

SUBJECT TO FINAL EDITING

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

DECISION NO. 1368

IN RE: Review of a Bishop's Decision of Law in the Baltimore-Washington Annual Conference concerning if the clergy session must (a) exclude a portion of the report of the Board of Ordained Ministry based on a policy that is not compliant with *The Book of Discipline 2016* and (b) exclude from consideration two candidates who acknowledged in writing that they are married to persons of the same gender.

DIGEST OF CASE

The Judicial Council affirms the bishop's decision of law that the first question presented is moot. The bishop's ruling on the second question is reversed since it violated the separation of powers by intruding on the responsibilities and rights of the Clergy Session. It is not within the authority of a bishop to prevent the Clergy Session from fulfilling its responsibilities, or to exclude individuals to come forward as candidates either for commissioning or for ordination.

STATEMENT OF FACTS

The facts recited here are relevant to both of the questions that were presented to Bishop Easterling.

Board of Ordained Ministry's Policy on Human Sexuality

By way of background, in October 2017, the Board of Ordained Ministry [hereinafter BOOM] voted to adopt the following Policy on Human Sexuality:

One of the primary purposes of the Board of Ordained Ministry is "to examine applicants and assess their fitness for ministry." We understand the Judicial Council's most recent rulings to encourage a full and thoughtful inquiry of all persons who come before us, using the range of questions and standards found in paragraphs 310, 324, 330 and 335 of the *Book of Discipline* for provisional membership, Deacon or Elder respectively. We write in response to these rulings' specific mandate to not ignore in the inquiry a candidate's self-disclosure of sexual orientation. We respectfully disagree with these rulings, acknowledging that the following policy is not compliant with the Book of Discipline.

The Board of Ordained Ministry will examine and assess all candidates who come before us. Knowing each of us is a child of God, made in God's image, and a recipient and vehicle of God's grace, we do not view race, ethnicity, gender, sexual orientation, marital status, or age as a barrier to ministry. We will not consider or evaluate sexual orientation or gender identity nor see them to be sufficient reasons to deny a candidate's ability to live up to our United Methodist standards. We will utilize our denomination's expectation of faithfulness in marriage and celibacy in singleness within our examination and expect not only high moral standards but also a strong sense of self-awareness about one's relational life. Our aim is to promote

well-grounded, Spirit-led, equipped ministers of the Gospel who live up to the high standards for fitness, readiness, and effectiveness in ministry.

We acknowledge that The United Methodist Church is not of one mind around issues of human sexuality and affirm the ongoing work of the Commission on a Way Forward. We believe this policy upholds the expectation of a full inquiry and high moral standards of all candidates. It also reflects some of our core values as a Board, including openness to the Holy Spirit, deep listening to one another, and a commitment to justice for all. We affirm the right and responsibility of all Board members to engage in holy conferencing during deliberations and to vote their conscience following a fair examination of all candidates.

Against that backdrop, when the Clergy Session turned to consider the portion of BOOM's report relating to the election of candidates for ministry, a point of order was raised, objecting that the Board's report was based on a policy for examining clergy candidates that violated ¶ 304.3 of *The Book of Discipline of The United Methodist Church*. To assist in ruling on the point of order, Bishop Easterling posed a question to the Chair of the Board of Ordained Ministry, asking, "Were the candidates examined in accordance with *The Discipline*, specifically ¶ 304.3?" The Chair replied that, insofar as human sexuality was concerned, all candidates were asked, "Are you faithful in marriage and celibate in singleness?" When asked by the clergyperson whether any candidates were asked "if they were practicing homosexuals," the Chair replied that BOOM asked only "Are you faithful in marriage and celibate in singleness," and further stated that BOOM believed it "did not have sufficient reason . . . to ask the question as the [clergyperson] framed it."

Following an exchange between another elder and the Chair, Bishop Easterling stated that it was her recollection that "during last year's annual conference there was one person who came to the floor of the conference and self-avowed that that individual was a practicing homosexual." Bishop Easterling then asked the Chair, "Is that individual in the list of candidates that you have brought forward?" In reply, the Chair ultimately answered the Bishop's question in the affirmative. "If that is the case," Bishop Easterling stated, "then you didn't need a charge [or] other documentation to inquire as of that candidate with respect to Judicial Council Decision [hereinafter JCD] 1341 and the other decisions that have been . . . named on the floor of this clergy session as well as the *Discipline* . ." The Chair further confirmed that, consistent with the policy BOOM adopted in October 2017, the candidate the Bishop was recalling had not been re-examined by BOOM following the rulings in JCD 1341, 1343 and 1344."

