

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION 1292

IN RE: Review of a Bishop's Decision of Law in the Detroit Annual conference Regarding Whether Resolution #14 Complies with ¶¶ 2702.1b, 2704.2a, and 324.13 as well as Judicial Council Decisions 111,1115, 1120, and 1218

DIGEST

The Bishop's ruling is affirmed in part and modified in part. The Annual Conference Resolution #14 Part 1, Section 1 is valid as an aspirational hope to the extent that support is limited to actions that are not in violation of the *2012 Discipline* and Judicial Council Decisions. The remainder of Section 1 and Section 2 are null, void, and of no effect as they encourage actions or the refraining from actions that are contrary to the *Discipline*. Section 3 is modified to reflect the disciplinary understanding regarding bisexual, transgendered, and persons who do not declare themselves to be "self-avowed practicing homosexuals." With this modification in understanding, Section 3 is also null and void and of no effect as it encourages actions that are contrary to the *Discipline*.

STATEMENT OF FACTS

During the regular business session of the Detroit Annual Conference on May 18, 2014, a lay member made a written request for a decision of law from the floor of the session as to Resolution #14, which had been adopted by the Detroit Annual Conference on May 17, 2014.

Resolution #14 as adopted states:

Therefore be it resolved the Detroit Annual Conference of The United Methodist Church in response to our common belief that God's grace and love is available to all persons and in keeping with the United Methodist tradition of diversity that each member, pastor, deacon, congregation, bishop, and committee be strongly encouraged to:

1. Support lesbian, gay, bisexual, and transgender lay members who marry and to refrain from filing complaints against pastors and deacons who perform marriages between gender and sexual minorities (also referred to as "same-sex marriages"); and
2. Refrain from using its resources to investigate or enforce a ban on marriages between lesbian, gay, bisexual, and transgender people, or for church trials, or for otherwise disciplining clergy that offer the ministry of marriage to all

- persons in their congregation or community; and
3. Refrain from using its resources to investigate the gender or sexual orientation of a minister or candidate for ministry, and not to use its resources to enforce a ban on the certification of a lesbian, gay bisexual, or transgender candidate for ministry, or the ban on ordination of a lesbian, gay, bisexual, or transgender minister.

The written request for a Decision of Law as presented states:

I hereby request that Bishop Deborah L. Kiesey determine the following as to Resolution #14 adopted by the 2014 session of the Detroit Annual Conference on May 17, 2014.

1. Is section 1 of the resolution in compliance with ¶ 2702.1 (b) of the 2012 *Book of Discipline of The United Methodist Church* and Judicial Council Decisions 1111, 1115, 1120, and 1218?
2. Is section 2 of the resolution in compliance with ¶ 2704.2(a) of the 2012 *Book of Discipline of The United Methodist Church* and Judicial Council Decisions 1111, 1115, 1120, and 1218?
2. Is section 3 of the resolution in compliance with ¶ 324.13 of the 2012 *Book of Discipline of The United Methodist Church* and Judicial Council Decisions 1111, 1115, 1120, and 1218?

The Bishop indicated that although specific provisions of the *Book of Discipline* and Judicial Council Decisions were cited, her analysis and ruling have taken into consideration “any relevant provisions and Decisions.” Her decision of law was accompanied by a brief containing her rationale for each item of the decision rendered.

The Decision of Law follows:

1. Although the three numbered sections of the Resolution are preceded by the phrase "resolved ...that each member, pastor, deacon, congregation, bishop, and committee be strongly encouraged to" take or to refrain from taking specified actions, with no penalty for a failure to comply, which could arguably make the entire Resolution aspirational and non-binding in nature, and hence, valid and not in violation of the *Discipline*, prior decisions by the Judicial Council

suggest that the full context of the Resolution and its debate, the substance of each numbered section, and their impact must be separately considered in determining whether the Resolution would negate, ignore or violate provisions of the *Discipline*.

