

Detailed Outline of United Methodist Judicial Process

Prepared by the Marriage Equality Task Force

Metropolitan Memorial United Methodist Church, Washington, D.C.

1. Introduction

The following outline is intended to familiarize the reader with the basics of *the judicial process used for the trials of clergy alleged to have violated the Book of Discipline* (BOD), specifically, by officiating at same-gender weddings or being a self-avowed practicing homosexual. It is not intended to be comprehensive. The reader may find answers to questions not provided in this outline by consulting the BOD itself. It is available on-line at the following URL:

http://issuu.com/abingdonpress/docs/9781426718120_online_part1?e=1213442/1091664.

The Handbook of the General Council on Finance and Administration (Handook), cited below, is also available on-line at: <http://www.gcfa.org/administrative-and-judicial-procedures-handbook>.

The BOD contains multiple sections which provide a context that may inform the trial process. Specifically, The Constitution of the Church, at Article IV, entitled “Inclusiveness of the Church,” BOD, ¶ 4, “acknowledges that all persons are of sacred worth.” Moreover, that section provides that “[a]ll persons, without regard to . . . status . . . shall be eligible” to participate fully in the life of the United Methodist Church. (See also ¶ 340.1. Clergy “serve in the local church . . . in witness and service of Christ’s love and justice.”)

The Conclusion of ¶ 102, “Doctrinal Standards and Our Theological Task,” provides that “[d]evising formal definitions of doctrine has been less pressing for United Methodists than summoning people to faith and nurturing them in the knowledge and love of God.” Further, ¶ 103, “Our Doctrinal History,” recognizes a distinction between the vital truths of Christian belief and respect for “diversity of opinions held by conscientious persons of faith.”

In addition, ¶ 121, “Rationale for Our Mission,” states as follows: “The mission of the Church is to make disciples of Jesus Christ for the transformation of the world by proclaiming the good news of God’s grace and by exemplifying Jesus’ command to love God and neighbor, thus seeking the fulfillment of God’s reign and realm in the world.” In particular, “[w]henver United Methodism has had a clear sense of mission, God has used our Church to . . . heal relationships [and] transform social structures . . . thereby changing the world.” In ¶ 122, “The Process for Carrying Out Our Mission,” the BOD states that the Church will accomplish this mission by sending “persons into the world to live lovingly and justly as servants of Christ . . . by freeing the oppressed, [by] being and becoming a compassionate, caring presence, and working to develop social structures that are consistent with the gospel[.]” Finally, ¶ 124, “Our Mission in the World,” provides that “[t]he visible

church of Christ as a faithful community of persons affirms the worth of *all* humanity . . . [.]” (Emphasis supplied).

In conclusion, in ¶ 140, “Called to Inclusiveness,” the BOD emphasizes that, as United Methodists, “we are called to be faithful to the example of Jesus’ ministry to *all* persons.” (Emphasis supplied). Specifically, the term “inclusiveness” is defined as follows:

“Inclusiveness means openness, acceptance, and support that enables *all* persons to participate in the life of the Church, the community, and the world; therefore, *inclusiveness denies every semblance of discrimination.*” (Emphasis supplied). (See also ¶ 162(J)).

2. Purpose

The purpose of the judicial process is stated in the BOD at ¶ 2701 as follows: “The judicial process shall have as its purpose a just resolution of judicial complaints, in the hope that God’s work of justice, reconciliation and healing may be realized in the body of Christ.” The BOD defines the phrase just resolution at ¶ 2701(5) in this way: “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 parties.” The Handbook describes this as “fair process” and explains it, at Section I, as follows: “Fair process seeks to protect the rights of the respondent by giving him/her every opportunity to know sufficient detail of the charges, to have adequate time to prepare a response, and to effectively present that response. These provisions are intended to enhance trust and reliance upon the Church’s own process as a fair method to resolve disputes.”

