

## A BRIEF HISTORY OF THE JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

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The Judicial Council is a relatively new addition to the structure of Methodism. From the earliest days of Methodism clergy were guaranteed the right of trial and appeal. However, until 1935 there was no satisfactory mechanism for resolving appellate cases in the Methodist Episcopal Church (MEC), The Methodist Episcopal Church South (MECS), or the Methodist Protestant Church (MPC). In 1934, the MECS General Conference established a Judicial Council which was the forerunner of the Judicial Council established in the 1939 merger of the three branches of Methodism in the United States.

During the 1800s there were discussions during the General Conferences of both the MEC and MECS about the need for some way to deal effectively with these appellate cases. Trials of clergy which were appealed by the individuals involved sometimes had to wait as much as four years for resolution. In the MEC there was a Committee on the Judiciary. In the MECS the body was known as the Committee on Appeals.<sup>1</sup> The Committee on Appeals of the MPC was more related to the right of a minister to appeal the assignment he was given than to trials of ministers.<sup>2</sup>

In the MEC the General Conference was the final interpreter of its law, and in the MECS it was the College of Bishops. In both cases the decisions were final. In the MPC the conference presidents ruled on the questions of law presented, but these decisions had to be reported to the General Conference. Only after approval by the General Conference did they become tantamount to law.<sup>3</sup> With the 1968 merger of The Methodist Church (MC) and The Evangelical United Brethren Church (EUB) still another way of dealing with interpretations of church law by bishops is seen. Section 402 of the 1967 Discipline of the EUB provided that "interpretations made by the Board of Bishops were only effective until the next General Conference."<sup>4</sup> These rulings had no continuing value as decisional law unless there was some enactment by the General Conference.

Off and on from the late 1860s there was discussion about the unifica-

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<sup>1</sup> Harmon, Nolan B. *The Organization of The Methodist Church*. (Nashville, TN: Abingdon-Cokesbury Press, 1948), 198-199.

<sup>2</sup> Harmon, 202.

<sup>3</sup> Harmon, 202-203.

<sup>4</sup> *Discipline*, The Evangelical United Brethren Church, 1967, Section 402.

tion of the MEC and the MECS. From 1916-1918 a Joint Commission on Unification met regularly and presented a plan of union for these two branches of Methodism. One of the parts of this proposed plan was the inclusion of a Judicial Council.<sup>5</sup> In 1930 the MECS General Conference adopted a new constitution which was sent to the annual conferences for ratification. The Constitution was rejected. One of the features of this constitution was the inclusion of a Judicial Council which was sent to the annual conferences as a separate amendment. This amendment was adopted by a nearly five to one margin of votes.<sup>6</sup> The Judicial Council became a part of the MECS constitution in 1934, and a Judicial Council of five ministers and four laymen was formed.<sup>7</sup> Unfortunately, no written decisions of that council have been found to date.

### The Judicial Council

At the 1939 Uniting Conference an interim Judicial Council was formed. It essentially followed the plan from the 1918 Joint Commission on Unification and the plan adopted by the MECS in 1934. It was to be composed of nine members—five ministers and four laymen. It was not until 1980 that having a majority of clergy and laity switched every eight years.<sup>8</sup> All members had to be over 40 years of age until 1972 when the minimum age requirement was dropped. The term of office was, and continues to be, eight years. The Council of Bishops nominated four times the number of persons to be elected, preserving the balance of ministers and laymen.<sup>9</sup> In 1968 this paragraph was amended to require that each jurisdiction and the overseas (later central) conferences be represented by at least one nominee. At the time these nominations are presented on the floor of the General Conference, nominations from the floor are allowed. After the nominations, a time is fixed for election by order of the General Conference. Originally, the names and conference affiliation of each nominee were published in two issues of the *General Conference Daily Advocate*; beginning in 1968 a biographical sketch of each nominee not exceeding 100 words was required.<sup>10</sup> Once the names and biographical information are published and 48 hours have elapsed, the balloting begins, during which there is no discussion, and continues until the requisite number of persons is elected by majority vote. Following those elections, alternates are elected. In 1940, the number of alternates was exactly the same as the membership, and their terms were eight

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<sup>5</sup> *Joint Commission on Unification of the Methodist Episcopal Church and the Methodist Episcopal Church, South* (New York: Methodist Book Concern, 1918), Vol. 2, 26-99.

