Date: March 23, 2019

Response Brief
in
Re: Erik Seise v Florida Annual Conference
to
Rulings by the Southeastern Jurisdiction's Committee on Appeals
March 22, 2019

Introduction

As the Judicial Council (JC) may have noted from my previous briefs, Bishop Carter wrote the original complaint that precipitated the actions of the Conference Relations Committee *CRC), the the Board of Ordained Ministry (BOM), the Administrative Review Committee (ARC), and Florida Annual Conference (FLAC). Because of that, He has received copies of everything I have submitted in my case. And he led the charge regarding the Council of Bishops' seeking a ruling of law from the JC that led to Judicial Council Decision (JCD) 1361. He certainly had my case in mind during that endeavor so I can understand why there was a special effort to speak to provisional members not being eligible for appeal under ¶ 2718.3-.4. JCD 1361 says nothing about Local Pastors. I do not think that is coincidental. Bishop Carter obviously has had a vested interest in dealing with the JC in regard to that paragraph and its possible application to me.

In the Southeastern Jurisdictional Committee on Appeals (SEJCOA), Rev. Schultz notes that the JC identified three things needed for a response to an appellant's grounds of appeal: "statement of facts, analysis, and disposition." The decision itself shows that is

a rephrasing of another list of requirements for a ruling: "statement of facts, procedural history, (and) rationale."

I point this out simply to be clear. JCD 1373 is calling upon all appellate bodies to deal with what is germane, what is a reasonable rationale in response to the grounds and not some vague reference saying "They were just following the Discipline" and citing what they feel is the appropriate paragraph. For the purpose of this brief, I will use a combination of what is in JCM 1373: Statement of Facts, Rationale, and Disposition. I believe that is actually what Rev. Schultz believes he was doing in dealing with each of the eight grounds of appeal before the SEJCOA.

Statement of Facts

Rev. Schultz called this section "Procedural History." Let me correct his narrative at several points.

There was no "series" of "supervisory meetings" before the bishop wrote up his complaint. There were two meetings with my superintendent. One was where she told me the BOM voted that I take CPE. The second meeting was where she brought a "boiler plate" agreement severing my relationship with the conference and providing conditions to be met in order to receive any benefits upon separation. She did promise another meeting if I chose not to sign. Neither was a two way consultation concerning my ministry nor my situation as a father of two small children and in the midst of a

hassle with the university over an allegation of sexual misconduct which was exacerbated by ineffective counsel provided by the conference. Both meetings were one way, hers, which I do not believe is the intent of ¶ 419.6 which says in part, ". . . Superintendents shall offer support, care, and counsel to clergy concerning matters affecting their effective ministry . . . ." Nor were they "supervisory" under ¶ 362 since no complaint had yet been written by the bishop or anyone else to my knowledge.

I stand by my Statements of Facts in each of my briefs which show vitiating violations of process and procedure made by various conference officials.

Rationale (Analysis)

1) The SEJCOA gives no rationale. They simply state the CRC members were fulfilling their roles as members of the BOM. They give no legal support for that contention beyond noting ¶ 635.1 which gives authority putting BOM members onto the CRC. They say there were no violations of ¶ 2718.4. They offer an opinion without any citations from the Discipline or JC rulings. Discussions about me and a vote on recommending me for involuntary leave and ending provisional membership occurred at at least one BOM meeting and an email vote taken on my case without my presence prior to the CRC hearing. That is a circumstance on which allegations and decisions occurred without my presence. That is by definition ex parte discussion under ¶ 361.2d).

The Judicial Council may recognize that having the CRC be made up of members of the BOM may be unconstitutional under ¶ ¶ 20 and 58 since hearings and appeals should never be conducted by people already participant in deciding against the person in question. Those hearing and appeal bodies need separation and need to be impartial and independent arbiters. - For that matter, should the BOM members be allowed to participate in the vote of the clergy session about matters they recommended to the Conference?

In a concurring opinion to JCD 1332, Beth Capen writes in part, "I . . . strongly believe that the time is ripe for a long overdue close examination and critical constitutional analysis of fair process rights as . . . has been undermined by conflicting Disciplinary provisions and misapplication thereof, and the extent to which it has become a mechanism that serves to further deprive individuals of their fair process rights." That discussion could begin with a ruling that certain practices like CRC members being part of the BOM are unconstitutional.

