some proposed legislation before the General Conference considers other petitions related to the matter. Is the Council of Bishops’ authority to make such requests coterminous with sessions of the General Conference?

The Book of Discipline does not say so. Is the term “proposed legislation” the same as “petition” as elaborated in ¶ 507? In this context, we think so.

There are constitutional concerns around Plan UMC Revised that center on ¶¶ 16.8, 16.9, 16.13, and 45-49 (particularly ¶¶ 47 and 49). All portions of Plan UMC Revised, both those referenced in this decision and those that by implication are indicated, must be tested against these constitutional provisions.

Paragraphs 16.8 and 16.9 address the General Conference’s full legislative power “over all matters distinctively connectional” and state that such authority includes:

8. To initiate and to direct all connectional enterprises of the Church and to provide boards for their promotion and administration.³²

9. To determine and provide for raising and distributing funds necessary to carry on the work of the Church.³³

The Proposed ¶ 905.7 in Plan UMC Revised gives one of the essential functions of the Connectional Table as follows:

7. In order to be accountable, along with the General Council on Finance and Administration, to The United Methodist Church through the General Conference, the Connectional Table shall have the authority and responsibility in the following matters:

a) To collaborate with the General Council on Finance and Administration in the preparation of budgets for the apportioned funds as provided for in ¶¶ 806.1 and 810.1. In the process of preparing budgets for General Conference consideration and approval primary responsibility for providing the assessment of the resource potential of the Church rests with the General Council on Finance and Administration, and primary responsibility for determining the optimum

distribution of those resources among the various needs and opportunities rests with the Connectional Table. (The underlined portions are in the original and represent language that, if approved, would be new for *The Book of Discipline*.)

The introduction to ¶ 806 speaks of the fiscal responsibilities of the General Council on Finance and Administration:

¶ 806. *Fiscal Responsibilities*—All monies contributed by a local church to any of the general funds of the Church, as listed or defined in ¶ 810.1, and such other funds as may have been **authorized by the General Conference** shall be held in trust by the council and distributed only in support of the ministries of the respective funds. The council shall be accountable to The United Methodist Church **through the General Conference** in all matters relating to the receiving, disbursing, and reporting of such funds, and agencies receiving such funds shall be fiscally accountable to the council. In the exercise of its fiscal accountability role, the council shall have the authority and responsibility to perform the following functions: (The bold is added for emphasis.)

The provisions that follow in ¶ 806.1 note that action and determination of budgets are the purview of General Conference (¶ 806.1). Recommendations are to the General Conference [¶ 806.1(a), 806.1(b)(3), 806.1(c)]. Approval comes from the General Conference (¶ 806.2). By reference to ¶ 806.1, Plan UMC Revised erases any possible constitutional conflict with the authority of the General Conference prescribed in ¶¶ 16.8 and 16.9 of the Constitution. The work of preparing recommendations for the General Conference is indeed part of the administrative function the Constitution grants to boards created by the General Conference.

More problematic in Plan UMC Revised is a proposed addition to ¶ 705. In listing basic responsibilities of the boards and general agencies, the amendment includes this responsibility: “determine mission and purpose.” Paragraph 16.8 gives the General Conference authority “to initiate and direct all connectional enterprises” while boards are provided “for their promotion

and administration.” Any board or agency task that is beyond the boundary of “promotion and administration” is unconstitutional. How does this relate to proposed ¶ 705(a)?

The General Conference has defined the Mission of the Church: “The mission of the Church is to make disciples of Jesus Christ for the transformation of the world. Local churches provide the most significant arena through which disciple-making occurs.” (¶ 120). Beyond that, the General Conference has stated a “Rationale for Our Mission” (¶ 121), “The Process for Carrying Out Our Mission” (¶ 122), “The Global Nature of Our Mission” (¶ 123), and “Our Mission in the World” (¶ 124).

