

2006 ROCKY MOUNTAIN CONFERENCE JOURNAL
ERRATA TO 2006 JOURNAL, VOLUME II
QUESTIONS OF LAW

**“To Bishop Warner Brown
Rocky Mountain Conference
June 23, 2006”**

Question No. 1:

“In your letter of June 14, 2006, you wrote, ‘Therefore, I have decided to refer this matter out of Supervisory Response, as a judicial complaint.’ The Book of Discipline, paragraph 2704.2.c states, regarding a judicial complaint that, “If five or more members of the committee on investigation so recommend, the Bishop may suspend the person charged from all clergy responsibilities pending the outcome of the judicial process.”

Is your suspension of June 14, 2006, in keeping with paragraph 2704.2.c?”

Question No. 2:

“I received copies of the letters of complaint one month after my first conversation with the district superintendent, after my meeting with you and two district superintendents, after my suspension, and after my replacement had been announced to the FUMC, Cheyenne congregation and after I was forced to seek retirement.

Was this in keeping with the requirements of “Fair Process” as defined in paragraph 362.3.e and in keeping with the decision of the Judicial Council, number 974?”

Question No. 3:

“Paragraph 362.1.c of the Book of Discipline refers to a suspension that may occur at the beginning of the process. Part of that paragraph reads, “During the suspension, salary, housing, and benefits provided by a pastoral charge will continue at a level no less than on the date of suspension.” I submitted my final Reimbursement account statement of expense around July 1 when my appointment ended. The finance committee chair wrote me that the District superintendent had told the committee not to pay any expense allowances except the annual conference session.

Is the action of the district superintendent in keeping or in conflict with paragraph 362.1.c?”

Question No. 4:

“In early June, the Cheyenne district superintendent granted an interview with a reporter from the Cheyenne newspaper in which he provided details of the current complaint and past events.

Is that in keeping with the requirement for confidentiality as defined by paragraph 362.b of the Book of Discipline?”

Question No. 5:

“Judicial Council decision 765 states that “if due process is denied because an accused person has been denied access to certain records, that person may demand a reconsideration of his/her case.” On January 12, such a request was made for reconsideration, but there has been no response to that request. Is that not a violation of my rights?”

2006 ROCKY MOUNTAIN CONFERENCE JOURNAL

Question No. 6:

"The supervisory response is described in paragraph 362.1.b. The second paragraph, first sentence, reads, "The supervisory response shall be carried out by the Bishop and district superintendent in a confidential and timely manner." Timely is defined later in the paragraph as 120 days with the possibility of extending that limit "by thirty days if the complainant and respondent agree."

For me the supervisory response began in late May or early June of 2005. It ended with the Bishop's referral as a judicial complaint on June 14, 2006.

Is the time spent in the supervisory response in keeping with the time constraints of paragraph 362.1.b, c?"

Question No. 7:

"Paragraph 352.1.d of the Book of Discipline lists the three actions the Bishop may take if resolution has not taken place in the supervisory response. In short, they are, "refer the matter to a third party mediator . . . ; dismiss the complaint; refer the matter as an administrative or judicial complaint . . ."

On May 21 I met with the Bishop and two district superintendents. The Bishop proposed a psychological evaluation as a response to the complaint. I asked the Bishop if his options were not limited to the three options of supervisory response. He said, "no, he had many options."

He later prescribed the psychological evaluation and a contract that restricted me from any pastoral activities.

Was the evaluation and the contract in keeping with 352.1.d and the three options there described?"

