

**COMMITTEE ON APPEALS
NORTHEAST JURISDICTIONAL CONFERENCE
THE UNITED METHODIST CHURCH**

In re: Appeal of Irene Elizabeth Stroud

DIGEST OF CASE

The verdict and the penalty are reversed and set aside. Although the Committee believes that the evidence in support of the charge was overwhelming and would be sustained in the absence of legal error, the Committee’s analysis of two particular questions of law compels it to conclude that legal error vitiates the verdict. First, it is the judgment of the Committee on Appeals that Judicial Council Decision No. 702, which binds this Committee, makes it legal error to try, convict and deprive a member in full connection of her right to an appointment pursuant to ¶¶ 304.3 and 2702.1(b) of *The Book of Discipline of The United Methodist Church*¹ when, as in this case, neither the General Conference nor the pertinent Annual Conference has defined the words “practicing homosexual” and “status.” Second, legal error was committed by trying and convicting Appellant on the basis of ¶ 304.3 because that provision constitutes a “new standard or rule of doctrine” which has not been declared by the General Conference to be “‘not contrary to’ the present standards,” in violation of the First Restrictive Rule and ¶ 102 of the *Discipline*.

STATEMENT OF FACTS

Irene Elizabeth Stroud (“Appellant”) was ordained as an Elder in the Eastern Pennsylvania Annual Conference in 1997. After serving for two years as Associate Pastor at West Chester United Methodist Church, she was appointed in July 1999 as Associate Pastor at First United Methodist Church of Germantown (Pa.) (“FUMCOG”).

Appellant’s Disclosures to Her Bishop and Congregation

In March 2003, Appellant met with her then Bishop (Peter Weaver, now the Resident Bishop of the Boston Area) and disclosed “that she was a lesbian living in a committed relationship with a partner.” *Trial Transcript* (“Tr.”) at 51. Appellant explained to Bishop Weaver that she was making this disclosure voluntarily because “she was yearning to be truthful and honest and live out her integrity as both a Christian as well as a human being” *Id.*

In a letter dated April 19, 2003, Appellant “notified the members of [FUMCOG] of her struggle ‘to respond to God’s calling’ while ‘a lesbian living in a committed relationship with a

¹ All references in this decision to the *Discipline* are to the 2000 version, which is controlling in this case, for both substantive and procedural purposes, given the period during which the relevant conduct occurred and the date the Bill of Charges and Specifications was received.

partner.” *Judicial Complaint (“Complaint”)*, ¶ 1.² Appellant’s letter reiterated her desire to be “more fully open about my sexual orientation and my family life with my partner,” and acknowledged that doing so “will put my credentials as an ordained United Methodist minister at risk.” *Id.*, ¶ 2. On April 27, 2003, Appellant delivered a sermon at FUMCOG, disclosing in that forum that she was a lesbian and introducing the partner with whom she had lived “in a covenant relationship for two and one-half years.” *Id.*, ¶¶ 8-9.

Initiation of the Complaint Process

In a letter dated May 29, 2003, Bishop Weaver notified Appellant that, as a result of her disclosures, he was initiating the complaint process, pursuant to ¶ 359 of the *Discipline*, to “bring [her] membership in the ministerial office of Elder under review.” *Complaint*, ¶ 11 & Exhibit C thereto. Bishop Weaver’s letter indicated that she would be charged with engaging in “practices declared by The United Methodist Church to be incompatible with Christian teachings,” which is a chargeable offense under ¶ 2702.1(b) of the *Discipline*.

Thereafter, a supervisory response was pursued pursuant to ¶ 359.1(b) of the *Discipline*, but reconciliation was not achieved. *Complaint*, ¶¶ 12-13. Accordingly, on March 31, 2004, a Judicial Complaint was filed on behalf of the Eastern Pennsylvania Annual Conference against Appellant. The Complaint asked the conference’s Committee on Investigation to “determine whether reasonable grounds exist to bring a bill of charges and specifications to trial.” *Id.* at 3. Appellant answered the Complaint on June 14, 2004, admitting the basic factual allegations set forth in ¶¶ 1-15 of the Complaint, but denying the “legal conclusion” in ¶ 16 of the Complaint, which had alleged that “the matter must be sent to trial under Par. 2702.1(b)” of the *Discipline* “if the Committee on Investigation also finds reasonable evidence that this ordained minister is a ‘practicing lesbian’” See *Answer*, ¶¶ 1-2; *Complaint*, ¶ 16.

