

**JUDICIAL COUNCIL ELECTIONS****OPTIONS**

At the 2008 General Conference, delegates will elect five members to the Judicial Council, two laypersons and three clergy. It is critically important that the persons elected be eminently qualified and that all care is taken to ensure that the Judicial Council is composed of people with a clear and balanced view of their role in providing sound interpretation of the UM Constitution and *Book of Discipline*.

**ISSUE**

At the 2000 General Conference, well-organized conservatives elected three members to the Judicial Council who were leaders within Good News and the Confessing Movement. In 2004, another person aligned with Good News and the Confession Movement was elected. These four persons have consistently voted together. Since a fifth member often votes with them, they have had a significant impact on reshaping our denomination. Most notably, in Judicial Council Decision 1032, they overturned the suspension of a pastor who had denied church membership to an active participant in the life of the congregation. The principles enshrined in decision 1032 allow a pastor to refuse church membership without any accountability to others for his/her decision. Even when the Council of Bishops unanimously petitioned the Council to reverse their decision, the original majority refused reconsideration in Decision 1041.

At issue is whether General Conference will take action to restore the independence and integrity of the Judicial Council.

**ANALYSIS**

The Judicial Council is the highest judicial body of the UMC and all of its decisions are final. The Constitution gives the General Conference the power to determine the number and qualifications of the Judicial Council's members, as well as their terms of office and method of election. Presently, it has 9 members.

At any given General Conference, the Council of Bishops nominates three people for each open position on the Judicial Council. Each jurisdiction, as well as the central conferences as a group, must be represented by at least one nominee. At the same daily session at which the nominations are announced, nominations may be made from the floor. The names of all the nominees along with their conference and a biographical sketch – not to exceed 100 words – are published in the *Daily Christian Advocate* at least 48 hours prior to the time of the election. (§2602.2)

The General Conference elects, without discussion, by ballot and majority vote the necessary number of clergy and lay members to the Judicial Council. (§2602.2) This election is similar to the election of General and jurisdictional Conference delegates in the annual conferences with

one significant exception. All General Conference delegates – both lay and clergy – vote for both the lay and clergy members of the Judicial Council.

It is likely that all the ballots necessary to elect the Judicial Council will take place in a short time on Monday morning. After correcting a computer problem that delayed the 2004 election for a day, it only took about twenty minutes to elect 4 members and 12 alternates to the Judicial Council. Ballots were taken one after another because discussion between ballots is specifically forbidden. Likewise in 2000, it only took part of one session to elect 5 members and 12 alternates.

United States Supreme Court Justice William Brennan used to speak of the Rule of Five – the word of five justices on the United States Supreme Court can override the express written word of all the Founding Fathers and all the American People. As the past four years have shown, if five members of the Judicial Council want The United Methodist Church to go a certain direction, they have a great deal of power to make this happen. They can interpret the Constitution and *Discipline* as they desire, regardless of what many would regard as their clear meaning. Indeed, many believe that the five who voted in favor of Decision 1032 turned ¶ 214 and ¶ 225 on their head in order to justify the decision.

In 2000 and 2004, the Good News and the Confessing Movement were well organized. In 2000 they were able to elect three of their candidates, displacing three sitting members of the Judicial Council who were seeking reelection. The three elected in 2000 now face re-election. They are James Holsinger, Mary Daffin and Keith Boyette. In addition, Rudolfo Beltran, who voted in favor of 1032 and usually provides the fifth vote for the Good News/Confessing group, is facing re-election. The only person facing re-election who opposed 1032/1041 is Shamwange P. Kyungu.

At the time of their election, Holsinger, Daffin and Boyette all held leadership positions in Good News and/or the Confessing Movement:

- Judicial Council President James Holsinger was a member of the Board of Directors of the Confessing Movement.
- Vice-President Mary Daffin was the Vice-President of Board of Director of the Confessing Movement.
- Secretary Keith Boyette was not only on the board of directors of Good News and representing it before the Judicial Council, but was also one of the nine members of the Steering Committee for the Coalition for United Methodist Accountability (CUMA). CUMA is a joint project of Good News, the Confessing Movement and the Institute for Religion and Democracy.

On several occasions since becoming judicial council members, questions have been raised about the appropriateness of their actions.