*"/s/ Wesley Kendall
6/23/06"*

2006 ROCKY MOUNTAIN CONFERENCE JOURNAL
JUDICIAL COUNCIL OF THE UNITED METHODIST CHURCH

**RESPONSE TO QUESTIONS OF LAW
SUBMITTED BY REV. WES KENDALL
DURING CLERGY SESSION AT 2006 ANNUAL CONFERENCE
OF THE ROCKY MOUNTAIN CONFERENCE
OF THE UNITED METHODIST CHURCH
(Warner H. Brown, Resident Bishop)**

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2006 ROCKY MOUNTAIN CONFERENCE JOURNAL

Question No. 1:

“In your letter of June 14, 2006, you wrote, ‘Therefore, I have decided to refer this matter out of Supervisory Response, as a judicial complaint.’ The Book of Discipline, paragraph 2704.2.c states, regarding a judicial complaint that, “If five or more members of the committee on investigation so recommend, the Bishop may suspend the person charged from all clergy responsibilities pending the outcome of the judicial process.”

Is your suspension of June 14, 2006, in keeping with paragraph 2704.2.c?”

Response to Question No. 1:

I understand the question to ask whether the authority for Rev. Kendall's suspension of June 14, 2006, is based on ¶ 2704.2c of the 2004 Discipline. Authority for the suspension of Rev. Kendall was not based on ¶ 2704.2c of the 2004 Discipline.

Authority for the suspension of Rev. Kendall on June 14, 2006, is based on ¶ 362.1c of the Discipline and the general disciplinary authority vested in the resident bishop. The Discipline clearly contemplates the suspension of clergy during the supervisory response period provided under ¶ 362.1a et seq. The Discipline also creates time frames within which Counsel for the Church and the Committee On Investigation may act. These time frames do not precisely coincide with each other. I hold that the Discipline clearly contemplates that the resident bishop, in appropriate connection with the Executive Committee of the Board of Ordained Ministry, has the authority to suspend clergy from ministerial duties until the Committee on Investigation has had the opportunity to consider suspension in its own right under ¶ 2704.2c.

Question No. 2:

“I received copies of the letters of complaint one month after my first conversation with the district superintendent, after my meeting with you and two district superintendents, after my suspension, and after my replacement had been announced to the FUMC, Cheyenne congregation and after I was forced to seek retirement.

Was this in keeping with the requirements of “Fair Process” as defined in paragraph 362.3.e and in keeping with the decision of the Judicial Council, number 974?”

Response to Question No. 2:

The District Superintendent's complaint against Rev. Kendall is dated May 16, 2005. The initial supervisory response meeting occurred on May 24, 2005. Rev. Kendall signed a Resolution Agreement on June 12, 2005. An Addendum to the Agreement was signed on June 17, 2005. The Resolution Agreement contains the following provision:

“7. Dr. Kendall acknowledges that he has received copies of the letters that resulted in this complaint . . .”

It is clear that Rev. Kendall received copies of the letters of complaint before signing the Agreement and, in any case, no later than June 12, 2005. Additionally, Rev. Kendall was actively consulting with private legal counsel of his choosing outside of the supervisory response. Rev. Kendall's signature on the Agreement was presumed to be valid and informed, and in no sense “forced”.

2006 ROCKY MOUNTAIN CONFERENCE JOURNAL

It is true that the letters of complaint were not provided to Rev. Kendall at the initial supervisory response meeting. Following this meeting, Rev. Kendall requested the letters of complaint, citing Judicial Council Decision 974. This Decision was reviewed and the letters were supplied to Rev. Kendall in early June, 2006. Upon providing the letters to Rev. Kendall, he was given time to read and verbally comment on all of the letters. Additionally, he had the opportunity to withdraw his retirement request to the Board of Ordained Ministry and the Clergy Session before either body had acted on the request. Further, he had the opportunity to refuse to sign the Resolution Agreement. He chose none of these options.

As bishop, I am entitled to rely on Rev. Kendall's signature on the Resolution Agreement acknowledging that he had the letters of complaint in hand prior to signing the Agreement.

The first conversation with the district superintendent and the meeting with the two district superintendents occurred prior to May 24, 2005. Neither of these two meetings were "hearings", as that term is defined by the Fair Process provisions of the 2004 Discipline, nor were these meetings part of the Supervisory Response period under ¶ 362.1a of the 2004 Discipline. Instead, these meetings were conducted as part of the ordinary process of supervision by district superintendents and the resident bishop. See, e.g., 2004 Discipline, ¶¶ 362.1a; 421.2; and, JCD No. 685.