Bill of Charges and Specifications

A Bill of Charges and Specifications was first issued by the Committee on Investigation for the Eastern Pennsylvania Annual Conference on July 26, 2004. That bill charged Appellant with violating ¶ 2702.1(b) of the *Discipline* “by engaging in practices declared by The United Methodist Church to be incompatible with Christian teachings.” In September 2004, however, this charge was declared null and void by the Presiding Officer, Bishop Joseph Yeakel, for two reasons. First, Bishop Yeakel ruled that Committee on Investigation’s vote was invalid because two laypersons had voted and, when those votes were excluded, as the *Discipline* required, there would be insufficient votes to constitute a quorum. Second, relying on Judicial Council Decision No. 980, Bishop Yeakel ruled that members of the Committee on Investigation should have been polled in advance to determine if any of them were unwilling to uphold the *Discipline* for reasons of conscience or otherwise and, if so, any such members must “step aside in this matter and either alternate members or others who are willing to uphold the *Discipline* must be appointed to the Committee to enable it to complete its responsibility.” *Decision No. 980*. Accordingly, Bishop Yeakel remanded the matter to the Committee on Investigation for a rehearing.

² In her Answer to the Complaint, dated June 14, 2004, Appellant admitted the facts alleged in the first 15 paragraphs of the Judicial Complaint, from which most of this Statement of Facts is drawn.

After reconvening, a quorum of seven members of the Committee on Investigation voted unanimously to bring a second Bill of Charges and Specifications against Appellant, which was issued on October 11, 2004. The sole charge asserted was that Appellant “has violated paragraph 2702(1)(b) of *The 2000 Discipline* by “engaging in practices declared by The United Methodist Church **to be incompatible with Christian teachings.**” *Bill of Charges and Specifications* at 1 (emphasis in original).

The Committee alleged that this charge was supported by five specifications, which may be summarized as follows:

1. Appellant’s disclosures in her April 19, 2003 letter to FUMCOG, including the disclosure that she was “a lesbian living in a committed relationship with a partner,” and that she understood that “being more fully open about my sexual orientation and family life with my partner will put my credentials as an ordained United Methodist minister at risk.” *Id.*, Specification No. 1.

2. Appellant’s April 27, 2003 sermon at FUMCOG, including her public disclosure there that she was a lesbian and had “lived in a covenant relationship [with her partner] for two and one-half years.” *Id.*, Specification No. 2.

3. A transcript of the Committee on Investigation’s interview of Appellant on July 23, 2004, during which (a) the Committee had asked whether the relationship between Appellant and her female partner “is a complete physical one and whether or not you have or are engaged in genital sexual contact,” and (b) Appellant had responded, “yes, that is a part of our relationship. It’s a part of who we are as a loving couple and as partners.” *Id.*, Specification No. 3.

4. An ultimate allegation that

the Committee believes and avers that Ms. Stroud is currently, and for approximately 3½ years has been, a self-avowed practicing homosexual in a monogamous, committed relationship with a specific female partner while in the ordained ministry of The United Methodist Church. As a part of the totality of that relationship, Ms. Stroud and her partner have expressed themselves physically and sexually, including genital sexual acts.

Constituting the Trial Court

On October 18, 2004, the Dean of the cabinet sent a letter to 66 clergy members who had been nominated by the cabinet to serve as the pool from which the Trial Court would be drawn. The letter included four questions that Bishop Yeakel, as the Presiding Officer, required the nominees to answer to assess their eligibility to serve on the Trial Court. The first three questions asked (1) whether they were members in full connection in the Eastern Pennsylvania Annual Conference; (2) whether they had been a member of any conference organization that had previously been involved in the proceedings against Appellant; and (3) whether they had already predetermined Appellant’s guilt or innocence. The fourth question, which the Presiding

Officer indicated was prompted by Judicial Council Decision No. 980,³ asked the following of the nominees for the Trial Court pool:

Are you willing and able to abide by the provisions of the *2000 Book of Discipline of The United Methodist Church*, setting aside your own opinions and feelings, and find the respondent (Pastor Stroud) guilty, if there is clear and convincing evidence to sustain the charge?

According to the transcript of Bishop Yeakel's pretrial rulings, 14 nominees were excused because, in response to the questionnaire, they had "indicated either they had already pre-decided the guilt or innocence of the Respondent [the focus of the third question] or they were unwilling to set aside their own convictions and administer the Discipline as stated by the Judicial Council" [the focus of the fourth question]. *Tr.* at 5. Another nominee was excused because a physical disability hampered his ability to serve, and two more were excused after they came down with the flu on the eve of trial. *Id.* In the end, then, the Trial Court was drawn from a pool of 49, rather than 66, members in full connection. *Id.* at 5-6.

