

Judicial Council of The United Methodist Church

Brief for Docket 1021-23

In Re: Petition for Declaratory Decision from the Council of Bishops on Questions Related to the Separation of an Annual Conference Within the United States from The United Methodist Church.

Jurisdiction

The Judicial Council has jurisdiction in this matter pursuant to ¶2608.1, which allows for the filing of briefs to the Judicial Council as part of the deliberations in a request for a declaratory decision, and pursuant to ¶2610.3, which permits “all persons or bodies who have or claim any interest that would be affected by the declaration [to] be parties to the proceeding” and allows any interested party to “intervene and answer, plead, or interplead” (*Book of Discipline*, hereafter, “*Discipline*”).

I name myself as an interested party in the Council of Bishop’s petition for a declaratory decision as found in Docket 1021-23. I am an elder in full connection in The United Methodist Church and a member of the Texas Annual Conference, and as such would be immediately affected by the declaration.

Digest

Here, I will offer my responses to the questions asked by the Council of Bishops in their request for a declaratory decision. I will explain each response in the “Rationale and Analysis” section.

Question 1: May an annual conference of the United Methodist Church (“UMC”) within the United States separate from the UMC under the Discipline?

Response: No.

Question 2: Since ¶572 of the Discipline already provides a process for annual conferences outside the United States to separate from the UMC “to become an autonomous Methodist, affiliated autonomous Methodist, or affiliated united church,” should the process and requirements of ¶572 be viewed as minimum standards devised by the General Conference for any annual conference to separate from the UMC under the holding in Decision 1366?

Response: No.

Question 3: Pursuant to Judicial Council Decision 1366, must the General Conference first act to establish the procedure and requirements for separation of an annual conference within the United States before a vote can be taken by the annual conference to separate from the UMC?

Response: Yes.

Question 4: If an annual conference within the United States takes a vote to separate from the UMC but the General Conference has not established the procedure and requirements for separation of an annual conference, what is the effect of the vote and what authority, if any, does the annual conference have to act on the vote and legally effect a separation?

Response: The effect is null and void without General Conference establishing procedures and requirements for the separation of an annual conference within the United States from the UMC.

Question 5: If an annual conference within the United States may separate from the UMC, what are the requirements under the Discipline for a separation, including, but not limited to:

- (a) the bodies (such as jurisdictional conferences and other annual conferences in addition to the separating annual conference) that must vote to approve the separation and the required vote(s);
- (b) matters of church law related to use of the name United Methodist, or any part thereof, use of the UMC Cross & Flame or other intellectual property, including the United Methodist Hymnal;
- (c) maintenance of retirement benefits and compliance with civil law and the requirements of WESPATH concerning the same;
- (d) compliance with any applicable state law requirements, including such requirements related to foundations, credit unions, title to real property, and the annual conference’s articles of incorporation; and
- (e) disposition of property held in trust for the denomination pursuant to the UMC’s trust clause, such as endowments, designated funds (including funds for specific ministries of the

UMC), cemetery associations, camps, historical records and archives, and any other property held in the name of the separating annual conference?

Response: An annual conference in the United States may not separate from the UMC under the current *Discipline*. The “Rationale and Analysis” to this response assumes a future when annual conferences may disaffiliate and answers the Council of Bishops’ questions based on that assumption.

Question 6: Must any separation of an annual conference from the UMC provide dissenting members, local churches, districts, clergy, and affiliated entities such as camps, Wesley Foundations, and health facilities an option to remain a part of the UMC and join another annual conference?

Response: Yes, though without having to join another annual conference.

Rationale and Analysis

Question 1

An annual conference within the United States may not separate from the UMC under the current *Discipline* for three reasons: to do so would override the constitutional powers of the jurisdictional conference; to do so would require the votes of lay delegates to the annual conference who are denied the power to vote on a change to a clergy person’s relationship to the annual conference; and to do so would require the General Conference to confer such power to the annual conference.