Rev. Kendall was not entitled to a hearing on whether his suspension from clergy responsibilities was proper or warranted. I suspended Rev. Kendall following the recommendation of the Executive Committee of the Board of Ordained Ministry. The suspension was in full compliance with ¶ 362.1c, including the announcement of an interim pastor for the period of the suspension.

Rev. Kendall's written request for retirement had been received in May 2005. The pastor for the new appointment year was introduced to the Staff-Parish Relations Committee of the church on June 5, 2005, and announced to the congregation the following Sunday, on June 12, 2005.

I therefore rule that ¶ 362.3e of the 2004 Discipline was not violated. Further, the Supervisory Response was brought into compliance with Judicial Council Decision 974 in a timely and non-prejudicial manner.

Question No. 3:

"Paragraph 362.1.c of the Book of Discipline refers to a suspension that may occur at the beginning of the process. Part of that paragraph reads, "During the suspension, salary, housing, and benefits provided by a pastoral charge will continue at a level no less than on the date of suspension." I submitted my final Reimbursement account statement of expense around July 1 when my appointment ended. The finance committee chair wrote me that the District superintendent had told the committee not to pay any expense allowances except the annual conference session.

Is the action of the district superintendent in keeping or in conflict with paragraph 362.1.c?"

Response To Question No. 3:

I understand this question to ask whether the denial of reimbursement of certain unnamed expenses was in keeping with the Discipline. Without more detail, I cannot answer the question of whether the denial of reimbursement of expenses submitted "around July 1 [2005] when [your]

2006 ROCKY MOUNTAIN CONFERENCE JOURNAL

appointment ended” was or was not in keeping with ¶ 362.1.c of the 2004 Discipline. In this sense, the question is moot and hypothetical. See, e.g., JCD 33.

Clearly, from the date of suspension forward, the clergyperson should not be incurring professional expenses chargeable to the church. Further, ¶ 362.1c refers to “salary, housing and, benefits”, but does not refer to “expenses”. For the period of the suspension, the clergyperson is not doing the work of ministry for or on behalf of the church, and therefore should not be incurring expenses chargeable to the church.

An exception is made for annual conference expenses because under ¶ 334 of the 2004 Discipline the suspended clergyperson is entitled to full participation in the Annual Conference. The District Superintendent correctly instructed the local church to pay for annual conference expenses.

The action of the District Superintendent did not violate ¶ 362.1c of the 2004 Discipline.

Question No. 4:

“In early June, the Cheyenne district superintendent granted an interview with a reporter from the Cheyenne newspaper in which he provided details of the current complaint and past events.

Is that in keeping with the requirement for confidentiality as defined by paragraph 362.b of the Book of Discipline?”

Response To Question No. 4:

It is my understanding that the only newspaper article published with attribution to the District Superintendent was the June 16, 2005, issue of the Wyoming Tribune Eagle. The timing of this publication is important. The article appeared in mid-June, following the date on which Rev. Kendall signed the Resolution Agreement (June 12, 2005). Additionally, the article appeared after the congregation had been informed about the matter.

The Resolution Agreement provides in part as follows:

“6. Dr. Kendall agrees that this agreement may be made public, in whole or in part, at the sole discretion of the resident bishop.” (Emphasis added.)

The text of the Agreement sets forth numerous provisions which in sum and substance contain the information appearing in the newspaper article, including:

1. The Agreement refers to “letters that resulted in this complaint”. Rev. Kendall thus agreed that reference to the letters of complaint could be made public.

2. The Agreement refers to a psychiatric/psychological evaluation “concerning the issues of sexual addiction and inappropriate sexual remarks and touch.” Rev. Kendall thus agreed that the public could know that he agreed to submit to such an evaluation, and that the psychological issues were sexual in nature.