Pre-Trial Rulings

Before the trial commenced, the Presiding Officer made two rulings of law that have been challenged on appeal. First, Bishop Yeakel overruled Appellant's objection to the fourth question presented to the nominees for the Trial Court pool. Understanding that Bishop Yeakel had posed the question based on Decision No. 980, Appellant argued (a) that Decision No. 980 was inapplicable because the composition of the Trial Court was not properly before the Judicial Council in that case; and (b) that including the question had the effect of depriving Appellant of a trial by a jury that was truly representative of her peers. On December 1, 2004, the day the trial commenced, Bishop Yeakel explained his reason for overruling Appellant's objection as follows:

In light of the ruling of the Judicial Council in terms of stepping aside and in light of the Discipline statement of innocence must be presumed until the time of the decision of the Court, I'm denying the appeal for the expansion of the Trial Court to its original size or its original named persons and indicating that we will work with the 49 available to us today. (*Tr.* at 6)

Also on December 1, 2004, Bishop Yeakel affirmed a request by Church Counsel to preclude Appellant from presenting argument or testimony at trial to the effect that pursuing a charge predicated on ¶ 304.3 of the *Discipline* violated other provisions of the *Discipline*, including various provisions of the denomination's Constitution, as well as Judicial Council Decision No. 702. *See generally Tr.* at 17-19. Appellant's counsel argued, and proffered

³ In Decision No. 980, the Judicial Council indicated that, just as members of a Committee on Investigation who are "unwilling to uphold the Discipline for reasons of conscience or otherwise . . . must step aside," so that "either alternate members or others who are willing to uphold the Discipline" may "complete [the Committee's] responsibility," so, too, "once a bill of charges is certified, persons who state that they cannot in good conscience uphold the *Discipline* are ineligible to serve on a trial jury."

testimony to support arguments, that pursuing a charge based on the statement in ¶ 304.3 that the “practice of homosexuality is incompatible with Christian teachings” (1) violates her fair process rights under the Constitution and Judicial Council Decision No. 702, inasmuch as neither the General Conference nor the Eastern Pennsylvania Annual Conference has defined the words “practicing homosexual” or “status”; (2) violates the Constitution’s proscription against discrimination on the basis of “status,” as expressed in ¶¶ 4 and 15 of the *Discipline*; and (3) violates the Constitution insofar as ¶ 304.3 violates the First and Fifth Restrictive Rules, as expressed in ¶¶ 16 and 19 of the *Discipline*, which seek to preserve our historical Articles of Religion, General Rules and doctrinal standards. *See generally Tr.* at 8-14. The Church’s counsel responded that all of these arguments—and any testimony proffered to support them—were irrelevant to, and beyond the proper scope of, the trial proceedings. In essence, Church Counsel argued that, while the issues that Appellant sought to raise “may be appropriate legislative consideration by the General Conference, they are . . . not relevant to the issue of this trial,” *Tr.* at 16, which is simply “to determine whether or not the rule of law itself has been transgressed.” *Tr.* at 17.

Bishop Yeakel “affirm[ed] the petition of the Church that the question of constitutionality and the decisions of the Judicial Council being raised are not relevant to this particular case and that we will proceed without reference to the issue of constitutionality in the trial without witness or argument from this time forward.” *Tr.* at 19. Bishop Yeakel explained that an “ambiguity” in Judicial Council Decision No. 702—the decision upon which Appellant relied to support some of her arguments—was “finally clarified for the General Conference” in the Judicial Council’s subsequent ruling in Decision No. 984, which clearly held that ¶ 304.3 constitutes “a declaration of the General Conference of the United Methodist Church that . . . the practice of homosexuality is incompatible with Christian teachings.” *Tr.* at 18-19.

Trial: Verdict & Penalty

After Bishop Yeakel confirmed his pre-trial rulings on the record, the trial commenced on December 1, 2004. The Church’s evidence consisted of testimony from Bishop Weaver and Appellant herself. Testimony in support of Appellant’s position was presented on the morning of December 2, 2004, by Bishop John Schol and the Rev. Alfred Day. After all testimony was concluded, counsel for the Church and Appellant presented closing statements, after which Bishop Yeakel instructed on the Trial Court on the law that should guide their deliberations in determining Appellant’s guilt or innocence of the charge. *Tr.* at 146-154.

On the afternoon of December 2, the Trial Court returned with a verdict of guilty on all four specifications and the charge. Twelve members of the Trial Court voted guilty on all four specifications and the charge. One member voted not guilty. *Tr.* at 159-160.

The trial then turned to the penalty phase, which began with counsel for both parties presenting argument to the Trial Court on what each believed was an appropriate sanction. The focus of Church Counsel’s argument was that the Judicial Council’s ruling in Decision No. 985—confirming that “a bishop may not appoint one who has been found by a trial court to be a self-avowed, practicing homosexual”—means “that the only penalty possible is to revoke the credentials of ordination of Reverend Stroud.” *Tr.* at 161. Counsel for Appellant then argued that, under the *Discipline*, the Trial Court had discretion to impose “a lesser penalty,” and urged

the Trial Court to do so, bearing in mind, among other things, that “Beth Stroud is a person of integrity and that’s why she could no longer remain silent about her gift of sexuality, though to have been silent would have certainly been prudent.” *Tr.* at 162-63.