First, the Constitution grants to the jurisdictional conferences the authority to determine the “number, names, and boundaries of the annual conferences and episcopal areas” in the United States of America (§40). A decision of an annual conference to remove itself from the UMC is also a decision to change the number, names, and boundaries of the annual conferences in the jurisdiction in which it is located. Authority to make that decision is not granted to annual

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conferences. While the annual conference does have the right to vote on “such other rights as have not been delegated to the General Conference under the Constitution” (§33) and annual conference disaffiliation may be interpreted as a right that has not been delegated to the General Conference, that right may not override the powers given by General Conference to other bodies in the church, in this case, the jurisdictional conference. The annual conference may not override the powers of the jurisdictional conference in this matter, and therefore, the approval of the jurisdictional conference should be considered a minimum requirement for the disaffiliation of an annual conference.

General Conference, as the legislative body of the entire church, could amend the *Discipline* so that annual conferences would not need jurisdictional conference approval to disaffiliate. To date, General Conference has not made such a change, and until General Conference does, the right of the jurisdictional conference to determine the “number, names, and boundaries” of the annual conferences remains.

The second issue is eligible voters. The Constitution of the *Discipline* under §33 grants to the annual conference “such other rights as have not been delegated to the General Conference under the Constitution, with the exception that the lay members may not vote on matters of ordination, character, and conference relations of clergy.” The exception to lay members not voting on “matters of ordination, character, and conference relations of clergy” is lay members serving on the Board of Ordained Ministry. Elsewhere, the *Discipline* echoes §33 by saying clergy members in full connection have “sole responsibility for all matters of ordination, character, and conference relations of clergy” (§602.1). A vote to remove an annual conference in the United States from the UMC would seek to remove the clergy members of the annual conference from membership in the UMC, thereby changing the “conference relations” of the

clergy. It could be argued that in the event an annual conference disaffiliates, the clergy members would remain members in that annual conference, so their conference membership is unchanged. Yet the annual conference, now removed from the UMC, is no longer an annual conference of *The United Methodist Church*: the annual conference would exist as an entity apart from the UMC, and though the annual conference may remain the same corporate entity, it is not the same disciplinary entity, having severed its relationship with the UMC. A vote to disaffiliate the annual conference constitutes a fundamental change in the nature of clergy relations to the annual conference that existed in the UMC.

Since annual conference disaffiliation *does* mean a change in the conference relations of its clergy members, lay delegates to the annual conference are not eligible to cast a vote for annual conference disaffiliation, and because the *Discipline* requires lay equalization of the clergy members of annual conference, it is not possible for clergy members alone to cast votes for annual conference disaffiliation. There exists, therefore, no authorized procedure in voter eligibility regarding annual conference disaffiliation. General Conference must act to resolve this confusion before any annual conference disaffiliation vote could be considered valid.

Third, there is the issue of annual conferences needing authorization from General Conference for the right to self-removal. As has already been discussed, there is silence in the *Discipline* on the subject of annual conference disaffiliation, and that silence could be interpreted as one of the untold number of rights given to the annual conference that fall under the category of “such other rights as have not been delegated to the General Conference under the Constitution” (§33). However, such an understanding contradicts the power of the General Conference, which the Constitution defines as “full legislative power over all matters distinctively *connectional*” (§16, emphasis added).

Annual conference disaffiliation is inherently a *connectional* matter. The annual conference is the “basic body” (§33) of the church, yet “basic” does not mean “autonomous”; a better meaning would be “fundamental.” As the fundamental body of the church, the existence of an annual conference, or its separation, affects the entire church. While the annual conference has the right to set its own agenda, business, rules, and plans for ministry, given these do not conflict with the *Discipline*, an annual conference does not have the right to interfere or otherwise change the ministries of other bodies in the church. Annual conference disaffiliation does cause immediate consequences for other church bodies. Simply put, the matter of annual conference disaffiliation does not end with the annual conference that wishes to separate. Annual conference disaffiliation is a connectional matter, and only General Conference has legislative power over matters that are “distinctively connectional.”