2. In section #1, with regard to the phrase "support lesbian, gay, bisexual, and transgender lay members who marry", the Resolution is valid as an aspirational hope, and to the extent "support" is limited to actions that are not in violation of the *Discipline* (e.g. offering emotional support for lay people that have a same-sex marriage), consistent with Decision 1262 of the Judicial Council and the distinctions offered therein.
3. In section #1, with regard to the phrase "and to refrain from filing complaints against pastors and deacons who perform marriages between gender and sexual minorities (also referred to as "same-sex" marriages)", the Resolution is null and void as an intention, encouragement, or summons either to ignore or to violate Church Law, or to expressly discourage the enforcement of Church Law, since conducting same-sex marriages by pastors is within the scope of the phrase "performing same-sex wedding ceremonies", a chargeable offense in the *Discipline*. See e.g. *Discipline*, ¶¶ 2702; 2704.
4. In section #2, with regard to the phrase "Refrain from using its resources to investigate or enforce a ban on marriages between lesbian, gay, bisexual, and transgender people, or for church trials, or for otherwise disciplining clergy that offer the ministry of marriage to all persons in their congregation or community", the Resolution is null and void as a summons to violate the provisions of the *Discipline* which require a Bishop and others in positions of supervision to use their time and other Church resources to investigate complaints alleging that chargeable offences have been committed, to participate in related trials, and to otherwise participate in the supervisory process and to provide due process when allegations of violations of the *Discipline* have occurred. See e.g. *Discipline* ¶¶ 2702, 2704
5. In section #3, with regard to the phrase: "Refrain from using its resources to investigate the gender or sexual orientation of a minister or candidate for ministry, and not to use its resources to enforce a ban on the certification of a lesbian, gay, bisexual, or transgender candidate for ministry, or the ban

on ordination of a lesbian, gay, bisexual, or transgender minister", the Resolution is null and void (a) as a summons to violate the provisions of the *Discipline* that require the Board of Ordained Ministry and others within the Church to use their time and other resources to determine whether a clergy person is in violation of the provision of the *Discipline* or whether a candidate for ministry would be in violation of the provisions of the *Discipline* immediately upon becoming a clergy person, and (b) as a summons not to use resources to enforce any related Disciplinary ban on ordination which currently applies. See e.g. *Discipline*, ¶¶ 324.12; 324.13; 2702; 2704.

JURISDICTION

The Judicial Council has jurisdiction under ¶¶ 51 and 56.3 of the Constitution and ¶ 2609.6 of the *2012 Discipline* as modified by Decision 1244.

ANALYSIS AND RATIONALE

The Bishop utilized the rationale as presented in Decisions 1120 and 1262 as grounds for her rulings on the various parts of Resolution #14, citing the importance of analyzing the resolution in the entire context of the annual conference discussion. In citing Decision 1120, she notes the conclusion of the Judicial Council that an annual conference may adopt a resolution on human sexuality that is aspirational in nature; however, an annual conference may not negate, ignore, or violate the *Discipline*. Further, Decision 1120 instructs the bishop in making a ruling of law to pay close attention to the whole context of the passage of the resolution.

The request for a Decision of Law must be read in its entire context and how the context of the question supplies meaning to the answer embodied in the bishop's response. The clear import of the question sought the bishop's determination as to whether the resolution as adopted violated the *Discipline*.

Judicial review of an annual conference resolution requires an intensive fact specific examination of the text of the annual conference resolution, and a clear understanding of the context of the annual conference debate. (1120)

A further citing of Decisions 1262 and 1218 illustrates the distinction between what are permissible aspirational statements and those statements that are void by reason of expressing an encouragement or intention to ignore church law as set forth in the *Discipline*. Based on the foregoing reasoning, the Bishop ruled that the first part of Section 1 of Resolution #14 is permissible by offering valid aspirational hope and defining support as

limited to actions that are not in violation of Church Law. See Decision 1262. The Judicial Council affirms this part of the ruling.

The Bishop ruled the second part of Section 1 as null and void and of no effect as it is “an encouragement or summons to either (a) to ignore or violate Church Law or (b) to expressly discourage the enforcement of Church Law.” (§ 2702.1b) The Bishop again cites precedents from Decisions 1262, 1115, and 1111. She concludes that based on the extensive analysis of these decisions and similar cases, the act of:

Discouraging the filing of complaints against pastors involved in chargeable offenses, as directed in Resolution #14, would serve as an endorsement or encouragement of such prohibited actions or to discourage the enforcement of Church Law. Thus, this portion of Resolution #14 is impermissible, void and without effect.