Promptly after counsel concluded their statements regarding the penalty issue, Bishop Yeakel provided instructions to the Trial Court to govern its deliberations in selecting a penalty. Bishop Yeakel stated:

Let me turn to the Trial Court. It is true that the decision of the Judicial Council No. 985 indicates that a Bishop may not appoint one who has been found by a Trial Court to be a self-avowed practicing homosexual.

The Discipline further states that the Trial Court shall determine the penalty which shall require a vote of at least 7 members.

It’s 9 for verdict and 7 for penalty.

The Trial Court shall have the power to expel the Respondent from the Church, terminate the conference membership and/or revoke the credentials of ordination or consecration of Respondent, suspend the Respondent from the exercise of the functions of office, or to fix a lesser penalty.

There are no further clarifications than the information I’ve shared with you. (*Tr.* at 164-65.)

After receiving these instructions,⁴ the Trial Court withdrew to deliberate. Later that afternoon, the Trial Court returned and announced that, by a vote of seven to six, the Trial Court had decided to impose as a penalty “the withdrawal of the credentials of ordination or consecration of the Respondent.” *Tr.* at 166.

Appellant timely filed this appeal.

⁴ Church Counsel’s brief represents that the Trial Court, after withdrawing to deliberate on the penalty, requested further clarification regarding its discretion in establishing a penalty, and that the Presiding Officer responded by providing further instructions, with counsel for both sides present. Since there is no transcript or other formal record of any such further instructions, however, the Committee on Appeals may not base its decision in this appeal on any such further instructions. *See Discipline*, ¶ 2710.8 (“A verbatim record of all proceedings of the trial shall be by stenograph or other appropriate means and reduced to writing and certified by the presiding officer or secretary. The record, including all exhibits, papers and evidence in the case, shall be the basis of any appeal that may be taken.”); *Id.*, ¶ 2715.6 (“The records and documents of the trial, including the evidence, and these only, shall be used in the hearing of any appeal.”); *Id.*, ¶ 2715.7 (Appeal “shall be determined by the records of the trial and the argument of counsel for the Church and for the respondent. The appellate body shall in no case hear witnesses.”).

JURISDICTION

The Committee on Appeals has jurisdiction of this appeal pursuant to the *Discipline*, ¶¶ 2715-2716.

ANALYSIS AND RATIONALE

The Committee is charged by the *Discipline* “to 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?” *Discipline*, ¶ 2715.7. In making that determination, the Committee is obliged to adhere to the *Discipline*, as interpreted by the Judicial Council, and to any holdings of the Judicial Council that are relevant to the issues presented by the parties.

A. Does the Weight of the Evidence Sustain the Charge?

Although the Appellant’s fourth argument on appeal is framed in terms of a challenge to the “weight of the evidence,” she is *not* challenging the sufficiency of the evidence that was presented to the Trial Court. Rather, Appellant’s argument is essentially that the Presiding Officer improperly *excluded* evidence, and that if “this information [had] been available to the Trial Court, there would not have been sufficient basis for the verdict and penalty reached in the trial.” Appellant’s Br. at 42. In our judgment, this is an assertion of legal error by the Presiding Officer, not a challenge to the Trial Court’s weighing of the evidence with which they were presented.

In the Committee’s judgment, there is no credible basis for concluding that the evidence that *was* presented to the Trial Court was insufficient based on the instructions the Trial Court was given. Indeed, the evidence was uncontradicted and overwhelming—based as it was on Appellant’s own admissions—that Appellant had engaged in genital sexual activity in the context of a longstanding committed relationship with a partner of the same gender. To the extent such conduct constitutes the “practice of homosexuality” as defined by the law of the Church, then there is no question that the weight of the evidence sustained the charge. The only conceivably open questions, in our judgment, are: (1) whether the charge has been adequately defined by the Church; and (2) whether the charge is invalid on the asserted ground that it conflicts with the Church’s Constitution. Appellant’s presentation on those questions constitutes the assertion of legal errors and must be addressed as such, rather than as challenges to the sufficiency of the evidence.

B. Were There Such Errors Of Church Law As To Vitate The Verdict And/Or The Penalty?

1. Did the Questionnaire Given to the Pool From Which The Trial Court Was Selected Violate Due Process?

Appellant’s first assignment of legal error is that she was denied fair process as a consequence of the Presiding Officer’s having asked the Trial Court pool whether they were “willing and able to abide by the provisions of the *2000 Book Of Discipline Of The United Methodist Church*, setting aside your own opinions and feelings, and find the Respondent . . . guilty, if there is clear and convincing evidence to sustain the charge?” Appellant argues that the

ruling in Decision No. 980 that “persons who state that they cannot in good conscience uphold the Discipline are ineligible to serve on a trial jury” exceeded the Judicial Council’s authority because the composition of the jury pool was not yet at issue in the *Dammann* case, no charges having been certified at the time Decision No. 980 was rendered. Appellant’s Br. at 17-18. Appellant further argues that, even if it was appropriate to inquire into the pool member’s willingness to uphold the *Discipline*, “the actual wording of the question denied Pastor Stroud a fair trial court because it was biased against her” and had the effect of depriving her of a “representative” jury. *Id.* at 18-19.