- During much of the time James Holsinger served on the Council, he was also a member and then chair of the Good Samaritan Foundation which the Kentucky Annual Conference sued in order to recover \$20 million in funds which belonged to the Annual Conference.
- Keith Boyette refused to recuse himself from decisions 1032 and 1041 even though they

involved a matter from his own annual conference. There has been a long tradition of Judicial Council members recusing themselves from *any* matter that comes before the Council from their own annual conference. In the last 8 years Judicial Council members who have recused themselves have included Sally Curtis Askew (923, 935), Rudolfo Beltran (908, 965, 1062), Solomon Christian (1082, 1083), Sally Brown Geis (947), Susan Henry-Crowe (1079) and Larry Pickens (892, 894, 907).

Under the leadership of Holsinger, Daffin and Boyette, the Judicial Council has made a number of decisions, in addition to Decision 1032, that have troubled those who regularly practice before the Judicial Council.

- Many groups are allowed to seek clarification from the Council about how to apply the *Discipline*. Before 2004, the Judicial Council answered every request. But beginning in 2004, the Council has refused to answer at least 4 requests. (See Decisions 1033, 1037, 1048 and 1050) In 1033 an annual conference wanted to find out if some of the procedures of its board of ordained ministry were correct. Because of the Council's inaction, a seminary student must be denied probationary membership before this question can be answered!
- In Decision 1080 the Council invented a new requirement for requesting a declaratory decision when it refused to consider a series of requests which had passed on the consent calendar.
- An annual conference had to wait for more than a year to find out if its new structure was legal. In October, 2006 the Council deferred taking any action on a plan adopted by the 2006 Baltimore-Washington annual conference. Then in April, 2007 it decided that its ruling must wait until following fall because the Council did not have enough documents about the plan to make a decision! (See Decisions 1066 and 1073)

The crisis of integrity that has arisen as a result of Judicial Council decisions and the conduct of some of its members, has produced a number of petitions to the 2008 General Conference. Some seek to reform the election process. Others want to hold Judicial Council members accountable for actions which violate standards of fairness and impartiality. These include:

- requiring support by at least 20 delegates in order to be nominated (81046-JA-¶2602.2, page 1300) and holding a forum where delegates can get more information about nominees (81045-JA-¶2602.2, pages 1299-1300). When someone is nominated as a U.S. Supreme Court justice, his or her record is carefully scrutinized. While the Council of Bishops may carefully review their nominees, those nominated from the floor do not receive careful review. And in any case, General Conference delegates are only provided with brief biographical statements which seldom contain information about a nominee's views or affiliations that could impact how the nominee may act on matters that come before the Judicial Council.
- establishing membership requirements for lay people seeking election (80847-JA-¶2602.1, page 1298).
- slowing down the pace of the Judicial Council election to allow more time for delegates to reflect and confer. (81044-JA-¶2602.2, page 1299)

- clarifying when a member has a conflict of interest or should recuse himself or herself. Petition 81314-JA-¶2602 on page 1298 would require the suspension and possible removal of any Judicial Council member who is part of a lawsuit against the United Methodist Church. Petitions 80848-JA-¶2600 on pages 1296-1297 and 81315-JA-¶2607 on page 1300 both seek to establish guidelines for when a Judicial Council member must recuse himself or herself.
- creating a Committee on Judicial Conduct (81107-JA-¶2600, pages 1297-1298). Presently there is no way to remove a Judicial Council member for incapacity or misconduct.

## **RECOMMENDED ACTION**

Be aware of the tremendous importance of the Judicial Council and the impact that the selection of its members has on The United Methodist Church.

1. The Council of Bishops gives a great deal of thought to its choice of nominees. Give special consideration to its nominees in the upcoming election. Only 1 of the 5 Judicial Council members who voted in favor of 1032 was nominated by the Council of Bishops.
2. Examine carefully any nomination coming from the floor. All four of those active in the Good News and/or the Confessing Movement at the time of their election were nominated from the floor.
3. Reform the election process to provide more information about nominees and more time to make wise decisions.
4. Establish a way to remove Judicial Council members for incapacity or misconduct by creating a Committee on Judicial Conduct. (81107-JA-¶2600, pages 1297-1298.)
5. Elect members to the Judicial Council who will serve The United Methodist Church well.