An example of the connectional nature of annual conference disaffiliation is the matter of church membership. If an annual conference were to separate from the UMC, then the church membership of every person in the annual conference would be changed. Membership in the United Methodist Church would cease, and membership in the newly chosen denomination would be the default. If a dissenting church member wishes to remain United Methodist but their church is located in an annual conference that separates from the UMC, they would have to elect to opt-in to United Methodist membership regardless of how long they had been a United Methodist member. Therefore, annual conference disaffiliation would cause a fundamental change to the conditions of church membership. Yet the power to “define and fix the conditions, privileges, and duties of Church membership” lies exclusively with the General Conference (§16.1). Church membership is a connectional matter. A church member is not a member of the local church only but a member of the full connection of the United Methodist Church. The

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power to define and fix the conditions of church membership is not granted to the annual conference because the scope of church membership is larger than the annual conference. In seeking to separate from the UMC, an annual conference would be attempting to change the conditions of church membership for every member in the annual conference, and such a change cannot be considered valid until General Conference acts to adjust the conditions of church membership. Church membership is one of many connectional matters that must be addressed by the General Conference for annual conference disaffiliation to be effective.

It is because annual conference disaffiliation is a connectional matter that General Conference established requirements and procedures for annual conferences outside the United States to separate from the UMC. Annual conferences outside the United States, like those within, are connectional in nature, and for their separation from the UMC to be effective, they need a pathway from the one body in the UMC that has legislative power over connectional matters: the General Conference. The same logic should apply to annual conferences within the United States.

It is not sufficient for annual conference disaffiliation to be interpreted as one of the powers delegated to the annual conferences because the *Discipline* is silent on it, for doing so would render the power of General Conference over “all matters distinctively connectional” as merely partial, not “full” as the Constitution defines. Therefore, until the General Conference establishes requirements and procedures for annual conferences in the United States to disaffiliate, they do not have the authority to do so.

Question 2

The *Discipline* provides requirements and procedures for annual conferences outside the United States to separate from the UMC “to become an autonomous Methodist, affiliated autonomous Methodist, or affiliated united church” (§572). The process is connectional given that annual conferences are inherently connectional. The process includes, but is not limited to, approval of the central conference in which the annual conference is located. The logic of such a process could apply to United States annual conference disaffiliation if General Conference ever permitted it. The General Conference could require the approval of jurisdictional conference and a majority of the annual conferences within the jurisdiction.

However, the fact remains that jurisdictional conferences are not central conferences. Minimum standards for one do not automatically transfer to another. The Constitution makes it clear that central conferences are “for the work of the Church outside the United States of America.” (§28). The process for disaffiliation of annual conferences outside the United States should not be assumed for annual conferences within the United States. General Conference would have to authorize a separate disaffiliation procedure for annual conferences within the United States.

Question 3

Yes, the General Conference must act to establish the requirements and procedures for the separation of an annual conference within the United States before a disaffiliation vote can be effective. That is to say, Judicial Council decision 1366 does not *in and of itself* constitute legislation that authorizes an annual conference to separate from the UMC.

In the matter of Decision 1366, Judicial Council exercised its right to rule on the constitutionality of proposed legislation to the General Conference. The proposed ¶2801.9 in Petition 90041 would have authorized annual conferences in the United States to separate from the UMC entirely and to affiliate with another denomination or become a self-governing church; that is, had the paragraph been approved by the General Conference. That was not the case. The proposed ¶2801.9 was not approved. Therefore, Decision 1366 applies to proposed legislation, not actual legislation.

One interpretation of Decision 1366 is that it automatically allows annual conferences to separate from the UMC, but that cannot be the case. Decision 1366 finds the theory of annual conference disaffiliation to be constitutional in the context of legislation that might have been approved by General Conference. Without the approval of General Conference, the theory of annual conference disaffiliation remains just that – a theory. The Judicial Council found the theory to be constitutional. Theories require legislation from General Conference to be effective, and such legislation does not exist in the *Discipline*, having not been ratified by General Conference. Therefore, the precedent set by Decision 1366, as real as it is in theory, does not have a procedure for application.

Another issue with Decision 1366 is the word “may.” Below is the language in question:

While the General Conference, under the authority of ¶ 16.3, *may* regulate the process and set the conditions for an annual conference to leave The United Methodist Church, the annual conference, having “reserved to it...such other rights as have not been delegated to the General Conference under the Constitution,” exercises autonomous control over the agenda, business, discussion, and vote on the question of withdrawal. (Decision 1366, page 44, emphasis added).