The Judicial Council affirms the Bishop’s decision that the second part of Section 1, of Resolution #14 is null and void and of no effect.

Following the same reasoning used in Section 1 Part 2, the Bishop ruled that Section 2 of Resolution #14 was also null and void and of no effect. By strongly encouraging members, pastors, deacons, congregations, bishops and others from refraining from using resources to investigate or enforce the ban on same-sex marriages and otherwise disciplining clergy that provide such marriages, this resolution encourages bishops and church officials to violate provisions of the *Discipline* which require them to use their time and other resources to investigate any complaints alleging that chargeable offenses have been committed, follow through with any supervisory processes and ensure fair process when violations of the *Discipline* have been alleged. (§ 2702.1b)

The phrase “strongly encouraging” in this part of Resolution #14 goes beyond aspirational encouragement. Encouragement to refrain from performing a required act is not permitted under church law as Decision 1262 points out. The Bishop concludes that “any attempt to negate or ignore the requirements of the *Discipline* by refraining from using available resources to follow, apply, or enforce the *Discipline* is not valid and is without effect.”

The Judicial Council affirms that the Bishop’s ruling that Section 2 of Resolution #14 is null, void and of no effect.

The Bishop found that Resolution #14, Section 3, which strongly encourages each member and conference committee to

Refrain from using its resources to investigate the gender or sexual orientation of a minister or candidate for ministry, and not to use its resources to enforce a ban on the certification of a lesbian, gay, bisexual or transgender candidate for ministry, or the ban on ordination of a lesbian, gay, bisexual or transgender minister,

to be null and void. She ruled that Section 3 is either a summons to violate the provisions of the *Discipline* that set forth the process, resources, commissioning, and full membership and ordination or as a summons not to use resources to enforce any disciplinary ban on ordination.

The *Discipline* requires that candidates for ministry submit specified information in a detailed process starting with the local church and completed by review and recommendations by the Annual Conference Board of Ordained Ministry to the clergy session of the annual conference (including ¶¶ 324.12 and 324.13). Resources at all levels of the Church are utilized in the determination of the fitness of a candidate for ministry. In order to carry out the disciplinary responsibilities of evaluation and recommendation of candidates, adequate resources must be used. To refrain from using these resources, including the expenditure of time, would result in negating or ignoring the requirements of the *Discipline* for licensing or ordination.

The Bishop further notes that this section “impermissibly encourages bishops not to use their time and other personal and annual conference resources when preparing to ordain elders, to investigate allegations of chargeable offenses, or to supervise clergy.” As noted in other sections of this ruling, citing Decision 1262, she concludes that this section of the Annual Conference resolution would be null and void as it either negates church law, ignores church law, encourages a violation of church law, or discourages the enforcement of the *Discipline* and various decisions of the Judicial Council.

The Judicial Council notes, however, that the *Discipline* makes no statement about bisexual or transgendered people seeking to be licensed or ordained or who are already ordained. The original resolution includes the listing of lesbian, gay, *bisexual*, or *transgender* candidates for ministry or ordination. The Bishop failed to note this discrepancy in her response. (see Decision 1074) It is also noted that if a person who may be homosexual does not admit to being a “self-avowed practicing homosexual,” that person can still be licensed for pastoral ministry, and/or received into conference membership, ordained and appointed. (¶ 304.3, footnote 1) The Judicial Council modifies the Bishop’s decision to reflect this disciplinary reality.

Nevertheless, the intent of Section 3, Resolution #14, appears to be as described by the Bishop. The Judicial Council affirms that this section of Resolution #14 is null, void, and of no effect.

DECISION

The Bishop's ruling is affirmed in part and modified in part. The Annual Conference Resolution #14 Part 1, Section 1 is valid as an aspirational hope to the extent that support is limited to actions that are not in violation of the *Discipline* and Judicial Council Decisions. The remainder of Section 1 and Section 2 are null, void, and of no effect as they encourage actions or the refraining from actions that are contrary to the *Discipline*. Section 3 is modified to reflect the disciplinary understanding regarding bisexual, transgendered, and persons who do not declare themselves to be "self-avowed practicing homosexuals." With this modification in understanding, Section 3 is also null and void and of no effect as it encourages actions that are contrary to the *Discipline*.

Beth Capen was absent.

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

April 18, 2015