2) The SEJCOA ruling discounts JCDs 698 and 784 which call upon administrative bodies to have a record by independent transcriptionists and which define such transcriptions as the presence of the respondent at meetings where decisions are being made affecting the pastor's employment, housing, and benefits without his/her

physical presence. The potential for the appearance of conflict of interest must also be taken into account, something the SEJCOA also dismisses without any comment. Further, the Discipline says, "The process set forth in this paragraph (361.2) shall be followed whenever there is a request for discontinuance of provisional membership . . ., involuntary leave of absence . . . ." Decisions about those were before the executive committee of the BOM and the BOM itself. Prior Disciplines have included hearings with both as part of the process. The crucial matter is that each body could have changed to another recommendation. They are not to be rubber stamps. Without the independently written transcript, I was not at either meeting at the minimal way stated in law by the JC, let alone in person. That should be a fatal flaw in the conference's process in my case.

3) Dismissing Paragraph 334.3 because it is in the section on Elders' responsibilities is implying the superintendent has no such responsibilities with all his clergy as Paragraph 419.6 states, but only with Elders. Such nitpicking about church law undercuts a superintendent's ministry as supervisor and implies a tool that could help redeem a "clergy" who is not an Elder is inappropriate.

That tool provides a record over time about problems a pastor may be having. In my case, all the materials discussed before the CRC were opinions collected in most cases long after the time of the alleged events when they should have been discussed with

me. In fact, none were taken as serious at the time, except the allegation regarding an action for which I had long since apologized and rectified to the best of my ability.

The "named consultants" never consulted with me in a timely manner. Their allegations were new to me, in violation of Paragraph 361.2 b) and e). There was only one superintendent's report and it was only read in part, the rest being positive enough for my reappointment. It is those kinds of sloppy evidence that I am challenging by calling the JC's attention to the lack of a standard of proof in the administrative hearings. Paragraph 334.3 provides concrete evidence of ineffectiveness, incompetence, or inability to perform ministry. Scratched-together allegations at the last minute are a bad foundation for establishing a decision affecting my ministry, my housing, my health insurance, and my income. No one in that room would have accepted as fair what happened if they had sat in my chair.

The SEJCOA does not substantiate its opinion that there was no problem with the standard of proof.

4) What the SEJCOA calls "aspirational", the allegation about undermining other clergy persons, is an argument meant to cover up what that allegation really was, a complaint without any specifics like time, place, and events that occurred. The bishop who wrote it determines what officially rises to the level of a judicial complaint. In this case, he

offered the allegation without specifics about a chargeable offense It was not an administrative offense like ineffectiveness, incompetence, or inability to perform ministry. How is that "aspirational?" It was overreach. The bishop may not have introduced the Title IX in his letter, the basis for the meeting. But it was the elephant in the room which the conference had already investigated and found untrue. It hung over the conference because the university was much slower than the conference with its processes. And he did bring up "issues with authority," my alleged inability to obey my superiors in office, a chargeable offense (Paragraph 2702.1d). The SEJCOA failed to deal with the issue of the use of judicially chargeable offenses in an administrative hearing.

5) The right to rule on procedural objections does not include refusing to respond to procedural questions and objections. The fundamental element of JCM 1361 is that no decision about a respondent can be made without those making the decision (in that case, the clergy session) having "the right to know that all outstanding legal issues have been resolved before they vote on the matter." All outstanding legal issues cannot be resolved unless the rationale for turning back the objections includes good legal grounds, even at the level of the CRC. That means procedural questions are a part of any hearing body's responsibilities, not just inquiring into the substance of any complaints. With no legal grounds, the opinion that the legal issues are resolved is empty and meaningless. The SEJCOA provides no legal basis for the CRC chairperson's

failure to answer every question and objection. By implication, they support letting the CRC operate without having to follow the Discipline if its chairperson thinks they do not have to. They only say that he responded to all of questions and objections. That is a fatal flaw that leads to the kind of problems noted several times by the JC beginning in JCD 777, as I posted in my original brief.

6) The SEJCOA ruled that going to the annual conference was the appropriate move prior to any appeal in my case because I was a provisional member of the conference and not a full Elder. They cited JCD 1361. Remember, my bishop appeared before the JC to be sure this provison was considered in October of 2018. My case was begun by him in February of 2018. His interest in formulating what is now JCD 1361 is not just a minor coincidence.