The Committee holds that the Presiding Officer’s inquiries to the jury pool do not constitute an error of Church law that vitiates the verdict or the penalty. First, even if the composition of the jury pool was not yet at issue in Decision No. 980, it is not clear to us that it would make the Judicial Council’s ruling on that point any less binding on the Presiding Officer or the Committee. More importantly, even if Appellant is correct on that point, the question would remain whether it was error for Bishop Yeakel to ask panel members whether any conscientious objection to the *Discipline* would preclude them from rendering a finding a guilt if the charges were proved by clear and convincing evidence. We believe that it was not error to pose such a question.

The question to which Appellant objects is consistent with the need to ensure that all church trials—regardless of the issue—are decided solely on the basis of the evidence and the law. The viability of our rules, as well as the rights of those accused of violating those rules, depends on ensuring that the Trial Court is composed of persons who will decide guilt or innocence on the basis of the evidence presented and the legal instructions they are given, not on the basis of whether they personally approve or disapprove of our rules. *See Judicial Council Decision No. 886*. The question is also consistent with the Judicial Council’s admonitions—in decisions besides Decision No. 980—that Annual Conferences and their subsidiary units—which include Trial Courts—may not implement their duties in such a way as to nullify any portion of the *Discipline*. *Id.*

With respect to the argument that the question displayed a bias in favor of conviction, we are not persuaded that the wording or structure of the question prejudiced the Appellant or resulted in an “unrepresentative” jury. Guilt was not presupposed; rather, the Presiding Officer asked whether, “*if there is clear and convincing evidence to sustain the charge,*” pool members would be able to set aside their personal feelings and find the respondent guilty. It is true that the Presiding Officer might have also asked, “If the evidence does not clearly and convincingly sustain the charge, are you willing and able to abide by the *Discipline* and render a verdict of not guilty, setting aside your own opinions and feelings?” He did, however, pose another question designed to ensure that no one had prejudged Appellant’s guilt of the charge, and we are persuaded, taken as a whole, the questions posed were not biased against Appellant but were designed to guard against a jury that had prejudged the case, one way or the other.

Finally, it is impossible to determine from the record how many potential jurors were excluded based on their answers to the question to which Appellant objects. Under those circumstances, we are unable to conclude that any of the 13 members that ultimately comprised the Trial Court were not “representative” or had prejudged the case.

2. Did the Presiding Officer Commit Legal Error by Excluding Argument and Evidence to Support Appellant’s Contention That The Charges Violated the Constitution, the Articles of Religion and the General Rules

In our view, Appellant’s argument that Bishop Yeakel erred by excluding argument or testimony at trial breaks down into two questions: (1) Was it error to exclude *testimony* to the Trial Court to the effect that pursuing a charge predicated on ¶ 304.3 of the *Discipline* violated other provisions of the *Discipline*? (2) Was it error to rule those legal challenges out of order even to the extent they were presented as legal *argument*? For the reasons explained below, we hold that it was not error to exclude testimony on these points, but that Appellant’s legal arguments were not beyond the proper scope of these proceedings and, in two narrow respects, must be resolved in Appellant’s favor based on the plain terms of the *Discipline* and binding Judicial Council decisions.

a. Appellant’s Legal Challenges Were Not Within the Trial Court’s Purview, But Were Properly Raised As Legal Argument and Should Have Been Resolved by the Presiding Officer

Insofar as Appellant sought to assert her legal arguments in the form of testimony for resolution by the Trial Court, such evidence was rightly excluded. Under our system of judicial process, the Trial Court is not empowered to decide issues of law; its sole function, like that of a jury in a secular court, is to determine whether the *facts*, as demonstrated by clear and convincing evidence, sustain the charge. In making that determination, the Trial Court must accept the Presiding Officer’s instructions on the governing *law* as a given; it has no authority to declare Church law invalid or unconstitutional and each of its members is duty-bound to decide guilt or innocence in accordance with the legal instructions given by the Presiding Officer. This conclusion is required by the express terms of ¶¶ 2710 and 2711 of the *Discipline*, which distinguishes the authority and power of the Presiding Officer and the Trial Court, respectively, making clear that the Trial Court’s function is to make a disposition of the charge—guilty or innocent—based on instructions of Church law supplied by the Presiding Officer. *Discipline*, ¶¶ 2710.1, 2710.10 & 2711.

