

Judicial Council Decisions (April 26, 2019)

The following is a summary of the decisions (1378 and 1379) of the Judicial Council of The United Methodist Church. It is divided into those petitions from the 2019 General Conference that were ruled unconstitutional and constitutional.

The significant decisions

- Language was added to the footnote of Para 304.3 expanding the Discipline definition of a “self-avowed practicing homosexual”
- Consecrating bishops who are “self-avowed practicing homosexuals”
- Bishops are prohibited from commissioning or consecrating deacons or elders “if the Board of Ministry has determined the individual is a self-avowed homosexual”
- Setting mandatory penalties “for conducting ceremonies which celebrate homosexual unions, or performing same-sex weddings”
- Modifying the complaint and just resolution processes

Petitions ruled unconstitutional (Proposed new wording is underlined)

- 90033 - Traditional Plan #2 “Episcopal Accountability – Par 408.3
 - By a majority vote of those present and voting, the members of the Council of Bishops may place any bishop in the retired relation with or without their consent and irrespective of their age if such a relation is recommended by the council relations committee. The procedures for fair process in administrative hearings shall be followed in any involuntary retirement procedure
- 90034 - Traditional Plan #3 “Episcopal Accountability – Par. 410
 - Involuntary Leave of Absence—a) By a majority vote of those present and voting, the members of the Council of Bishops may place any bishop in an involuntary leave status...
- 90035 - Traditional Plan #4 “Episcopal Accountability – Par. 422 (90035 is very lengthy and omitted from this document for space limitations.) It proposes committee to “hear requests for involuntary leave of absence”; “fair process hearings”; and an “administrative review committee” “by which the Council of Bishops may hold one another accountable”
- 90037 - Traditional Plan #6 “Composition of Board of Ordained Ministry – Par. 635.1a
 - Prior to being nominated for membership on the Board of Ministry by the bishop, any individual must certify that he or she will uphold, enforce, and

maintain the Book of Discipline related to commissioning, ordination, and marriage of self-avowed practicing homosexuals. Additionally, the bishop must certify that he or she only has nominated individuals who will uphold, enforce, and maintain the Book of Discipline related to ordination and marriage of self-avowed practicing homosexuals.

- 90038 - Traditional Plan #7 “Full Examination – Par. 635.2h
 - The Board of Ministry shall conduct an examination to ascertain whether an individual is a practicing homosexual, including information on social media, as defined by the Book of Discipline. The board shall certify that such an examination has occurred and its results. If it is determined as a matter of fact that an individual is a practicing homosexual, the board shall not recommend the individual to the clergy session of the annual conference for commissioning or ordination.

- 90039 - Traditional Plan #8 “Composition of Board of Ordained Ministry – Par. 806.9
 - Every annual conference shall certify that the bishop has nominated only members of the Board of Ministry who will uphold, enforce, and maintain the Book of Discipline related to ordination and marriage of practicing homosexuals. Failure to do so shall result in the General Council on Finance and Administration withholding all funds from The United Methodist Church and withdrawing the annual conference’s ability to use the denominational cross and flame logo.

- 90040 - Traditional Plan # 9 “Composition of Board of Ordained Ministry – Par. 613.19
 - Every annual conference shall certify that the bishop has nominated only members of the Board of Ministry who will uphold, enforce, and maintain the Book of Discipline related to ordination and marriage of practicing homosexuals. Failure to do so shall result in the General Council on Finance and Administration withholding all funds from The United Methodist Church and withdrawing the annual conference’s ability to use the denominational cross and flame logo.

- 90045 - Traditional Plan #14 “Just Resolution – Par 2701.5 (The *second sentence* of the underlined wording was ruled unconstitutional. It is *italicized* for clarity. The *first sentence* was ruled to be constitutional, as is noted elsewhere in this document.)
 - A just resolution is one that focuses on repairing any harm to people and communities, achieving real accountability by making things right insofar as possible and bringing healing to all the parties. Just resolutions shall state all identified harms and how they shall be addressed by the Church and other parties to the complaint. *In cases where the respondent acknowledges action(s) that are a clear violation of the provisions of the*

Discipline, a just resolution shall include, but not be limited to, a commitment not to repeat the action(s) that were a violation.