At that point, Bishop Easterling ruled on the point of order as follows:

[W]ith respect to what [The Chair has] just shared and acknowledged and what I recall of last year's annual conference, I believe that I have to say that this portion of the Board of Ordained Ministry's report is out of order.

The First Question of Law

Shortly after Bishop Easterling made her ruling on the point of order, a clergyperson took the floor and stated that, "given the seriousness of this situation," he thought it appropriate to ask Bishop Easterling for a ruling on the following question of law, which he also submitted in writing to the Conference Secretary:

On the basis of the policy of the Board of Ordained Ministry for this annual conference reported on April 6, 2018, specifically that policy's candid admission that it is not compliant with The Book of Discipline, and on the basis of The Book of Discipline ¶¶ 604.1, 604.3 and 635.1(b), as well as numerous judicial council rulings, I ask: "Must the annual conference exclude from its business the portion of the report of the Board of Ordained Ministry pertaining to the election of candidates for membership or provisional membership?"

Bishop Easterling did not issue a ruling on this question of law at that time but announced that she expected to render a ruling before the Clergy Session was concluded. ¹

The Second Question of Law

When the Clergy Session reconvened later that evening, the Chair of BOOM, made the following report to the body:

Members of the Board of Ordained Ministry had a chance to meet with all of the candidates prior to dinner this evening. . . . All candidates were given an opportunity to offer information and self-disclosure about any issues that were not brought up in the profiling and examination, particularly as it pertained to human sexuality. No additional information was shared with us.

We do want to share with the body that in the course of [BOOM's] profiling, two of our candidates shared in writing that they . . . are married to persons of the same gender, (names)..That is the information that we have that pertains to the report.

Immediately after the Chair concluded his report, a clergy came to a microphone and stated that, "[i]n light of the Chairs report, I would move that we remove these two candidates from consideration for this session of the clergy." Upon inquiry by Bishop Easterling, the clergy reframed his motion as a question of law, as follows:

"Must this session of the clergy exclude these two candidates on the basis of Dr. Hunt's report and on the basis of *the Discipline* ¶ 304.3?"

Bishop Easterling rendered the following ruling on that question:

[B]eloved, as I shared earlier, typically I have thirty (30) days to rule on a question of law but I can't wait thirty days to rule on this information . . . that is now before us. The matter that was causing us to not be able to move forward on [BOOM's] report was the concern that the Board of Ordained Ministry had not done a full inquiry as some believe that the Book of Discipline requires and

¹ *Post-Conference Ruling on the First Question of Law*

On June 29, 2018, Bishop Easterling filed with the Judicial Council a report on the questions of law presented during this year's annual conference. This submission contained the post-conference ruling on the first question of law. As explained in some detail in the Syllabus appended to the report to the Judicial Council, the bishop ruled that the first question of law had effectively been withdrawn and superseded when the clergy presented his second question, making his first question moot.

several of the Judicial Council’s rulings require. The Board met with the candidates, both those for commissioning and those for elders orders, and asked for full disclosure on those matters. No other persons came forward except the two who had already disclosed in writing as a part of their profile that they are married to same-gendered partners. In light of that fact, in light of JCD 1341 and several that followed thereafter and the *Book of Discipline* and the Baltimore-Washington Conference rules, I rule, to this question of law, **that these two individuals are not able to come forward as candidates either for commissioning or for ordination.**

After receiving this ruling on his second question of law, the clergyperson made a motion that the body proceed forward with voting on the *other* clergy candidates that had been recommended in BOOM’s report, i.e., all but the two excluded by Bishop Easterling’s ruling. The body approved the motion to move forward with the election of those other candidates, and never took any vote on the two excluded candidates.