3. Complaint

The judicial process, insofar as it relates to misconduct by clergy, begins with the filing of a complaint with the bishop of the annual conference (the resident bishop) in which the person named in the complaint is a clergyperson in full connection. The BOD defines a complaint, at ¶ 363.1, as “a written and signed statement claiming misconduct as defined in ¶ 2702.1.” The grounds set forth in ¶ 2702.1, as relevant to the current trials, are: “(b) practices declared by The United Methodist Church to be incompatible with Christian teaching, including but not limited to being a self-avowed practicing homosexual; or conducting wedding ceremonies which celebrate homosexual unions; or performing same-sex wedding ceremonies . . . (d) disobedience to the order and discipline of The United Methodist Church[.]” (See also ¶¶ 161(b), 341.6.). Pursuant to ¶ 2702.4, “[n]o judicial complaint or charge shall be considered for any alleged occurrence that shall not have been committed within six years immediately preceding the filing of the complaint[.]”

It does not appear from the BOD or the Handbook that the person filing the complaint needs to be a member of The United Methodist Church. The bishop is responsible for notifying the clergyperson charged of the fact of the complaint and the details contained therein. Under ¶ 363.1(a) of the BOD, the bishop is also responsible for notifying, in writing, the person

filing the complaint and the person against whom complaint is filed of the process to be followed.

4. Supervisory Response and Just Resolution

Because the bishop has administrative responsibility for the annual conference to which he or she is assigned, under ¶ 363.1(b) of the BOD, upon receipt of a complaint he or she shall initiate a supervisory response to that complaint. This response must be carried out within 90 days after the receipt of the complaint. ¶ 363.1(f). The response is “pastoral and administrative” and is “directed toward a just resolution among the parties” and it “is not part of any judicial process.” During this process, the complaint is treated as an allegation or as allegations. Both the complainant and the person against whom the complaint is filed (the respondent) have the right to choose another person to accompany him or her. That person has the right to speak during the proceedings. At the bishop’s discretion, “persons with qualifications and experience in assessment, intervention, or healing may be chosen to assist in the process.” ¶ 363.1(b). Any agreement between the parties is a final resolution of the complaint. Handbook, Chapter 5.II.

The judicial process may also include a more formal procedure designated as “just resolution.” (See citation to ¶ 2701(5) above.) In conducting the process the parties may be “assisted by a trained, impartial third party facilitator(s) or mediator(s)[.]” Ibid. The objective of the procedure is to reach “an agreement satisfactory to all parties.” If an agreement is reached, it must be reduced to writing and signed by all the parties. “A just resolution agreed to by all the parties shall be a final disposition of the related complaint.” In effect, this process constitutes an attempt to achieve a negotiated settlement, with or without third party intervention. The just resolution procedure can take place at any stage of the complaint process, up to and including the trial stage. In particular, after consultation with the counsel for the church and the counsel for the respondent, the presiding official may refer the complaint to the resident bishop to conduct a just resolution procedure. ¶ 2708.3. (This has happened in the Ogletree trial.)

If the supervisory response and/or the just resolution procedure fail to produce a resolution of the complaint, the complaint returns to the bishop and he or she has the discretion either to: (1) dismiss the complaint, with the consent of the cabinet (the District Superintendents of the conference) and giving his or her reasons in writing, or (2) refer the matter to the counsel for the church as a complaint. BOD, ¶ 363.1(e). The BOD does not specify the reasons needed for the bishop to dismiss the complaint. ¶ 163.1(e).(1). However, according to the Handbook, a bishop may dismiss a complaint if, e.g., he or she determines that it is without sufficient evidence or is not based in law or fact. Handbook, Chapter 5.I. On the other hand, ¶ 2704.2(a) provides that if the bishop “determines that a written complaint is based on allegations of one or more offenses listed in ¶ 2702.1, the bishop shall refer the complaint to the counsel for the Church, who shall be appointed by the bishop. Note, in particular, that

the only qualification to be the counsel for the Church is that he or she “shall be a clergy person in full connection.” Thus, the bishop has discretion as to the choice of the counsel for the Church. In addition, the counsel for the Church may choose an assistant counsel who may be an attorney and who may not speak in any hearing conducted as part of the judicial process. See also BOD ¶ 2713.4. The person against whom the complaint is filed, in his or her discretion may also select a representative or counsel, who must be a clergy person in full connection, and an assistant counsel who may be an attorney but who similarly may not speak during any part of the judicial process. In effect, such assistant counsels serve an advisory function.