These definitions give the parameters within which a board or agency may establish its own statement of “mission and purpose.” The Plan UMC Revised amendment to ¶ 705(a) is too broad in calling on the boards and agencies to “determine mission and purpose.” That particular language lacks the limits intended in ¶ 16.8 of the Constitution, and thus is unconstitutional.

Does Plan UMC Revised intrude on the authority of the Council of Bishops to “plan for the general oversight and promotion of the temporal and spiritual interests of the entire Church...”? At the heart of this question is an amendment labeled as ¶ 901.2:

The Connectional Table (CT) shall have responsibility for monitoring and reviewing the work of all program agencies of The United Methodist Church. The CT shall work in partnership with other agencies and the Council of Bishops to conduct necessary research efforts as needed to support strategic thinking and planning and the implementation of mission critical ministries.

In reviewing an earlier iteration of Plan UMC Revised (Plan UMC as approved by the 2012 General Conference), the Judicial Council observed:

On the basis of this test, Plan UMC has a serious constitutional defect. In ¶ 47, the Constitution authorizes the Council of Bishops to bear the responsibility for general oversight. The constitutional authority of the Council of Bishops cannot be compromised or modified by legislative enactments. (Judicial Council Decision 1210)

Plan UMC Revised has avoided the word “oversight” in delineating the responsibilities of the Connectional Table. It speaks of “monitoring and reviewing the work of all program agencies of The United Methodist Church.” This is a clear effort to avoid the defect identified in Judicial Council Decision 1210. The problem, however, is not so much the word “oversight” (It is used in numerous disciplinary listings of specific functions of specific bodies, e.g., ¶¶ 226, 335, 403, 606, 703, 1004, 1101, 1119, 1806, 2529). The problem would emerge if there were universalization of “oversight” by the Connectional Table. It is one thing to have watch-care over an assigned portion of the Church’s work; it is quite another thing to have such oversight over “the whole Church” (See ¶ 403), “the entire Church” (See ¶ 47). That “general oversight” is constitutionally given to the Council of Bishops and it cannot be delegated elsewhere. Activities of the Connectional Table must not intrude on the constitutional role of the Council of Bishops for “general oversight.” To the extent that the “monitoring and reviewing” responsibility of the Connectional Table is limited to those program agencies within its bailiwick, that provision is constitutional. To the extent that the “monitoring and reviewing” responsibility reaches beyond those program agencies, it is unconstitutional. The Council of Bishops, in turn, has oversight “...of “the entire Church” (See ¶ 47), including the Connectional Table. Any clarification of this tension would need to be resolved legislatively by the General Conference.

Paragraph 16.3 of the Constitution gives the General Conference the authority “to establish such commissions for the general work of the Church as may be deemed advisable.” That responsibility cannot be delegated. Plan UMC Revised discontinues the General Commission on the Status and Role of Women and the General Commission on Religion and Race (and creates a United Methodist Committee on Inclusiveness); Plan UMC Revised discontinues the General Commission on Archives and History (and creates a Committee on Archives and History under the General Council on Finance and Administration). Plan UMC Revised substitutes United Methodist Men for the General Commission on United Methodist Men and substitutes United Methodist Communications for the General Commission on Communication. Such action is within the constitutional purview of the General Conference.

The text of Plan UMC Revised ¶¶ 901.3 and 901.4 present key ingredients in the plan.

Paragraph 901.3: In the exercise of its responsibility prescribed in ¶ 2 hereof, the Connectional Table shall have authority during the 2017 to 2020 quadrennium to guide and work with all program and administrative agencies and connectional bodies, to include the general secretaries, of The United Methodist Church to plan for and implement the overall restructure and reorganization approved by the 2016 General Conference for those agencies and bodies. One of the goals is the consolidation of program and administrative leadership to eliminate unnecessary duplication of efforts as provided in ¶ 806.13 and ¶ 811.1 while ensuring that critical and important connectional ministries are functional and adequately carried forward.

