

DOCKET FOR OCTOBER 2014 WITH SUPPORTING DOCUMENTS

DOCKET 1014-1

IN RE: A Request from the College of Bishops of the Western Jurisdiction for a Declaratory Decision Regarding the Meaning, Application, and Effect of ¶¶ 413, 2701.5, and 2704.1 if a Complaint is Filed against a Bishop under ¶2702

The College of Bishops of the Western Jurisdiction of The United Methodist Church met in a scheduled meeting in Pasadena, California, on January 16 and 18, 2014. The minutes reflect that on January 18, 2014, it was moved and seconded that the College request a declaratory decision. Following discussion, the motion was passed. The motion reads:

If the president of the College of Bishops receives a complaint against a bishop in the College for a chargeable offense under ¶ 2702 of the 2012 Book of Discipline, what are the meaning, application and effect of ¶ 413, ¶ 2701.5, and ¶ 2704.1?

Paragraph 413 guides the complaint process against bishops. In response to a complaint against a bishop concerning the effectiveness, competence, or one or more of the offenses listed in ¶ 2702, ¶ 413 describes the responsibility of the president of the College of Bishops to work with the secretary of the College of Bishops and members of the jurisdictional committee on episcopacy in a supervisory response to the complaint, that is similar in some ways to the supervisory response to complaints against clergy found in ¶ 363. Paragraph 413 specifies that the supervisory response should be carried out “in a confidential manner,” according to a specific timeline, following certain guidelines and may “include a process seeking a just resolution.” Paragraph 2701.5 encourages a just resolution process focused on “repairing any harm to people, and communities . . . by making things right in so far as possible and bringing healing to all the parties . . . at any time, including through the judicial proceedings.”

Paragraph 2704.1, in apparent conflict with ¶ 413 and ¶ 2701.5, instructs the president of the College of Bishops as follows: “A complaint based on allegations that a bishop has committed one or more of the offenses listed in ¶ 2702 shall initially be served on the president and secretary of the College of Bishops. Upon receipt of the complaint [based upon one or more of the offenses listed in ¶ 2702] the president of the College of Bishops shall forthwith deliver a copy of the complaint to the respondent bishop, notify active bishops of the existence and nature of the complaint, and refer the complaint to an elder in full connection . . . who shall serve as counsel for the Church.”

1. Does the word “forthwith” in ¶ 2704.1 refer to all or only some of the following:
 - 1) deliverance of a copy of the complaint to the respondent bishop, 2) notification of active bishops of the existence and nature of the complaint, and 3) referral of the complaint to an elder . . . who shall serve as counsel for the Church?
2. Is it possible for the president of the College of Bishops to conduct a supervisory response to a complaint against a bishop according to ¶ 413

- without violating ¶ 2704.1?
3. Does the president of the College of Bishops have authority, in consultation with other members of the supervisory team and within the time parameters defined in ¶ 413, to determine when and if a complaint against a bishop will be referred to counsel for the church as described in ¶ 2704.1?
 4. Does the president of the College of Bishops, in consultation with the supervisory team, have the authority to interpret the meaning and application of “in a confidential manner” in a supervisory response to a complaint against a bishop and are the complainant(s) and respondent(s) expected to abide by the bishop’s interpretation?
 5. Does notification of active bishops of the existence and nature of a complaint (¶ 2704.1) violate the expectation in ¶ 413 that the supervisory response be carried out in a “confidential manner?”

DOCKET 1014-2

IN RE: Review of a Bishop’s Decision of Law in the Southwest Texas Annual Conference and the Rio Grande Annual Conference Regarding the Constitutionality of the Conference Structure in the Plan for Unification

On February 8, 2014 Special Sessions of the Southwest Texas and Rio Grande Annual Conferences were held in San Antonio, Texas. The purpose of the Special Sessions was for both annual conferences to act on a proposed structure for a new annual conference combining the Rio Grande and Southwest Texas Annual Conferences. The following request for a Bishop's Ruling of Law was presented to Bishop James Dorff. It was requested by Austin Frederick, an elder in the Southwest Texas Conference.

Bishop:

I too want to affirm and continue the celebration as being one in that number of votes marching for Unification. I also want to affirm the work of the Unification Team in its efforts to bring an organizational plan to address the mission field of South Texas.

Having inquired about the constitutionality of the plan at the San Antonio District Briefing, I and those assembled were informed by Byrd Bonner that the only way to be sure that the plan was in keeping with the provisions of the 2012 Book of Discipline and the people call Methodist was to have it reviewed and ruled by you and the Judicial Council so the celebration of unification can be lived out in South Texas.

Therefore in accordance with Article VII, Paragraph 51 of the 2012 Book of Discipline I hereby raise of you as the presiding Bishop a "question of law" in relation to the organizational plan presented and

now passed by the Southwest Texas Conference as to its constitutionality in areas such as representation, inclusiveness, and accountability in alignment with its Duties and Powers as shared in Paragraphs 604 and 610 of the 2012 Book of Discipline.

[Signed, Austin Frederick, Jr.]

RULING

It is my ruling that the organizational plan presented to and adopted as amended by the Southwest Texas and Rio Grande Annual Conferences is both Constitutional and in keeping with the *2012 Discipline of the United Methodist Church*. Further, it is my ruling that it is specifically in keeping with Paragraphs

604, 610, 611, 635, 636, 637, 639, 640, 647, and 648.

It should be noted that no action was taken by the conferences regarding the adoption of Standing Rules for the purpose of implementing the adopted Plan. Further, no budget was presented or approved for the purpose of funding the adopted Plan. The effective date of the new conference was adopted as January 1, 2015.

Standing Rules, a budget, and election of persons to serve in the new Rio Texas Annual Conference will be presented to the conferences when they meet in June. Therefore, I cannot rule on the appropriateness of these significant aspects of conference structure.

The Unification Plan presented to the conferences in February intentionally recommended a basic structure for adoption. Thus allowing joint committees to do further work in proposing budgets, nominations, and Standing Rules based on the structure adopted.

DOCKET 1014-3

IN RE: A Request from the Upper New York Annual Conference for a Declaratory Decision Regarding the Constitutionality and Validity of ¶ 101

Constitutionality and Powers of Paragraph 101 of The 2012 Book of Discipline

Whereas, ¶31 Article IV of the Constitution of the United Methodist Church outlines the “powers and duties” of central conferences; and

Whereas, ¶59 Article I of the Constitution of the United Methodist Church outlines the procedures for amending the Constitution; and

Whereas, ¶101 alters the “powers and duties” of central conferences by naming previously adaptable sections of the Book of Discipline as now “not subject to

adaptation” and thereby effectively altering the Constitution of the United Methodist Church (¶31) ; and

Whereas, ¶101 was added to the 2012 Book of Discipline without any attempt to seek “the ratification of the amendment by the required two-thirds affirmative vote of the aggregate number of members of the several annual conferences present and voting” as required in ¶59 Article I; and

Whereas, ¶101 states that “the Standing Committee on Central Conference Matters has primary responsibility for proposing to General Conference revisions to this paragraph” (¶101) implies a role of for this committee is a violation of the process for amending the Book of Discipline and more specifically the Constitution of the United Methodist Church (¶60).

Therefore be it resolved that the Upper New York Annual Conference refers this matter to the Judicial Council for a declaratory decision as to the constitutionality and validity of paragraph 101 of the 2012 Book of Discipline and the powers it bestows on the Standing Committee on Central Conferences.

DOCKET 1014-4

IN RE: Review of a Bishop’s Decision of Law in the Indiana Annual Conference Regarding the Transitional Leave of Absence Appointment of an Elder in Light of ¶ 425

The following question of law is submitted under if5l of the 2012 Book of Discipline.

I. Was Rev. Michael Heinbaugh properly appointed from August 1, 2013 to December 31, 2013 and did he receive compensation in accordance with ¶425 of the Book of Discipline and Annual Conference Policies?

DECISION OF LAW

During the Clergy Session of the Indiana Conference of The United Methodist Church held on May 29, 2014, a written request was made for a Decision of Law on this question: "Was Rev. Michael Heinbaugh properly appointed from August 1, 2013 to December 31, 2013, as required in Paragraph 425 of the Book of Discipline?"

After reviewing the facts of the situation, my ruling is as follows:

Michael Heinbaugh was appointed to a Transitional Leave of Absence in the interim between the 2013 and 2014 Sessions of the Indiana Conference. The Executive Committee of the Board of Ordained Ministry acted upon a recommendation from the Cabinet for Rev. Heinbaugh to be appointed to Transitional Leave when his appointment to Decatur St. Mark's church ended on July 31, 2013. There were no formal complaints involved, just a church which demanded a change of appointment, and in a meeting on August 26, 2013 with myself and my Executive Assistant Dr. Cindy Reynolds, Rev. Heinbaugh declined to

accept the only other available appointment - indicating his preference for something closer to the geography of his sons because he was going through a divorce. After the Cabinet secured a new pastoral appointment for Rev. Heinbaugh which met those geographic request, effective January 1, 2014, the Executive Committee voted to return him from Transitional Leave to receive that pastoral appointment. Those actions of the Executive Committee were confirmed by the Clergy Session on May 29, 2014 after a thorough discussion including the consideration of several different actions which were not approved.

Therefore, my ruling is that Michael Heinbaugh's appointment from August 1, 2013 through December 31, 2013, was to Transitional Leave. Being appointed to any kind of Leave of Absence is an appointment, not a change of status, so Paragraph 425 was not violated.

As with any formal request for a Decision of Law, this decision will be forwarded to the Judicial Council of The United Methodist Church for their review.

Bishop Michael J. Coyner,
Indiana Area May 30, 2014

ADDITIONAL BACKGROUND INFORMATION

Rev. Heinbaugh brought a motion to the Clergy Session asking that he be reimbursed approximately \$22,000 for salary that he "lost" by being on Leave of Absence from August 1, 2013 through December 31, 2013. This is the third time in his ministry that Michael has stepped away from ministry and gone onto Leave of Absence, so his assertions that he did not know he would be without salary seemed difficult for the Clergy Session to comprehend. Once the Cabinet shared that Michael had turned down an appointment in August of 2013, and thereby no longer "offered [himself] without reserve to be appointed" within the meaning of Paragraph 333.1, the Clergy Session voted to affirm the decisions of the Board of Ordained Ministry that he was on Transitional Leave from August 1, 2013 through December 31, 2013.

DOCKET 1014-5

IN RE: A Request from the North Alabama Annual Conference Regarding the Constitutionality, Meaning, Application, and Effect of Action Taken by the Commission on the General Conference in Light of ¶ 511.5e

The North Alabama Conference petitions the Judicial Council to issue a declaratory decision as to the constitutionality, meaning, application and effect of the action taken by the Commission on General Conference in October 2013 in which they pre-determined a target number of General Conference Delegates prior to applying the

current formula for representation to the General and Jurisdictional Conferences under ¶ 511, 5) e.

Rationale: It is our understanding of ¶ 511, 5) e. that the Commission on General Conference only has the authority to adjust the number of delegates after the formula defined in ¶ 15. Article III is applied and the number falls outside of the parameters set in ¶ 13. Article I.—1. Pre-determining the number of delegates prior to the application of the formula is not in keeping with the process defined.

DOCKET 1014-6

IN RE: A Request from the Western Pennsylvania Annual Conference Regarding the Legality of Actions Taken in Regard to Judicial Council Decisions 1238 and 1241

P 104 Request by the Western Pennsylvania Annual Conference Regarding Legality of Actions Taken in Regard to Judicial Decision 1238 and Judicial Decision 1241

(Adopted 06-07-2014)

WHEREAS Missions is an incarnational ministry of the church where we are the hands and feet of Jesus Christ to make disciples for the transformation of the world. John 1:14 expresses incarnational ministry as a ministry full of grace and truth, "And the Word became flesh and lived among us, and we have seen his glory, the glory as of the Father's only son, full of grace and truth." Also as stewards of God's resources in missions we must be faithful and true, 1 Corinthians 4:2 "Moreover, it is required of stewards that they be found trustworthy."

WHEREAS The People and the Churches of the Former Pittsburgh East District raised nearly \$100,000 for the Uganda Challenge for constructing the Naboole Church building, digging a water well, and providing a mobile maize mill for the churches and the people of the Busia District of Eastern Uganda.

WHEREAS In January 2005, Nancy Denardo and other persons from Western Pennsylvania visited Uganda to see the outcomes of the mission. At the site where the church was to have been constructed, they discovered only an unfinished foundation, and they were told by Reverend Wandabula that the funds had been exhausted.

WHEREAS On four subsequent occasions (2007, 2009, 2010, 2011), Nancy Denardo visited the site to determine whether additional construction had occurred, but she found only a few unfinished walls had been added.

WHEREAS On July 24, 2011 Nancy Denardo made a complaint against Bishop Wandabula following the protocol of the 2008 *Book of Discipline*. In December 2011 Nancy Denardo filed a joint complaint against Bishop Wandabula with Reverend John Kiviiri.

WHEREAS Since the last meeting of our annual conference, the General Council on Finance and Administration met August 16, 2013 in Nashville, Tennessee to consider a request from the president of the Africa Central Conference for "actions that would be necessary to satisfactorily resolve the outstanding audit issues" with Bishop Daniel Wandabula of East Africa. Bishop Michael Coyner, president of the council, listed the steps in an August 30, 2013 response to Bishop Eben Nhiwatiwa:

(1) Bishop Wandabula agrees to resign his position as a bishop and surrender his clergy credentials;

(2) Bishop Wandabula pays a full restitution of all unaccounted-for monies identified by the General Board of Global Ministries Audit Committee from the most recent documents submitted by Bishop Wandabula that total being \$757,275;

(3) Bishop Wandabula agrees to the removal of Charles Bamutya as the treasurer of The East Africa Annual (regional) Conference.

(4) In response to these actions, the Board of Global Ministries and the Council on Finance and Administration agree to appoint a financial administrator of the East Africa Annual Conference "to manage properly all conference finances." The administrator would be accountable only to the two agencies and could be terminated by them. "This will be reviewed on an annual basis." (*UMConnections* 9/1/2013)

WHEREAS Since the last meeting of the Western Pennsylvania Annual Conference Bishop Wandabula asked the Judicial Council for reconsideration of the payment of \$3,000 to Isaac Sebit or the Western Pennsylvania Annual Conference and the Judicial Council denied that request in Judicial Decision 1241 with this additional language in a concurring opinion "We concur with the decision not to reconsider Decision 1238. However, we also understand that the Judicial Council retains jurisdiction on the payment of money indicated in part 2."

WHEREAS After notification that Bishop Wandabula and the East Africa Annual Conference had not complied with Judicial Council Decision 1238 and 1241, The Judicial Council made the following motion at its April meeting.

"We instruct the Secretary to write Bishop Wandabula and indicate that the Judicial Council reaffirms Decision 1238 in its entirety. Because the funds were not given to Isaac Sebit by the required date of January 1, 2014, now those funds are to be returned to the Western Pennsylvania Annual Conference by June 1, 2014. Copies of the letter to Bishop Wandabula are to be sent to Bishop Warmer Brown, Bishop Rosemarie Wenner, Bishop Tom Bickerton, Robert Zilhaver, Thomas Kemper, Richard Rettberg, Isaac Sebit, and Nancy Denardo. The Secretary should include the full text of Judicial Council Decision 1238...."

WHEREAS After tireless efforts by the Western Pennsylvania Annual Conference the \$3,000 was received on May 27, 2014.

WHEREAS The Judicial Council in Decision 1238 states that Nancy Denardo's complaint is still in process. "The Judicial Council, therefore, understands that the complaint process is continuing."