By the same token, however, the *Presiding Officer*, as distinct from the Trial Court, *is* authorized to make rulings of law, including on constitutional issues, during the trial process. That questions of law may be decided by the Presiding Officer is contemplated by ¶ 2715.9, which provides that, although “the right to present evidence shall be exhausted when the case has been heard once on its merits in the proper court, . . . *questions of Church law may be carried on appeal, step by step, to the Judicial Council.*” *Discipline*, ¶ 2715.9 (emphasis added). It goes without saying that questions of Church law cannot be “carried on appeal, step by step,” if they cannot be presented in the first instance during the trial proceedings. The *Discipline* also provides that the Presiding Officer’s role is analogous to that of a judge in a secular jury trial, expressly giving the Presiding Officer, in addition to specifically enumerated powers, “such other authority as is normally vested in a civil court judge sitting with a jury.” ¶ 2710.1.

We also conclude that this authority includes the power to resolve constitutional issues. First, the authority given by the General Conference in ¶ 2715.9 expressly extends to “questions of Church law,” without indicating any exception for questions of constitutional law. Second,

judges in analogous secular courts clearly have the power and duty to resolve constitutional challenges. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177-78 (1803); *Robb v. Conolly*, 111 U.S. 624, 637 (1884); *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 31-42 (1816) (Story, J.).

Third, to hold that the Presiding Officer has no authority to entertain Constitutional challenges—that the Judicial Council is the only body that can do so, and only then upon a petition for a declaratory decision from one of the limited class of institutions eligible to seek such declarations—is effectively to preclude anyone charged in a trial proceeding from raising due process or other constitutional challenges. Indeed, if the rule is that constitutional challenges can only be raised in a petition for a declaratory decision, then not even the Judicial Council could entertain the constitutional challenges advanced in this appeal of a trial court verdict. Such a holding would be anomalous, given the Constitution's dominant focus on protecting the rights of the accused and the Judicial Council's admonition that legislation which exceeds the limits of the Constitution is void and unenforceable. *Judicial Council Decision No. 819*.

Finally, it is, of course, true—as Appellant's counsel concedes—that the Judicial Council upheld ¶ 304.3 against a constitutional challenge in Decision No. 544. The question, though, is whether the Judicial Council, in Decision No. 544 or any other Judicial Council decision, has resolved the *particular* constitutional challenges raised here *by Appellant*. If so, and if those decisions were adverse to Appellant's position, the Presiding Officer and the Committee would have no choice but to reject those arguments. The grounds for doing so, however, would be that the arguments lacked merit as a matter of binding law, not that they were irrelevant or beyond the purview of these proceedings altogether.

In sum, Appellant was properly precluded from presenting her legal challenges in the form of evidence for resolution by the Trial Court, which properly sits only as a jury. On the other hand, it was error to preclude Appellant from presenting legal argument on those points on the ground that they were irrelevant or beyond the scope of these proceedings. In the following sections, we analyze the merits of the particular legal challenges, in order to determine whether the exclusion of any of those arguments is sufficient to vitiate the verdict and/or penalty.

b. Judicial Council Decision No. 702 Requires That The Verdict And Penalty Be Set Aside Because Neither The General Conference Nor The Eastern Pennsylvania Annual Conference Has Defined The Words “Practicing Homosexual” And “Status”

The first of Appellant's legal challenges is a due process challenge, which is predicated primarily on Judicial Council Decision 702. In that case, building upon its ruling in Decision No. 544, the Judicial Council held that the “Annual Conference must make any determination which would effect a change in ministerial standing,” and that “[t]he prohibition of an appointment [based on the provision that now appears as ¶ 304.3] must be exercised in compliance with the rights of all persons who are in full membership.” *Decision No. 702*. The Judicial Council then further held that, “[I]n order to do that”—that is, in order to ensure that “the prohibition of an appointment . . . is exercised in compliance with the rights of all persons who are in full membership”—“the “words ‘status’ and ‘self-avowed practicing homosexual’ must be defined by either the General Conference or the various Annual Conferences.”

Appellant argues that this holding is violated in her case—and, therefore, her due process rights have been violated—because neither the General Conference, nor her Annual Conference, has ever defined by either “practicing homosexual” or “status.” This is not a frontal challenge to the constitutionality of ¶ 304.3. Rather, it is an argument that, according to Decision No. 702, due process is not satisfied if ¶ 304.3 is used to prohibit Appellant’s appointability without first receiving a definition of both “practicing homosexual” and “status” from the General Conference or the Annual Conference.

Appellant is correct that neither of these phrases has been defined by the General Conference or the Eastern Pennsylvania Annual Conference. There is nothing in the record that suggests that the Annual Conference has done so. Moreover, although the General Conference has now defined “self-avowed” in a footnote to ¶ 304.3, that footnote merely repeats, without adding any content, the words “practicing homosexual.” Nor has the General Conference defined “status,” notwithstanding that in Decision No. 845 the Judicial Council again strongly urged the General Conference to do so with respect to sexual orientation in particular.