Petitions ruled constitutional (approved new wording is underlined and **bold**)

- 90032 - Traditional Plan #1 “Footnote 1, Qualifications for Ministry – Par. 304.3
 - “*Self-avowed practicing homosexual*” is understood to mean that a person openly acknowledges to a bishop, district superintendent, district committee of ordained ministry, Board of Ordained Ministry, or clergy session that the person is a practicing homosexual; **or is living in a same-sex marriage, domestic partnership or civil union, or is a person who publicly states she or he is a practicing homosexual**

- 90036 - Traditional Plan #5 “Episcopal Responsibilities – Par. 415.6
 - **Bishops are prohibited from consecrating bishops who are self-avowed homosexuals, even if they have been duly elected by the jurisdictional or central conference. Bishops are prohibited from commissioning those on the deacon or elder track if the Board of Ministry has determined the individual is a self-avowed homosexual or has failed to certify it carried out the disciplinarily mandated examination, even if the individual has been recommended by the Board of Ordained Ministry and approved by the clergy session of the annual conference. Bishops are prohibited from ordaining deacons or elders if the Board of Ministry has determined the individual is a self-avowed homosexual or has failed to certify it carried out the disciplinarily mandated examination, even if the individual has been recommended by the Board of Ordained Ministry and approved by the clergy session of the annual conference.**

- 90042 - 90042 (ADCA 190-91) Traditional Plan #11 “Minimum Penalty – Par. 2711.3
 - **Except, where the conviction is for conducting ceremonies which celebrate homosexual unions, or performing same-sex wedding ceremonies under ¶ 2702.1(b) or (d), the trial court does not have the power to and may not fix a penalty less than the following:**
 - **a) First (1st) offense – One (1) year’s suspension without pay.**
 - **b) Second (2nd) offense – Not less than termination of conference membership and revocation of credentials of licensing, ordination, or consecration.**

- 90043 - Traditional Plan #12 “Qualifications for Ministry – Par. 304.5
 - **The District Committee on Ordained Ministry and the Board of Ordained Ministry shall not approve or recommend any person for candidacy, licensing, commissioning, or ordination who does not meet the qualifications of ¶ 304.1-3, based on the full examination**

and thorough inquiry into the person’s fitness by the committee and board (see Judicial Council Decisions 1343 and 1344). The bishop presiding in the clergy session shall rule any such unqualified candidate out of order and not eligible to be acted upon

- 90044 - Traditional Plan #13 “Complaint Process – Par 362.e
 - If within 90 days after the receipt of the complaint resolution is not achieved, the bishop shall either:
 - (1) Dismiss the complaint **as having no basis in law or fact**, with the consent of the cabinet, giving the reasons therefore in writing, copies of which shall be placed in the clergy person’s file **and shared with the complainant**;

- 90045 - Traditional Plan #14 “Just Resolution – Par 2701.5
 - A just resolution is one that focuses on repairing any harm to people and communities, achieving real accountability by making things right insofar as possible and bringing healing to all the parties. **Just resolutions shall state all identified harms and how they shall be addressed by the Church and other parties to the complaint.**

- 90046 - Traditional Plan #15 “Just Resolution – Par. 2701.5
 - Amend ¶¶ 362.1c), 413.3c), 2701.5, and 2706.5.c.3 by adding the same sentence to all four as follows: **No matter where in the process a just resolution is achieved, the complainant(s) shall be a party to the resolution process and every effort shall be made to have the complainant(s) agree to the resolution before it may take effect.** Also add **the complainant**, in ¶¶ 2701.5 and 2706.5(c)3...
 - c) Just Resolution—The supervisory response may include a process that seeks a just resolution in which the parties are assisted by a trained, impartial third party facilitator(s) or mediator(s), in reaching an agreement satisfactory to all parties.⁶⁹ If the bishop chooses to initiate a mediated attempt to produce a just resolution, then the bishop, the person filing the complaint, the respondent, and other appropriate persons shall enter into a written agreement outlining the process, including any agreements on confidentiality. A process seeking a just resolution may begin at any time in the supervisory, complaint, or trial process. **No matter where in the process a just resolution is achieved, the complainant(s) shall be a party** to the resolution process and every effort shall be made to have the complainant(s) agree to the resolution before it may take effect. If resolution is achieved, a written statement of resolution, including any terms and conditions, shall be signed by the parties and the parties shall agree on any matters to be disclosed to third parties...
 - c) The supervisory response may include a process seeking a just resolution in which the parties are assisted by a trained, impartial third party facilitator(s) or mediator(s) in reaching an agreement satisfactory to all parties. (See ¶ 363.1b, c.) The appropriate persons, including the president of the College of Bishops, or the secretary if the complaint

concerns the president, should enter into a written agreement outlining such process, including an agreement as to confidentiality. **No matter where in the process a just resolution is achieved, the complainant(s) shall be a party to the resolution process and every effort shall be made to have the complainant(s) agree to the resolution before it may take effect.** If resolution is achieved, a written statement of resolution, including terms and conditions, shall be signed by the parties and the parties shall agree on any matters to be disclosed to third parties. Such written statement of resolution shall be given to the person in charge of that stage of the process for further action consistent with the agreement...