3. The Agreement refers to the fact that Rev. Kendall was requesting retirement. Rev. Kendall thus agreed that the public could know that he retired in the face of the charges set forth in the letters of complaint.

2006 ROCKY MOUNTAIN CONFERENCE JOURNAL

4. The Agreement states that Rev. Kendall “will not perform any ministerial duties, including [etc.]” Rev. Kendall thus agreed that his suspension from ministry could be discussed publicly, as well as the specific types of ministry outlined in the Agreement.

5. The Agreement states that Rev. Kendall would write a “letter of explanation and apology” to the congregation, “tak[ing] responsibility for his actions that resulted in letters from members of the congregation requesting supervisory relief.” Rev. Kendall thus agreed that the public could know that he was to admit responsibility for his actions, and that it was his actions that led to the letters of complaint from members of the congregation.

Rev. Kendall agreed that confidentiality of the Resolution Agreement and its provisions did not apply to the Resolution Agreement and its provisions. He necessarily had to anticipate that any information in the Resolution Agreement could be made public. Similarly, the congregation had already been informed of the general nature of the matter, including the fact that the letters of complaint came from at least five members of the congregation and that the complaints were sexual in nature.

The local newspaper had already published several articles on the episode without any input or contribution from the Conference or the District Superintendent. The newspaper already had extensive information about the episode and about past events, including the event in Littleton, Colorado. The District Superintendent felt that the local community had a right to know the status of the matter from the standpoint of the Conference, provided the information he released was not otherwise confidential. Following the execution of the Resolution Agreement, and Rev. Kendall’s waiver of any confidentiality that might otherwise apply to the information set forth in the Agreement, the District Superintendent granted the press interview.

The District Superintendent did not violate ¶ 362.1b in granting the interview and providing the information he did.

Question No. 5:

“Judicial Council decision 765 states that “if due process is denied because an accused person has been denied access to certain records, that person may demand a reconsideration of his/her case.” On January 12, such a request was made for reconsideration, but there has been no response to that request. Is that not a violation of my rights?”

Response To Question No. 5:

I did not give a written, formal response to the request for reconsideration. However, I repeatedly informed Rev. Kendall orally that his request was out of order because it was made during the time that the supervisory response period was pending, as suspended by the Resolution Agreement.

The question does not identify the records or documents in question. Judicial Council Decision 765 discussed “fair process” in the context of records which were made “inaccessible to an accused person” and used at a hearing which affected the clergyperson’s status with the conference in question.

If this question refers to the letters of complaint from members of the congregation that formed the factual basis for the District Superintendent’s complaint of May 16, 2005, then these letters were not made “inaccessible” to Rev. Kendall. In fact, these letters had been produced to Rev.

2006 ROCKY MOUNTAIN CONFERENCE JOURNAL

Kendall prior to his signing of the Resolution Agreement and prior to the Clergy Session at which his request for retirement was considered and approved. Additionally, there have been no "hearings" under either administrative or judicial process regarding the letters of complaint against Rev. Kendall, a fact of which Rev. Kendall has been informed on several occasions.

For the foregoing reasons, there has not been a violation of the principle regarding access to records as established by Judicial Council Decision 765.

Question No. 6:

"The supervisory response is described in paragraph 362.1.b. The second paragraph, first sentence, reads, "The supervisory response shall be carried out by the Bishop and district superintendent in a confidential and timely manner." Timely is defined later in the paragraph as 120 days with the possibility of extending that limit "by thirty days if the complainant and respondent agree."

For me the supervisory response began in late May or early June of 2005. It ended with the Bishop's referral as a judicial complaint on June 14, 2006.

Is the time spent in the supervisory response in keeping with the time constraints of paragraph 362.1.b, c?"

Response To Question No. 6:

The supervisory response period commenced on May 24, 2005. The Resolution Agreement dated June 12, 2005, as amended on June 17, 2005, suspended the running of the 120-day period provided under ¶ 362.1d of the 2004 Discipline. A total of 19 days elapsed prior to the suspension of the supervisory response period.