The counsel for the Church conducts an independent investigation of the allegations in the complaint as deemed necessary. Under ¶ 2704.2(a) “[i]f the counsel for the Church determines that there is sufficient evidence to support a chargeable offense, [the] counsel shall prepare and sign a complaint, which shall consist of a bill of charges and specifications, including documentary evidence, for each offense.” In this regard, Judicial Council Decision No. 980 states as follows: “When the agreed facts concede a practice which the Discipline declares to be incompatible with Christian teaching, reasonable grounds exist to bring a bill of charges and specifications and it is an egregious error of Church law not to bring such a bill of charges and specifications.” The counsel then informs the resident bishop that charges are being forwarded and the bishop appoints a presiding officer of the trial court, who must be either a retired bishop or the bishop of another annual conference. See also BOD ¶ 2713.2. Once the presiding officer is appointed, the counsel for the Church forwards the charges to that officer.

Several things are to be noted at this point: (1) in practice, the counsel for the Church is appointed by the bishop once any preliminary procedure is completed without resolution of the complaint; (2) since the bishop has discretion as to the selection of the counsel for the Church, he or she is under no obligation to select someone who is opposed to same-gender marriage; and (3) the bishop also has discretion in selecting the presiding officer and, in the interest of fairness, should choose someone who is open-minded and will allow the fullest presentation of the evidence and the arguments. This is important. In recent trials, for example, presiding officials have restricted the presentation of evidence, ruling that only evidence that went to whether or not the respondent in fact conducted a same-gender marriage was relevant. Evidence as to provisions of the Discipline relating, e.g., to non-discrimination and inclusiveness, was not permitted. As to other aspects of a bishop’s discretion, Dr. Thomas Frank of Wake Forest University stated, in a letter to all United Methodist bishops as follows: “Nothing in the *Book of Discipline* requires that you refer complaints to counsel for the church and subsequent trial. You have discretion as the chief pastors of the church over the manner, purpose, and conduct of any supervisory response and just resolution under ‘fair process.’” (Emphasis in original).

5. Trial Procedures

A trial is considered as an expedient of last resort and is only considered an option after all other attempts to resolve the complaint have been exhausted. BOD, ¶ 2707. The “official charged with convening the trial,” usually the resident bishop, determines the time and place of the trial and is responsible for notifying the presiding officer, the respondent, and the counsel for the Church. BOD, ¶ 2713.1. Prior to the trial of a clergy member of an annual conference a jury pool is constituted consisting of 35 members of the conference in full connection. BOD, ¶ 2713.3.(a). The members of the pool are selected by the District Superintendents. Ibid. At the beginning of the trial, 13 persons and two alternates are selected from the pool to constitute the jury. ¶ 2709.2. The counsel for the Church and for the respondent have up to four peremptory challenges and an unlimited number of challenges for cause. ¶ 2709.3. The presiding officer decides whether sufficient grounds have been presented to sustain a challenge for cause.

The presiding officer has the authority, among other things, to rule on proper representation of the counsel for the Church and for the person charged, the admissibility of evidence, and “charging the members of the trial court as to the Church law involved in the case at the beginning of the trial and just before they retire to make up their verdict[.]” ¶ 2710.1. The Handbook, Chapter 13,IV.H., recommends that a court reporter be used to record the trial proceedings because “the trial record is the only background material that may be reviewed by appellate bodies[.]” The presiding official does not have the authority to pronounce a judgment either for or against the person charged. Under ¶ 2708.1, a presiding official may choose to have his or her own counsel who “functions in much the same way as a civil court judge’s law clerk[.]” Handbook, Chapter 13, II, G.