WHEREAS The Judicial Council in Decision 1238 notes "The complainant is certainly entitled to be included in active consultation with regard to the handling of the complaint, and the accused is certainly entitled to fair process. The Africa Central Conference College of Bishops and the Council of Bishops have responsibility for the proper handling of the complaint to its conclusion."

WHEREAS Since the last meeting of the Western Pennsylvania Annual Conference Bishop Wandabula asked the Judicial Council for reconsideration of the finding that the complaint was still in process. In his request for reconsideration he argued that the complaint by Nancy Denardo was dismissed at a meeting of the Central Conference Bishop's meeting by the College of Bishops. The Judicial Council denied that request in Judicial Decision 1241 retaining the original language of Judicial Decision 1238, "The Judicial Council, therefore, understands that the complaint process is continuing."

THEREFORE BE IT RESOLVED That the Western Pennsylvania Conference officially petition the Judicial Council under the jurisdiction of Judicial Decision 1238, Judicial Decision 1241, ¶2609.5 of the 2012 *Book of Discipline* on the following matters:

To provide clarification as to which paragraph of the *Discipline* and which body of the church currently holds the jurisdiction over the complaint process (Nancy Denardo and John Kiviiri's complaints) that was understood as continuing under Judicial Decision 1238 and 1241. And to further clarify what action or actions that body which has jurisdiction over the complaints is required to take by the *Discipline*.

DOCKET 1014-7

IN RE: A Request from the Western Pennsylvania Annual Conference for a Declaratory Decision Regarding the Meaning and Application of ¶¶ 413, 2702, 2704, and 2706 in the Process of Review and Dismissal of a Complaint against a Bishop

P 105 Request by the Western Pennsylvania Annual Conference for a Declaratory Decision Regarding the meaning and application of ¶413, ¶2702, ¶2704 and ¶2706 in the Process of Review and Dismissal of a Complaint against a Bishop

(Adopted 06-07-2014)

WHEREAS Missions is an incarnational ministry of the church where we are the hands and feet of Jesus Christ to make disciples for the transformation of the world. John 1:14 expresses incarnational ministry as a ministry full of grace and truth, "And the Word became flesh and lived among us, and we have seen his glory, the glory as of the Father's only son, full of grace and truth." Also as stewards of God's resources in missions we must be faithful and true, 1 Corinthians 4:2 "Moreover, it is required of stewards that they be found trustworthy."

WHEREAS The People and the Churches of the Former Pittsburgh East District raised nearly \$100,000 for the Uganda Challenge for constructing the Naboole Church building, digging a water well, and providing a mobile maize mill for the churches and the people of the Busia District of Eastern Uganda.

WHEREAS In January 2005, Nancy Denardo and other persons from Western Pennsylvania visited Uganda to see the outcomes of the mission. At the site where the church was to have been constructed, they discovered only an unfinished foundation, and they were told by Reverend Wandabula that the funds had been exhausted.

WHEREAS On four subsequent occasions (2007, 2009, 2010, 2011), Nancy Denardo visited the site to determine whether additional construction had occurred, but she found only a few unfinished walls had been added.

WHEREAS On July 24, 2011 Nancy Denardo made a complaint against Bishop Wandabula following the protocol of the 2008 Book of Discipline. In December 2011 Nancy Denardo filed a joint complaint against Bishop Wandabula with Reverend John Kiviiri.

WHEREAS Since the last meeting of our annual conference, the General Council on Finance and Administration met August 16, 2013 in Nashville, Tennessee to consider a request from the president of the Africa Central Conference for "actions that would be necessary to satisfactorily resolve the outstanding audit issues" with Bishop Daniel Wandabula of East Africa. Bishop Michael Coyner, president of the council, listed the steps in an August 30, 2013 response to Bishop Eben Nhiwatiwa:

(1) Bishop Wandabula agrees to resign his position as a bishop and surrender his clergy credentials;

(2) Bishop Wandabula pays a full restitution of all unaccounted-for monies identified by the General Board of Global Ministries Audit Committee from the most recent documents submitted by Bishop Wandabula that total being \$757,275;

(3) Bishop Wandabula agrees to the removal of Charles Bamutya as the treasurer of The East Africa Annual (regional) Conference.

(4) In response to these actions, the Board of Global Ministries and the Council on Finance and Administration agree to appoint a financial administrator of the East Africa Annual Conference "to manage properly all conference finances." The administrator would be accountable only to the two agencies and could be terminated by them. "This will be reviewed on an annual basis." (UMConnections 9/1/2013)

WHEREAS Since the last meeting of the Western Pennsylvania Annual Conference Bishop Wandabula asked the Judicial Council for reconsideration of the payment of \$3,000 to Isaac Sebit or the Western Pennsylvania Annual Conference and the Judicial Council denied that request in Judicial Decision 1241 with this additional language in a concurring opinion "We concur with the decision not to reconsider Decision 1238. However, we also understand that the Judicial Council retains jurisdiction on the payment of money indicated in part 2."

WHEREAS After notification that Bishop Wandabula and the East Africa Annual Conference had not complied with Judicial Council Decision 1238 and 1241, The Judicial Council made the following motion at its April meeting.

"We instruct the Secretary to write Bishop Wandabula and indicate that the Judicial Council reaffirms Decision 1238 in its entirety. Because the funds were not given to Isaac Sebit by the required date of January 1, 2014, now those funds are to be returned to the Western Pennsylvania Annual Conference by June 1, 2014. Copies of the letter to Bishop Wandabula are to be sent to Bishop Warner Brown, Bishop Rosemarie Wenner, Bishop Tom Bickerton, Robert Zilhaver, Thomas Kemper, Richard Rettberg, Isaac Sebit, and Nancy Denardo. The Secretary should include the full text of Judicial Council Decision 1238...."

WHEREAS After tireless efforts by the Western Pennsylvania Annual Conference the \$3,000 was received on May 27, 2014.

WHEREAS The Judicial Council in Decision 1238 states that Nancy Denardo's complaint is still in process. "The Judicial Council, therefore, understands that the complaint process is continuing."

WHEREAS The Judicial Council in Decision 1238 notes "The complainant is certainly entitled to be included in active consultation with regard to the handling of the complaint, and the accused is certainly entitled to fair process. The Africa Central Conference College of Bishops and the Council of Bishops have responsibility for the proper handling of the complaint to its conclusion."

WHEREAS Since the last meeting of the Western Pennsylvania Annual Conference Bishop Wandabula asked the Judicial Council for reconsideration of the finding that the complaint was still in process. In his request for reconsideration he argued that the complaint by Nancy Denardo was dismissed at a meeting of the Central Conference Bishop's meeting by the College of Bishops. The Judicial Council denied that request in Judicial Decision 1241 retaining the original language of Judicial Decision 1238, "The Judicial Council, therefore, understands that the complaint process is continuing."

THEREFORE BE IT RESOLVED That the Western Pennsylvania Conference officially petition the Judicial Council for a ruling in the nature of a declaratory decision (¶2610) as to the meaning and application of ¶413, ¶2702, ¶2704 and ¶2706 in regards to the process of the review and a dismissal of a complaint regarding a bishop regarding, namely:

- 1) Upon receipt of a complaint what is the responsibility and process (including timeliness) of the President/Secretary of the College of Bishops is required to take to initiate a supervisory response process under the provisions of ¶413?
- 2) Who has the responsibility to conduct and who has the responsibility to oversee the supervisory response process under the provisions of ¶413? What is the process (including timeliness) and responsibility of those conducting the supervisory process under the provisions of ¶413?

- 3) Does ¶413 allow the action by the College of Bishops to resolve the complaint without a supervisory response to seek a just resolution?
- 4) Is the power to dismiss a complaint, determined by the College of Bishops to be an Administrative Complaint, retained solely by the jurisdictional or central conference committee on episcopacy under the provisions of ¶413?
- 5) Is the power to dismiss a complaint, determined by the College of Bishops to be a Judicial Complaint, retained solely by the Committee on Investigation ¶2704 and ¶2706?
- 6) Does ¶413.3.d as read in context with ¶413.3.e require the College of Bishops to refer the complaint to the jurisdictional or central conference committee on the episcopacy if the complaint is based on allegations of incompetence, ineffectiveness, or unwillingness or inability to perform episcopal duties?
- 7) Does ¶413.3.d as read in context with ¶2704.1.a require the College of Bishops to refer the complaint to the respondent bishop, notify active bishops of the existence and nature of the complaint, and refer the complaint to an elder in full connection within the same jurisdiction or central conference, who shall serve as counsel of the Church?
- 8) Has the General Conference in ¶413.3.d or in any action under ¶16.5 given the College of Bishops the power to dismiss complaints or make rulings regarding administrative or judicial processes?

DOCKET 1014-8

IN RE: Review of an Appeal of the Findings of the Administrative Review Committee of the East Ohio Annual Conference Regarding the Involuntary Retirement of a Clergy Member under ¶ 358.3

IN RE: Motion to place Rev. Wayne Scott on Involuntary Retirement at the 2014 Meeting of the East Ohio Conference in accordance with ¶358.3

I. JURISDICTION

Upon the motion of the East Ohio Conference Board of Ordained Ministry to place Reverend Wayne Scott on Involuntary Retirement in accordance with ¶358.3 (2012 BOD), a fair process hearing was held by the Conference Relations Committee of the East Ohio Annual Conference on March 3, 2014. The Conference Relations Committee recommended to the full Board of Ordained Ministry to bring the motion to place Reverend Scott in the status of Involuntary Retirement at the 2014 Clergy Session of East Ohio Annual Conference. This recommendation was adopted by the Board of Ordained Ministry on March 12, 2014. Reverend Scott was notified of this action of the Board of Ordained Ministry on March 18, 2014. The

Administrative Review Committee reported its findings to Reverend Scott on May 21, 2014. The finding of the Administrative Review Committee is that all appropriate Disciplinary procedures were followed in coming to the recommendation to be presented by the Board of Ordained Ministry.

The Judicial Council has jurisdiction over this matter in regard to violations of fair process in accordance with ¶2715 of the 2012 Book of Discipline.

Judicial Council Decision 830 states:

"At present, there is no specifically stated disciplinary route of appeal of the procedural aspects of administrative decisions; however, fair process must be followed in administrative decisions. Inasmuch as the council continues to receive bishops' rulings on questions of law regarding administrative actions, the following procedure is offered for use in regard to questions of fair process.

"Questions of fair process must be timely raised with the presiding officer at each step of the administrative process. Any objections to irregularity of the proceedings, must be made prior to or at the first session of the proceedings set forth in ¶2627 of the 1996 Discipline. The presiding officer's ruling on questions of fair process can be pursued only by means of appeal in accordance with procedure as in the same manner as set forth in ¶2628 of the 1996 Discipline. Fair process is a constitutional, as well as a disciplinary, right and is protected by the judicial process. Fair process applies to administrative action as well as judicial process. However, fair process does not apply to supervisory situations. Questions of fair process are not proper questions of law for substantive ruling by a bishop."

The language of ¶2628 of the 1996 Discipline holds the same content as ¶2715 of the 2012 Book of Discipline.

This appeal deals only with fair process matters in regard to the status of Reverend Wayne Scott as adjudicated through an administrative process, and has been filed under the requirements of ¶2715

II. ACTIONS REQUESTED OF THE JUDICIAL COUNCIL

Request that the Judicial Council make the following rulings or findings that errors in church law and fair process procedures have occurred and remand the recommendation back to the Board of Ordained Ministry so that action may be taken to promptly remedy these errors and restore Reverend Scott to a member in good standing with appropriate reimbursement:

- 1) Failure to meet a requirement set by the General Conference for a recommendation of involuntary retirement in accordance to ¶358.3, "Written notice of the intended action shall be given to such member by the Board of Ordained Ministry

at least 180 days prior to annual conference."

2) Failure of the chair of the Conference Relations Committee to rule on questions of law/objections: Request for Ruling of Law by Hearing Chair Re: Judicial Council Decision 1031(ARC Appendix 12, 16); Motion to Dismiss as a Violation of ¶1358.3 (ARC Appendix 17); Motion to Dismiss because of Failure to Seek Just Resolution (ARC Appendix 18); Objection to Violation of Right to be Heard (ARC Appendix 19); Request for Ruling by Chair for violation of Just Resolution and Presumption of Innocence (ARC Appendix 20). In accordance with Judicial Council Decision 830, "Any objections to irregularity of the proceedings, must be made prior to or at the first session of the proceedings and the presiding officer shall rule on such questions as in the same manner set forth in ¶2627 of the 1996 Discipline."

3) Failure of the Conference Relations Committee to restrain the scope of its hearing authority on matters of clergy character and conduct and extend the authority of the Conference Relations Committee beyond its disciplinary powers in accordance with Judicial Council Decision 1031.

4) Failure to seek a just resolution in accordance with ¶1361.1 (2008 BOD) and ¶1363 (2012 BOD) and Judicial Council Decision 1082, by failing to provide a copy of the letter of reprimand and remedial action to Rev. Scott, to provide pastoral care, to provide an annual review, and comments in the Board of Ordained Ministry Minutes of December 3, 2013.

5) Failure to maintain the presumption of innocence in the administrative process in accordance with Judicial Council Decision 920.

6) Failure to ensure that the respondent's right to be heard was protected before any final action was taken in accordance with ¶1362.2.a in that no verbatim record of the hearing was made.

7) Failure to ensure the respondent's right to be accompanied to any hearing by a clergyperson in full connection of the respondent's annual conference in accordance with ¶1362.2.c.

8) Failure to provide access to all records in violation of ¶1362.2.b and ¶1362.2.e in that Reverend Scott was never provided a copy of the Private Letter of Reprimand referenced in BOOM chair Reverend Baker's Letter dated August 29, 2011. Nor was Reverend Scott provided any documentation of actions taken by the Conference Relations Committee and the Board of Ordained Ministry, in preparation for his appeal.

9) Restore Reverend Wayne Scott to a member in good standing as of October 1, 2011.

Require the East Ohio Annual Conference to pay Reverend Scott at the base compensation rate as established by the conference for an elder in full connection and pay any pension liability for the period affected by this decision. As the Annual Conference has obligated itself for hospitalization under ¶1639.7 it should also be required to pay any medical and

hospitalization insurance expenses incurred.

TIMELINE OF EVENTS

The following is a time line of events surrounding the issues that have led to the question before the Judicial Council.

- August 17, 2011 The East Ohio Conference Board of Ordained Ministry placed Reverend Wayne Scott on Involuntary Leave of Absence in accordance with ¶1355.4 of the 2008 Book of Discipline with an effective date of October 1, 2011 (ARC Appendix 1).
- December 6, 2013 Reverend Hull, Chair of BOOM, drafts notification letter with grounds for the BOOM's recommendation of Involuntary Retirement (ARC Appendix 7).
- December 30, 2013 Reverend Scott is given the notification of the East Ohio Conference Board of Ordained Ministry's recommendation of Involuntary Retirement and grounds for this recommendation (ARC Appendix 8).
- January 8, 2014 Reverend Hull, Chair of BOOM, acknowledges receipt of notification of the Conference Board of Ordained Ministry's recommendation of Involuntary Retirement and grounds for this recommendation by Reverend Scott on December 30, 2013. Reverend Hull also acknowledges that the notification violates the 180 days required by ¶1358.3 and requests the Administrative Review Committee view this error as harmless (ARC Appendix 8).
- February 3, 2014 The Administrative Review Committee declines to address this error until the record is complete following the fair process hearing by the Conference Relations Committee and action of the East Ohio Conference Board of Ordained Ministry (ARC Appendix 9).
- February 5, 2014 Jean Forbes, Chair of the Conference Relations Committee, notifies Reverend Scott that his fair process hearing will take place on March 3, 2014. She once again enumerates the grounds for the recommendation from Reverend Hull's Letter dated December 6, 2013 (ARC Appendix 7) and sets the agenda for the hearing. Reverend Scott's presentation is limited to 20 minutes. She also informs Reverend Scott that he will have access to a complete copy of all the documents regarding this action to be picked up on February 17, 2014. (ARC Appendix 10).
- February 10, 2014 Reverend Scott makes several motions to clarify the process of the March 3, 2014 fair process hearing by the Conference Relations Committee (ARC Appendix 11).
- February 11, 2014 Chairperson Forbes makes rulings on Reverend Scott's motions regarding scope of the hearing, clarification on Reverend Scott's right to be accompanied by a clergyperson in full connection with the East Ohio Annual Conference, and clarification of the right of

Reverend Scott to submit written documentation at the hearing and the process for doing so {ARC Appendix 11).

