

## **JUDICIAL COUNCIL UNITED METHODIST CHURCH**

BISHOP'S REPLY TO QUESTION OF  
LAW RAISED IN NEW ENGLAND ANNUAL  
CONFERENCE - JUNE 17, 2016

Docket No. 1016-8

### **STATEMENT OF FACTS**

At the Clergy Session of the New England Annual Conference on Friday, June 17, 2016, a report was received concerning clergy status which listed a clergy member of the New England Annual Conference as having his conference membership terminated by trial. This clergy was tried by the Florida Annual Conference in January of 2016, where he was found guilty of three charges. The penalty imposed on him was termination of his membership in the New England Annual Conference. The clergy person was serving in a cross conference appointment at the time the complaint was brought, and he was tried under the provisions of Par. 2719.1 of the *2012 Book of Discipline* ("*2012 Discipline*"). The New England Annual Conference clergy session had no authority to vote on the matter and merely received the report. This reply to question of law is submitted pursuant to the provisions of Par. 2609.6 of the *2012 Discipline* of the United Methodist Church.

The Judicial Council has jurisdiction over this issue under Pars. 51 and 56.3 of the Constitution of The United Methodist Church and under Par. 2609 of the *2012 Discipline*, interpreted by Judicial Council Decision 1244.

### **QUESTION OF LAW**

After receiving this report in question, a clergy member requested a ruling of law from presiding Bishop Sudarshana Devadhar on five (5) questions:

“1. Is the section of Par. 2719.1 that makes an exception to the requirement that a member be subject to judicial proceedings in his or her own annual conference in conflict with Par. 33 of the Constitution of the United Methodist Church?

2. Do not Judicial Council Decisions 1210, 1244 and 1318, among others, establish the principle that the General Conference cannot delegate powers that are constitutionally reserved to one body to another body without amending the constitution?

3. Does the constitution authorize an annual conference to revoke the membership of a clergy member of another annual conference?

4. If the Bishop determines that the cited section of Par. 2719.1 is in conflict with Par. 33 of the Constitution, and is thus, by definition, unconstitutional, what will be the status of Rev. Leslie ending review of this decision of law by the Judicial Council?

5. If Rev. Leslie is determined to be a member in good standing of the New England Annual Conference while review of this decision of law is pending, is he entitled to receive an appointment in the interim?"

The clergy member asking for the Ruling of Law specifically noted that the decision to refer the matter to the Florida Annual Conference was made in compliance with the *2012 Book of Discipline*, Par. 2719.1.

I indicated that I would issue my ruling within thirty (30) days as required by Par. 2609.6.

## DECISION OF LAW AND ANALYSIS

I rule that Par. 2719.1 is constitutional and therefore, a clergy member tried, convicted and sentenced by trial court assembled in a different annual conference from the one in which the clergy holds his membership, can have his membership terminated in his conference of membership.

It has been argued that Par. 33 which states in pertinent part: "The annual conference is the basic body in the Church and as such shall have reserved to it the right to vote...on all matters relating to the character and conference relations of its clergy members...", means that an annual conference where a clergy is not a member, cannot vote on his conference relations. I disagree with that interpretation as it applies to the trial situation.

Par. 33 specifically refers to the annual conference's reserved right to vote on these matters, (emphasis added). In the instance of a trial and imposition of penalty, no annual conference votes. Even if the trial of the clergy at issue had taken place in New England and the same penalty had been imposed, the clergy session of annual conference still would not have had the right to vote to affirm or reject the penalty.

Par. 2711 describes the powers of the trial court. Clearly, the annual conference either as a full body or by its clergy sessions is not a part of this voting or decision making in trial matters.

Additionally, the Judicial Council has affirmed the finality of a trial court ruling in Judicial Council Decision 1201 which states: "The meaning of the *Discipline* is clear in Par. 2711. 'The trial court shall have full power to try the respondent.' It does so within the boundaries of the *Discipline* for determining guilt, and the trial court alone has the authority to reach a determination with regard to a penalty in the circumstance where it has made a finding of guilt. Only the trial court has the authority to set a penalty, and it must do so within the range of options specified by the *Discipline* (Par. 2711.3). No other entity outside of the operations of the trial court can usurp it, modify it, supplant it, or enter a suggestion into the decision by the trial court as the *Discipline* makes clear."