The jury “shall have the exclusive right to determine the innocence or guilt of the person charged.” Id. If the respondent pleads “guilty” at the beginning of the trial, no trial is held. In that circumstance, evidence is taken only with regard to the penalty. If he or she pleads “not guilty,” the trial proceeds with the taking of testimony, the introduction of evidence, and the presentation of arguments. ¶ 2710.4. The burden of proof requires the counsel for the Church to convince the jury of the respondent’s guilt by “clear and convincing” evidence. ¶ 2711.2. (By analogy with civil law, this is a higher burden than preponderance of the evidence, but less than proof beyond a reasonable doubt.) A vote of nine members of the jury is required to sustain the charges and to convict. Id. Less than nine votes constitute an acquittal. Id.

If the jury convicts the respondent, further testimony may be heard and arguments presented by counsel as to what the penalty should be. ¶ 2711.3. A separate vote by the jury is taken to determine the penalty. Determination of the penalty requires the vote of seven members of the jury. Id. As relevant to trials of clergy, the penalties include termination of conference membership; revocation of ministerial credentials, suspension, or some lesser penalty. Id.

Any lesser penalty must be clearly spelled out so that it can be enforced. Handbook, Chapter 13.V.B. The Discipline, therefore, does not mandate defrocking clergy who are found guilty of officiating at same-gender marriages. (Note that the jury has complete discretion as to the guilt of the respondent and the penalty. This is significant in that the church has no right to appeal from the findings of the trial court (see below)). According to Judicial Council decisions, *see* Judicial Council Decision Nos. 1201 and 1250, the jury must have available to it the full range of legislated penalties. Thus, annual conference legislation requiring specific penalties, e.g., 24-hour suspensions, when a respondent is found guilty of officiating at same-gender weddings, may very well violate the Discipline. (The Pacific Northwest Conference has such a policy and it has been applied in two cases.)

The Social Principles in Chapter 164.V (The Political Community) set forth principles urged by the Church to be applied in the criminal justice system. ¶ 164.V.(H). As stated there, “restorative justice [as opposed to punitive justice] seeks to hold the offender accountable to the victimized person, and to the disrupted community. Through God’s transformative power, restorative justice seeks to repair the damage, right the wrong, and bring healing to all involved, including the victim, the offender, the families, and the community.” *Id.* To be consistent with these principles, the Church should apply them in clergy trials, instead of the punitive justice now applied, e.g., revocation of ministerial credentials. It should be noted, *see, e.g.*, Judicial Council Decision No. 1254, that the Social Principles are not church law. However, the Social Principles set forth policies that represent a public declaration of the church’s position on various issues and actions by the church that are inconsistent with those policies, as well as the policies set forth in the Introduction hereto, could make it seem that the church is hypocritical. (Note further that in the current clergy trials there is no “victim,” unless it is argued that the church itself is the “victim.”)

6. Appeals

Anyone appealing a trial court decision must notify the resident bishop, the presiding officer, and counsel and provide a written statement of the grounds of the appeal. ¶ 2715.1. The committee on appeals is selected by the bishops within the jurisdiction where the trial was held and is composed of four clergy, a diaconal minister, a full-time local pastor, and three lay persons. ¶ 2716.1. “The appellate body shall determine two questions only: (a) Does the weight of the evidence sustain the charge or charges? (b) Were there such errors of Church law as to vitiate the verdict and/or the penalty?” ¶ 2715.7 “These questions shall be determined by the records of the trial and the argument of the counsel for the Church and for the respondent.” Under ¶ 2715.6, “[t]he records and documents of the trial, including the evidence, *and these only*, shall be used in the hearing of any appeal.” (Emphasis supplied). “The appellate body shall in no case hear witnesses.” *Id.* See also Handbook, Chapter 14.II.A. “The Church shall have no right of appeal from the findings of the trial court.” ¶ 2715.10. Decisions of the appellate body involving questions of Church law may be appealed to the Judicial Council. ¶ 2715.9.