One interpretation of the word “may” is that General Conference approval for annual conference disaffiliation is optional: the General Conference may or may not regulate the process

and set the conditions for an annual conference to leave the UMC, but regardless, the annual conference has the exclusive right to do so on its own. Such an interpretation ignores the context of Decision 1366. The context *is* approval of a regulated process and conditions for annual conference disaffiliation established by General Conference, for that was the matter in question: a proposed new paragraph of the *Discipline* to be presented to the General Conference. Decision 1366 assumes the new paragraph would have established General Conference process and conditions.

Therefore, the word “may” here is not to be applied to the annual conference but rather to the General Conference. The General Conference may establish procedures and conditions for annual conferences to separate from the UMC, or it may not. The General Conference is not bound to either course. The annual conference may exercise its right to disaffiliate, *but only according to* procedures and conditions established by the General Conference, which to date do not exist.

Decision 1366 tells us what General Conference *may* do to allow for an annual conference to separate from the UMC, and had proposed ¶2801.9 become church law, General Conference would have done it. What Decision 1366 *does not do* is allow for annual conferences to separate from the UMC without General Conference process and conditions.

Question 4

This question assumes an annual conference in the United States votes in the affirmative to separate from the UMC before the General Conference sets the procedures and requirements for annual conference separation. Such a vote must be null, void, and without effect, for the annual conference would not have the authority to effect such a vote.

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There could be a scenario where an annual conference takes a vote to disaffiliate from the UMC with the expectation that General Conference would legislate the procedures and requirements for annual conference disaffiliation in the future, and the assumption is the vote would take effect when General Conference grants authority to the vote. But General Conference does not retroactively authorize the decisions of an annual conference. General Conference authorizes church law for the present and future, not the past. A vote taken by an annual conference *in expectation* of future authorization does not have authority. General Conference must first grant the authority for a vote to be effective, and then an annual conference may take up that vote with the correct legal understanding that the vote has all the authority of church law.

Question 5

An annual conference in the United States may not separate from the UMC under the current *Discipline*. Therefore, the rationale here assumes a future when the General Conference does act to amend the *Discipline* and legislates procedures and requirements for annual conference disaffiliation. The Council of Bishops named six areas that would require further clarification if such a future became reality.

(a) This brief has already argued that approval from the jurisdictional conference should be considered a minimum requirement in the event an annual conference wishes to separate from the UMC.

(b) The name “United Methodist”, the cross and flame logo of the UMC, the United Methodist Hymnal, and all other intellectual property belonging to the UMC are restricted to and solely for the use of United Methodist bodies as recognized by the *Discipline*.

(c) Compliance with civil law is paramount. WESPATH, as a United Methodist body, is bound to the paragraphs of the *Discipline* that stipulate the consequences of local church disaffiliation. In this case, ¶1504.23 is considered a minimum requirement and must be followed by all parties in the disaffiliation process.

(d) An annual conference wishing to disaffiliate must abide by all state laws, including where law requires the updating of the name of the annual conference, made necessary by it ceasing to be a United Methodist body, with all institutions to which it is obligated.

Real property owned by the incorporated entity of the annual conference remains the property of the annual conference upon disaffiliation: this includes and is limited to all real property over which the annual conference Board of Trustees has governance and does not include the real property owned by the incorporated entities of the local churches in the conference.

Responsibility for an annual conference's Articles of Incorporation belongs to the annual conference Board of Trustees. Therefore, the Board of Trustees reserves the right to update, or to decline to update, the Articles of Incorporation to reflect a change in the name of the annual conference.

(e) Real and intellectual property held by the incorporated entity of the annual conference should remain the property of the annual conference upon disaffiliation. However, all other incorporated entities associated with the annual conference, such as those named in the Council of Bishops' question, are responsible to the governance bodies of each entity, and the annual conference may not claim the real or intellectual property of those entities without the approval of the corresponding governance bodies.