There are four specific matters of church law I wish to address regarding that decision: one, the BOM's authority to make the "final" decision may be unconstitutional; two, related Disciplinary passages all support the fair process right of appeal for provisional members; three, appeal to the Judicial Council is absolutely necessary to assure review by the furthest step possible in the Church from the influence of command of the bishop; and four, the BOM should not have the "final" authority" about a provisional member without the results of the appeal.

One, ¶ 33 says "The annual conference . . . shall have reserved to it the right to vote on . . .all matters relating to the character and conference relations of its clergy members .and on the ordination of clergy and such other rights . . ."

¶ 324 ff describe what it takes to be a provisional member. In addition to all that I did to be considered for provisional membership (notice the phrasing that while it is modified by the word "provisional," it includes the word "member"), my efforts had to be endorsed by the BOM among other bodies and by three fourths vote of the annual conference clergy session. The annual conference accepted me with far more than a majority vote. And then there is ¶ 327.6 which was interpreted in JCD 1361 as allowing the BOM's action to terminate a provisional member to be "final." This is contrary to what is stated earlier in the same paragraph where it says, "Provisional members . . . may be discontinued by the clergy session upon recommendation of the Board of Ordained Ministry." Further, the BOM's decision is not "final" because it can be appealed to the ARC prior to the referral to the clergy session (¶¶ 327.6 and 636).

A better interpretation of this whole set of paragraphs would be that the BOM does not really have the final say with regard to the provisional member's termination but rather that the word "final" at best refers to the last step prior to the referral to the annual conference. If this is indeed the intention of the whole Discipline, then the Judicial Council's rationale for excluding provisional members from the right of interlocutory

appeal (or appeal at all) is in error. And if it is in error, the Judicial Council can resolve the matter by ruling that phrase about the BOM having the "final" word is only the final step (subject to ARC review if appealed) prior to consideration of the clergy session, is unconstitutional, or can strongly recommend the next General Conference reword the phrase to end this very confusion. After all, may what the annual conference grants by three fourths vote be taken away by a majority vote of the BOM? Besides, the BOM is "directly amenable" to the annual conference (¶ 635.1b), not the other way around.

I believe the Discipline is clear that I as a provisional member have the right of appeal as part of my fair process rights and that the BOM does not have the final authority to end that right.

I believe that ¶ 327.6 where it says that the decision of the BOM is final is unconstitutional because it pre-empts the authority of the annual conference to make the final decision about a membership status (¶ 33). It is at least inconsistent with everything else related to provisional members, as I will now argue below.

Two, another major flaw in JCD 1361's exclusion of provisional members from interlocutory appeal is that the fair process rights of provisional members are violated. JCD 830 points out that fair process rights are the legislative expression of ¶¶ 20 and

58: “Fair process is a constitutional, as well as a disciplinary right. . . .”

Both ¶¶ 20 and 58 allow for the right of appeal to clergy and “to our members.” Just on that basis alone, provisional members if they are not considered conference members are still eligible for the right of appeal as members of the Church. In addition, ¶¶ 362.1, 362.2, and 363.1 all include provisional members as eligible for fair process consideration. With that goes the right of appeal under ¶¶ 20 and 58.

If interpreting ¶ 327.6 to allow the BOM’s decision about ending provisional membership is taken as final, then for provisional members it renders meaningless ¶¶ 20, 58, 362.1, 362.2, and 363.1, contrary to JCD 331 as quoted in JCD 1361.

My third argument is illustrated by my case. If the Judicial Council agrees that the bishop. BOM, CRC, and ARC all operated outside of the Discipline, it can be asserted that the members of the various committees were subject to the power of the bishop over their respective appointments as well as their nomination to those various bodies and thus are under the “influence of command” of the bishop. Then an appeal is absolutely necessary outside of the annual conference. In my case, the bishop’s letter of February 15 was the complaint on which the CRC and the others acted. It is obvious that his opinion was clear to every member of each conference body that acted on my case. Be aware that the bishop’s influence of command made it difficult for me to find

an advocate willing to stand up to him. No one wanted to upset the bishop by having to question or challenge him about the violations I saw. And he gave me little time to respond at the clergy session over which he presided and sped up the procedures there, so every conference member knew whose weight was behind removing me from ministry.

