

JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

Memorandum No. 1158

In Re: Request from the Arkansas Annual Conference for the Judicial Council on its own motion to reconsider Judicial Council Decision 1032. IN RE: Request from the Northern Illinois Annual Conference for the Judicial Council on its own motion to reconsider Judicial Council Decision 1032.

Saturday, October 30, 2010

The 2010 session of the Arkansas Annual Conference adopted the following resolution requesting the Judicial Council to reconsider Decision 1032 on its own motion:

The Arkansas Annual Conference therefore respectfully requests that the Judicial Council on its own motion and pursuant to its standing Rules of Practice and Procedure (VIII.A) reconsider Decision 1032, issue a new decision finding that Decision 1032 is null and void, and direct that any prospective members denied membership in the United Methodist Church as a result of Decision 1032 be granted admission.

The 2010 session of the Northern Illinois Annual Conference adopted the following resolution:

The Northern Illinois Annual Conference requests that the Judicial Council on its own motion and reconsider Decision 1032, issue a new Decision finding that Decision 1032 is null and void, and direct that any prospective members denied membership in The United Methodist Church as a result of Decision 1032 be granted admission.

Under Rule IX.A of the Rules of Practice and Procedure of the Judicial Council, wherever a decision of the Judicial Council is shown to be in error, or in order to prevent a manifest injustice resulting from the interpretation of a Judicial Council decision, the Judicial Council on its own motion, or on a petition filed by a party to the proceedings, may, by a majority vote, reconsider any ruling or action taken by it.

Neither the Arkansas Annual Conference nor the Northern Illinois Annual Conference was a party to the case presented in Decision 1032. The Judicial Council previously considered a request for reconsideration in Memorandum 1041.

DIGEST

The requests for reconsideration are hereby denied.

October 30, 2010

Concurring Opinion

The twin requests of the Arkansas Annual Conference (AAC) and Northern Illinois Annual Conference (NIAC) for the Judicial Council to reconsider on its own motion Decision 1032 are bereft of legal basis. A similar move from within to so reconsider would be unnecessary. There is a better alternative, a brighter path for us to tread towards the same goal of clarification. The 2008 General Conference has intimated to us the way.

I

In April, 2006 via Memorandum 1041, the Council entertained petitions for reconsideration of Decision 1032 (2005). It took a second hard look at the controversy, distilling twelve briefs and more than 2,000 communications delving on the diverse viewpoints submitted. Prior to Decision 1032, twenty-two briefs were filed and passed upon, oral hearings were conducted, issues thoroughly argued. The majority again prevailed but the minority fully aired their dissent. There should be an end to a controversy.

The requests from the said two annual conferences, not parties to the original action, amount to a circumvention of the current rule allowing only a motion for reconsideration from a party to the proceeding within 45 days from date of the decision. If they joined the Virginia Annual Conference Bishop and Board of Ordained Ministry in the 2006 petitions for reconsideration, they were heard enough. If they did not, the time to do it has long passed. What is not allowed directly should not be allowed indirectly.

Belaboring the issues and irreconcilable positions of interested parties, after the Council had twice ruled and spoken, is not countenanced in our Rules. Not only is there a vacuum of provision for a second reconsideration; the arguments put forth in the present requests are mere echoes of those earlier ventilated, i.e., alleged error and manifest injustice which had been amply resolved, including the matter of jurisdiction of proper role of the Council.

Besides, no new facts are brought to light to justify the requests (Rule IX.G).

II

The requests are largely hinged on a subsequent amendment to ¶225, the focal Disciplinary provision involved and interpreted in Decision 1032 concerning transfer of a member from another denomination. The amendment by the General Conference in the 2008 Discipline consists of substituting the word “shall” for “may” used in the 2004 Discipline, subject of 1032 decided in 2005. Thus, the pertinent first sentence of ¶225 now reads:

A member in good standing in any Christian denomination who has been baptized and who desires to unite with The United Methodist Church shall be received as either baptized or a professing member.

But the 2008 provision cannot be given retroactive effect. This is fundamental. The remedy is not another reconsideration bid at 1032. A new case developed after the 2008 amendment or a proper petition to determine and declare its meaning, effect and application may be the suitable recourse.