<sup>6</sup> Lawson, Martin E. *The Genesis and Development of the Judicial Council of The Methodist Church*. Undated, unpublished paper, 8. Records of the Judicial Council, United Methodist Church Archives, Madison, New Jersey.

<sup>7</sup> Lawson, 8.

<sup>8</sup> *The Book of Discipline* (Nashville, TN: The United Methodist Publishing House, 1980), ¶ 2601.

<sup>9</sup> *Doctrines and Discipline* (New York, NY: The Methodist Publishing House, 1939), ¶ 601.

<sup>10</sup> *Discipline*, 1968 ¶ 1701.

years.<sup>11</sup> The number of alternates has fluctuated, and in the *2008 Discipline* the number is six lay and six clergy.<sup>12</sup> In 1996 the terms for alternates became four years.<sup>13</sup> When a vacancy occurs, the first elected alternate (lay or clergy depending on which class the vacancy occurs in) becomes a member for the remainder of the term of the member being replaced. Interestingly, from 1940 to 1988 once “the exhaustion of the list of alternate members” had been reached, the Judicial Council had the authority to choose members for the remainder of the quadrennium.<sup>14</sup>

From its inception the Judicial Council was given the authority to provide its own method of organization. It fixes the date, place, frequency, and length of its meetings with two exceptions—it must be in session for the entire time the General Conference is meeting and it must meet at least once a year to review bishops’ decisions of law.<sup>15</sup>

These provisions exist today much the same as when they were first enacted in 1939 and 1940. With the 1968 merger of MC and the EUB the Judicial Council continued in The United Methodist Church much as it was in the MC. Decisions of the prior Judicial Council are persuasive precedents in the merged church.<sup>16</sup>

### Authority of the Judicial Council

In the original powers and duties of the Judicial Council were included the authority to determine the constitutionality of any act of the General Conference when requested by one fifth of the members of the General Conference or a majority of the Council of Bishops.<sup>17</sup> The second power gave the Judicial Council the power to determine the constitutionality of any act of a Central or Jurisdictional Conference on the appeal of the majority of the College of Bishops or one fifth of the members of the Jurisdictional or Central Conference.<sup>18</sup>

The third power granted originally was to determine the legality of any action taken by “any General Conference board or Jurisdictional or Central Conference board or body.”<sup>19</sup> This was a very broad provision and subject to interpretation of which boards or bodies were created by these conferences.

The fourth power granted in the 1939 *Discipline* was to hear and pass on all decisions of law made by bishops in Annual or District Conferences. The Judicial Council was required to meet at least once each year to hear these decisions. The Council had the authority to “affirm, modify, or reverse

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<sup>11</sup> *Discipline*, 1939 ¶ 601.

<sup>12</sup> *Discipline*, 2008 ¶ 2603.

<sup>13</sup> *Discipline*, 1996 ¶ 2603.

<sup>14</sup> *Discipline*, 1938 ¶ 601.

<sup>15</sup> *Discipline*, 2008 ¶ 2608.2.

<sup>16</sup> *Discipline*, 2008 ¶ 2611.

<sup>17</sup> *Discipline*, 1939 ¶ 604.

<sup>18</sup> *Discipline*, 1939 ¶ 605.

<sup>19</sup> *Discipline*, 1939 ¶ 606.

them.”<sup>20</sup> The final power granted in 1939 was to “hear and determine the appeal of a bishop when taken from a Trial court in his case.”<sup>21</sup>

Between 1940 and 1944 there was discussion of the addition of a fifth power to the Judicial Council allowing the Council to make “a ruling in the nature of a declaratory decision.”<sup>22</sup> This authority allowed the Judicial Council to consider questions of lack of clarity in disciplinary paragraphs, conflict among disciplinary paragraphs, and proper authority of conferences to take certain actions. One of the first questions arising under this new power related to the power of the General Conference to elect missionary bishops. The bishops were elected, and that action was appealed to the Judicial Council. The Judicial Council determined that the General Conference had no authority to elect any bishop.<sup>23</sup>

### **Jurisdiction to Decide Matters**

The *Discipline* sets the parameters for the jurisdiction of the Judicial Council to decide matters presented. In the decades since 1940 there have been some changes in this jurisdiction and many of the avenues of appeal have been spelled out more carefully. Most appeals come from annual conferences, but occasionally they come from other bodies. Only General Conference and the Council of Bishops have the authority to ask for a decision on proposed legislation. Obviously, the questions from the General Conference can come only when it is in session, but the Council of Bishops has no time limitation on when it can ask questions about proposed legislation.