February 13, 2014 Reverend Scott submits for a ruling of law as to the scope and power of the Conference Relations Committee to adjudicate the recommendation of the Board of Ordained Ministry for Involuntary Retirement based upon the grounds provided in Reverend Hull's letter (ARC Appendix 7) and Jean Forbes' Letter (ARC Appendix 10) based upon the restrictions of Judicial Council Decision 1031 (ARC Appendix 12).

March 2, 2014 Reverend Scott requests a continuance of the fair process hearing in that after contacting numerous individuals (ARC Appendix 14) that met the disciplinary criteria he was unable to secure someone to accompany him to the hearing (ARC Appendix 13).

March 2, 2014 Chairperson Forbes rules against a continuance of the fair process hearing on the grounds that Reverend Scott could find no one to accompany him to the hearing on March 3, 2014 (ARC Appendix 15).

March 3, 2014 The East Ohio Conference Relations Committee of the Board of Ordained Ministry conducts a fair process hearing regarding the Board's recommendation to place Reverend Scott on Involuntary Retirement Status at the 2014 Annual Conference, effective July 1, 2014. At this hearing Reverend Scott made the following written and oral motions stemming from violations of fair process:

1. Oral Objection to 20 minute limitation of the presentation of his material in accordance with ¶362.2.a.
2. Written Request for ruling of law as to the scope and power of the Conference Relations Committee to adjudicate the recommendation of the Board of Ordained Ministry for Involuntary Retirement based upon the grounds provided in Reverend Hull's letter (ARC Appendix 7) and Jean Forbes' Letter (ARC Appendix 10) based upon the restrictions of Judicial Council Decision 1031 (ARC Appendix 16).
3. Written Objection and Motion to Dismiss based upon violations of process in accordance with ¶358.3 (ARC Appendix 17).
4. Written Objection and Motion to Dismiss based upon violations of fair process and access to all information in accordance with ¶362.2.b and ¶362.2.e and failure to follow fair process in that the primary purpose of the process is to seek a just resolution (ARC Appendix 18).
5. Written Objection and Motion for Continuance due to violations of the fair process right to be heard as no verbatim record was taken in accordance with 11362.2.a (ARC Appendix 19).
6. Written Objection and ruling regarding the violation of fair process by the Board of Ordained Ministry in its failure to pursue a just resolution and maintain the presumption of innocence (ARC Appendix 20).

March 3, 2014 Conference Relations Committee votes to uphold the

- recommendation of the Board of Ordained Ministry to place Reverend Scott in an Involuntary Retirement Status as of July 1, 2014 (ARC Appendix 21).
- March 5, 2014 Reverend Scott requests the record of his fair process hearing via email to Jean Forbes (Appendix B)
- March 12, 2014 The East Ohio Board of Ordained Ministry votes to place Reverend Scott in an Involuntary Retirement Status as of July 1, 2014 (ARC Appendix 21).
- March 18, 2014 Reverend Hull notifies Reverend Scott of the Conference Board of Ordained Ministry's Decision (ARC Appendix 21).
- March 21, 2014 Reverend Scott once again requests the record of his fair process hearing and minutes of the Conference Board of Ordained Ministry to Reverend Hull and Jean Forbes (Appendix C).
- April 14, 2014 Reverend Scott objects via email to the Chair of the Administrative Review Committee of failure to have records from the hearing and Board of Ordained Ministry Meeting in violation of fair process protections 1}362.2.e. (Appendix D)
- May 21, 2014 Reverend Scott notified by Chair of the Administrative Review Committee that "We will report that it is our finding that all appropriate Disciplinary procedures were followed in coming to the recommendation to be presented by the Board of Ordained Ministry "

IV. RATIONALE & ANALYSIS

1. Failure to meet a requirement set by the General Conference for a recommendation of involuntary retirement in accordance to ¶1358.3, "Written notice of the intended action shall be given to such member by the Board of Ordained Ministry at least 180 days prior to annual conference."

Division Two, Section II, Article IV of the Constitution gives the General Conference the power "To define and fix the powers and duties of elders, deacons, supply preachers, local preachers, exhorters, deaconesses, and home missionaries;" (J16.2) and, further gives to the General Conference the power, "To define and fix the powers and duties of annual conferences, provisional annual conferences, missionary conferences and missions, and of central conferences, district conferences, charge conferences, and congregational meetings." (1j16.3)

The General Conference has defined the power of the annual conference to place clergy members in an Involuntary Retirement Status in 11358.3 with the following requirement, "Written notice of the intended action shall be given to such member by the Board of Ordained Ministry at least 180 days prior to annual conference."

Judicial Council Decision 513 states, "Decisions 313 and 318 hold that Par. 15 of the Constitution has placed in the General Conference the power to establish standards, conditions and qualifications for admission to the ministry, a matter of distinct connectional importance, and that where, as is the case here, the General Conference has acted it has thereby pre-empted such authority, so that an Annual Conference may not add to, nor subtract from, the requirements established by the General Conference."

The Board of Ordained Ministry of the East Ohio Annual Conference failed to meet the 180 notification standard of 11358.3 and may not alter that requirement due to the constitutional provisions stated above. Therefore, the Conference Relations Board should have dismissed this recommendation. If at the 2014 meeting of the East Ohio Annual Conference this motion to place Reverend Scott on involuntary retirement status is adopted, the East Ohio Annual Conference will have usurped the power of the General Conference and acted in an illegal fashion.

The Judicial Council should note this as a grievous error and remand this matter back to the full Board of Ordained Ministry to correct this matter. If the East Ohio Annual Conference has acted on this measure the Board of Ordained Ministry should be barred from taking any further action as a violation of double jeopardy.

2. Failure of the chair of the Conference Relations Committee to rule on questions of law in accordance with Judicial Council Decision 830.

Reverend Wayne Scott submitted the following questions of law and objections prior to or at the first session of the proceedings to place him in an involuntary retirement status: Request for Ruling of Law by Hearing Chair Re: Judicial Council Decision 1031(ARC Appendix 12, 16); Motion to Dismiss as a Violation of 11358.3 (ARC Appendix 17); Motion to Dismiss because of Failure to Seek Just Resolution (ARC Appendix 18); Objection to Violation of Right to be Heard (ARC Appendix 19); Request for Ruling by Chair for violation of Just Resolution and Presumption of Innocence (ARC Appendix 20). Judicial Council Decision 830 states, "Any objection to irregularity of the proceedings, must be made prior to or at the first session of the proceedings and the presiding officer shall rule on such questions as in the same manner set for in 112627 of the 1996 Discipline."

As of the writing of this brief the presiding officer has not answered these questions of law, in violation of Judicial Council Decision 830 and Reverend Scott's right to a fair process.

The Judicial Council should note this as a grievous error and remand this matter back to the full Board of Ordained Ministry to correct this matter. If the East Ohio Annual Conference has acted on this measure the Board of Ordained Ministry should be barred from taking any further action as a violation of double jeopardy.

3. Failure of the Conference Relations Committee to restrain the scope of its hearing authority on matters of clergy character and conduct and extend the authority of the Conference Relations Committee beyond its disciplinary powers in accordance with Judicial Council Decision 1031.

The Judicial Council in Decision 1031 ruled;

1. Involuntary administrative processes/administrative complaints are based on allegations of incompetence, ineffectiveness, or unwillingness or inability to perform ministerial duties.

2. The Conference Relations Committee of the Conference Board of Ordained Ministry has no authority to consider a judicial complaint.

3. The Board's authority extends to consideration of remedial or other action on an administrative complaint.

4) The Board of Ordained Ministry does not have the authority to transform an allegation determined by the Bishop to be the basis for an administrative recommendation/complaint into a chargeable offense.

Specifically in the analysis of Decision 1031 the decision of the board of ordained ministry actually transformed the administrative complaint in this manner, "Since [the Elder] is unwilling to uphold [sic] Book of Discipline and to take direction and supervision from his superintendent and his bishop, this makes it inappropriate for him to continue to serve under appointment."

Decision 1031 further states, "Simply because the complaint has an administrative label and went through the administrative process does not change what actually occurred,"

According to Conference Relations Committee Chairperson Jean Forbes' letter of February 5, 2014 (ARC Appendix 10), the following actions alleged in Reverend Nancy Hull's letter of December 6, 2013 are the basis for the recommendation of involuntary retirement for Reverend Scott:

1. Administrative Complaint process in 2011: Reverend Scott failed to observe and respond to supervision.

2. Administrative Complaint process in 2011: Reverend Scott failed to meet the conditions of a signed agreement resulting from a previous supervisory response.

3. Failure of Reverend Scott to adhere to the restrictions of the 2012 Book of Discipline 955.6.

4. Failure to keep ethical boundaries with parishioners and former parishioners including but not limited to admitting that money gifts from parishioners and former parishioners were accepted by Rev. Scott during the period of time when he had no employment.

5. Failure of Reverend Scott to prove during the time on Involuntary Leave of Absence that he was supervisable.

These allegations are matters for a judicial complaint under ¶2702 and not based on allegations of incompetence, ineffectiveness, or unwillingness or inability to perform ministerial duties. The matters are not administrative in nature, but rather judicial in nature.

Whereas these allegations were the basis of the recommendation for the administrative action considered at the March 3, 2014 hearing, the Conference Relations Committee of the Conference Board of Ordained Ministry has no authority to consider a judicial complaint and should have referred the matter back to the full Board to correct this error. Further, in this process the Conference Board of Ordained Ministry exceeded its authority and considered a matter that must be handled as a judicial complaint. In this

case the Board of Ordained Ministry does not have the authority to transform an allegation determined by the Bishop to be the basis for an administrative recommendation/complaint into a chargeable offense.

The Judicial Council should note this as a grievous error and remand this matter back to the full Board of Ordained Ministry to correct this matter. If the East Ohio Annual Conference has acted on this measure the Board of Ordained Ministry should be barred from taking any further action as a violation of double jeopardy.

4. Failure to seek a just resolution in accordance with ¶361.1 (2008 BOD) and ¶363 (2012 BOD) and Judicial Decision 1082.

From the very beginning, the Cabinet and the Board of Ordained Ministry failed to uphold the requirement of pursuing the "primary purpose of this review," which is "a just resolution of any violations of this sacred trust [ordination and membership in an annual conference of The United Methodist Church] in the hope that God's work of justice, reconciliation and healing may be realized in the body of Christ," in accordance with ¶361.1 (2008 BOD) and ¶363 (2012 BOD). This is the foundation of any fair process, that the parties seek a just resolution.

Conference Relations Committee Chairperson Jean Forbes noted in her letter dated February 11, 2014 (ARC Appendix 11) that this hearing is really based upon the failure of the specific remedial action plan, "This hearing will only address the process of the Board of Ordained Ministry from June, 2011, to the present in making their recommendation to the Clergy Session for you to be placed on Involuntary Retirement status. The merits of the original request for involuntary leave of absence were heard and evaluated in 2011. The Board of Ordained Ministry, Cabinet and Executive Clergy Session of the Annual Conference all affirmed that that case had been appropriately decided and fair process had been followed. So the merits of that administrative complaint will not be addressed in this hearing."

BOOM Chair Rev. Dr. David A. Baker noted in his letter dated August 29, 2011, "The Board of Ordained Ministry at its August 17, 2011 meeting voted to place you [Rev. Scott] on Involuntary Leave of Absence in accordance with Paragraph 355.4 (2008 BOD), effective October 1, 2011. In addition, because of the breaking of the "Sacred Trust" among the covenant community of the Order of Elders in The East Ohio Annual Conference, we require that a private reprimand be placed in your permanent file in accordance with ¶363.2.j of the 2008 Book of Discipline. This letter is to state the reoccurring patterns of the breaking of ethical and moral practices, the refusal of appropriate supervision, and the betrayal of Ordination Vows of United Methodist Clergy during the dissemination of your ministerial duties."

Paragraph 363.2.j of the 2008 Book of Discipline outlines the requirements of a Private reprimand as "a letter signed by the chairperson of the Board of Ordained Ministry and the clergyperson's district superintendent, addressed to the clergyperson with a file copy in the permanent file of the Board of Ordained Ministry (5606.6) stating

the appropriateness of the complaint, the specific remedial action required, and the conditions under which the reprimand shall be withdrawn. A report of the reprimand and the remedial action taken shall remain in the personnel file of the respondent once the reprimand has been withdrawn."

Paragraph 361.1 (BOD 2008) and ¶363 (BOD 2012) states, "This review shall have as its primary purpose a just resolution of any violations of this sacred trust, in the hope that God's work of justice, reconciliation and healing may be realized in the body of Christ. A just resolution is one that focuses on repairing any harm to people and communities, achieving real accountability by making things right in so far as possible and bringing healing to all the parties."

Judicial Council Decision 1082 strikes down a policy for dealing with ineffective clergy in the Memphis Conference on the grounds that it circumvents the primary purpose of a just resolution in that, "The policy provides no means for the clergyperson to challenge the determination of ineffectiveness or to have access to all records that were relied upon in making that determination;" and further, "The policy does not provide adequate pastoral care and support to the clergyperson who has been declared ineffective, nor is there any mention of pastoral care and support for his or her spouse and family,"

Reverend Scott has never received a copy of the letter of reprimand although 1P63.2 .j of the 2008 Book of Discipline requires that it be in the form of a letter addressed to him. Reverend Scott also has asked for a copy of this letter of reprimand (and the vital information it contains) many times since receiving Rev. Baker's August 17, 2011 letter, but has never been given even a copy. Reverend Scott therefore did not have access to:

1. Know the "specific remedial action required" by the Board of Ordained Ministry in accordance with ¶363.2.j (2008 BOD), and have sufficient detail to allow the respondent [Rev. Scott] to meet those specific remedial actions to fulfill his part of the just resolution as required by ¶361.1 (2008 BOD) and ¶363 (2012 BOD);
- 2, Know the "conditions under which the reprimand shall be withdrawn" in accordance with 11363.2.j (2008 BOD), and have sufficient detail to allow the respondent [Rev. Scott] to fulfill his part of the just resolution as required by 61.1 (2008 BOD) and 11363 (2012 BOD) and provide healing to all parties (including but not limited to Rev. Scott, the Board of Ordained Ministry, and the Order of Elders of East Ohio Conference);
3. Know how the letter of reprimand stated the "appropriateness of the complaint" in accordance with ¶363.2.j (2008 BOD) and provide for an

opportunity of review and appeal as provided by ¶120 (2008 & 2012 BOD), ¶1636 (2008 & 2012 BOD), and ¶12715.9 (2008 & 2012 BOD);

4. Reverend Scott may not be held responsible for items in a remedial action plan (963.2, 2008 BOD) in a letter of reprimand (1363.2.j, 2008 BOD) of which he was given no written notice or means to challenge (JCD 1082).