Paragraph 901.4: The Connectional Table’s responsibility, shared with the General Council on Finance and Administration, to monitor and review the work of the agencies shall include authority for the consolidation of administrative services to the extent practicable for all general church activities into the appropriate agency on a fee for service basis as it affects agencies receiving general church funds.

Proposed ¶ 901.3 gives the Connectional Table the responsibility for consolidating program and administrative leadership of “all program and administrative agencies and connectional bodies.” Additionally, proposed ¶ 901.4 calls for the consolidation of administrative services “...for all general church activities.” Such consolidation must not intrude on the General Conference’s constitutional authority “to initiate and direct all connectional enterprises of the Church and to provide boards for their promotion and administration” (¶ 16.8); thus ¶¶ 901.3 and 901.4 of Plan UMC Revised are unconstitutional.

The centralization in the Connectional Table of the election of the general secretaries (¶ 713 of Plan UMC Revised) and the authority assigned to the Connectional Table to dismiss general secretaries oversteps ¶ 16.8 that grants the General Conference the authority to establish boards. Although coordination of program functions is highly desirable and is constitutional, any loss of a board’s decision-making authority is a usurpation of the General Conference’s prerogative in establishing such boards. Those portions of ¶ 713 that give the Connectional Table the authority to elect and dismiss general secretaries of program boards are unconstitutional.

Paragraph 701.2 of Plan UMC Revised calls for the general agencies of The United Methodist Church to “report directly to General Conference.” Paragraph 713 of Plan UMC Revised indicates that the general secretaries of the program boards will “report administratively to the Executive General Secretary of the Connectional Table.” This potential conflict within Plan UMC Revised risks diminution of the relationship between the boards and the General Conference as made clear in proposed ¶ 701.2 and constitutionally in ¶ 16.8.

In a brief filed by an elder and a home missionary, the claim is made that Plan UMC Revised creates the Connectional Table as “a continuous General Conference.” This assertion is based on the language of the proposed ¶ 901.3:

In the exercise of its responsibility prescribed in .2 hereof, the Connectional Table shall have authority during the 2017 to 2020 quadrennium to guide and work with all program and administrative agencies and connectional bodies, to include the general secretaries, of The United Methodist Church, to plan for and implement the overall restructure and reorganization **approved by the 2016 General Conference** for those agencies and bodies. (Emphasis added)

This is clearly an administrative duty assigned by the General Conference, in keeping with ¶ 16.8. The provision, if enacted, would meet both the “initiate” and “direct” requirements of ¶ 16.8. It is constitutionally acceptable.

Plan UMC Revised has dimensions that are constitutionally sound and dimensions that are constitutionally uncertain or defective. The Judicial Council does not take a position on the wisdom and soundness of the proposals of Plan UMC Revised; that is a legislative determination to be made by the General Conference.

Decision

Plan UMC Revised contains components that fail the test of constitutionality and components that are, as stated, entirely constitutional. The appropriateness of the constitutionally adequate portions of Plan UMC Revised as an action of the General Conference is a legislative matter left to the processes of the General Conference.

F. Belton Joyner, Jr., Secretary

William B. Lawrence, President

May 9, 2016

CONCUR IN PART AND DISSENT IN PART

In part, I concur with my colleagues in determining portions of Plan UMC to be constitutional and portions to be unconstitutional. On the other hand, I dissent from the conclusion that ¶¶ 901.3 and 901.4 fail the test of constitutionality. Paragraph 901.3 is clear that the Connectional Table is acting only on the instruction of the General Conference; that is not a delegation of the “initiate and direct” authority that ¶ 16.8 grants to General Conference. Paragraph 901.4 speaks of consolidation of administrative services; that is in keeping with the administrative role the Constitution gives to boards created by the General Conference (¶ 16.8). Paragraphs 901.3 and 901.4 of Plan UMC Revised are constitutional.