An annual conference in its regular business session may ask for a decision “in the nature of a declaratory decision” or for a decision of law by a bishop.<sup>24</sup> There is no authority for individuals to appeal to the Judicial Council except in one instance: if a clergy person chooses to appeal from a decision of a Jurisdiction or Central Conference Court of Appeals.<sup>25</sup> That appeal is only on a matter of church law and not on the facts of the case. Two questions only are to be decided: “. . . (a) Does the weight of the evidence sustain the charge or charges? [and] (b) Were there such errors of church law as to vitiate the verdict and/or the penalty?”<sup>26</sup>

### **Decisions of the Judicial Council**

Paragraph 2609.10 states that all decisions of the Judicial Council are final. Paragraph 2611 states that “the decisions of the Judicial Council of The Methodist Church heretofore issued shall” have persuasive authority as prece-

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<sup>20</sup> *Discipline*, 1939 ¶ 607.

<sup>21</sup> *Discipline*, 1939 ¶ 609.

<sup>22</sup> *Discipline*, 1944 ¶ 914.

<sup>23</sup> Judicial Council Decision, 21.

<sup>24</sup> *Discipline*, 2008 ¶¶ 2609, 2610.

<sup>25</sup> *Discipline*, 2008 ¶¶ 2712.5, 2713.5.

<sup>26</sup> *Discipline*, 2008 ¶ 2715.7.

edents for The United Methodist Church except in such cases “where their basis has been changed by the Plan of Union or other revisions of Church law.”<sup>27</sup> From 1939 until 1953 the Judicial Council decisions appeared in the General Minutes and summaries (also referred to as digests) appeared in various church publications. In 1953, Dr. Nolan B. Harmon, Book Editor of The Methodist Church, announced plans to publish the decisions of the Judicial Council with an index as well as adding footnotes with decision numbers to the Discipline paragraphs related to the decision(s). Until 1988, a volume was compiled each quadrennium and periodically those volumes were compiled into a larger volume. The bound volumes were distributed to bishops and Judicial Council members as well as being available for sale through Cokesbury Bookstores.

From 1940 through April 2010 there have been 1,114 Decisions made by the Judicial Council.<sup>28</sup> The Decisions have been published in six volumes to date. Until 2005, pamphlets of the decisions were printed following each meeting and compiled into bound volumes with indices added at the end of each quadrennium. There is not a disciplinary or Rules of Practice and Procedure requirement that a bound volume be published, but the compilation of the decisions with indices has been deemed helpful to the bishops and others across the church. Only the bound volumes contain indices which meant searching through each decision made between bound volumes to be sure no new decision affected the matter at hand. Until the discontinuance of the publication of the General Minutes, each year the decisions were printed at the back of those volumes. In 1997, a digital copy of all of the decisions from 1940–1996 was distributed in CD-ROM format. Beginning in the late 1990s those decisions and the subsequent decisions were posted on the official United Methodist Internet site maintained by United Methodist Communications. There is a search engine on this site which makes searching for decisions on specific issues or disciplinary provisions much easier, especially between the issuance of bound volumes.

### Rules of Practice and Procedure of the Judicial Council

The Constitution gives the Judicial Council the authority “[t]o provide its own methods or organization and procedure.”<sup>29</sup> The *Disciplines* from 1939 through 1964 contained the Rules of Practice and Procedure. After 1968 these rules became a separate document, and in 2000 appeared on the Judicial Council portion of the official United Methodist website. They were always the work of the Judicial Council and not the General Conference. In 1948 the Council amended the rule on election of officers to add a statement

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<sup>27</sup> *Discipline*, 2008 ¶¶ 2609.10, 2611.

<sup>28</sup> The last numbered decision at the April, 2010 meeting is 1151, but there are no decisions numbered 256-300. There are 8 decisions issued by the Interim Judicial Council at the Uniting Conference in 1968 which are numbered 1-8. This makes the total number of decisions 1114.