Failure to provide access to the remedial plan and letter of reprimand shows a reluctance of the Board of Ordained Ministry to have ever had as its primary purpose in this review of Reverend Scott's ministry a just resolution of any violations of this sacred trust, in the hope that God's work of justice, reconciliation and healing may be realized in the body of Christ.

This failure of the Board of Ordained Ministry to pursue a just resolution, reconciliation and healing is further illustrated by the failure of the Board to conduct "regular oversight and an annual review" of the remedial action plan with the respondent during the first two years of the respondent's involuntary leave status in accordance with ¶1363.2 (2008 BOD), though such oversight and review was repeatedly requested by the respondent. The Board only conducted a review on October 8, 2013 as the involuntary leave was about to expire for the purpose of recommending involuntary retirement.

In addition, the Board of Ordained Ministry has provided no pastoral care and support to Rev. Scott who had been declared ineffective, nor has there been any pastoral care or support for Rev. Scott's spouse and family.

The Judicial Council should note this as a grievous error and remand this matter back to the full Board of Ordained Ministry to correct this matter. If the East Ohio Annual Conference has acted on this measure the Board of Ordained Ministry should be barred from taking any further action as a violation of double jeopardy.

5. Failure to maintain the presumption of innocence in the administrative process in accordance with Judicial Council Decision 920.

The Board of Ordained Ministry violated ¶1361.I (2008 BOD) and 11363 (2012 BOD) in failing to uphold its requirement of pursuing the primary purpose of a just resolution of any violations of the sacred trust of ordination and membership in the annual conference, and the presumption of innocence in the administrative process (JCD 920) in the comments in the minutes of the Board of Ordained Ministry regarding Rev. Scott's employment as a Volunteer and Bereavement Coordinator for Tridia Hospice. These comments were used by the Board of Ordained Ministry in the formulation of its recommendation to place Reverend Scott on Involuntary Retirement.

Paragraph 361.1 (BOD 2008) and 11363 (BOD 2012) states, "This review shall have as its primary purpose a just resolution of any violations of this sacred trust, in the hope that God's work of justice, reconciliation and healing may be realized in the body of

Christ. A just resolution is one that focuses on repairing any harm to people and communities, achieving real accountability by making things right in so far as possible and bringing healing to all the parties."

Judicial Council Decision 920 states, "Under our polity, a presumption of innocence is to be maintained until conclusion of the administrative or trial process."

The December 3, 2013 Board of Ordained Ministry Minutes extract states, "The team vetted Wayne's work with hospice. It is a for-profit hospice. Wayne is the coordinator of volunteers. He recruits and trains volunteers. In his mind, he has performed no ministerial duties. Though it may be possible to have that position and not perform ministerial duties, the team wondered if that was possible, especially for someone like Wayne."

The Board of Ordained Ministry Team's opinion that Rev. Scott's employment involved ministerial functions in violation of ¶355.6, for the recommendation of Involuntary Retirement status, was not based on facts that the team had gathered (rather in contradistinctions to those facts) and demonstrates that the Team and the Board of Ordained Ministry failed to maintain a presumption of innocence through the administrative process. Further, these statements demonstrate that the purpose and intent of the Team's presentation (as the basis of the decision to recommend Involuntary Retirement status by the Board of Ordained Ministry) were not conducted with the primary purpose of a just resolution in accordance with ¶361.1 (BOD2008) and ¶363 (BOD 2012).

The Judicial Council should note this as a grievous error and remand this matter back to the full Board of Ordained Ministry to correct this matter. If the East Ohio Annual Conference has acted on this measure the Board of Ordained Ministry should be barred from taking any further action as a violation of double jeopardy.

6. Failure to ensure that the respondent's right to be heard was protected before any final action was taken (in accordance with ¶362.2.a) in that no verbatim record of the hearing was made, and his right to be heard was arbitrarily limited.

There are two instances whereby the hearing violated Reverend Scott's right to be heard. First, no verbatim record was made of the March 3, 2014 hearing. Second, over the objection of Reverend Scott, the presiding officer ended Reverend Scott's presentation of his De Novo case after an arbitrarily set time period.

A. No Verbatim Record: No verbatim record was made at Reverend Scott's Fair Process hearing held on March 3, 2014 and this is a violation of fair process. Paragraph 362.2.a affords the respondent shall have a right to be heard before any final action is taken.

The respondent's right to be heard is protected by the fair process hearing held by the Conference Relations Committee. The right to be heard is inseparably linked to a

verbatim record in Judicial Council Decision 698, which states, "This file, of course, contains no verbatim record of the proceedings of the Joint Review committee, thus depriving the respondent the right to be heard by the entity which imposes the sanction."

Because no verbatim record was made, a verbatim record did not accompany the recommendation of the Conference Relations Committee to the full Board of Ordained Ministry and cannot accompany the recommendation of the full Board of Ordained Ministry to the Clergy Session of the East Ohio Annual Conference. This deprives Reverend Scott the right to be heard by those bodies. This right was clarified in Judicial Council Decision 784, which states, "We held in Decision 698 that a verbatim record of the proceeding must accompany the recommendation to a body which has the authority to recommend remedial action."

It is the responsibility of the Conference Relations Committee to provide a verbatim record for any appeal (including review by the Administrative Review Committee). This responsibility was expressed in Judicial Council Decision 836, which states, "The purpose of the required verbatim of the judicial process is to provide a detailed record for any further process or appeal" and further, "If and when, reconciliation and/or resolution is not attained, the Discipline provides for a proper hearing, notice, advocacy and verbatim record."

This has been further clarified in Judicial Council Decision 921, which states, "Par. 633 does not require the administrative review committee to do anything more than review the record for any violations of fair process. The probationary member in question and a member of the executive committee of the board of ordained ministry are not required to be involved in this review process. However, the board of ordained ministry must provide to the administrative review committee a complete written record of the entire administrative process leading to the action for change in conference relationship' 011633). If a hearing is held, the administrative fair process procedures in ¶359.2 must be followed."

The Board of Ordained Ministry has not provided a "complete written record of the entire administrative process leading to the action for a change in conference relationship" for Reverend Scott by failing to provide a written verbatim record/transcript of the March 3, 2014 hearing, thereby depriving the right of Reverend Scott to be heard by the bodies that make the final actions and appeal decisions in this process.

The Judicial Council should note this as a grievous error and remand this matter back to the full Board of Ordained Ministry to correct this matter. If the East Ohio Annual Conference has acted on this measure the Board of Ordained Ministry should be barred from taking any further action as a violation of double jeopardy.

B. Ending Reverend Scott's De Novo presentation Over His Objection: The chair of the Conference Relations Committee stopped the presentation of Reverend Wayne Scott after the time period set in her agenda. The fair process hearing is the De Novo hearing of record for the bodies by whom the final decisions are made and the hearing of record for appeal bodies (i.e., no new evidence may be presented or objections may be presented).

The Discipline does not give the chair of a hearing of record the authority to limit the oral presentation of a respondent as it does for an appeal body. To the contrary, the Discipline holds that the respondent has a right to be heard. Provided that the respondent is still presenting new information to the hearing body for the record, the chair does not have the power to abridge the right of the respondent to be heard by the hearing body in accordance with ¶1362.2.a.

As the chair prematurely halted the presentation of Reverend Wayne Scott to the hearing body for the sake of an arbitrary time limit, the Judicial Council should note this as a grievous error and remand this matter back to the full Board of Ordained Ministry to correct this matter. If the East Ohio Annual Conference has acted on this measure the Board of Ordained Ministry should be barred from taking any further action as a violation of double jeopardy.

7. Failure to ensure the respondent's right to be accompanied to any hearing by a clergyperson in full connection of the respondent's annual conference (962.2.c).

Fair process under 1f362.2.c states, "the respondent shall have the right to be accompanied to any hearing by a clergyperson who is a member in full connection of the respondent's annual conference." However, two trajectories have collided to deny Reverend Scott someone who met the standards outlined in the 2012 Book of Discipline to accompany him to the hearing. Although Rev. Scott requested assistance in finding a person to accompany him to the hearing and also asked for a continuance to continue his search, the Conference Relations Committee neither assisted Reverend Scott in the search nor did they afford him more time to secure his right not to go through this process alone.

The first trajectory that worked against Reverend Scott was the fact that the General Conference has made qualifications much stricter in the 2012 Book of Discipline. Indeed, these qualifications historically have been made tighter and tighter. The 1996 Book of Discipline allowed any clergyperson to accompany a person going through a fair process hearing 01358.2.4 The 2000 Book of Discipline made the qualifications stricter by requiring that the clergyperson be a clergyperson in full connection (11339.2.c). The 2012 Book of Discipline makes the qualifications even

stricter still, by restricting the clergyperson to one who is a member in full connection of the respondent's annual conference (1362.2.c). This trajectory has made it increasingly difficult for a respondent's fair process right to be secured.

The second trajectory that worked against Reverend Scott was the onerous manner in which the leadership of the annual conference used the time that Reverend Scott was on involuntary leave to stigmatize him and isolate those who might have aided him in securing the right not to walk through this process alone. For example, during East Ohio Conference Executive Sessions in 2012 and 2013, The Board of Ordained Ministry unnecessarily disparaged and vilified Reverend Scott. Then, when he contacted a list of over a dozen clergypersons in full connection (see Appendix 4) no one would go with him.

Fair process procedures outlined in ¶1362.2 are part of the holy covenant that exists within the membership and organization of The United Methodist Church. These procedures are presented for the protection for the rights of the individuals and for the protection of the Church in administrative hearings. The Church provides for and ensures that fair process procedures are followed.

The Church provides the hearing committee and ensures that the respondent has a right to be heard (962.2,a). The Church provides notice with sufficient detail to allow the respondent to prepare a response and ensures that this is done at least 20 days prior to the hearing, to provide for fairness (11362.2.b). The Church provides the assurance the respondent shall be present when matters of substance are discussed and ensures that under no circumstances shall one party, in the absence of the other party, discuss issues with members of the hearing body (11362.2.d). The Church provides all records relied upon in the determination of the outcome of the administrative process (11362.2.e), including a verbatim record.

The Church also has legislated that the respondent shall have the right to be accompanied to any hearing by a clergyperson who is a member in full connection of the respondent's annual conference (11362.2.c). The respondent has the right to be accompanied and this right is provided for by the Church. The Church did not legislate that the respondent has the right to ask someone to accompany him or her to a hearing, but the right to have someone accompany him or her.

If because the stigma of the process or the restrictions on the person to accompany the respondent to a hearing are so onerous that a person is unable to find someone to accompany him or her, the Church has a responsibility of finding/appointing someone who meets the disciplinary qualifications to accompany the respondent.

Reverend Scott was thwarted in his attempts to find someone to accompany him to the hearing. He requested help and a continuance to ensure this fair process right, but the Church failed to ensure the respondent's right to be accompanied by a clergyperson who is a member in full connection of the respondent's annual conference.

In fact, in the email message sent to Rev. Scott {ARC Appendix 15) the chairperson of the Conference Relations Committee removes from the Church any burden of ensuring fair process and places it solely on the respondent, stating, "this provision does not require that the respondent have an advocate."

The Judicial Council should note this as a grievous error and remand this matter back to the full Board of Ordained Ministry to correct this matter. If the East Ohio Annual Conference has acted on this measure the Board of Ordained Ministry should be barred from taking any further action as a violation of double jeopardy.

8. Failure to provide access to all records in violation of ¶362.2.b and ¶362.2.e in that Reverend Scott was never provided the Private Letter of Reprimand referenced in Reverend Baker's Letter dated August 29, 2011, nor even a copy thereof.

Reverend Scott was never provided the private letter of reprimand with the specific remedial action (nor even a copy thereof), as required by ¶363.2.j (2008 Book of Discipline). This document was needed to develop Reverend Scott's response to the remedial program under review of the Conference Relations Committee at their March 3, 2014 hearing. This denied Reverend Scott the following Fair Process rights:

- notice being given not less than 20 days prior to the hearing (11362.2.11);
- sufficient detail to allow the respondent to prepare a response (J362.2.b);
- and access to material for the specific remedial action under review by this hearing (11362.2.e).

Conference Relations Committee Chairperson Jean Forbes noted in her letter dated February 11, 2014 (ARC Appendix 11) that this hearing is really based upon the failure of the specific remedial action plan: "This hearing will only address the process of the Board of Ordained Ministry from June, 2011, to the present in making their recommendation to the Clergy Session for you to be placed on Involuntary Retirement status. The merits of the original request for involuntary leave of absence were heard and evaluated in 2011. The Board of Ordained Ministry, Cabinet and Executive Clergy Session of the Annual Conference all affirmed that that case had been appropriately decided and fair process had been followed. So the merits of that administrative complaint will not be addressed in this hearing."

BOOM Chair Rev. Dr. David A. Baker noted in his letter dated August 29, 2011 (ARC Appendix 1), "The Board of Ordained Ministry at its August 17, 2011 meeting voted to place you [Rev. Scott] on Involuntary Leave of Absence in accordance with Paragraph 355.4 (2008 BOD), effective October 1, 2011. In addition, because of the breaking of the "Sacred Trust" among the covenant community of the Order of Elders in The East Ohio Annual Conference, we require that a private reprimand be placed in your permanent file in accordance with ¶363.2.j of the 2008 Book of Discipline. This letter is to state the reoccurring patterns of the breaking of ethical and moral practices, the refusal of appropriate supervision, and the betrayal of Ordination Vows of United Methodist Clergy during the dissemination of your ministerial duties."

Paragraph 363.2.j of the 2008 Book of Discipline outlines the requirements of a Private reprimand as: "a letter signed by the chairperson of the Board of Ordained Ministry and the clergy person's district superintendent, addressed to the clergy person with a file copy in the permanent file of the Board of Ordained Ministry (606.6) stating the appropriateness of the complaint, the specific remedial action required, and the conditions under which the reprimand shall be withdrawn. A report of the reprimand and the remedial action taken shall remain in the personnel file of the respondent once the reprimand has been withdrawn."

Reverend Scott has never received this letter of reprimand (or even a copy thereof) even though ¶363.2.j of the 2008 Book of Discipline requires that it be in the form of a letter addressed to him. He has also asked for a copy of this letter of reprimand (and the vital information it is to contain) many times since receiving Rev. Dr. Baker's letter, but has never been given it. Reverend Scott therefore did not have access to:

1. Know the "specific remedial action required" by the Board of Ordained Ministry in accordance with ¶363.2.j (2008 BOD), and have sufficient detail to allow the respondent [Rev. Scott] to prepare a response in accordance with ¶362.2.b (2012 BOD);
2. Know the "conditions under which the reprimand shall be withdrawn" in accordance with ¶363.2.j (2008 BOD), and have sufficient detail to allow the respondent [Rev. Scott] to prepare a response in accordance with ¶362.2.b (2012 BOD);
3. "Have access, at least seven days prior to the hearing, to all records relied upon in the determination of the outcome of the administrative process" in accordance with ¶363.2.e (2012 BOD)

In addition, Reverend Scott was not given access to any records or other documentation from his fair process hearing, nor any records/documents generated in regards to his administrative process following the fair process hearing. Reverend Scott raised a timely request on March 5, 2014 to Chairperson Jean Forbes (Appendix B). He restated this request on March 21, 2014 to Reverend Hull and Jean Forbes (Appendix C). After receiving no resolution he made his objection with his appeal to the Administrative Review Committee on

April 14, 2014 (Appendix D). As of the writing of this brief Reverend Scott has not been given access to nor received any of this requested documentation. This is an additional violation of fair process in accordance with ¶1362.2.e, which affords access by the respondent to all records/documents through the entire administrative process and any appeal.

The Judicial Council should note this as a grievous error and remand this matter back to the full Board of Ordained Ministry to correct this matter. If the East Ohio Annual Conference has acted on this measure the Board of Ordained Ministry should be barred from taking any further action as a violation of double jeopardy.