While subject to the Resolution Agreement, Rev. Kendall communicated with various persons in a manner which violated both the spirit and the letter of the Agreement and which was calculated to undermine the Agreement. He was released from the Resolution Agreement on June 14, 2006, and the matter was referred to Counsel for the Church on the same day for preparation of a judicial complaint. Because Rev. Kendall was under a Resolution Agreement until June 14, 2006, this was the earliest date on which the matter could have been referred as a judicial complaint.

Accordingly, the time spent in the supervisory response period is in keeping with the time constraints of ¶ 362.1d of the 2004 Discipline.

Question No. 7:

"Paragraph 352.1.d of the Book of Discipline lists the three actions the Bishop may take if resolution has not taken place in the supervisory response. In short, they are, "refer the matter to a third party mediator . . . ; dismiss the complaint; refer the matter as an administrative or judicial complaint . . ."

On May 21 I met with the Bishop and two district superintendents. The Bishop proposed a psychological evaluation as a response to the complaint. I asked the Bishop if his options were not limited to the three options of supervisory response. He said, "no, he had many options."

He later prescribed the psychological evaluation and a contract that restricted me from any pastoral activities.

2006 ROCKY MOUNTAIN CONFERENCE JOURNAL

Was the evaluation and the contract in keeping with 352.1.d and the three options there described?"

Response To Question No. 7:

[Editorial Clarifications: (1) The meeting referred to in this question occurred on May 24, 2005, not May 21. (2) Paragraph 352.1d does not exist in the 2004 Discipline. I assume Rev. Kendall intended to cite to ¶ 362.1d, and respond accordingly.]

The 2004 Discipline expressly authorizes a bishop to engage professionals during the supervisory response period, with or without the clergy person's consent, as follows: "At the determination of the bishop, persons with qualifications and experience in assessment, intervention, or healing may be selected to assist in the supervisory response." Discipline, ¶362.1b.

Additionally, in the Resolution Agreement, Rev. Kendall consented to a psychological/psychiatric evaluation and its use, as follows:

"3. Dr. Kendall will submit to being evaluated by a psychologist/psychiatrist chosen by the Conference Chancellor and retained by the Rocky Mountain Conference . . ."

4. The recommendations for action resulting from this evaluation will be completed by Dr. Kendall and reviewed by the Bishop, Cabinet, and Executive Committee of the Board of Ordained Ministry for the Rocky Mountain Conference before restoration to ministerial duties will be considered." (Emphasis added.)

The psychiatrist who evaluated Rev. Kendall issued his report on November 29, 2005. He recommended retention of all restrictions on the performance of ministerial duties set forth in the Resolution Agreement, as amended.

The matter remained subject to the Resolution Agreement until June 14, 2006, when Rev. Kendall was released from the Resolution Agreement and the matter was referred to Counsel for the Church as a judicial complaint.

The supervisory response period ran for a total of 19 days prior to suspension of the period through execution of the Resolution Agreement. While subject to the Resolution Agreement, Rev. Kendall communicated with various persons in a manner which violated both the spirit and the letter of the Agreement, and which was calculated to undermine the Agreement. Additionally, Rev. Kendall refused to accept the results of the psychiatric evaluation. By June 14, 2006, the bishop determined that resolution would not be achieved and, accordingly, referred the matter as a judicial complaint.

The psychiatric evaluation and the Resolution Agreement were both in keeping with ¶ 362.1b of the 2004 Discipline. Further, my action in referring the matter as a judicial complaint was in keeping with ¶ 362.1d of the 2004 Discipline.

Dated this 18th day of July, 2006.

/s/ Warner H. Brown

Warner H. Brown

Resident Bishop

Rocky Mountain Conference

United Methodist Church

2006 ROCKY MOUNTAIN CONFERENCE JOURNAL