<sup>29</sup> *Discipline*, 2008 ¶ 56.6. This provision has not been changed since its adoption in 1939 at the Uniting Conference.

“Provided no officer shall be elected to succeed himself in any particular office.”<sup>30</sup> However, the rule never appeared in the published rules, and in 1952 the rule was ignored when Charles B. Ketcham was elected secretary for a second quadrennium. The rule was reaffirmed in 1956 and included in the Rules.<sup>31</sup> Prior to 1980 it was dropped, and officers have been routinely elected to the same office.

The later Rules had a last paragraph stating that the rules could be amended at any time.<sup>32</sup> The 1960s and 1970s saw several revisions of the Rules; most changes were a quadrennial updating of the disciplinary paragraph numbers.<sup>33</sup> In 1999 the Rules were reorganized and readopted, and several appendices were added. These appendices included “Guidelines for the Preparation of Briefs” which had previously been sent to parties of interest in a separate document and “Guidelines for Bishop’s Decisions of Law” which were included as a part of Decision 799 in 1997.<sup>34</sup>

In 2010, there was another major rewriting adopted which made various changes, the most significant one being the addition of a new Section X dealing with “Recusal, Inhibition and Conflicts of Interest.”<sup>35</sup> At the 2008 General Conference several petitions were considered which would have required members of the Judicial Council to withdraw from participation in decisions which presented a conflict of interest or when the matter came from the annual conference where the member resided.<sup>36</sup> However, in Decision 1096 the Judicial Council wrote:

The General Conference is vested with the constitutional authority to determine the number and qualifications of Judicial Council members, their terms of office, and the method of election and the filling of vacancies. The Judicial Council is empowered by the Constitution to provide its own methods of organization and procedure. Any proposed legislation that purports to mandate the Judicial Council to adopt certain policies, or take certain actions, or that creates a method to sanction, suspend or dismiss members of the Judicial Council is in excess of the power of the General Conference and is therefore unconstitutional. The petitions which address recusal, conflicts of interest and the creation of a Commission on Judicial Conduct are unconstitutional. The General Conference is empowered to set a minimum number of members to comprise a quorum and is likewise empowered to require that only the whole of the Judicial Council may consider and decide the constitutionality of acts of the General Conference.<sup>37</sup>

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<sup>30</sup> Minutes of May 7, 1948, amending Section 1 of ¶ 2001 of the 1944 *Discipline*. Records of the Judicial Council, United Methodist Church Archives, Madison, New Jersey.

<sup>31</sup> *Discipline*, 1956 ¶ 2001.

<sup>32</sup> 2010 Rules.

<sup>33</sup> In 1961, the Rules were amended to add a requirement that a transcript or relevant copy of the minutes or journal of the body submitting the request be submitted. Without this information the Judicial Council found it could not be sure that proper procedures were followed in the body requesting the decision (Minutes, October, 1961, 4, Records of the Judicial Council, United Methodist Church Archives, Madison, New Jersey).

<sup>34</sup> *Decisions of the Judicial Council of The United Methodist Church, 1997-2000*, 1.

<sup>35</sup> *Decisions of the Judicial Council of The United Methodist Church, 2001-2008*, 376.

<sup>36</sup> 2008 *Daily Christian Advocate*, Volume 2, Section 2 Petition Numbers 80849-JA, 80848-JA, 81107-JA, 81314-JA, 81525-JA, 81315-JA.

<sup>37</sup> Decision 1196.

Sensitive to the concerns about recusal and conflicts of interest expressed in the petitions to the General Conference, the Judicial Council added Section X to the Rules adopted in April of 2010. Petition 80148 requiring that nine members or alternates be present if a question of constitutionality of acts of General Conference is to be considered was adopted by the General Conference.<sup>38</sup> Interestingly, in April 2010 that new requirement resulted in the last minute participation of an alternate.<sup>39</sup>

### The Way the Council Does its Work

Although the Rules of Practice and Procedure govern much of the way the Council operates, the Council has developed methods of working to facilitate the making of decisions. Both the *Discipline* and the Rules prohibit members from discussion of matters before the Council.<sup>40</sup> Confidentiality is a cornerstone of the work of the Council.