Par. 2719.1 does not describe an action at all similar to those actions ruled unconstitutional in Judicial Council Decisions 1210, 1244, and 1318. Rather it simply provides a venue which has been

agreed to by the bishops of both conferences invoked and the respondent. That is exactly what occurred in the instant matter. There was no usurping of authority from the New England Annual Conference in violation of Par. 33.

My decision that Par. 2719.1 is constitutional makes the remaining questions moot. If, however, the Judicial Council rules Par. 2719.1 unconstitutional, then I believe that all trials ever held under this provision must be ruled invalid, and new trials must be granted to all respondents whose trial occurred in an annual conference other than the one where the respondent had his/her membership.

### **DECISIONS SUMMARY**

Question #1 - Par. 2719.1 is not a violation of Par. 33 and is therefore constitutional.

Respectfully submitted,

Sudarshana Devadhar, Bishop  
New England Annual Conference

Date: \_\_\_\_\_

### CERTIFICATE OF SERVICE

I, Brenda Borchers, hereby certify that on the below date, I served a copy of the foregoing Bishop's Reply to Question of Law, postage prepaid, to the following:

Rev. Luan-Vu Tran  
Secretary, Judicial Council  
11138 Del Amo Blvd., Suite 134  
Lakewood, CA 90715 (13 copies)

Rev. Scott Campbell  
36 May Street  
Cambridge, MA 02138 (1 copy)

\_\_\_\_\_  
Signature of Certifying Official

By: \_\_\_\_\_

## JUDICIAL COUNCIL UNITED METHODIST CHURCH

BISHOP'S REPLY TO QUESTION OF  
LAW RAISED IN NEW ENGLAND ANNUAL  
CONFERENCE - JUNE 17, 2016

Docket No. 1016-9

### BASIS OF JURISDICTION

This is Bishop's Reply to a Question of Law within the meaning of Par. 2609.6 of the *2012 Book of Discipline* ("*2012 Discipline*"). A request for a ruling of law was raised at a conferencing session on June 17, 2016 questioning the constitutionality of an affirmation passed earlier in that session titled: "Action of Non-Conformity with the General Conference of the United Methodist Church." This reply to the question of law is submitted pursuant to the provisions of Par. 2609.6 of the *2012 Discipline*.

The Judicial Council has jurisdiction under Pars. 51 and 56.3 of the Constitution of the United Methodist Church and under Par.2609 of the *2012 Discipline*, interpreted by Judicial Council Decision 1244.

### STATEMENT OF FACTS

At the New England Annual Conference on Friday, June 17, 2016, in regular session, the members of the New England Annual Conference adopted by a 445 to 179 vote in favor of the following affirmation entitled Action of Non-Conformity with the General Conference of the United Methodist Church. The text of this affirmation reads:

The NEAC will not conform or comply with provisions of the *Discipline* which discriminate against LGBTQIA persons, including marriage (161.B), the incompatibility clause (162.F), ordination and appointments (304.3), homosexual unions (341.6), AC funding ban (613.19), GCFA funding ban (806.9), chargeable offenses pertaining to being "a self-avowed practicing homosexual" or to officiating at weddings for couples regardless of the sex of the partners (2702.1b, d).

The NEAC and its members will not participate in or conduct judicial procedures related to the *Discipline's* prohibitions against LGBTQIA persons.

The NEAC insists that any benefits available to clergy and employees and their families are available to all clergy and employees and their families, regardless of the sexes or genders of the partners, and requires the District Superintendents to inform all clergy under their supervision of this right.

The NEAC will realign its funding to reflect these commitments, using no reserve funds to pay for judicial procedures related to the *Discipline's* prohibitions against LGBTQIA persons, and instead requests the Connectional table and CCFA develop and fund programs of cultural competency, anti-racism, anti-ageism, anti-sexism, anti-oppression and anti-homophobia training at the conference and district levels, as well as for advocacy and implementation efforts related to the same.