- ¶ 2701.5. A Just Resolution in Judicial Proceedings—A just resolution is one that focuses on repairing any harm to people and communities, achieving real accountability by making things right insofar as possible and bringing healing to all the parties. Special attention should be given to ensuring that cultural, racial, ethnic, age, and gender contexts are valued throughout the process in terms of their understandings of fairness, justice, and restoration...if a process seeking a just resolution is used, the appropriate persons, including the counsel for the Church, **the complainant**, and the counsel for the respondent, should enter into a written agreement outlining such process, including any agreement on confidentiality. **No matter where in the process a just resolution is achieved, the complainant(s) shall be a party to the resolution process and every effort shall be made to have the complainant(s) agree to the resolution before it may take effect...**
- ¶ 2706.5. Bill of Charges and Specifications, Deliberations, Vote, and Referral...The appropriate persons, including the counsel for the Church, **the complainant**, and counsel for the respondent, should enter into a written agreement outlining the process, including any agreements on confidentiality. **No matter where in the process a just resolution is achieved, the complainant(s) shall be a party to the resolution process and every effort shall be made to have the complainant(s) agree to the resolution before it may take effect...**
- 90047 - Traditional Plan #16 “Church Appeal – Par. 2715.10
 - 10. **The Church shall have no right of appeal from findings of fact of the trial court. The Church shall have a right of appeal to the committee on appeals and then to the Judicial Council from findings of the trial court based on egregious errors of Church law or administration that could reasonably have affected the findings of the trial court. When the committee on appeals or the Judicial Council shall find egregious errors of Church law or administration under this part, it may remand the case for a new trial, along with a statement of the grounds of its action. This is not to be double jeopardy.** In regard to cases where there is an investigation under ¶ 2702, but no trial is held, egregious errors of Church law or administration may

be appealed to the jurisdictional or central conference committee on appeals **and then to the Judicial Council** by counsel for the Church. The committee on investigation's decision not to certify a bill of charges does not alone constitute an egregious error of Church law or administration. When the committee on appeals **or the Judicial Council** shall find egregious errors of Church law or administration under this part, it may remand the case for a new hearing, in which event it shall return to the chair of the committee on investigation a statement of the grounds of its action. This is not to be double jeopardy...

- 90066 - Disaffiliation – Taylor – Par 2533
 - Statement from the Digest of Judicial Council Ruling 1379, setting the basis for the constitutionality ruling of 90066
 - *Any legislation of the General Conference permitting the “gracious exit” of a local church must require at a minimum that (1) the disaffiliation resolution be approved by a two-thirds majority of the professing members of the local church present and voting at the church conference, (2) the terms and conditions, including effective date, of the agreement between the annual conference and the exiting local church be established by the conference board of trustees in accordance with applicable church law and civil laws, and (3) the disaffiliation agreement be ratified by a simple majority of the members of the annual conference present and voting. When taken together with the consent of the annual conference pursuant to ¶ 2529.1(b)(3), Petition 90066 as amended meets all three requirements and is constitutional and provides a means for the disaffiliation of a local church.*
 - **¶ 2553. Disaffiliation of a Local Church over Issues Related to Human Sexuality.**
 - **1. Basis—Because of the current deep conflict within The United Methodist Church around issues of human sexuality, a local church shall have a limited right, under the provisions of this paragraph, to disaffiliate from the denomination for reasons of conscience regarding a change in the requirements and provisions of the Book of Discipline related to the practice of homosexuality or the ordination or marriage of self-avowed practicing homosexuals as resolved and adopted by the 2019 General Conference, or the actions or inactions of its annual conference related to these issues which follow.**
 - **2. Time Limits—The choice by a local church to disaffiliate with The United Methodist Church under this paragraph shall be made in sufficient time for the process for exiting the denomination to be complete prior to December 31, 2023. The provisions of ¶ 2553 expire on December 31, 2023 and shall not be used after that date.**