9. Restore Reverend Wayne Scott to a Member in Good Standing (Effective Status) of the East Ohio Annual Conference as of October 1, 2011.

Reverend Scott was placed on Involuntary Leave of Absence on October 1, 2011. He has remained on this leave through an administrative process riddled with fair process violations and regarding a matter that had nothing to do with ineffectiveness, but was of a secretive process of character slander that should have been handled in a judicial proceeding.

The private reprimand that Board of Ordained Ministry chair Rev. Dr. David Baker required in his August 29, 2011 letter (ARC Appendix 1) noted that, "This letter is to state the reoccurring patterns of the breaking of ethical and moral practices, the refusal of appropriate supervision, and the betrayal of Ordination Vows of United Methodist Clergy during the dissemination of your ministerial duties."

Breaking of ethical and moral practices, refusal of supervision, and the betrayal of Ordination Vows during the dissemination of ministerial duties are all beyond the purview of an administrative process. Because this private reprimand was handled as a "secret reprimand" that was never made available to Reverend Scott, he was denied the ability to appeal upon the basis of the contents of the letter of reprimand, take any meaningful remedial action, and was denied the ability to be heard by the East Ohio Annual Conference, the body which makes the decision on his status.

The Board of Ordained Ministry failed in its responsibility to give Reverend Scott a remedial action plan, nor did it conduct any formal reviews as required by the Discipline, thus further denying him the ability to appeal upon the basis of the contents of the letter of reprimand or any other remedial plan, take any meaningful remedial action, and was further denied the ability to be heard by the East Ohio Annual Conference, the body which makes the decision on his status.

As a result of these grievous errors, the Judicial Council should restore Reverend Scott as a member in good standing as of October 1, 2011, as the East Ohio Conference Board of Ordained Ministry takes action to redress the grievous errors in Reverend Scott's fair process.

10. Require the East Ohio Annual Conference to pay Reverend Scott at the base compensation rate as established by the conference for an elder in full connection and pay any pension liability for the period affected by this decision. As the Annual Conference has obligated itself for hospitalization under ¶639.7 it should also be required to pay any medical and hospitalization insurance expenses incurred: The Chair of the Conference Council on Finance and Administration should be required to remunerate Reverend Scott compensation at no less a rate than the conference minimum salary and other remuneration provided in conference rules and policies, prorated for the period without appointment (in accordance with Judicial Council Decision 1135 et al.).

V. SUMMARY

The process the East Ohio Conference Board of Ordained Ministry and the Conference Relations Committee has used to move Reverend Scott from a member in good standing of the East Ohio Conference has neither been fair nor disciplinary. The Administrative Review Committee's failure to remand these grievous errors back to the Conference Board of Ordained Ministry has neither been fair nor disciplinary. The failure of the Administrative Review Committee of the East Ohio Conference to remand these grievous errors back to the Conference Board of Ordained Ministry for correction, and their finding that all appropriate Disciplinary procedures were followed, should be overturned. The Judicial Council should remand this matter back to the full Board of Ordained Ministry to correct this matter. If the East Ohio Annual Conference has acted on this measure the Board of Ordained Ministry should be barred from taking any further action as a violation of double jeopardy.

LETTER FROM BISHOP HOPKIN'S ASSISTANT

Greetings in the name of the Lord of the Church, Jesus Christ. Bishop Hopkins has directed me to communicate with you concerning your June 16th e-mail response to Rev. Robert Zilhaver and copied to Bishop Hopkins and other East Ohio Conference leaders. Your response to Rev. Zilhaver acknowledged receipt of an alleged brief (appeal) he sent you and your further instruction to Rev. Zilhaver as follows:

"In addition to the material you have sent me, I need the minutes of the session at which the report of the Administrative Review Committee was given (and any other relevant minutes)."

Bishop Hopkins is not currently aware of any provision in The Book of Discipline of The United Methodist Church 2012 which permits Rev. Zilhaver to submit what he states is a "brief" to the Judicial Council. It is Bishop Hopkins' understanding that absent the annual conference having

requested the Judicial Council for a Declaratory Decision (W610.1-3) or the automatic review by the Judicial Council of a Bishop's Decision (Ruling) of Law (I12609 6), Mr. Zilhaver has no basis to "appeal" the findings of the East Ohio Conference's Administrative Review Committee's findings. It may be important to be aware of the following information:

- Rev. Zilhaver's June 14 e-mail (copied to Bishop Hopkins and others) notifying you of Rev. Zilhaver's submission of the items he sent predated the East Ohio Conference clergy session which was held Monday, June 16, and as part of the session of the East Ohio Annual Conference held June 16-19.
- Rev. Zilhaver did not identify his standing or role in submitting the items sent to you. Rev. Zilhaver appears to be a clergy member of the Western Pennsylvania Annual Conference. He is not a clergy member of the East Ohio Annual Conference. He does not identify himself as an advocate for Rev. Wayne Scott, who is a clergy member of the East Ohio Annual Conference.
- As part of the East Ohio Conference clergy session held on Monday, June 16, the clergy session upon hearing the findings of the conference's Administrative Review Committee as per 11636 of the current Book of Discipline and upon recommendation of the conference board of ordained ministry voted to place Rev. Wayne Scott on Involuntary Retirement as per the provisions of **11358.3** and having observed the "*Administrative Fair Process*" provisions found in 1362.1-3. The report of the Administrative Review Committee was reported to the clergy session before the vote to place Rev. Scott on Involuntary Retirement was taken by written ballot. Approximately 83% of the members in full connection present and voting supported the board of ordained ministry's recommendation (significantly more than the 2/3 vote required) in full connection voted to place Rev. Scott on Involuntary Retirement.
- No motion or request for either a Declaratory Decision ((¶)2610.1-3) nor a Bishop's Decision (Ruling) of Law (¶)2609.6) was made at either the clergy session held on Monday, June 16, or any point during the annual conference session held June 16-19.

In view of the information cited above, Bishop Hopkins respectfully asks for your clarification as to whether or not Rev. Zilhaver's submission is able to be considered by the Judicial Council and subsequently docketed by the Judicial Council. If so, which specific paragraph(s) from the current Book of Discipline would be applicable in this matter? Your timely response will be helpful to Bishop Hopkins and the other conference leaders by knowing if Rev. Zilhaver's submission may require a formal response on the part of the annual conference to you as the secretary of the Judicial Council,

DOCKET 1014-9

IN RE: Review of a Bishop's Decision of Law in the New England Annual Conference Regarding Whether Its Resolution RS-204 Conforms to Article XXII of the Methodist Articles of Religion

**RS – 204 – TO AFFIRM GOD'S CALL TO MINISTRY AND
MARRIAGE**

As those who oppose, seek to change, and intend to live in disobedience to the United Methodist Disciplinary language that "homosexuality is incompatible with Christian teaching" as a criteria for ordination and marriage and those policies that emanate from this language, we submit the following for adoption and implementation by the New England Annual Conference of the United Methodist Church, WHEREAS our Conference, just as the general church, is not of one mind, RESOLVED:

1. We prayerfully support those clergy who have been brought to trial for solemnizing marriage vows for all properly prepared couples.
2. We strongly urge our Board of Ordained Ministry, Appointment Cabinet, and Resident Bishop to do all within their power to make the New England Annual Conference a place of welcome and refuge to those convicted by Church trial courts for presiding over same gender Christian weddings or faithfully responding to the call to ordained ministry.
3. We strongly urge the next General Conference of the United Methodist Church to remove all language that prohibits the ordination and marriage of persons based upon gender orientation or to allow Annual Conferences a "local option" to discern their own criteria in these matters.

We strongly urge our New England Conference congregations and their clergy to open their "hearts, minds, and doors" to all couples regardless of gender seeking to sanctify their unions in holy matrimony.

BISHOP'S RULING OF LAW

Resolution 204 – by which the 2014 New England Annual Conference voted to: (1) prayerfully support clergy brought to trial for solemnizing same gender marriage vows; (2) strongly urge the Board of Ordained Ministry, the Cabinet and Bishop to do all within their power to make the Conference "a place of welcome and refuge for those convicted by church trial courts for presiding over same gender Christian weddings or faithfully responding to the call to ordained ministry"; (3) strongly urge that the next General Conference remove certain prohibitive language from the Book of Discipline or to allow Annual Conferences a "local option" to discern their own criteria in these matters; and (4) strongly urge the New England Annual Conference congregations and clergy to open their hearts, minds and doors to all couples regardless of gender seeking to sanctify their union in holy matrimony – is a resolution that is thoroughly aspirational in nature. None of the actions being urged in any way break

the mandates of the church rites and ceremonies noted in Article XXII. If the wording of Resolution 204 is read as I read it, nothing contained within the four corners of Resolution 204 would serve to mandate, negate, ignore, or violate The Book of Discipline, nor is any of it in any way unlawfully prescriptive in nature, and I rule that it is upheld as lawful in its entirety.

IV. REASONS SUPPORTING BISHOP DEVADHAR'S RULING OF LAW

Resolution 204 calls for four things. First, it calls for the New England Annual Conference to “prayerfully support those clergy who have been brought to trial for solemnizing marriage vows for all properly prepared couples.” Secondly, it “strongly urges” the Board of Ordained Ministry, the Cabinet, and the Bishop to do “all within their power to make New England Annual Conference a place of welcome and refuge” for those convicted by church trial courts for presiding over same gender weddings. Third, Resolution 204 “strongly urges” the next General Conference to remove certain language that prohibits the ordination and marriage and persons based on gender or to allow Annual Conference a “local option” to discern their own criteria in these matters. Finally, it “strongly urges” New England Annual Conference congregations and clergy to open their “hearts, minds and doors” to all couples regardless of gender orientation, seeking to sanctify their unions in holy matrimony. All four of those components of Resolution 204, as expressly and intentionally worded by its makers, are aspirational, without prescriptive force, and do not serve to negate, ignore or violate a provision of the Discipline, or an act of the General Conference. The aspirational nature of the chosen language can be seen by reference to governing Judicial Council Decisions, as noted below.

Words of aspiration, as identified by Judicial Council Decisions, are usually easy to identify. First, they are non-mandatory. Secondly, they are typically expressions of human hopes, dreams, goals or commitments, all directed towards affirming, supporting or seeking to change certain social policies, institutions or attitudes. For example, a resolution “affirming the sacred worth,” committing to continue to build inclusive communities, and inviting churches and individuals to adopt a statement, was upheld as aspirational. Calls to affirm, commit or invite are lawful according to the Judicial Council. Decision No. 1220 (2012). Similarly, a resolution “reaffirming a historic commitment,” declaring a passionate opposition to continued gender-oriented distinctions, acknowledging a grave pastoral crisis facing the church, stating that while Bishops, boards, agencies and clergy “are bound by the Book of Discipline”, they are also “bound to exercise their consciences and are bound by Jesus’ call to stand with the marginalized and the oppressed”, and finally urging the annual conference to recognize that the individuals conducting certain actions do so “contrary to the historic expression of the annual conference at the risk of causing great harm to LGBT persons” was also all upheld as aspirational. Language declaring a passionate opposition, stating a belief, and urging recognition, has no prescriptive force and is lawful. Decision 1218 (2012). Similarly, an annual conference resolution calling for a “commendation” for those who have provided nurture to same sex

couples, was upheld as “a historical recounting of actions by others, and is aspirational.” Decision 1255 (2013).

By contrast, annual conference resolutions that cross the boundary of lawfulness tend to be far more forceful, prescriptive and commanding. A resolution to “renounce” a legislative act of General Conference was not legal, as it was plainly and openly disobedient to the Discipline (“We renounce the statement that homosexuality is incompatible with Christian teaching...”) Decision 1220 (2012). A resolution informing annual conference of the names of clergy willing to perform same gender unions in violation of the Book of Discipline was also unlawful, again as attempting to negate, ignore, or violate the provisions of the Book of Discipline. Decision 1111 (2009). A resolution which proclaimed that its own stated principles were “a more authentic and truthful representation of the United Methodist Church” implied that it believed the present language of the Book of Discipline was less authentic, less truthful and presumably, therefore, less lawful than its own resolution; and that was considered by the Judicial Council to go beyond a permissible expression of a mere disagreement. Decision 1120 (2009). Another variety of an impermissible resolution is found in Decision 1250. In that Decision, the annual conference attempted to impose a suggested alternative penalty to a church trial court sanction in a manner that violated the trial court’s prerogatives under the Book of Discipline. Obviously, this resolution was by its nature a usurpation of powers not granted to annual conference, and therefore unlawful and unenforceable. Decision 1250 (2013).

Turning now to each item in Resolution 204:

Item #1 of Resolution 204 says that the Conference will keep clergy brought to trial in prayer. Absolutely nothing in Article XXII is violated by praying for someone. This is aspirational in nature. See, Decision 1255 (Commendation for those who have taken a stand for justice).

Item #2 of Resolution 204 calls for the New England Conference to be a welcoming conference and a refuge for those whom the church has convicted. Absolutely nothing in Article XXII is violated by a conference being a welcoming refuge – to ANYONE, and it should be to ALL. This, too, is aspirational in nature. See, Decision 1255.

Item #3 of Resolution 204 urges that actions be taken by General Conference 2016. This is totally appropriate and is part of the process by which General Conference discerns issues. It is anticipated that many petitions concerning this topic will be submitted. Absolutely nothing in Article XXII is violated by urging General Conference to adopt new laws. See, Decision 1255 (Commending) and 1218 (Reaffirming and Recognizing).

Item #4 of Resolution 204 – and probably the main item being asked for a ruling of law, although not specifically stated as such, urges local United Methodist Churches to open their “hearts, minds and doors”. To open one’s heart is to care for people; to open one’s mind is to

gather information, learn and discern; to open one's doors is to let someone in to worship. Not one of these acts, actually announced as United Methodist ways of behaving, is a violation of Article XXII. Additionally, Item # 4 does not prevent nor override the provisions of Par.340.2(3)a of the Book of Discipline of the United Methodist Church, 2012, which gives the pastor the authority to determine whether or not to perform a marriage ceremony after due counsel of the parties involved and in accordance with the laws of the state and the rules of the United Methodist Church. This applies to all couples seeking to be married in the church and/or by the pastor. Additionally, the encouragement to welcome all couples...is keeping with par.161F which affirms our commitment to be in ministry with and for all persons.

Finally, Item #4 does not urge the sanctification of same gender marriages that would negate, ignore or violate the Book of Discipline. See, Decision 1111 (Offering names of retired clergy who would perform same gender marriages did serve to negate, ignore, or violate Discipline). Rather, Item #4 as worded, merely urges clergy and congregations to open their hearts, minds, and doors to all couples "seeking to sanctify their unions in holy matrimony." This is aspirational, and does not have the effect of negating, ignoring or violating the Discipline.

However, the Judicial Council may view Item #4 of Resolution 204, like the person who requested the ruling of law, that the words really are urging local congregations to have same-gender marriages in United Methodist churches and that the services be conducted by United Methodist clergy. If this is the interpretation to be given, then Item #4 is a violation of the Discipline as discussed above and should therefore be removed from Resolution 204 as null and void.

V. CONCLUSION

Resolution 204 - by which the 2014 New England Annual Conference voted to: (1) prayerfully support clergy brought to trial for solemnizing same gender marriage vows; (2) strongly urge the Board of Ordained Ministry, the Cabinet and Bishop to do all within their power to make the Conference "a place of welcome and refuge for those convicted by the church trial courts for presiding over same gender weddings"; (3) strongly urge that the next General Conference remove certain prohibitive language from the Book of Discipline; and (4) strongly urge the New England Annual Conference congregations and clergy to open their hearts, minds and doors to all couples regardless of gender orientation - is a resolution that is thoroughly aspirational in nature. None of the actions being urged in any way break the mandates of the church rites and ceremonies noted in Article XXII. Nothing contained within the four corners of Resolution 204 mandates negating, ignoring or violating the Book of Discipline, nor is any of it in any way unlawfully prescriptive in nature. Resolution 204 of the 2014 New England Annual Conference is upheld as lawful in its entirety.