Some such petitions are now before the Council, with partly new members. We should be afforded a fresh look at the amendment, other related provisions and jurisprudence.

Given the sharp diversity of opinions on the matter, we see no end in sight if we accommodate any further attempt to trigger an undue third look at the Decision. That will be detrimental to our function of settling legal questions with finality and it would deprive us of valuable time to devote to other cases of equal importance.

As conceded in some of the briefs for the requesting annual conferences and *amici curiae*, Decision 1032 was valid when (enacted) rendered, the 2008 General Conference revised the language in ¶ 225 to rectify the situation and it intended to remove the discretionary power, with the word “may” in the 2004 Discipline, given to the Pastor in 1032. If so, the appropriate approach is to probe into the significance of the new Disciplinary language, not to overindulge in the old one, which is now moot and academic.

At any rate, Decision 1032 will not be a persuasive precedent because of its highly divisive character with a 5:4 voting. The opinions filed either way will not be an authoritative citation, as compared to a unanimous decision or a nearly unanimous one. The best that can be said about it is it provided the Church people an excellent opportunity to exercise their freedom of thought and expression and the Council to exhibit its equanimity in the midst of turmoil and strife.

Let the decision rest where it may. Changing metaphors, let us not resurrect a dead horse which, by all indications, may be further beaten up. The 2008 General Conference has given us a new donkey in the modified ¶225. Let us untie and ride on it to bring us to a desirable destination where, hopefully, there would be relative peace so direly needed in these trying times for United Methodists.

Let us now move forward with new insights and optimism to face the emerging challenges that lie ahead. This way we remain on track maintaining stability in the Church legal order.

There is no need to reconsider, abandon, overturn or withdraw Decision 1032.

ACCORDINGLY, I vote to deny reconsideration.

RUBEN T. REYES

October 30, 2010

Concurring Opinion

I continue to believe that Decision 1032 was wrongly decided. In addition to usurping the legislative authority of the General Conference, the decision ignored longstanding Judicial Council jurisprudence and precedent regarding to the assumption of jurisdiction. Decision 1032 sits atop an ideological fault line within our connection and my disagreement with its holding was made clear in my dissent. Nevertheless, I do not look favorably upon continued requests for the Judicial Council to make new Church law. At this Judicial Council session, now five years after Decision 1032 was rendered, we have been asked in seven separate cases to review or reconsider Decision 1032 in some fashion. Efforts to nuance or explain away the meaning of Decision 1032 through conference policies,

resolutions or sophistry do nothing to achieve the true goal of clarifying the issue of inclusive membership for the Church as a whole. The General Conference is the only body authorized and able to resolve the issue for the Church.

Although I vigorously dissented from the majority opinion in Decision 1032, I have grown weary of repeated requests for review, reconsideration, and retraction of the decision. The only sensible course available to those who wish for Church law to be different is to work within the Church's structures to make it so. Annual Conferences and individual members of The United Methodist Church possess the power of petition and should use it whenever issues facing the Church require a full and fair debate. The Judicial Council is not an appropriate body to change Church law. The resolution in this case and others of similar ilk should be ushered through the legislative processes of the General Conference.

There is a larger principle at stake. I will not do now the very thing I criticized then. It was wrong for the Judicial Council to legislate then and it would be wrong for the Judicial Council to legislate now. This issue cannot and should not be resolved by judicial fiat. The same thought and energy that annual conferences expend in adopting these tepidly symbolic resolutions should be directed in the future to the legislative processes of the 2012 General Conference and to subsequent sessions of the General Conference if necessary. Albert Einstein taught that the definition of insanity is doing the same thing over and over again and expecting different results. Annual Conferences planning to adopt resolutions requesting the Judicial Council to reconsider Decision 1032 should consider another course.

Jon R. Gray

I join in this concurrence.

Susan T. Henry-Crowe

October 30, 2010

Concur In Part and Dissent In Part

I concur with my colleagues that neither of the Annual Conferences were parties in the case that resulted in Decision 1032. However, I do note that the requests from Arkansas and Northern Illinois were that the Council reconsider 1032 on the Council's own motion and thus I do not believe that one necessarily need be a party to the original case, particularly when the implications of the case potentially affect every annual conference, clergy member, and lay member in the connection.