- **3. Initial Inquiry to disaffiliate from The United Methodist Church—If the church council of a local church determines that the church wishes to consider disaffiliation from The United Methodist Church under this paragraph, that church council shall submit a request to the district superintendent to begin this process. The district superintendent shall appoint a task force under ¶ 213 for the purpose of making findings and a recommendation to the district superintendent on whether the church will have a viable future within or outside The United Methodist Church. The provisions of ¶ 213.2 and ¶ 213.3 shall not apply. If the local church, as it exists at the time of the assessment, is found to have a viable future, the district superintendent shall call a church conference under ¶ 248 for the sole purpose of deciding whether to disaffiliate from The United Methodist Church under this paragraph, based upon the reasons in ¶ 2553.1. If the local church is found to not have a viable future, the district superintendent shall recommend closure under ¶ 2549, or take other appropriate action, and all property of the local church shall remain with The United Methodist Church according to the provisions of ¶ 2549.**
- **4. Decision Making Process—The church conference shall be conducted in accordance with ¶ 248 and shall be held within one hundred twenty (120) days after the district superintendent calls for the church conference. In addition to the provisions of ¶ 246.8, special attention shall be made to give broad notice to the full professing membership of the local church regarding the time and place of a church conference called for this purpose and to use all means necessary, including electronic communication where possible, to communicate. The decision to disaffiliate from The United Methodist Church must be approved by a two-thirds (2/3) majority vote of the professing members of the local church present at the church conference.**
- **5. Process following decision to disaffiliate from The United Methodist Church—If the church conference votes to disaffiliate from The United Methodist Church, the terms and conditions for that disaffiliation shall be established by the resident bishop of the applicable annual conference, with the advice of the cabinet, the annual conference treasurer, the annual conference benefits officer, the director of connectional ministries, and the annual conference chancellor. The terms and conditions, including the effective date of disaffiliation, shall be memorialized in a binding Disaffiliation Agreement between the annual conference and the trustees of the local church, acting on behalf of the members. That agreement must be consistent with the following provisions:**

- a) Standard Terms of the Disaffiliation Agreement. The General Council on Finance and Administration shall develop a standard form for Disaffiliation Agreements under this paragraph to protect The United Methodist Church as set forth in ¶ 807.9. The agreement shall include a recognition of the validity and applicability of ¶ 2501, notwithstanding the release of property therefrom. Annual conferences may develop additional standard terms that are not inconsistent with the standard form of this paragraph.
- b) Apportionments. The local church shall pay any unpaid apportionments for the 12 months prior to disaffiliation, as well as an additional 12 months of apportionments.
- c) Grants. All grants received by the local church from the annual conference or its ancillary organizations within five (5) years from the date of disaffiliation shall be repaid.
- d) Property. A disaffiliating local church shall have the right to retain its real and personal, tangible and intangible property. All transfers of property shall be made prior to disaffiliation. All costs for transfer of title or other legal work shall be borne by the disaffiliating local church.
- e) Pension Liabilities. The local church shall contribute withdrawal liability in an amount equal to its pro rata share of any aggregate unfunded pension obligations to the annual conference. The General Board of Pension and Health Benefits shall determine the aggregate funding obligations of the annual conference using market factors similar to a commercial annuity provider, from which the annual conference will determine the local church's share.
- f) Other Liabilities. The local church shall satisfy all other debts, loans, and liabilities, or assign and transfer them to its new entity, prior to disaffiliation.
- g) Payment Terms. The agreement shall specify the terms and conditions of the payment to the annual conference for any sums related to ¶ 2553.5. b, c, and e. The term of payment shall not exceed ten (10) years.
- h) Disaffiliating Churches Continuing as Plan Sponsors of the General Board of Pension and Health Benefits Plans. The United Methodist Church believes that a local church disaffiliating under ¶ 2553 shall continue to share common religious bonds and convictions with The United Methodist Church based on shared

Wesleyan theology and tradition and Methodist roots, unless the local church expressly resolves to the contrary. As such, a local church disaffiliating under ¶ 2553 shall continue to be eligible to sponsor voluntary employee benefit plans through the General Board of Pension and Health Benefits under ¶ 1504.2, subject to the applicable terms and conditions of the plans.

- **i) Once the disaffiliating local church has reimbursed the applicable annual conference for all funds due under the agreement, and provided that there are no other outstanding liabilities or claims against The United Methodist Church as a result of the disaffiliation, in consideration of the provisions of this paragraph, the applicable annual conference shall release any claims that it may have under ¶ 2501 and other paragraphs of The Book of Discipline of The United Methodist Church commonly referred to as the trust clause, or under the agreement.**