JURISDICTION

The Judicial Council has jurisdiction under ¶¶ 51, 56.3, and 2609.6 of *The Discipline*

ANALYSIS AND RATIONALE

The First Question of Law

The Judicial Council has repeatedly held that bishops may not provide substantive responses to moot or hypothetical questions. *See* JCD 33, 799. Based on the ordinary usage of the word, a question may be understood to be moot when it has been “deprived of practical significance: made abstract or purely academic. In addition, the Judicial Council has explained that to avoid being deemed moot or hypothetical, a question of law must either (1) “be germane to the regular business, consideration, or discussion of the Annual Conference and shall state the connection to a specific *action taken*,” or (2) “the question must be raised during the deliberation of a specific issue of a matter upon which the conference *takes action*.” JCD 799 (emphasis added).

Based on these principles, the first question of law became moot. At the time the clergy presented that question, the Conference had not yet taken any action on the clergyperson candidates recommended in BOOM’s report. Moreover, although the first question was germane to an action the annual conference was being *asked* to take—namely, to vote on *all 29* clergy candidates recommended in BOOM’s report for membership or provisional membership—the annual conference never subsequently took that action either. Rather, following a recess, the focus of the Clergy Session’s deliberations shifted based on the further report received from BOOM’s Chair, which in turn led the clergy himself to pose his modified and distinct *second* question of law—a question he tailored to correspond to the facts newly illuminated in the BOOM’s Chair post-recess report.

In sum, events that unfolded when a first question of law was posed, but before the bishop’s ruling, changed the landscape to such an extent that the first question no longer had the requisite

connection to any “specific action taken” by the annual conference. *See* JCD 799. The Judicial Council affirms the bishop’s decision of law that the first question is moot.

The second Question of Law

Bishop Easterling rendered a substantive ruling on the second question of law immediately after it was presented. Her rationale for that ruling may be stated succinctly. As the Judicial Council emphasized in JCD 1352—which itself concerned BOOM’s prior consideration of one of the candidates excluded here—the opinions handed down in JCD 1341, 1343 and 1344 prevent a Board of Ordained Ministry from ignoring statements of self-disclosure about any action that violates any portion of church law as is the case of the candidate who acknowledged that she is a lesbian and married to another woman.” Those holdings, which stand as binding interpretations of the provisions of the *Discipline* currently in force, dictate that the two individuals excluded by her ruling, both of whom have acknowledged being married to persons of the same gender, may not be “certified as candidates, ordained as ministers, or appointed to serve in The United Methodist Church.” *Discipline* ¶ 304.3. The essence of the bishop’s ruling was, *that these two individuals are not able to come forward as candidates either for commissioning or for ordination.*

The question to the bishop was stated as follows: “As a question of law, Bishop, must **this session of the clergy** exclude these two candidates on the basis of the Chair’s report and on the basis of *the Discipline*, ¶ 304.3?” There is no permissible basis for a bishop to make a ruling requiring the Executive Session to exclude persons (or to do anything). The meeting of the Executive Session is a process among clergy and other session members; the bishop presides without vote. In effect, Bishop Easterling did not actually respond to the question of whether the Executive Session must exclude the two candidates by ever ruling that the Executive Session must (or may not) exclude them; instead with her ruling the Bishop excluded them herself. Par. 369.5 of *the Discipline* assigns to the Executive Session the responsibility “to consider questions relating to matters of ordination, character, and conference .” Par.635.2.m states: “... it is the right of the executive session of the clergy members in full connection with an annual conference to receive all information, confidential or otherwise, related to the qualifications and/or character of any candidate or clergy member of the conference.” Further, JCD 406 gives to the Executive Session “the freedom to make its decisions on the basis of the report of the Board [of Ordained Ministry] and any further information considered necessary by the conference through questionings and comments by its members.”

The Bishop’s ruling of law violated the separation of powers by intruding on the responsibilities and rights of the Executive Session. It is not within the authority of a bishop to prevent the Executive Session from fulfilling its responsibilities. The Bishop’s decision to exclude the candidates prematurely interfered with the body’s right to question the Board concerning its claims and to question the two candidates directly. The Judicial Council reverses the ruling on the second question of law.

RULING

The Judicial Council affirms the bishop's decision of law that the first question presented is moot. The bishop's ruling on the second question is reversed since it violated the separation of powers by intruding on the responsibilities and rights of the Clergy Session. It is not within the authority of a bishop to prevent the Clergy Session from fulfilling its responsibilities, or to exclude individuals to come forward as candidates either for commissioning or for ordination.

February 21, 2019

Ruben Reyes was absent.

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

Lui 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.