We recognize that Judicial Council Decisions Nos. 920 and 980 indicate that “practicing homosexual” may encompass engaging in “genital sexual activity,” but we cannot conclude that either of those decisions relieve this Committee from the binding holding in Decision No. 702, which built on Decision No. 544, that (a) “prohibition of an appointment”—which is clearly at stake in this case—“must be exercised in compliance with the rights of all persons who are in full membership,” and (b) “[i]n order to do that, the words ‘status’ and ‘self-avowed practicing homosexual’ *must* be defined by either the General Conference or the various Annual Conferences.”

In the first place, Decisions Nos. 920 and 980 provide nothing at all in terms of a definition of “status.” Moreover, the reference to engaging in “genital sexual activity” in Decisions Nos. 920 and 980 was not supplied for purposes of *trial* with the result that a clergy member’s right to an appointment was finally prohibited, but for purposes of the beginning stages of reviewing the accused’s relations with the conference. The core holding in Decision No. 920 was that a “statement by a clergy woman that she is ‘living in a partnered, covenanted homosexual relationship with another woman’ is sufficient . . . to subject such person’s membership in her ministerial office to *review* under ¶ 359.1 of the *Discipline*.” Similarly, the key holding in Decision No. 980 was that a Committee on Investigation must *certify charges* that a clergy member has violated ¶ 2702.1.b when the member has admitted living in a homosexual relationship that includes “genital sexual contact.” In essence, then, Decisions 920 and 980 provide a working definition of “practicing homosexual” that illuminates the circumstances in which the review and charging process *must be put in motion* so that matter can be placed firmly in the hands of the Annual Conference. We do not find anything in those decisions that persuades us that, once the process is initiated, the Annual Conference is relieved of its duty under Decision No. 702 to protect the due process rights of one of its members by defining the conduct upon which her appointment stands to be prohibited and by defining “status” so that judicial officers can meaningfully decide her challenge that the legislation violates the constitutional proscription against discrimination on the basis of status.

Any conclusion that the holding of Decision No. 702 has been supplanted by Decisions 920 and 980 is also undermined by the fact that the definition suggested in latter decisions is too

narrow to be workable across the board in all cases. The definition provided in those cases is, in fact, gender-specific, addressing only women clergy.

Nor do we find anything in decisions that post-date Decision No. 702 that indicates that the Judicial Council has retracted its view that “[i]t is not the task of the Judicial Council to legislate the meaning of words passed by the General Conference,” and that, certainly where matters of conference relations and appointment rights are at stake, it is “clear that either the General Conference or the Annual Conferences must define for their own use, the words ‘self-avowed practicing homosexual.’”

Of course, it is also not responsive to this assignment of due process error to say that the argument was foreclosed by the Judicial Council’s holding in Decision No. 544. The constitutional challenge at issue in Decision No. 544 was distinct from the due process challenge addressed here. Indeed, inasmuch as the due process holding in Decision No. 702 was predicated largely on the analysis in Decision No. 544, the two decisions are congruent.

In short, we conclude that Decisions Nos. 920 and 980 do not constitute an about-face for the Judicial Council, but should be understood as illuminating the circumstances in which the review process must be initiated, so that the Annual Conference can perform its duty of deciding all matters relating to membership status, while remaining true to the Judicial Council’s longstanding pronouncements on what is necessary to ensure compliance with due process. If the Judicial Council had intended in Decisions 920 or 980 to retract its holdings in Decisions No. 544 and 702—and to henceforth dispense with the longstanding practice of reviewing the legality of annual conference definitions developed in response to the Judicial Council’s admonitions—the Judicial Council would have said so directly. *See, e.g.*, Decisions Nos. 722, 725, 764, 837 (all ruling on legality of various Annual Conference definitions of “self-avowed practicing homosexual”).

The Committee stresses that its decision on this point says *nothing* about the wisdom or theological soundness of ¶ 304.3. The Committee recognizes and respects that the General Conference is the supreme lawmaking body of the Church and that all are bound to live by, and may not legitimately act to nullify, that law. The Committee also appreciates that its decision may frustrate the will expressed by a majority at several General Conferences. On this issue, however, that frustration is a product of the fact that the Committee is obliged to follow the rulings of the Judicial Council when applying the *Discipline*. The Committee’s narrow holding is simply that binding Judicial Council precedent continues to require that ¶ 304.3 cannot constitutionally be applied to prohibit an appointment unless either the General Conference or the Annual Conference has first defined both “practicing homosexual” and “status.” Since neither phrase has been defined by either of the requisite bodies in this case, the verdict and penalty must be set aside.

c. The Verdict And Penalty Be Set Aside Because ¶ 304.3 violates the First Restrictive Rule

We also conclude that ¶ 304.3 violates the First Restrictive Rule, an argument raised at pp. 21-22 of Appellant’s brief. Since this argument has not previously been addressed by the Judicial Council, it, too, is not foreclosed by prior Judicial Council precedent.