Prior to 1988 the docket for each meeting began being published in advance of the meeting. The *Discipline* requires that no request for a declaratory decision be heard until at least 30 days after the publication of the docket item.<sup>41</sup> No such advance publication is required for bishop's decisions of law; however, the same deadline is used for all docket items regardless of type. The place of publication has varied, but presently includes *The Interpreter*, *Newscope*, and the Judicial Council portion of the official United Methodist website (<http://www.umc.org>).

The Rules require that all materials related to docket items be in the hands of the secretary of the Judicial Council 60 days in advance of the twice yearly meetings. Those materials include a copy of the exact written statement presented on the floor of the annual conference or in a board or commission meeting, the relevant portion of minutes of the body from which the request comes, in the case of a bishop's decision of law a copy of the bishop's decision, and any briefs or materials submitted related to the request. If the matter is an appeal from a decision of a Jurisdiction or Central Conference Court of Appeals, all relevant documents including a trial transcript are submitted. The persons submitting materials are required to share them with all other persons identified as Interested Parties or *amici curiae* and to send 13 copies to the Secretary of the Judicial Council.<sup>42</sup>

Although the procedure followed in writing the decisions is not included in the Rules of Practice and Procedure nor formalized in any way, the long time practice has been to assign specific docket items to members to research and write draft opinions prior to the meetings. At least two persons are assigned each docket item, but any member may write on any docket item whether assigned to it or not. These assignments are made by the president

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<sup>38</sup> *Discipline*, 2008 ¶ 2608.2.

<sup>39</sup> Decision 1149.

<sup>40</sup> *Discipline*, 2008 ¶ 2607. Rules of Practice and Procedure 2010, Section VIII.

<sup>41</sup> *Discipline*, 2008 ¶ 2610.3.

<sup>42</sup> Rules 2010.

of the Judicial Council in consultation with the vice-president and secretary. At the meetings the docket items are considered seriatim with the exception of items for which oral hearings are scheduled. Those items are not considered until after oral hearings are held. Each person writing a draft opinion reads the opinion aloud after copies have been distributed to the members. There is no discussion until after the drafts have been read aloud. The matter is then discussed by the entire council and usually one draft is adopted as a working paper. Suggestions for additions and deletions are made, and often the two drafters are asked to work together on a new draft. Most decisions go through several drafts before becoming final and given a decision or memorandum number.

The decisions are not signed by an individual as they are considered the product of the entire membership of the Judicial Council. If a member writes a concurring opinion or a dissent, it is signed and published at the end of the majority opinion. Normally, the concurrences and dissents are written and released at the same time the majority opinion is. Following each meeting, the decisions are distributed to the interested parties with an editing disclaimer added. The decisions are sent to the bishops, annual conference chancellors, and other persons required by the *Discipline*.<sup>43</sup> They are also posted on the official website.

Prior to October, 1968, the secretary of the Judicial Council wrote a summary of the decisions for “use by United Methodist Information and others.”<sup>44</sup> Beginning in 1964 the Judicial Council allowed a person representing the news and information board of the church to sit in on meetings. That person was not allowed to quote any of the discussion related to the docket items. The information was to be used only to help in understanding the decision when a news article was written following the meeting. It was not until October, 2009, that the Judicial Council adopted a set of guidelines for press coverage.<sup>45</sup> To date there have been only six persons assigned to cover the Judicial Council. Three of them have served for a period of ten or more years. Each of these persons has been careful to follow the procedures set down and to write unbiased reports of the meetings and decisions.

From its inception Judicial Council included a section at the beginning of each decision called “Digest of the Case.” This was a brief statement of the decision. This Digest later became the same as the Decision. The digests from each meeting are published in *The Interpreter* and *Newscope*. As a result, the digests receive a much wider distribution than the complete decisions.

There are two types of opinions issued by the Judicial Council—decisions and memoranda. The basic format of a Decision includes the decision number, the *In Re* (usually the same as the listing of the docket item),

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<sup>43</sup> *Discipline*, 2008 ¶2612.

<sup>44</sup> Minutes, November 7-9, 1968, Records of the Judicial Council, United Methodist Church Archives, Madison, New Jersey.