F. Belton Joyner, Jr.

May 9, 2016

CONCUR IN PART AND DISSENT IN PART

I concur with my colleagues’ conclusions regarding the unconstitutional portions of the petition however I disagree with the proposition that the matter may be brought to the Judicial Council prior to the convening of General Conference. The Judicial Council review of proposed General Conference legislation, which is authorized under ¶ 2609.2, is permitted when General Conference is in session. This is particularly important because each General Conference votes on its own Rules of Order and Plan of Organization. For example, by the setting of their rules at the commencement of General Conference, the members could potentially decide, albeit unlikely and probably imprudent, that they will not consider any documents that were submitted by one church or one person as constituting legislation properly before the body. Similarly, the General Conference might choose to recognize as proper legislation only those documents that were submitted by an annual conference. Under either of those hypotheticals

the petition in this case would be excluded as “proposed legislation” of the General Conference because it was submitted by an individual.

Furthermore, I believe that the Judicial Council and the Council of Bishops are at risk of improperly influencing the early stages of the legislative process by giving attention and visibility to documents which might not otherwise garner much excitement or support from a meaningful number of the General Conference delegates. Each General Conference is a newly constituted body and is unique from those that convened before it and from those that will sit thereafter. What excites one General Conference one year may be replaced by a different concern of the General Conference that meets four years later. The issues and concerns that occupy one particular General Conference will not be exactly the same for the General Conference the convenes four years later. Our history seems to bear this out despite the overlap in membership (*e.g.*, persons that are re-elected as General Conference delegates). One quick example is all of the work and energy surrounding legislation at the 1992 General Conference which called for the relocation of the General Board of Global Ministries from New York City to Reston, Virginia. I recall intensive lobbying by interested parties for and against the move as well as lapel pins that were available to wear as a continual witness by those in opposition to the relocation. Despite the very strong and committed beliefs of those who sought the move at the 1992 General Conference, four years later at the 1996 General Conference there was no attention nor debate concerning the relocation of GBGM to Virginia nor anywhere else.

It is also of concern that a petition lifted by the Council of Bishops for review and ruling (a declaratory decision) by the Judicial Council is, by this very process, given visibility prior to the convening of General Conference. Such visibility, conferred before the commencement of General Conference, by the Council of Bishops and the Judicial Council under ¶ 2609.2 can constitute an unfair advantage over other issues, legislation, and legislative priorities which emerge once General Conference convenes. The reason that it is unfair is because the *only* bodies that can ask the Judicial Council to review proposed General Conference legislation are the General Conference itself and the Council of Bishops. General Conference cannot ask for a declaratory decision until it convenes. I believe that the authority of the Council of Bishops is likewise defined in scope by the commencement of the General Conference session.

Even if one agrees with the position taken by the majority (that the Judicial Council can entertain this request for declaratory decision on this potential General Conference legislation

prior to the commencement of General Conference), it is an unwise and imprudent path to take. In the mere consideration of this matter we (the Council of Bishops and the Judicial Council) are presupposing the will of the 2016 General Conference by assuming that the petition will be of interest sufficient to trigger the need to ask whether it contains any unconstitutional provisions. Of greater concern is that we – the judicial and administrative arms of the Church - have engaged in conduct that can influence the legislative process by prematurely lifting up a document (submitted by one person for *this* General Conference) and giving it visibility and energy that might not otherwise exist in the newly assembled 2016 General Conference.

Even with full awareness of the depths to which our institutional political rivers flow in The United Methodist Church, I very strongly believe in the movement of the Holy Spirit and have witnessed it at work as it enables the members of the General Conference to have new insights that were not wholly envisioned prior to the commencement of the General Conference. Our pre-General Conference legislative review can influence those initial and early phases of legislative prioritization by the members of General Conference. We need to take great care and ensure that it is the body of delegates that determines the legislative priorities for its 2016 General Conference and that this legislative body does so uninfluenced and unhampered by the early interventions of the Judiciary and Administrative arms of the church (*e.g.*, the Judicial Council and the Council of Bishops).

Beth Capen
May 9, 2016