There is an interpretation of the trust clause in ¶2503 that argues for the right of the annual conference to claim all United Methodist property within its bounds as held in trust for the use and discretion of the annual conference, and therefore, in the event of annual conference disaffiliation, all such property would follow the annual conference out of the UMC. But the trust clause uses exact language for the use of United Methodist property. These premises are subject to usage as “authorized and declared by the General Conference *and* by the annual conference within whose bounds the said premises are situated.” (emphasis added). The General Conference *and* the annual conference have the right to authorize and declare the use of property held in trust for United Methodist ministry. The General Conference, having not authorized requirements or procedure for annual conference disaffiliation, has not allowed an alternative use for United Methodist properties that do not belong to the incorporated entity of the annual conference. Should other United Methodist bodies wish to disaffiliate from the UMC, they must follow the established requirements and procedures in the *Discipline*, but the right is not granted to the annual conference to effect disaffiliation on their behalf.

Question 6

Yes, dissenting members, local churches, clergy, and affiliated entities must have an option to remain a part of the UMC. A district may be considered an “affiliated entity” where the district is incorporated as a legal entity.

The question of affiliated bodies is answered in Question 5 (e): without standards and procedures authorized by General Conference that would permit annual conferences to claim the property held in trust by affiliated bodies, the annual conference may not claim such property.

Where the trust clause of ¶2503 is applied, such property remains held in trust for United Methodist ministry.

Additionally, there is the question of dissenting members, clergy, and churches. If there is a future when annual conferences are permitted to disaffiliate, and an annual conference effects disaffiliation, then dissenting members, clergy, and churches could satisfy the minimum requirements for the existence of an annual conference and may be understood to constitute the continuing annual conference post-disaffiliation. Therefore, dissenting members, clergy, and churches must be allowed to remain in the UMC and are not obligated to transfer to another annual conference.

The *Discipline* supplies three conditions for an annual conference to continue to exist in the UMC even after it votes to separate from the UMC. This rationale assumes the legal entity of the annual conference has separated from the UMC and the conditions for a continuing annual conference, presented here, are met.

First, the Constitution of the *Discipline* requires an annual conference to have a membership of “no fewer than fifty clergy in full connection, except by the consent of the General Conference” (¶27.4). Assuming an annual conference effects disaffiliation, and assuming there are at least fifty dissenting clergy in full connection who are members of the annual conference, and assuming the dissenting clergy elect not to be members of another denomination, then from the perspective of the *Discipline* there exists the minimum number of clergy in full connection for that annual conference to continue to exist in the UMC. Those clergy are themselves the continuing annual conference, for in dissenting with disaffiliation, they never separated from the annual conference. The continuing annual conference is *not* the legal entity that has separated from the UMC. Rather, it is the disciplinary body and eventual legal

entity that satisfies the minimum number of clergy members for an annual conference to exist. Lay delegates must equalize these clergy delegates at a meeting of the annual conference.

Second, it is the Jurisdictional Conference that establishes the “names, number, and boundaries of the annual conferences” (§40). Annual conference disaffiliation, if it were permitted, does not equate to a change in the names, number, and boundaries of the annual conferences in a jurisdiction if the jurisdictional conference has not voted to effect such a change. From the perspective of the jurisdictional conference, the names, number, and boundaries of the annual conference remain continuous and unchanged unless the jurisdictional conference acts to change them. If an annual conference were to disaffiliate from the UMC without the approval of jurisdictional conference, then the disaffiliating annual conference may exist as a separate incorporated entity from the UMC, but the name and boundaries of the annual conference prior to disaffiliation remain and that annual conference is counted in the number of the annual conferences in the jurisdiction. Members, local churches, and clergy may continue to exist and do ministry within the bounds of the annual conference as recognized by the jurisdictional conference because, from the perspective of jurisdictional conference, those boundaries have not changed.

Third, each local church organized under the requirements of the *Discipline* is responsible for the maintenance of its organizing documents, including its Articles of Incorporation and its Bylaws, with the requirement that no organizing document claim power that exceeds those given to it by the *Discipline* (§2506). The charge conference may from time to time update the organizing documents and usually delegates that responsibility to the Board of Trustees. The local church “cannot sever its connectional relationship to The United Methodist Church without the consent of the annual conference” and “The organizing documents of the

local church must reflect its connectional relationship to the United Methodist Church” (§2529 b2 and c). Therefore, for a local church to disaffiliate from the UMC, it must reflect the same in its organizing documents, and the annual conference must consent to such a change for it to be effective.

However, the annual conference may not adjust the organizing documents of the local church *for* the local church. The annual conference may not remove the connectional relationship between the local church and the UMC from the organizing documents of a local church. The local church must instigate and enact such a change, while the annual conference must consent.