Docket 1014-10

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 1111, 1115, 1120, and 1218

Pursuant to 1151 and 1156.3 of the 2012 *Book of Discipline of The United Methodist Church ("Discipline")*, I hereby submit for Judicial Council review my Decision of Law on the written and signed request made for such a decision by a lay member on May 18, 2014 from the floor of the plenary session of the Detroit Annual Conference of The United Methodist Church ("DACUMC") as to Resolution #14, adopted by the DACUMC 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 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?
3. 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?

Although the request for a Decision of Law on Resolution #14 references only specific provisions of the *Discipline* and certain Judicial Council Decisions, my analysis and ruling of necessity have considered any relevant provisions and Decisions.

My Decision of Law is:

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* 1111 324.12; 324.13; 2702; 2704

DOCKET 1014-11

IN RE: Review of a Bishop's Decision of Law in the Indiana Annual Conference Regarding the Authority of the Conference Board of Trustees to Establish Policies for the Demolition of Closed Church Properties in Light of ¶ 2549.7

During the 2014 Session of the Indiana Annual Conference, Darren Cushman Wood submitted in writing a request for the bishop to respond to the following question of law:

"Does the Indiana Annual Conference Board of Trustees have authority to set policy concerning the demotion [sic] of closed church properties in urban areas (as defined by Par. 2549.1)? If so, is the Trustees policy on the Closed Church Demolition Fund in compliance with Par. 2549.1?"

After reviewing the facts of the situation, my ruling is as follows:

The Board of Trustees of the Indiana Conference has authority to propose policies regarding the disposition of any funds from the sale of discontinued church properties, with the Annual Conference Session holding final authority to approve or disapprove of such policies.

The 2014 Session of the Indiana Conference approved the proposal of the Conference Trustees that up to 15% of net proceeds from the sale of all closed church properties be used for the demolition of such properties, maintaining a balance of up to \$100,000 in that demolition fund, with the expressed provision that such demolition funds assessed to properties in urban centers of more than 50,000 in population be retained in a *separate* demolition fund for that *population* center in order to comply with Par. 2549.7.

Given that other costs associated with the sale of closed church properties (such as insurance costs, utility costs, and realtor fees) are normally accounted from the "gross" sale proceeds to determine the final "net" proceeds, it is the right of the Trustees to propose that a "demolition fund" also be deducted from the "gross" proceeds as a part of the work of the Trustees to dispose of such properties. The 2014 Session of the Indiana Conference approved this policy in the Trustees report, with the specific notation that proceeds from the sale of closed churches in urban centers be retained in a separate demolition fund for that population center in order to comply with Par. 2549.7.

Therefore it is my ruling that the actions of the Board of Trustees and the approval of the 2014 Session of the Indiana Conference do not violate Par. 2549.1.

DOCKET 1014-12

IN RE: A Request from the Alaska Annual Conference for a Declaratory Decision on the Constitutionality, Meaning, Application, and Effect of ¶ 316.6 in Light of ¶ 35

As authorized by ¶2610.2.(j) the Alaska United Methodist Conference requests that the Judicial Council make a declaratory decision on the constitutionality, meaning, application and effect of ¶316.6 which says, in relevant part, “local pastors...shall have the right to vote on all matters except...election of delegates to general, jurisdictional, or central conferences...” This request is made in light of ¶35 which says, “The clergy delegates to the General Conference and to the jurisdictional or central conference shall be elected from the clergy members in full connection and shall be elected by the clergy members of the annual conference or provisional annual conference who are deacons and elders in full connection, associated members, and those provisional members who have completed all of their educational requirements and local pastors who have completed course of study or and M. Div. degree and have served a minimum of two consecutive years under appointment immediately preceding the election.”

Rationale:

There is an obvious conflict between what is said of local pastors in ¶35 and what is said of them in ¶316.6. Since ¶35 is part of the United Methodist Constitution, the prohibition on local pastors’ voting for delegates to General, jurisdictional, and central conference in ¶316.6 is unconstitutional and must be stricken.

DOCKET 1014-13

IN RE: Review of a Bishop’s Decision of Law in the Eastern Pennsylvania Annual Conference Regarding the Eligibility of Certain Members of the Board of Ordained Ministry to Serve in Light of Judicial Council Decision 980 and ¶ 341.6

After the retiree service concluded, the final retiree vignette was shown. After the vignette, Bishop Johnson called a brief recess. After the recess, Bishop Johnson called forward those who were going to present the Nominations Report. As they were moving to the podium, Bishop Johnson addressed to body to remind them that she had been presented with a request for a decision of law the previous day by Rev. Jo DiPaolo. She then re-read the written request.

It stated: "I request a ruling of law on the following: In light of the fact that there are presently members of the Board of Ordained Ministry who have made conscientious

statements in public that they cannot and will not uphold the Discipline, namely those who participated in the Arch Street same-gender wedding on November of 2013, is it legal for such persons to be or to remain members of or advisers to the Board of Ordained Ministry, which is a committee whose members are responsible to uphold the Discipline in the administration and oversight of all clergy matters? I refer you to Judicial Council Decision 980 (2003), which held that persons who would not uphold the Discipline were ineligible to serve on the Committee on Investigation or in a jury pool."

Bishop Johnson then ruled that "It is the opinion of the chair that Judicial Council Decision 980 does not apply to the nominations process. Decision 980 involved the judicial process where the accused party would receive due process. The committee on nominations cannot exclude possible nominees arbitrarily. Any person who cannot carry out the Disciplinary duties of their committee should consider not accepting the nomination in accordance with Decision 980."

Rev. Joe DiPaolo then made a motion for a vote of the body to appeal Bishop Johnson's ruling of law to the Judicial Council. The motion was seconded by Rev. Nelson Alleman. A vote was taken, and the majority voted to do so.

DOCKET 1014-14

IN RE: Review of a Bishop's Decisions of Law in the Philippines Central Conference Regarding the Legality of Proposed Rules for the Election of Bishops in Light of Judicial Council Decision 1249

MEMORANDUM 1249

In RE: Review of a Bishop's Decision of Law in the Philippines Central Conference Regarding the Legality of Proposed Rules for the Election of Bishops

STATEMENT OF FACTS

On December 12, 2012, in the course of the Twentieth Regular Session of the Philippines Central Conference, two members made two separate requests for decisions of law by the presiding bishop, Bishop Warner Brown. The requests were as follows:

1. I move that the presiding bishop make a ruling on Page 9, Line 229 the whole section on Committee on Elections.

2. I move to request the Chair to rule on whether the CPORO proposal, particularly = ART. 2, Part E: Committee on Elections, Sections 18-20 and ART. 5, Part A: General Guidelines, Sections 1-9, as printed in the legislative agenda kit of the 20th Regular Session of the Philippines Central Conference, currently convened here in Bayombong, N.V, Philippines (Dec 11-16, 2012) are in conflict with Par. 405 of the *2008 Book of Discipline* of the United Methodist Church and with Sec. III, Part A.3 of the Philippines Central Conference Plan Organization and Rules of Order as printed in the 2012 Handbook for Delegates, page 85.

The presiding bishop made a decision of law in which he found some of the provisions of the Committee on Plan of Organization and Rules of Order Proposal as being in violation of the *2008 Discipline*.

The records submitted to the Judicial Council contained only the two requests for decisions of law and the presiding bishop's decision of law. Absent from the records were the minutes of the December 12, 2012, session at which the requests were made and copies of the Committee on Plan of Organization and Rules of Order Proposal and the Philippines Central Conference Plan of Organization and Rules of Order. Efforts were made by the Judicial Council to obtain the minutes of the December 12, 2012, session with no success.

JURISDICTION

The Judicial Council has jurisdiction under ¶ 2609 of the *2008 Discipline*.

DIGEST

Without the minutes of the December 12, 2012, session, the Judicial Council cannot make a determination of whether the requests for a decision of law were received during the regular business of a session. The longstanding jurisprudence of the Judicial Council has been that requests for decisions of law shall be germane to the regular business, consideration, or discussions of the Annual Conference and shall state the connection to the specific action taken, or the questions must be raised during the deliberation on a specific issue of a matter upon which the conference takes action. Also, without the Committee on Plan of Organization and Rules of Order Proposal and the Philippines Central Conference Plan of Organization and Rules of Order the Judicial Council is unable to review the Bishop's decision of law.

Consequently, the matter is remanded to the Philippines Central Conference, and it is instructed to forward to the Secretary of the Judicial Council the minutes of the December 12, 2012, session of the Twentieth Regular session of the Philippines Central Conference and copies of the Committee on Plan of Organization and Rules of Order Proposal and the Philippines Central Conference Plan of Organization and Rules of Order within sixty days as of this decision. The Judicial Council retains jurisdiction.

Dennis Blackwell was absent.

Timothy K. Bruster, first clergy alternate, participated in this decision.

October 26, 2013

DOCKET 1014-15

IN RE: Review of a Bishop's Decision of Law in the Northern Illinois Annual Conference Regarding Legislation "In Support of Marriage Equality" in Light of ¶¶ 304.3 and 2702.1

On June 9, 2014, Rev. Scott Field requested a decision of law regarding Document 700.08, "In Support of Marriage Equality," and on June 10, 2014, I received his written and signed request which reads as follows:

First, in light of Judicial Council Decision #886 as well as other relevant Judicial Council decisions and the document before us (Doc. 700.08 "In Support of Marriage Equality"), are Annual Conferences and their churches generally and the Northern Illinois Annual Conference and its local churches particularly permitted to disobey disciplinary provisions that prohibit United Methodist clergy from conducting ceremonies which celebrate homosexual unions or performing same-sex wedding ceremonies (par. 2702.1), that refuse candidacy, ordination, and appointment to self-avowed practicing homosexuals (par. 304.3), and that restrict our church buildings from being used to host ceremonies which celebrate homosexual unions or same-sex wedding ceremonies?";

Second, if, by your ruling, Annual Conferences and their churches generally and the Northern Illinois Annual Conference and its local churches particularly are permitted to disobey these provisions of the discipline, to what extent is an Annual Conference and its churches permitted to disobey other provisions of the Discipline?

The legislation (Doc. 700.08, "in Support of Marriage Equality") was approved by a large majority of the delegates to the Northern Illinois Annual Conference on June 9, 2014 after minimal debate and with no speeches against. The request for a ruling cited Judicial Council Decision #886 which clearly states that "annual conferences may not legally negate, ignore, or violate provisions of the *Discipline* with which they disagree, even when the disagreements are based upon conscientious objections to those provisions."

Doc. 700.08 has four sections with areas of concern but overall, it is an aspirational statement and non-binding or specifically prescriptive. It doesn't cite any specific Disciplinary statement in relation to any specific action. It's an historical and aspirational statement without prescriptive force which does not specifically negate, ignore or violate provisions of the *Discipline* (Judicial Council Decision 1218 and Judicial Council Decisions 1021, 1044, 1111, 1120, and 1185).

The legislation contributes and underscores previous historical statements that the Northern Illinois Annual Conference has made in regards to a compassionate and caring response to LGBTQ persons. As of Annual Conference 2014, Northern Illinois Annual Conference has passed 25 petitions, statements, and other legislation since 2006 in opposition of the *Discipline* and/or Judicial Council Decisions and has submitted petitions to General Conference in support of more inclusiveness on the part of The United Methodist Church.

If anything, Doc. 700.08 is a statement of what the majority of delegates to the Northern Illinois Annual Conference believe in relation to matters of same-gender marriage, ordination, and other aspects of sexual orientation. It makes a statement to the general church as much as to any congregation or clergy person in Northern Illinois. Judicial Council Decision #1120 clearly states that "a resolution may express disagreement with the current language of the *Discipline* and may express its aspirational hopes," even as it may "not legally negate, ignore, or violate provisions of the *Discipline*, even when the disagreements are based upon conscientious objection to those provisions."

In regards to each of the sections of the Doc. 700.08:

1. We call upon our Northern Illinois Conference congregations and their pastors to open their "hearts minds and doors" (sic) to all couples regardless of gender, who are seeking to sanctify their unions in holy matrimony.

This call to congregations and clergy suggests radical hospitality in some form. But it doesn't explicitly

identify radical hospitality according to specific Disciplinary paragraphs. It begs the question, perhaps for purposes of awareness, education and discussion, that congregations and clergy are to "open their hearts, minds, and doors." But specifically, what would that be? Would holding a reception or lifting a couple in prayer before or after a same-gender marriage violate the *Discipline* (even if the couple was married by someone other than the clergy and not in the building)? Would that be "celebrating" or "sanctifying" same-gender marriage? Granted, this statement implies in its context that one form of providing radical hospitality to same-gender couples would be to violate the provisions of the *Discipline*, but how to "sanctify" is not specifically stated here.

Furthermore, "opening our hearts, minds and doors" to all couples (again, how to do so is not specified) brings out the inherent incongruence of the *Discipline* itself which states that all people are of sacred worth, that the church is called to be in ministry to all people, including LGBTQ persons and families, and families and churches are "not to reject or condemn lesbian and gay members and friends (par. 161). Yet in the same paragraph, it states that the United Methodist Church "does not condone the practice of homosexuality and considers this practice incompatible with Christian teaching" (par. 161). Therefore, *The Discipline* itself creates confusion at best in midst of the practicalities of everyday congregational and ministerial life of reaching out to the LGBTQ community, making it impossible to uphold par. 161 without violating one or another sentence in it.

I do not find this section to be out of order because it's non-binding, not specific and not prescriptive.

- 2.** We commend and support those pastors who have been brought to trial for solemnizing marriage vows for properly prepared couples.

There is no *Disciplinary* prohibition against "commending and supporting" persons who have been brought to trial. And again, there is no specificity, prescription or binding action, much less definition, to what support means. To support may be to give financial assistance to persons who have found themselves stripped of their credentials and thereby their means of providing for their families and themselves. There is no prohibition against this. Or support may also mean to encourage and comfort someone who has been stripped of credentials and livelihood. Again, there is no prohibition against this. It may also mean to raise awareness of and encouragement to the broader community to examine new ways of respecting and caring for clergy who have made a decision to practice disobedience to the *Discipline*, especially but not exclusively for their own family members, and out of their sincere understanding of the Gospel. There is no prohibition against that; it doesn't negate, ignore or violate any Disciplinary statement and is supported by Judicial Council Decision #1262 since it doesn't specifically state an action contrary to the *Discipline*.

At the 2014 Northern Illinois Annual Conference, Frank Schaefer was the guest of the Methodists for Social Action banquet (funded by MFSA and not the Northern Illinois Conference) and he was warmly received, i.e. "commended and supported." There is no prohibition against that and therefore is not out of order.

While one definition of "to commend" might mean to "endorse" someone's actions, it doesn't specifically say that or how endorsing or commending would be acted out.

Therefore, I do not find this section to be out of order because it's non-binding, not specific and not prescriptive.

- 3.** We strongly urge our Board of Ordained Ministry, Appointment Cabinet and Resident Bishop to do all within their power to make the Northern Illinois Conference a place of welcome and refuge to those convicted by Church trial courts for presiding over Christian weddings or faithfully responding to the call to ordained ministry.