<sup>45</sup> Minutes, October, 2009, 1.

the digest, the statement of facts, the jurisdiction, the analysis and rationale, the decision, a listing of any absences or recusals, the date of the decision, followed by any concurring and/or dissenting opinions. The basic format of a Memorandum includes the Memorandum Number, the *In Re*, a brief statement of facts, jurisdiction or the lack thereof, digest, any absences or recusals, date, and any concurring or dissenting opinions. Actually, the basic difference is the length of the opinion. Recent memoranda usually are statements of no jurisdiction.

### A Brief Mention of Some Types of Decisions

Judicial Council Decision 33 is the seminal decision stating the rule that moot and hypothetical questions will not be decided. Moot and hypothetical questions may arise as questions of law asked of a bishop or as requests for declaratory decisions. Additionally, when questions of a parliamentary nature are asked of a bishop, such questions will not be considered by the Judicial Council.

The Central Jurisdiction which contained most of the Negro churches was formed as a compromise to facilitate merger of the MEC, MECS, and MP in 1939.<sup>46</sup> A part of the Plan of Union for the MC and EUB churches adopted in 1968 provided for the merger of the former all black conferences into the white conferences in the same geographic area. There was a decision made at the 1966 General Conference which “. . . recognized that the transition from the old to the new cannot be accomplished the moment the new church comes into being.”<sup>47</sup> The Judicial Council wrote that the Enabling Legislation did not forbid the continuation of overlapping annual conferences, even though some of the conferences might be based on racial lines. This allowed time for annual conferences to produce plans to merge former separate annual conferences into one inclusive body, but the transition period would end for the merger of annual conferences at the close of the 1972 Jurisdictional Conferences and the merger of districts by the close of annual conferences in 1973.<sup>48</sup> Many questions arose during this transition period and were before the Judicial Council resulting in Decisions 242, 246, 324, 357, 362, and 305 as well as two decisions made at the 1968 Uniting Conference by the Interim Judicial Council (IJC1 and IJC 2).

Beginning in the 1970s, many decisions related to the status of clergy couples.<sup>49</sup> Most of the questions related to salaries, especially minimum salaries, and housing of clergy couples. This was a new situation for annual conferences to deal with, and the *Discipline* was either silent or unclear on the issues which lead to differing plans in annual conferences. By the time Decision 588 was announced in 1987 both the *Discipline* and annual confer-

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<sup>46</sup> Use of the words Negro, black, and African American reflect the usage in the *Discipline* for the time period being discussed.

<sup>47</sup> Decision No. 242.

<sup>48</sup> Decision No. 357.

<sup>49</sup> Decision Nos. 433, 510, 562, 579, and 588.

ence policies had been modified to ensure that no clergy couple was denied housing benefits and full compensation for each member of the couple.

Also in the 1970s, questions about the issue of homosexuality, especially related to clergy, began to appear. The first case occurred in 1972 and dealt with the issue of whether or not an annual conference could involuntarily locate a minister who announced that he was a homosexual. In rendering its decision the Judicial Council quoted ¶368 of the 1968 *Discipline* which said

Whenever it is determined by the Board of the Ministry that in their judgment a member of the Annual Conference is unacceptable, inefficient, or indifferent in the work of the ministry or that his conduct is such as to impair seriously his usefulness as a minister . . . disqualifies him for pastoral work, they shall notify him in writing and ask him to request location at the next session of the Annual Conference. If he refuses or neglects to locate as requested, the conference may by count vote, on recommendation of the Board of Ministry, locate him without his consent.<sup>50</sup>

Further, the Judicial Council said “The action of this Conference indicates not only strict adherence to disciplinary procedures but attests to the protection afforded ministers by Paragraphs 368 and 369, to assure their rights to hearing before their peers on any recommendation concerning the termination of their conference membership.”

For the next twelve years annual conferences refused to use homosexuality as a reason to deny conference membership to clergy, asked them to request voluntary location, or, if that option was refused, voted to locate them involuntarily. The 1984 General Conference added ¶402.2 to the *Discipline*. This paragraph required “fidelity in marriage and celibacy in singleness” and had a second sentence: “Since the practice of homosexuality is incompatible with Christian teaching, self-avowed practicing homosexuals are not to be accepted as candidates, ordained as ministers, or appointed to serve in The United Methodist Church.” This unleashed a whole set of questions as to the definition of a “self-avowed practicing homosexual.” Between 1989 and 2008, there were 28 Judicial Council Decisions dealing with the issue of homosexuality. Most of them related to whether or not “self-avowed practicing homosexuals” could be clergy members of annual conferences or whether church funds could be used “to promote the acceptance of homosexuality.”<sup>51</sup>

In 1996, a footnote was added to ¶303.3 (and continues to be included today) saying “‘*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.”<sup>52</sup> Meant to add clarity to the definition of “self-avowed practicing homosexual,” the statement has

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<sup>50</sup> Although there were women clergy by this time, the language of the *Discipline* used the male pronouns.