In a future when annual conferences are permitted to disaffiliate, the local church reserves the right to update or not to update its organizing documents to reflect a change in connectional relationship. As argued in response to Question 5, the annual conference may not automatically claim the property of a local church by invoking the trust clause because the General Conference has not authorized an alternative use for properties that are held in trust for United Methodist ministry. Therefore, the default position of *all* local churches within the bounds of a disaffiliating annual conference is to retain their connectional relationship to the UMC. If a local church wishes to follow the disaffiliating annual conference into another denomination, it must act to update its organizing documents. In such a case when a local church decides not to follow the annual conference out of the UMC, it must be considered to be in connection with the UMC as it was prior to annual conference disaffiliation. A decision not to act is a *de facto* decision to remain in connectional relationship with the UMC.

So what happens to dissenting members, clergy, and local churches in annual conferences that could, one day, choose to disaffiliate? They may be understood to constitute the continuing annual conference, given these conditions:

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- 1) At least fifty clergy from the annual conference choose to remain in full connection with the UMC;
- 2) The jurisdictional conference has not consented to a change in the names, number, and boundaries of the annual conferences that would reflect the disaffiliation of the annual conference;
- 3) One or more local churches choose not to change their organizing documents to reflect a change in connectional relationship with the UMC and continue in the default position of being a United Methodist entity.

In total, these conditions are the environment for an annual conference to be recognized as the continuing annual conference that exists after annual conference disaffiliation. While the continuing annual conference would be a separate legal entity from the disaffiliating annual conference, it is a legitimate disciplinary entity in which dissenting members, clergy, and local churches may retain their United Methodist membership, affiliation, and ministry.

Conclusion

This brief has argued for a ruling that annual conferences in the United States may not separate from the UMC. The following realities summarize this position:

1. Annual conference disaffiliation is fundamentally a connectional matter, and General Conference has full legislative power over all matters distinctively connectional.

Therefore, General Conference must act to establish requirements and procedures for annual conferences in the United States to separate from the UMC for a disaffiliation vote to be effective.

2. Jurisdictional conference has the power to establish the names, number, and boundaries of the annual conferences in the United States. Therefore, an annual conference may not separate from the UMC without the approval of the jurisdictional conference.
3. Lay delegates to the annual conference may not vote on the conference relations of clergy, and to separate an annual conference from the UMC would change the conference relations of the clergy yet also would require votes cast by lay delegates. Therefore, General Conference must act to establish voter eligibility for a vote that would separate an annual conference from the UMC.
4. Judicial Council decision 1366 substantiates the theory of annual conference disaffiliation but does not constitute legislation. Therefore, Decision 1366 may not be considered an authoritative pathway for annual conference disaffiliation.
5. The provisions of ¶572 do not apply to annual conferences in the United States. Therefore, General Conference must establish requirements and procedures for annual conferences in the United States to disaffiliate for a disaffiliation vote to be effective.
6. The trust clause in ¶2503 requires the General Conference *and* the annual conference to authorize and declare the use of property held in trust for United Methodist ministry, and to date, the General Conference has not authorized and declared any alternative use for properties under the trust clause. Therefore, the General Conference must act to supply an alternative use for United Methodist property for an annual conference to claim any such property it does not own for use outside of United Methodist ministry.
7. In a future when annual conference disaffiliation is allowed in the United States, and in the event an annual conference votes to separate from the UMC, the dissenting clergy (assuming they number at least fifty), the bounds established by the jurisdictional

conference, and the organizing documents of local churches that retain the name “United Methodist” may serve to constitute the continuing annual conference.

These realities support a ruling that an annual conference may not disaffiliate, separate, or sever connectional relationships with the United Methodist Church without the action and approval of General Conference.

Thank you for your consideration. This brief has the support of a leadership team, and their names are listed below. I am copying the Secretary of the Council of Bishops who submitted the original request for a declaratory decision. The grace of the Lord Jesus Christ be with you.

Respectfully Submitted,



Rev. David Horton
Elder, Texas Annual Conference of The United Methodist Church

Leadership Team

Rev. Dr. John Stephens, Elder, Texas Annual Conference
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