This affirmation was developed the prior evening when the annual conference members voted to meet as a "Committee of the Whole" in accordance with Robert Rules of Order #52. Bishop Devadhar called the conference to recess and during that time, the annual conference convened as a Committee of the Whole, which, per Roberts Rules, elected its own chairperson, who presented the affirmation for vote by the entire annual conference in regular session.

## QUESTION OF LAW

Shortly after the affirmation was passed, a clergy member of the conference was recognized and said, "I respectfully request a decision of law by Bishop Devadhar as to the legality and constitutionality of the 'Action of Non Conformity' which we just voted. I believe this action is clearly and intentionally in opposition to, and in conflict with the *Book of Discipline*."

I said I would issue my ruling within thirty (30) days as required by Par. 2609.6.

## DECISIONS OF LAW AND ANALYSIS

The issue in the instance matter is whether it is unlawful for an annual conference to pass an affirmation stating in advance that it will not follow the *Discipline*. It has been suggested that the words of the affirmation are purely precatory and would only be a violation once an actual action is taken. I rule that this affirmation is not precatory because it mandates that illegal actions be taken and, as such, is a violation of the *Discipline*.

Specifically, as to the first paragraph of the affirmation, the refusal to conform to or comply with paragraphs of the Social Principles is not a violation of the *Discipline* because the Social Principles are "... not to be considered church law...". Preface to the Social Principles.

However, the other paragraphs listed in the first paragraph of the affirmation are the law of the church and must be conformed to and complied with and for an annual conference to mandate otherwise is a violation of the *Discipline*. Par. 16 states that “The General Conference shall have full legislative power over all matters distinctively connectional...” That legislation includes Par. 304.3 which states that self-avowed practicing homosexuals cannot be certified, ordained or appointed. Par. 341.6 prohibits the conducting of homosexual unions. Pars. 623.19 and 806.9, prohibit UMC funding of homosexual acceptance and chargeable offenses. Par. 2702. 1b and d list chargeable offenses dealing with homosexuality issues. An annual conference cannot disobey these paragraphs without being in violation of the *Discipline*.

The 2<sup>nd</sup> paragraph of the affirmation mandates that the New England Annual Conference will not conduct or participate in certain judicial procedures for certain offenses. While the decision whether to send a matter to judicial procedures is discretionary with a bishop, the discretion is to be used on a case by case basis. To mandate how a bishop is to proceed with certain offenses removes the *Disciplinary* authority given only to the bishop, not the annual conference (Par. 363). This is in violation of the *Discipline*.

The 3<sup>rd</sup> paragraph is not *Disciplinary* and if the New England Annual Conference wants to make benefits available to clergy and employers and their families regardless of sexes or genders of partners, they can do so. This is not a violation of the *Discipline*.

Finally, the 4<sup>th</sup> paragraph of the affirmation addresses the required funding or non-funding related to the above three (3) paragraphs. Wherever I have ruled the affirmation in violation of the *Discipline*, I rule that the relevant statement about funding is also in violation of the *Discipline*.

## DECISIONS SUMMARY

I found this decision a painful one to make. By its nature, a Ruling of Law is circumscribed within a set of norms. The United Methodist Constitution, to which as a United Methodist Bishop I must be faithful, in Par. 51 directs me to decide questions of law in accordance with the *Discipline*, not according to my heart or what I wish the *Discipline* said. Given that the adopted affirmation is expressly one of non-conformity, by its inherent quality the affirmation is prohibited by the same standard by which I am now bound to rule. As a United Methodist Bishop, I cannot challenge what I believe to be an unjust law by approving an illegal law.

Some parts of the affirmation are not in violation of the *Discipline* and can stand. Other parts cannot be enforced because they violate the *Discipline*, as noted above.

Respectfully submitted,

Sudarshana Devadhar, Bishop  
New England Annual Conference

Date: \_\_\_\_\_

**CERTIFICATE OF SERVICE**

I, Brenda Borchers, hereby certify that on the below date, I served a copy of the foregoing Bishop's Reply to Question of Law, postage prepaid, to the following:

Rev. Luan-Vu Tran  
Secretary, Judicial Council  
11138 Del Amo Blvd., Suite 134  
Lakewood, CA 90715 (13 copies)

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Portsmouth, RI 02871 (1 copy)

Signature of Certifying Official

By: \_\_\_\_\_