Also, note that despite my request, there were no assurances from the SEJCOA that none of its members were friends, supporters, or co-workers of the bishop or key members of the conference bodies involved in my case. Note that the SEJCOA in its first ruling also argued verbatim what the ARC and Council of Bishops argued regarding the necessity of interjecting the annual conference into the line of appeal.

I have to then say that even the adverse ruling of the jurisdiction is suspect and appeal to the Judicial Council is absolutely necessary in our polity because it is one step further from the influence of command of the bishop.

Finally, four, even if all of my other arguments are not accepted by the Judicial Council, it really needs to hear its own words as it applied them to the annual conference by applying them to the BOM. "Until the completion of the appellate process, claims of procedural errors are not resolved and the disciplinary question is not sufficiently clear to allow the clergy members in the [Board of Ordained Ministry] to make a fair and

informed involuntary change of status when the appellate process has not yet been completed." ("Board pf Ordained Ministry" inserted in the Digest of the Case of JCD 1361 in the place of "annual conference.")

For these four reasons, the SEJCOA should be overruled on my appeal and that all provisional members (and Local Pastors) should have the right of interlocutory appeal when facing administrative actions against them.

7) The SEJCOA ruled that the Discipline provides for a bishop to preside at clergy sessions and so "there is nothing to see here." They would not be so comfortable if they were the respondent and the complainant bishop presided over the clergy session hearing on their cases. As my brief pointed out such a pattern is not consistent with the laws of western civilization as well as not consistent with the Golden Rule. JCD 704 does use this argument over retroactive enforcement of new laws: "Such action is repugnant to our sense of justice, which is undoubtedly informed at least in part by the constitutional and legislative history of democratic societies." The SEJCOA does not apparently find what the bishop did as repugnant. I trust the JC will.

8) The JC has already given the rationale for overturning the SEJCOA regarding the ARC's lack of responsiveness to each objection I raised: "Until the completion of the appellate process, claims of procedural errors are not resolved and the disciplinary

question is not sufficiently clear to allow the clergy members in the [Administrative Review Committee] to make a fair and informed involuntary change of status when the appellate process has not yet been completed." ("Administrative Review Committee" inserted in the Digest of the Case of JCD 1361 in the place of "annual conference.")

SEJCOA does not think that the ARC is an appellate body. I believe it is. Although it is as susceptible to the influence of command of the bishop as are all the other committees dealing with personnel, at least its members are not members of the BOM which in my case had already recommended involuntary leave and ending provisional membership for me without me being present before the CRC hearing. Further, the Discipline gives them authority, much as the Judicial Council has, to reverse decisions reviewed by the committee and rectify the situation. ARC's ¶ 636 gives that appellate authority.

Disposition

The various rulings of the SEJCOA, while intended to respond to the remanding of JCM 1373, does so only in partial and inadequate ways. I ask the Judicial Council to rule against them in my case for the grounds I have offered herein, including rescinding the part of JCD 1361 which excludes provisional members from the right of appeal.

I ask also that the Judicial Council take seriously its statement that all of the actions

taken against me be stayed as directed in JCD 1361, which says in part: "An administrative appeal filed in a timely manner **stays** a recommendation for involuntary leave of absence, administrative location, involuntary retirement . . . ." (Emphasis added.) That means that the conference, if my appeal is upheld, will restore me to provisional membership and provide the full pastoral support package I was earning at the time I was removed. Anything less would be punishment in the form of a fine. That punishment would be laid on me without fair process. I disagree with JCD 1355 which allowed the conference to reimburse the respondent with minimum salary based on the premise that she could have been appointed to a minimum salary church. She actually was not, as I read that ruling. Her bishop took no such action at any time, presuming she was put out by his abuse of Disciplinary procedures. The Judicial Council might want to revisit that decision to avoid the same problem I face, that I was improperly removed from office and left without income, health insurance, housing and other conference benefits for most or all of the time between removal and restoration.

Respectfully,

Rev. Erik Seise

cc: Bishop Carter
Rev. Schultz
Rev. Shanks
Rev. Eckert

Electronic copies have been sent to the above.