Again, the language is general, non-prescriptive, and non-binding. For instance, it could mean to welcome those who are hurting from actions taken against them by including them in the life of a congregation and the annual conference. For persons responding to a call to ordained ministry, nothing specific is mentioned in terms of doing "all within their power" by the Board of Ordained Ministry, cabinet and bishop. It could be to knowingly bring into full membership of the annual conference a self-avowed, practicing homosexual which would be in direct violation

of the *Discipline*, but it doesn't say that specifically and there are other ways to "welcome and (provide) refuge."

Since it doesn't specifically say what it means by "to do all within their power," it does not negate, ignore or violate any specific Disciplinary statement and is in order.

4. We call upon the next General Conference of the United Methodist Church to remove all language that prohibits the ordination and marriage of persons based on sexual ordination (sic — I believe the word is meant to be "orientation").

With this legislation, the Northern Illinois Annual Conference declares its position to be that the General Conference in 2016 should remove all language that prohibits the ordination and marriage of persons based on sexual orientation. This is the fundamental right of any individual, group within the United Methodist Church, and Annual Conference (par. 507). Therefore, it is in order.

In relation to the second part of the request for a ruling, it is my determination that it is moot and hypothetical because:

1. None of the points in the legislation had specific Disciplinary references which called anyone to negate, ignore or violate them.
2. It cannot be assumed that even if specific Disciplinary references were negated, ignored or violated in specific actions chosen by specific congregations and clergy that there would be no consequences to those actions.
3. This part of the request for a ruling is not germane to the Doc. 700.08 before the Annual Conference in 2014.

Therefore, I rule that Doc. 700.08 is in order (in all four sections) but that the second part of the Field request is moot and hypothetical.

DOCKET 1014-16

IN RE: Review of a Bishop's Decision of Law in the Arkansas Conference Regarding Non-appointive Members of the Cabinet Participating in Appointment-making in Light of ¶¶ 403.2, 419.2, 424,428, and 608.6

During the June 21, 2014, session of the Arkansas Annual Conference, Rev. David Orr made the following request:

I request a ruling of church law regarding the Arkansas Conference practice of non-district superintendents participating in the making of appointments.

Specifically, does the Structure of the Arkansas Conference as found in the 2013 Conference Journal defining the Appointive Cabinet (page 445, "PURPOSE: Working with the Bishop, the appointive cabinet facilitates and administers the appointive process. STRUCTURE: The membership of the Appointive Cabinet shall be determined by the presiding Bishop to address the missional needs of the Annual Conference"); and, the Arkansas Conference's current practice of non-district superintendents participating in the making of clergy appointments comply with The 2012 Book of Discipline paragraphs 403.2, 424, 428, 419.2, and 608.6?

It might be appropriate to declare this request for a ruling of law as inappropriately moot and hypothetical because it was not an item related to any business undertaken during the 2014 annual conference, but legislation addressed in a previous annual conference session. See Judicial Council decisions 1214, 1086, 799 and 33. Further, it might be inappropriate because it asks for a ruling of law about an entity, "the appointive cabinet," that does not exist in, and is not defined by, *The Book of Discipline*.

Nevertheless, I will address the request in a substantive manner.

The Book of Discipline always takes precedence over annual conference standing rules. If there is a discrepancy between the two, annual conference standing rules must be changed. The bishop's authority to compose the cabinet resides in *The Book of Discipline* and not the Arkansas Conference Standing Rules. In this instance the Arkansas Conference Standing Rules concerning the composition of the "appointive cabinet" is consistent with the cited paragraphs in the request for the ruling of law. However, since *The Discipline* addresses this matter, this particular standing rule is redundant and unnecessary.

The question of whether the Arkansas Conference "current practice" of including persons who are not district superintendents in providing consultation to the bishop in the making of appointments is not a conference practice. It is an act undertaken by the bishop based on the responsibilities given him by *The Book of Discipline*.

¶154 *Article X* makes it clear that district superintendents serve in a consultative role to the bishop, "The bishops shall appoint, after consultation with the district superintendents,

ministers to the charges...” ¶419 states that the district superintendent is “an extension of the office of bishop.” See also ¶ 403.2. ¶425.1 states that it is the bishop who makes appointments: “Clergy shall be appointed by the bishop, who is empowered to make and fix all appointments in the episcopal area of which the annual conference is a part.”

In sum, district superintendents do not make appointments but serve a consultative function to the bishop. As such, any actions they take concerning appointments while meeting as part of the cabinet are merely advisory in nature.

¶424 clearly indicates that all district superintendents are members of “the cabinet.” ¶428 prescribes the role of the “cabinet as a whole” in considering all appointments, but it does not preclude the bishop from considering information obtained from other persons, including those with whom the bishop consults in determining the ministry settings that are most appropriate for particular clergy as a part of the bishop’s exercise of his or her appointment authority. Likewise, while ¶419.2 provides that the district superintendent “...shall work with the bishop and cabinet in the process of appointment and assignment for ordained and licensed clergy,” it does not preclude the bishop from consulting with others, including members of the extended cabinet.

¶619.2 mandates that the director of administrative services “...shall be present when the cabinet considers matters relating to conference administration related to the conference treasurer’s or conference treasure/director of administrative service’s responsibilities, or other matters as the cabinet and director may determine.”

¶608b states that the director of connectional ministries (or designated person) “...shall serve as an officer of the conference and shall sit with the cabinet when the cabinet considers matters relating to coordination, implementation or administration of the conference program, and other matters as the cabinet and director may determine.”

¶607.6 states, “The conference lay leader shall meet with the cabinet when matters relating to the coordination, implementation, or administration of the conference program, or other matters as the cabinet may determine are on the agenda.”

¶619.2 explicitly states that the director of administrative services shall not meet with the cabinet when it is considering appointments. However, ¶607.6 and ¶608b do not have such a restriction.

While ¶424 is the section of *The Discipline* that addresses the role and function of the cabinet, it never defines its membership to exclude persons who are not district superintendents,

particularly since the work of the cabinet is not limited to appointments. Further, the commonly used phrase “appointive cabinet” never appears in *The Book of Discipline*, and only ¶1609b mentions the “extended cabinet” at all.

While the district superintendents are always part of the cabinet - and while it is mandated that certain persons be present at particular times - *The Book of Discipline*, with one limited exception involving the director of administrative services, never states that bishops may not invite others to participate in the cabinet either during the making of appointments or any of its other work.

In sum, the relevant sections of *The Book of Discipline* include the district superintendents as members of the cabinet and also describe the cabinet as a fluid entity purposely designed by *The Discipline* with maximum flexibility to help the bishop carry out her or his leadership duties in the annual conference, including appointments.

Therefore, I rule that, within the limitations explicitly outlined by *The Book of Discipline*, including the tenure of district superintendents, ¶¶403.2, 424, 428, 419.2, and 608.6 give the bishop the right to include those who are not superintendents in a consultative fashion in cabinet meetings that address the making of appointments. The standing rule addressing the composition of the “appointive cabinet”, while substantively in compliance with *The Book of Discipline*, is not binding on the bishop and is unnecessary since it is addressed by *The Book of Discipline*.

DOCKET 1014-17

IN RE: Review of a Bishop’s Decision of Law in the Baltimore-Washington Annual Conference Regarding the Legality of Voting Procedures on Resolutions Related to Human Sexuality with Consideration of ¶ 604.1

During the Fourth Plenary Session of the 2014 Annual Conference, the members voted to pass five resolutions concerning human sexuality. Thereafter, the Rev. Stephen Ricketts, pastor of Providence-Fort Washington United Methodist Church, presented the following question of law in writing:

Request a ruling on a point of law regarding our voting procedure and process on the five resolutions that were passed by secret ballot Friday night.

Specifically, was the vote on the resolutions legal and in compliance with [the] 2012 BOD since we did not have the chance to offer amendments?

¶1604.1-structure did not provide protection against discrimination.

For the reasons explained below, my decision is that the procedure and process used by the Annual Conference to vote on the five human sexuality resolutions was lawful and did not violate the *Discipline*.

BACKGROUND

Long before the opening of the 2014 Annual Conference, the following five resolutions concerning human sexuality were proposed for the body's consideration:

Resolution No. 6	Resolution to End Discrimination in West Virginia
Resolution No. 7	Resolution to Stop Clergy Trials
Resolution No. 10	Resolution to Agree to Disagree on Issues Pertaining to Gender and Sexual Minorities
Resolution No. 11	Inclusive Conference Resolution
Resolution No. 14	Resolution that the Baltimore-Washington Conference of The United Methodist Church supports the removal of all provisions in the <i>Book of Discipline</i> and Social Principles that discriminate against or restrict the participation of laity or clergy based on their sexual identity.

The first plenary session of the 2014 Annual Conference was held on Thursday afternoon, May 29, 2014. During that opening session, Jen Ihlo, Chair of the Conference's Rules Committee, provided a summary of the rules of the session. Immediately after that presentation, and in anticipation that the Conference would be taking up the aforementioned resolutions the following day, Cynthia Taylor, Chair of the Conference's Discipleship Council, rose to make a formal motion to suspend the rules of the session for the purpose of allowing the body to consider and vote on those specific resolutions using a

"circle process" that aimed to strengthen Christian community by encouraging dialogue, rather than debate, around the human sexuality issues that had long divided so many in The United Methodist Church family. This motion to suspend the rules was seconded, at which point Ms. Taylor provided the body with the following explanation of the motion's purpose:

I move the rules be suspended for Friday evening so that, rather than a time of debate, questions, and amendments, the body will consider the five resolutions relating to human sexuality as outlined at the pre-conference briefings, held May 15 and May 17, 2014.

The Sessions Committee and the Discipleship Council believe that following our usual debate format fosters 'speeches,' often by the same

folks each year, and limits our ability to have conversation with one another about significant matters affecting our Conference and the worldwide United Methodist Church.

We believe that this process, as designed, will allow for that conversation to take place in a healthy, faith-filled environment. Each person in a group will have an opportunity to speak without interruption. The process also allows for a written ballot on each of the five resolutions.

Bishop, this is my motion.

Following Ms. Taylor's statement, I called for a vote.¹ The motion passed, with well over two-thirds of the members present voting in favor of the motion, as required by our rules. *Rules*, 5410.1.J.32.

The five resolutions on human sexuality were then presented to the Annual Conference for its consideration during the Fourth Plenary Session held on Friday evening, May 30. At the outset, Assistant to the Bishop Rev. Maidstone Mulenga; myself and the Rev. Dr. Karin Walker all spoke to describe the "Circles of Grace" process that was to be used in considering those resolutions. The process had been developed by a team selected by the Sessions Committee and arose from broad-based discussions that had started at the Connectional Table's meeting in February and concluded with the concurrence of the Discipleship Council at its meeting on May 13. The basic components of the circle process may be described as follows:

1. The body would participate in a time of holy conferencing by gathering into groups of approximately 10 persons.

Under the Conference's Rules of the Session, a motion to suspend the rules is not subject to debate, *Manual on Policies and Procedures of the Baltimore-Washington Conference of The United Methodist Church ("Rules")*, ¶ 5410.1.J.18.

2. Sitting together in a circle, each group would discuss the resolutions among themselves.
3. Prior to the discussion, the maker of each resolution would have one minute to summarize why he or she believes the resolution is important and should be adopted by the Annual Conference.
4. After these brief presentations, each group would begin its dialogue, with the aid of a facilitator, who would seek to ensure that no one dominated the conversation and everyone in the group had an opportunity to be heard.
5. Each group was asked to center the discussion around three questions:
 - a. What do you perceive as the impact of this resolution on the Baltimore-Washington Conference in particular and The United Methodist Church in general?
 - b. Where do you see God in this resolution?
 - c. How can we continue be God's love and build bridges as we discuss this resolution?
6. At the conclusion of the period of discussion, the Bishop would offer a prayer, following which the members were to record their vote on paper ballots, which the facilitators would collect and deliver to the tellers.

After this summary, the body heard presentations from the resolution's proponents, after which the small groups engaged in their facilitated discussions for nearly an hour. The facilitators then passed out written ballots to those in their groups. Facilitators stood to indicate when their group had finished voting, and the tellers then came to collect the ballots. The tellers secured the ballots, took them to a designated counting area, and tallied the votes immediately. The evening ended with prayers.

The following day, I announced the results of the voting. The results were as follows:

Resolution No. 6	806 in favor; 49 opposed
Resolution No, 7	519 in favor; 334 opposed
Resolution No. 10	549 in favor; 304 opposed
Resolution No. 11	548 in favor; 304 opposed
Resolution No. 14	511 in favor; 344 opposed

ANALYSIS AND RATIONALE

The General Conference has empowered each annual conference to adopt rules and regulations "for its own government," so long as they are "not in conflict with the Discipline," and provided that in exercise of its powers, each annual conference shall act in all respects in harmony with the policy of The United Methodist Church with respect to elimination of discrimination." Discipline, ¶ 604.1. Pursuant to this authority, the Baltimore-Washington Conference has adopted its own "Rules of the Session," which govern (among other things) the parliamentary procedures to be used at each session of the Annual Conference. (*See Manual on Policies and Procedures of the Baltimore-Washington Conference of The United Methodist Church*, ¶ 5410.1.J.)

In addition, like most rules of parliamentary procedure, the Conference's rules allow motions to suspend the rules of the session: "The operation of any of the provisions of the Rules of the Session may be suspended at any time by two-thirds of the members present and voting." *Id.*, ¶ 5410.1.132. *See also id.*, ¶ 5410.1..1.29,b (reiterating that a motion to suspend the rules requires a two-thirds vote, not a simple majority); *id.*, ¶ 5410.1.J.18 (providing that motions to suspend the rules are not subject to debate). Nothing in the *Discipline* precludes an annual conference from adopting the commonplace parliamentary practice of allowing two-thirds of all members present and voting to suspend their own rules for a particular purpose, including obtaining conference action on resolutions of the type that were being presented for the body's consideration in this instance.

It is important to note that both laity and clergy were given detailed advance notice about the process for suspending the rules, the proposed discernment process, and the resolutions at issue during the mandatory preconference sessions on May 15 and May 17. This means there was plenty of time for members of the Annual Conference to pray, discuss, and decide whether they supported suspending the rules.

Please note further that the ballot was not "secret" as presented in the question. A "written" ballot is not "secret" in the way that term seems to imply. It was not a "secret" or last-minute plan for the vote on the resolutions to be taken by written ballot; again, that was the considered choice and action of the Annual Conference to vote in that manner.

Accordingly, the annual conference's decision to suspend its rules and adopt the circle process for voting on these resolutions was lawful under its own rules of parliamentary procedures, which the Conference has been empowered by the General Conference to enact, and which are not in conflict with the *Discipline*. As the Cynthia Taylor, Chair of the Conference's Discipleship Council stated, in elaborating on her motion to suspend the rules, the principal purpose of that motion was precisely to dispense with "a time of debate, questions, and amendments," because that "format fosters 'speeches' and otherwise "limits our ability to have conversation with one another about significant matters affecting our Conference and the worldwide United Methodist Church." Provided a two-thirds majority was achieved (and it was), it was lawful and within the rights of the body to agree with Ms. Taylor and to adopt the Circles of Grace process for its deliberations on these particular resolutions.

For these reasons, it is my ruling that the procedure and process used by the Annual Conference to vote on the five human sexuality resolutions was lawful and did not violate the *Discipline*.

In addition, regarding the last part of the Question of Law presented here, every member of the Annual Conference who was present was given a chance to vote on all the resolutions. Therefore, I conclude that the annual conference's decision to suspend the rules and adopt the circle of grace process for this purpose was consistent "with the policy of The United Methodist Church with respect to elimination of discrimination."