The First Restrictive Rule provides that the “General Conference shall not revoke, alter or change our Articles of Religion or establish any new standards or rules of doctrine contrary to our present existing and established standards of doctrine.” *Discipline*, ¶ 16. With respect to the latter part of this restriction, the *Discipline* further makes clear no “new standards or rules of doctrine” are valid unless either (a) it has been “*declared* ‘not contrary to’ the present standards,” or (b) has gone “through the difficult process of constitutional amendment.” *Discipline*, ¶ 102, p. 58.

In construing these provisions, the Judicial Council has held that it is not competent to make a determination on whether a new rule or standard of doctrine is congruent with or contrary to existing rules and standards. Decision No. 358. Thus, it falls to the General Conference alone to issue the declaration, required by ¶ 102, that any new doctrinal standard or rule, is not contrary to present standards.

The Committee concludes that ¶ 304.3 constitutes a new standard or rule of doctrine within the meaning of the First Restrictive Rule because it establishes a definitive interpretation of “Christian teaching” on a particular subject and binds the Church to act in accordance with that interpretation. While there is nothing to prevent the Church from establishing rules and standards for ministry, ¶ 304.3 goes beyond the mere articulation of a rule or qualification for ministry. It declares that the church is compelled by a particular theological understanding. It seeks to define the Christian position on the practice of homosexuality, and thus enters into the realm of doctrine.

Yet, there is no record that, in enacting ¶ 304.3, the General Conference has ever issued a declaration that the new rule is congruent with prior rules and standards of doctrine. Nor was “the difficult process of constitutional amendment” (¶ 102) used to adopt ¶ 304.3. Under these circumstances, the enactment of ¶ 304.3 did not satisfy the dictates set down by the General Conference, therefore, is null and void.

This holding, too, makes no judgment on the content of ¶ 304.3. In this instance, our holding is strictly that the Discipline requires that one of two procedures be followed before a new doctrinal standard can have effect, and neither was done with respect to ¶ 304.3. For that reason, the verdict and penalty, which depend on the validity of ¶ 304.3, must be set aside.

3. Appellant’s Remaining Legal Arguments

Appellant has advanced a number of other legal arguments, which the Committee addresses briefly as follows:

- A. *Argument: Par. 304.3 violates the Fifth Restrictive Rule (Par. 19), which precludes the General Conference from changing the General Rules (Par. 103), by (1) “adding a rule of conduct that is not even suggested anywhere in the General Rules,” and (2) “causing harm to persons who are a part of the covenant community and The United Methodist Church itself.”*

The Committee does not agree that ¶ 304.3 constitutes a revocation or change of the General Rules.

- B. *Argument: Punishing Pastor Stroud on the basis of “her homosexual status and her monogamous committed relationship with her partner” discriminates on the basis of “status” in violation of Pars. 4 and 15 of the Constitution.*

Pursuant to Decision No. 702, the Committee cannot resolve this question because neither the General Conference nor the Annual Conference has defined the key terms and the Committee is precluded by the Judicial Council from supplying its own interpretation of those terms. However, as we hold above, Appellant cannot be denied an appointment in a manner that satisfies due process in the absence of such definitions by the Annual Conference or the General Conference.

- C. *Argument: Par. 304.3 violates Article XXI of the Articles of Religion (Par. 103) by effectively requiring homosexuals to “vow the estate of single life.”*

The Committee concludes that Paragraph 304.3 does not violate Article XXI. That Article, by its terms, is designed to protect the right of clergy to marry, a right which is not infringed by sanctioning sexual activity outside the context of marriage.

- D. *The Presiding Officer Erred By Instructing the Trial Court, During the Penalty Phase, That “a Bishop May Not Appoint One Who Has Been Found By The Trial Court To Be a Self-Avowed Practicing Homosexual.”*

Since the Committee’s holding vitiates the verdict and (with it) the penalty, the Committee need not resolve the question of whether there was error in connection with the instructions given to the Trial Court during the penalty phase.

DECISION

The verdict and the penalty are reversed and set aside. Although the Committee believes that the evidence in support of the charge was overwhelming and would be sustained in the absence of legal error, the Committee concludes that legal error vitiates the verdict on two independent grounds. First, Judicial Council Decision No. 702, which binds this Committee, makes it legal error—namely, a deprivation of due process—to try, convict and deprive a member in full connection of her right to an appointment pursuant to ¶¶ 304.3 and 2702.1(b) of the *Discipline* when, as in this case, neither the General Conference nor the pertinent Annual Conference has defined the words “practicing homosexual” and “status.” Second, it was error to try and convict the Appellant on the basis of ¶ 304.3 because that provision constitutes a “new standard or rule of doctrine” which has not been declared by the General Conference to be “‘not contrary to’ the present standards,” in violation of the First Restrictive Rule and ¶ 102 of the *Discipline*.

Friday, April 29, 2005

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