Many within the church are clearly desperate for a final voice of authority as to the status of Decision 1032, particularly in light of General Conference's amendment of ¶ 225 at the 2008 General Conference. Likewise, there appears to be a cognizance that the composition of the Council has changed since Decision 1032 was issued and that with said change there is a hope for a different outcome.

I dissented in Decision 1032, and I continue to believe that the decision is wrong for three reasons. First, we did not have jurisdiction to rule upon anything beyond the issue that the questions of law that were presented were improper in that they related to an administrative and judicial process of a clergy person in the annual conference. Second, the majority created law which was beyond the scope of its authority granted to it by Discipline. Third, the majority went far beyond the facts of the case in an attempt to create law concerning portions of the Discipline which were not specifically at issue in that case (§ 225 was the applicable paragraph, not § 214).

Decision 1032 was predicated upon Questions of Law asked of the Bishop during annual conference. The questions pertained to substantive matters relating to a clergy person's judicial process. The presiding Bishop ruled on each of the questions presented rather than ruling that the questions of law were improper. The Guidelines for Bishop's Rulings on Questions of Law in Decision 799 state:

... The bishop has no authority to make substantive rulings on judicial or administrative matters. Such matters are limited to the purview of the judicial or administrative bodies such as Committee on Investigation, Trial court, Committee on Appeals or Judicial Council. The constitution (§ 18) and the 1996 Discipline (§§ 358, 2623, and 2626-2628) have placed the authority to resolve such questions in these bodies. To do otherwise would **violate the principle of separation and balance of powers between the legislative, executive and judicial branches** as set forth in the Constitution [emphasis added].

Questions which are procedural or substantive matters relating solely to actions in a judicial or administrative process are not proper questions to be addressed in a substantive ruling by a bishop....

As the Council has stated previously as well as in Memorandums 1166 and 1167, issued simultaneously herewith, there continues to be confusion concerning the issue of that which is appropriately asked by an individual of a presiding bishop as a question of law and that which is improper. The confusion may perhaps be the result of the fact that until October 1999 the church had operated under a paragraph in the Discipline that permitted bishops so to rule. Paragraph 2628.1(j) of the *1996 Discipline* had specifically provided:

Errors or defects in judicial proceedings shall be duly considered when present on appeal. (1) In regard to cases where there is an investigation under § 2626, but no trial is held as a result thereof, errors of Church law or administration committed by those in charge of the investigation are to be corrected by the presiding officer of the next conference on request in open session, and in such event the conference may also order just and suitable remedies if injury resulted from such errors. (2) Errors of Church law or defects in judicial proceedings that are discovered on appeal are to be corrected by the presiding officer of the next conference upon request in open session, and in such event the conference may also order just and suitable remedies if injury has resulted from such errors.

However, in October 1999 the issue of the constitutionality of this paragraph came before the Judicial Council. In Decision 872 the Judicial Council ruled:

This paragraph grants to a bishop and an annual conference powers and authority which are reserved to other organizational bodies and divisions in the Constitution.

For the foregoing reasons ¶ 2628.1(j) is determined to be unconstitutional and is ruled to be so.

Questions as to fair process, judicial process, and administrative process must be addressed in the appropriate manner and through the specific bodies set forth in the *Discipline*. In no event may an individual bring those delineated issues to the Judicial Council pursuant to a review of a bishop's ruling on a question of law; to do so circumvents the process set forth in the *Discipline* and also violates the principle of the separation and balance of powers. It is only by vote of an authorized body for a declaratory decision that the matter might be addressed by the Judicial Council on the merits.

Thus, the case at issue in Decision 1032 ought to have been decided in the same manner that previous cases have been decided, as well as the cases that were brought before this Council during this session (see Memorandum 1166 and Memorandum 1167). The Decisions of Law ought to have been "reversed and vacated" without further comment. Only by vote of the annual conference for a declaratory decision could the matter raised in Decision 1032 have properly been before the Judicial Council for consideration and comment.

Beth Capen

October 30, 2010