DOCKET 1014-18

IN RE Review of a Bishop's Decision of Law in the Arkansas Conference Regarding Limitation of Years of Service of Cabinet Members Who are Not District Superintendents in Light of ¶ 418

During the June 21, 2014, session of the Arkansas Annual Conference, Rev. David Orr made the following request:

I request a ruling of church law on the matter of limitations on years of service for those serving on the Appointive Cabinet. Specifically, does Par 418 of the 2012 Book of Discipline apply to non-district superintendents serving on the Appointive Cabinet?

It might be appropriate to declare this request for a ruling of law as inappropriately moot and hypothetical because it relates to a term, "the Appointive Cabinet," that does not exist in, and is not defined by, *The Book of Discipline*. Further, since the request relates to "non-district superintendents" and ¶418 applies only to district superintendents, it appears that the question does not concern an issue of law under *The Book of Discipline* and is therefore

improper for that reason also. Finally, it might be inappropriate because it was not an item related to any business undertaken during the 2014 annual conference, but legislation addressed in a previous annual conference session. See Judicial Council decisions 1214, 1086, 799 and 33.

Nevertheless, I will address the request in a substantive manner.

¶418 limits the tenure of a district superintendent and, therefore, limits his or her membership in the cabinet as a district superintendent. Neither this, nor any other paragraph in *The Book of Discipline*, states that those who serve in the cabinet and are not district superintendents are bound by ¶418.

Therefore, I rule that ¶418 is not binding on non-district superintendents who serve in a consultative fashion in cabinet meetings that address the making of appointments.

DOCKET 1014-19

IN RE: Review of a Bishop's Decision of Law in the Baltimore-Washington Annual Conference Regarding the Resolution "Agree to Disagree on Issues Pertaining to Gender and Sexual Minorities" in Light of ¶¶ 324.13, 2702.1b, and 2704.2a and Judicial Council Decisions 1111, 1115, 1120, and 1218

During the Fourth Plenary Session of the 2014 Annual Conference on May 30, 2014, the members voted to pass Resolution No. 10, which was entitled "Agree to Disagree on Issues Pertaining to Gender and Sexual Minorities." Resolution No. 10 included the following three paragraphs, which are the subject of the question of law addressed in this ruling:

THEREFORE, LET IT BE RESOLVED THAT THE BALTIMORE-WASHINGTON CONFERENCE be strongly encouraged to:

1. Support LGBT lay members who marry and to consider refraining from filing complaints against pastors who perform marriages between gender and sexual minorities; and
2. Consider refraining from using its resources to investigate or enforce a ban on marriages between gender and sexual minorities, or for church trials, or for otherwise disciplining clergy that perform same-sex marriages; and
3. Consider refraining from using its resources to investigate the gender or sexual orientation of a minister or candidate for ministry, and consider refraining from using its resources to enforce a ban on the certification of an LGBT

candidate for ministry, or the ban on ordination of an LGBT minister.

Lay Member Matthew S. Sichel of Wesley United Methodist Church presented in writing the following three-part question of law regarding the aforementioned provisions of Resolution No. 10:

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?
3. 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?

For the reasons explained below, my ruling of law is that none of the cited sections of Resolution No. 10 violate the *Discipline*, nor do they conflict with the decisions of the Judicial Council.

BACKGROUND

For the sake of completeness, I have attached the entire text of Resolution No. 10. And I am reprinting certain excerpts below because these passages (among others) reflect an overall context that informs my judgment that Resolution No. 10 cannot fairly be read as running afoul of the *Discipline* or Judicial Council precedent.

Immediately after the introduction and rationale, Resolution No. 10 recited the three paragraphs that are the focus of Mr. Sichel's question of law. In turn, however, those three paragraphs were followed by three additional paragraphs, also numbered "1," "2" and "3." Thus, Resolution No. 10 culminated as follows:

Be it further resolved the Baltimore-Washington Conference *implores* Annual Conference members to work between now and the General Conference in 2016 to:

1. Be in ministry with all people, regardless of their economic status, race, age, ethnicity, gender, sexuality, disability, or immigration status.
2. Put forth proposed changes to the *Book of Discipline* and Social Principles that permit matters concerning LGBT persons to be discerned by individual members, congregations, pastors,

bishops, committees and conferences through Biblical obedience with the aid of the Holy Spirit and at the discretion of the individual members, pastors, congregations, bishops, conferences and committees; and

3. Put forth proposed changes to the *Book of Discipline* and Social Principles that permit those that disagree with one another with respect to homosexuality and LGBT persons to remain inside the United Methodist Church connection, which will require, at a minimum, deletion of the excluding language in Social Principle 161F, eliminating the ban on same-sex marriages 341.6 and eliminating the ban on ordination of homosexuals or LGBT persons in ¶304.3.

ANALYSIS AND RATIONALE

The Judicial Council has held that annual conferences "may not negate, ignore, or violate provisions of the Discipline with which they disagree." *Decision No. 1111*. By the same token, however, the Judicial Council is clear that annual conferences need not blind themselves to the reality that the "[m]embers of The United Methodist Church are not of one mind on the issue of homosexuality." *Decision No. 913*. See also *Decision No. 1021* (holding that "historical statements" that honestly acknowledge division within the denomination carry "no prescriptive force" and cannot be deemed to negate, ignore, or violate provisions of the *Discipline*).

More importantly, the Judicial Council's admonition against resolutions that "negate, ignore, or violate provisions of the *Discipline*" does not mean that an annual conference must stand silent when it decides, as a body, that its collective conscience is calling it to speak out, including by announcing its disagreement with the provisions adopted by the General Conference, by advocating that the *Discipline* be changed, and by encouraging all Conference members, in the meantime, to be in ministry with all of God's children. On the contrary, the essence of the Judicial Council's decision in *Decision No. 913* is that a resolution does not violate the *Discipline* when it acknowledges that United Methodists "are not of one mind on the issue of homosexuality" and that "we need to continue to be in dialogue with each other on the subject" and "to be in ministry with all persons."

Similarly, in *Decision No. 1044*, the Judicial Council affirmed the legality of a resolution this Conference passed at its 2006 session, entitled "Resolution to Prohibit Discrimination in Receiving Members into United Methodist Congregations." The Judicial Council affirmed the presiding bishop's ruling of law, agreeing in particular with the bishop's conclusion that "the resolution was aspirational in nature." *Decision No. 1044*.

The Judicial Council further ruled in *Decision 1115* affirmed resolutions that simply encourage compassionate response to disobedience and the Judicial Council further

ruled in *Decision 1120* 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*, even when the disagreements are based upon conscientious objections to those provisions."

As in regard to *Decision 1218*: "The Judicial Council has previously acknowledged that non-binding resolutions do not require clergy to take particular action or engage in action that

violates the *Discipline*. They have no "prescriptive force."

This is also the case in this resolution. The resolution at issue here does not have "prescriptive force" for actions of clergy, for those charged with supervision, or for those whose responsibility it is to examine candidates for licensing and ordination; it does call upon those who do these things to be strongly "encouraged" to consider the use of our resources in how we do these

things with regard to human sexuality. Again, it is aspirational and not prescriptive.

Against this backdrop, and for the additional reasons explained below, I conclude that Resolution No. 10 does not violate, negate or ignore the provisions of the *Discipline* reference in Question of Law No. 2.

More specifically, the Annual Conference has not negated, ignored or violated ¶ 2702.1(b) of the *Discipline* by resolving that the Conference "be strongly encouraged" to "support LGBT lay members who marry" and to "consider refraining from filing complaints against pastors who perform marriages between gender and sexual minorities." That section is stated in explicitly aspirational terms. In addition, inasmuch as the *Discipline* imposes no obligation on church members to file a complaint against a pastor who officiates at a same sex marriage, the body cannot be said to be inciting any violation of the *Discipline* by asking church members to consider refraining filing complaints while proposed changes to the *Discipline* are being pursued.

Similarly, it is fundamentally aspirational to resolve that the Conference "be strongly encouraged" to "consider refraining from using its resources to investigate or enforce a ban on marriages between gender and sexual minorities, or for church trials, or for otherwise disciplining clergy that perform same-sex marriages."

In the absence of the presentation of a complaint to the bishop pursuant to ¶363, I am not aware of anything that requires the use of Annual Conference resources for the purposes mentioned. On the other hand, if a complaint *is* filed pursuant to ¶363, then other provisions of the *Discipline* may be triggered, including possibly ¶ 2704.2(a). But in that

scenario (which at this juncture is hypothetical, making it an inappropriate subject of a question of law), the relevant provisions of the *Discipline* will become operative, and the Annual Conference's expression of its hopes in Resolution No. 10 provides no basis for concluding that the controlling provisions of the *Discipline* will be negated, ignored or violated by those responsible for processing the complaint.

Lastly, the Annual Conference has not negated, ignored or violated ¶324.13 of the *Discipline* by resolving that the Conference "be strongly *encouraged*" to "consider refraining from using its resources to investigate the gender or sexual orientation of a minister or candidate for ministry, and consider refraining from using its resources to enforce a ban on the certification of an LGBT candidate for ministry, or the ban on ordination of an LGBT minister." The terms of ¶324.13 of the *Discipline* do *not* require an annual conference to investigate the gender or sexual orientation of any minister or candidate for ministry. Rather, ¶324.13 states that the "candidate shall file with the [conference's board of ordained ministry] a written, concise, autobiographical statement (in duplicate on a prescribed form) regarding age, health, family status, Christian experience, call to ministry, educational record, formative Christian experiences, and plans for service in the Church." Thus, in addition to being aspirational in nature, the viewpoints expressed in Resolution No. 10 are unrelated to ¶324.13 of the *Discipline* and, for that reason alone, Resolution No. 10 does not negate, ignore or violate that provision of the *Discipline*.

For all of the foregoing reasons, it is my ruling of law that the three sections of Resolution No. 10 that are the subject of Question of Law No. 2 do not violate Judicial Council precedent that prohibits annual conferences from negating, ignoring or violating the *Discipline*.

1014-20

IN RE: A Request from the North Georgia Annual Conference for a Declaratory Decision on the Constitutionality of the Deletion of ¶ 2703.2 of the 2008 Book of Discipline

The Committee on Nominations hereby moves that the Annual Conference, as empowered by ¶2610.2.(j) of the 2012 *Book of Discipline*, request of the Judicial Council a declaratory decision on the constitutionality of the deletion of ¶2703.2 of the 2008 *Book of Discipline*, the text of which defining the annual conference Committee on Investigation does not appear in the 2012 *Book of Discipline*. Similarly, ¶2704.2 of the 2012 *Book of Discipline* does not contain the references to the Committee on Investigation that were in the same paragraph in the 2008 *Book of Discipline*, and that paragraph describes the process by which the annual conference conducts the investigation of charges brought against clergy members of the conference. Moreover, ¶2706, which describes the procedure of the Committee on Investigation, has all reference to clergy members of the annual conference that were in the 2008 *Book of Discipline* deleted there from, despite the fact that ¶2706.2 continues to describe the parties as "the respondent and the Church" without qualifying "respondent" not to include clergy members of the annual conference. This all must be interpreted in the light of ¶33 of the United Methodist Constitution which specifies that

the lay and clergy members of the Committee on Investigation are empowered with vote on matters related to ordination, character, and conference relations of clergy, strongly and necessarily implying that those lay members, as well as clergy members of the annual conference, through their service on the Committee on Investigation, have a role in the investigation of charges against those clergy members.

RATIONALE

After many attempts over the years 2008 General Conference, subject to approval of a constitutional amendment in accordance with Judicial Council Decision Number 993, with the support of two-thirds vote of the membership of all annual conferences, changed the Constitution (§33) to provide laity voting members in the clergy committee on investigation. The 2008 *Book of Discipline* §§602.6 and 2703.2 were also appropriately changed by the 2008 General Conference to specify full laity and clergy involvement in the clergy committee on investigation and clergy were instituted as voting members of any laity committee on investigation. Prior to this time laity were excluded from full participation in clergy investigations. The changes in §§33, 602.6 and 2703.2 were all proposed in one petition and enacted by General Conference 2008 as an integrated package, despite the fact that since §33 is part of the Constitution it had to be treated in a different manner. §§602.6 and 2703.2 were amended as a manner of implementing the change effected by changing §33. The Council of Bishops certified passage of the Constitutional amendment and the 2008 *Book of Discipline* was changed by addendum.

In an attempt to streamline the fair process of determining if a clergy person will be brought to trial after charges have been filed, the 2012 General Conference completely eliminated the clergy committee on investigation and gave that responsibility to one clergy person appointed by the bishop to decide whether a clergy is brought to trial. This means the important decision on bringing a clergy to trial is no longer made by a body of persons elected by the annual conference but is made by one person appointed by the bishop with no accountability whatsoever to peers or to the laity of the Church. However, the controlling constitutional paragraph 33 was not changed.

The long standing similarity to secular accountability of a district attorney reporting findings to citizen peers, with that Grand Jury deciding whether to indict, has now been lost in our Church and a process is now in place with no independent review before a clergy person is placed on trial. This is not the case for laity or bishops or diaconal ministers because those committees on investigation have been left in place.

The Constitution of The United Methodist Church (§33) still provides that a clergy committee on investigation made up of peer clergy and laity is to be part of the fair process when charges are brought against a clergy member of the annual conference. That is to say the Constitution was NOT amended even though the clergy committee on investigation was eliminated by legislation.

The motion before the Annual Conference is needed to request that the Judicial Council review the elimination of the clergy committee on investigation as to its constitutionality to determine whether the disciplinary paragraphs that support the constitutional requirements for the clergy investigative function should be retained and reinstated.

DOCKET 1014-21

IN RE: Appeal by the Counsel for the Church of the Eastern Pennsylvania Annual Conference of the Decision of the Northeastern Jurisdiction Committee on Appeals in the Matter of Frank Schaefer

Greetings in the name of the Lord Jesus Christ.

I am writing as Counsel for the Church of the Eastern Pennsylvania Conference of the United Methodist Church in the matter of Rev. Frank Schaefer. This letter serves as notice of my appeal on behalf of the Church to the Judicial Council pursuant to Paragraph 2609.8(a) of the 2012 Book of Discipline. I am appealing the Northeast Jurisdiction Committee on Appeal's Decision of June 24, 2014 in the matter of Rev. Schaefer. That Decision appears to be at variance with *The Book of Discipline* and prior Judicial Council decisions.

Following are the general grounds for this appeal to Judicial Council.

- 1) THE RESPONDENT VOIDED HIS RIGHT TO APPEAL, PURSUANT TO ¶2715.3 OF THE 2012 *BOOK OF DISCIPLINE*.
- 2) THE APPEAL DECISION MISAPPLIED AND IS AT VARIANCE WITH *THE DISCIPLINE* AND JUDICIAL COUNCIL DECISIONS RELATED TO THE PENALTY. THE APPEAL DECISION IS AT VARIANCE WITH THE NORTH CENTRAL JURISDICTION COMMITTEE ON APPEALS' DECISION IN THE CASE OF REV. GREGORY DELL ON SEPTEMBER 17, 1999.
- 3) THE COMMITTEE ON APPEALS WRONGLY CRAFTED ITS OWN PENALTY RATHER THAN REMANDING IT BACK TO THE TRIAL COURT TO DETERMINE THE PENALTY.
- 4) IT WAS ERROR FOR THE COMMITTEE ON APPEALS TO ACCEPT AN AMICUS BRIEF WHICH WAS BASED ON ISSUES NOT RAISED ON APPEAL.

In light of these grounds of error in church law in the NEJ Appeal Decision, as Counsel for the Church of the Eastern Pennsylvania Conference, I am filing this Appeal to Judicial Council in accordance with ¶2609.8 of the 2012 *Discipline*. I am specifically requesting oral arguments before the Judicial Council.