<sup>51</sup> *Discipline*, 2008 ¶806.9.

<sup>52</sup> Footnote in the *Discipline*, 2008, 205.

done little to stem the disagreement on the issue of the practice of homosexuality being “incompatible with Christian teaching.”<sup>53</sup> In 1988, the phrase “practices declared by The United Methodist Church to be incompatible with Christian teachings” appears in the list of chargeable offenses for clergy.<sup>54</sup>

Most of the requests for decisions which come to the Judicial Council do not generate the kind of controversy which the ones above do. In almost every case where a clergy trial is held in an annual conference which results in a guilty verdict, the case is appealed to the Jurisdiction Court of Appeals and then to the Judicial Council. The questions center on the trial procedures as the appellate bodies do not hear witnesses or evidence of anything other than improper procedures.<sup>55</sup> Only the clergy person can appeal from a trial court verdict; the conference has no right of appeal.<sup>56</sup>

A continuing question is how and when it is appropriate to place a clergy person on involuntary leave or to retire that person involuntarily. There have been twenty-nine Judicial Council decisions related to these questions, all dealing with the procedures followed. The first instance of ministers being retired involuntarily appears in the *Journal of the General Conference* of 1836 where the retirement of three ministers was upheld by the General Conference on the recommendation of the Judiciary Committee.<sup>57</sup> The most recent decision on the subject was in 2008.<sup>58</sup>

## Potpourri

There have been 62 Judicial Council Decisions on questions relating to the Philippines Central Conference. The first decision made on April 26, 1940, came from the Philippines on the question of lay missionaries voting on the election of ministerial delegates to General Conference.<sup>59</sup> The most recent decision was in May of 2010.<sup>60</sup>

There were a total of 31 persons who were members of the Judicial Council from 1939 to 1968. The Interim Judicial Council served only during the Uniting Conference of the MC and the EUB in 1968; there were 9 members of the former MC Judicial Council who were members plus two from the EUB. This council had 11 members rather than the nine on other councils. From 1968-2010 there have been 41 members. The longest serving member was Tom Matheny who served from 1972 to 2000 and was President from 1976-2000.<sup>61</sup>

In 1948, the first African American member was elected; J. Ernest Wilkins,

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<sup>53</sup> *Discipline*, 2008 ¶161F.

<sup>54</sup> *Discipline*, 2008 ¶ 2621 (b).

<sup>55</sup> *Discipline*, 2008 ¶ 2715.7.

<sup>56</sup> *Discipline*, 2008 ¶ 2715.10.

<sup>57</sup> *Journal of the General Conference* 1836, 492-493.

<sup>58</sup> Decision 1092.

<sup>59</sup> Decision 1.

<sup>60</sup> Decision 1152.

<sup>61</sup> The list of current and former members of the Judicial Council appears in the introductory pages of each bound volume of Judicial Council Decisions.

a layman, was from the Lexington Conference in the Central Jurisdiction. He served as President during the 1956-1960 Quadrennium. It was not until 1968 that Dr. Charles B. Copher was elected, becoming the first African American clergy person to serve. Dr. John B. Corry in 2000 became the first African American clergy person elected president.<sup>62</sup>

At the Uniting Conference in 1968 the first woman was elected to the Judicial Council, Kathryn Mowrey Grove, who also became secretary for the next eight years. In 1988, the first clergywoman was elected, Susan M. Morrison, who was elected to the episcopacy that same year and never sat as a member of the Council except at the organizational meeting at General Conference. In 1992, The Rev. Susan T. Henry-Crowe was elected and served one eight year term. She was elected to a second term in 2004 and became the first woman to serve as President in 2008. Rudolfo Beltran from the Philippines became the first Judicial Council member elected from a Central Conference in 2000.

Two significant pieces of legislation were passed at the 2000 General Conference related to the membership of the Judicial Council. First was a provision that no person could serve more than two consecutive terms as a member with a minimum of four years before reelection to the council.<sup>63</sup> The second piece was the removal of an age limit for members.<sup>64</sup>

No minutes from 1939-1948 exist in the United Methodist Archives. There are miscellaneous papers and letters which were sent to Drew University during that period. Many of the letters related to a discussion among the Judicial Council members on the wisdom of amending the *Discipline* in 1944 to allow “decisions in the nature of a declaratory decision.”<sup>65</sup> The members had considerable disagreement about the wisdom of this, but the 1944 General Conference added that authority to the powers of the Judicial Council.<sup>66</sup> Also in those same papers is an undated picture of the Judicial Council members wearing black robes. There is no identification of individual members in the picture.

From the letters and other papers from 1940 to 1948 it appears that the Judicial Council hired secretarial help during its meetings.<sup>67</sup> It was not until 1968 that the secretary was given the authority to employ part time secretarial help.<sup>68</sup> It is not clear from the minutes whether or not that person attended the meetings of the Council or provided general secretarial help to the secretary between meetings. In 1976, Barbara R. Davis was hired as

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<sup>62</sup> The list of present and past officers of the Judicial Council appears in the introductory pages of each bound volume of Judicial Council Decisions.

<sup>63</sup> *Discipline*, 2008 ¶ 2602.

<sup>64</sup> *Discipline*, 1996 ¶ 2602.

<sup>65</sup> Judicial Council Appeals and Miscellaneous Cases and Decisions, Records of the Judicial Council, United Methodist Church Archives, Madison, New Jersey.

<sup>66</sup> *Discipline*, 1944 ¶ 914.

<sup>67</sup> Judicial Council Appeals and Miscellaneous Cases and Decisions, Records of the Judicial Council, United Methodist Church Archives, Madison, New Jersey.

<sup>68</sup> Judicial Council Minutes November 7-9, 1968, Records of the Judicial Council, United Methodist Church Archives, Madison, New Jersey.

part time secretary and continued in that position until 2004. She did attend meetings, retype and produce copies of draft decisions, assist in editorial work on the decisions, and whatever else she was asked to do by the secretary during or between meetings. In 2008, General Conference approved an amendment to ¶ 2608 which directed the council to employ a part time clerk to work “no more than an average of 20 hours per week . . . and in consultation with GCFA provide an office for the clerk suitable to maintain records and conduct business as the council shall direct.”<sup>69</sup> However, only \$25,000 per year was provided for salary and office; therefore, although a clerk was employed, to date no office has been organized or maintained.<sup>70</sup> The secretary continues to have an assistant at the meetings who retypes and copies decisions as they are perfected.

Beginning in 1939, the secretary was required to keep all materials related to matters decided. The whereabouts of those materials are unknown at this time. In 1952, the Judicial Council Rules required the secretary to send to the library at Drew University all materials finally disposed of.<sup>71</sup> In 1976, materials from each meeting began to be sent to the General Commission on Archives and History. Later materials include signed copies of the minutes and decisions made as well as the docket and all briefs and materials associated with each decision. Those records are closed for a period of 25 years after which they are available for researchers to use.

## Conclusion

This article includes some of the important information about the Judicial Council. It was compiled from *Disciplines*, *Daily Christian Advocates*, a few chapters in books, and minutes and other Judicial Council materials housed at the United Methodist Archives. However, a more complete history must contain additional information from the missing minutes and Rules of Practice and Procedure. Tracking some of this information will require a search for the papers of early Judicial Council members in the hopes of finding missing minutes and copies of the Rules.

Appellate judicial process in Methodism did not begin with the formation of the Judicial Council, and much research on the earlier ways of dealing with appeals in the various branches of Methodism remains to be done. To have a complete record of the history of judicial process will require more research and at least several additional articles. Such research may include information on how other Methodist bodies do judicial work.

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<sup>69</sup> *Discipline*, 2008 ¶ 2608.

<sup>70</sup> *Daily Christian Advocate*, (The United Methodist Publishing House, 2008), 2320-2322.

<sup>71</sup> *Discipline*, 1952 ¶ 2001.5.