

## DOCKET ITEM 0522-02

### ***In Re: Petition for Declaratory Decision of the Council of Bishops on Questions Related to ¶2548.2 of The Book of Discipline 2016***

#### **Brief of Wespath Benefits and Investments (Authors: Andrew Q. Hendren, General Secretary and Chief Executive Officer, and Sheila Saegh Henretta, Chief Legal Officer)**

The General Board of Pension and Health Benefits of The United Methodist Church, Incorporated in Illinois, d/b/a Wespath Benefits and Investments (“Wespath”) is a general agency of The United Methodist Church (the “UMC”) whose mission is to care for those who serve, as described in ¶1500 et seq. of *The Book of Discipline of The United Methodist Church* (the “*Discipline*”). A foundational aspect of Wespath’s mission is “the support, relief, and assistance and pensioning of clergy of [the UMC], lay workers of the various units of the Church, and their families.”<sup>1</sup> This includes ensuring the continuity of pension benefits in the face of a changing Church. In furtherance of its mission and the interests of those participants and beneficiaries, Wespath submits this brief as *amicus curiae* to assist the Judicial Council in addressing certain pension issues related to the questions presented by the above-referenced petition for declaratory decision (the “Petition”). This brief focuses specifically on the requirement for a separating local church to make a pension withdrawal liability payment (a “Withdrawal Payment”) under ¶1504.23 of the *Discipline*.

#### **I. ISSUES PRESENTED BY THE PETITION**

In the Petition, the Council of Bishops of the UMC has requested a declaratory decision from the Judicial Council regarding the availability of ¶2548.2 of the *Discipline* as an independent path for local church separations and several related questions. Under ¶1504.23 of the *Discipline*, if a local church “changes its relationship to The United Methodist Church through closure,

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<sup>1</sup> ¶1501.1(a) of the *Discipline*.

abandonment, or release from the trust clause pursuant to ¶2548, ¶2549, or otherwise, notwithstanding whether property with title held by the local church is subject to the trust (under the terms of ¶2501), the local church shall contribute a withdrawal liability in an amount equal to its pro rata share of any aggregate unfunded pension obligations to the annual conference.”<sup>2</sup> The Withdrawal Payment required under ¶1504.23 (and ¶2553.4(d)) of the *Discipline* was enacted to protect the accrued pension benefits of eligible clergy members and their survivors. It was designed to help ensure that the entity(ies) that remains (remain) responsible for funding those pension benefits owed to current and retired clergy members (including clergy members who remain in the UMC and some who change their affiliation to disaffiliating or separating churches), as well as surviving spouses and other contingent annuitants, in the future have sufficient assets to do so.

Wespath urges the Judicial Council to address two pension-related questions described below.

- Question 5 of the Petition asks whether a local church may exercise ¶2548.2 of the *Discipline* separately from any other process that results in the merger of the local church pursuant to ¶2547, closure pursuant to ¶2549, disaffiliation pursuant to ¶2553, or some other disposition of the local church deeding the property that results in termination of the local church as a unit of the UMC. A related question is: Does ¶1504.23 of the *Discipline* apply to a local church that separates from the UMC using ¶2548.2 of the *Discipline* – whether in conjunction with a process under ¶¶2547, 2549, or 2553 of the *Discipline* or separately?

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<sup>2</sup> The same Withdrawal Payment requirement is incorporated in ¶2553.4(d) of the *Discipline* with respect to disaffiliations of a local church over issues related to human sexuality. However, in the case of a disaffiliation under ¶2553, ¶2553.4(f) includes an express requirement that the payment occur *prior to* the effective date of the church’s disaffiliation.

- Question 7 of the Petition asks whether a comity agreement within the meaning of ¶2548.2 may include provisions not authorized or prohibited by the *Discipline*. A related question noted on page 8 of the Petition is: May a comity agreement within the meaning of ¶2548.2 of the *Discipline* include provisions that would nullify any of the Withdrawal Payment requirements under ¶¶1504.23 or 2553 of the *Discipline*?

**II. DOES ¶1504.23 OF THE *DISCIPLINE* APPLY TO A LOCAL CHURCH THAT SEPARATES FROM THE UMC USING ¶2548.2 OF THE *DISCIPLINE* – WHETHER IN CONJUNCTION WITH A PROCESS UNDER ¶¶2547, 2549, OR 2553 OF THE *DISCIPLINE* OR SEPARATELY?**

Based on the plain language of ¶1504.23, the Withdrawal Payment applies to all local church departures from the UMC regardless of the separation or disaffiliation path taken by a local church. Wespath believes that the Withdrawal Payment required by ¶1504.23 applies to a local church if it separates using ¶2548.2 of the *Discipline* regardless of whether it uses that paragraph in conjunction with a process under ¶¶2547, 2549, or 2553 of the *Discipline* or separately.<sup>3</sup> To hold otherwise would contravene the express provisions of ¶1504.23 and, in practical terms, could permit separating local churches to walk away from pension promises and leave behind the risk and responsibilities for funding pension benefits which were earned by clergy members in the past. Avoiding that outcome was the primary reason that the intentionally broad language of ¶1504.23 was approved by the Special Session of General Conference in 2019.

**III. MAY A COMITY AGREEMENT WITHIN THE MEANING OF ¶2548.2 INCLUDE PROVISIONS THAT WOULD NULLIFY ANY OF THE REQUIREMENTS UNDER ¶¶1504.23 OR 2553 OF THE *DISCIPLINE*?**

Question 7 and the paragraph that follows it on page 8 of the Petition provide as follows:

“(7) May a comity agreement within the meaning of ¶ 2548.2 include provisions not authorized or prohibited by the 2016 Book of Discipline?”

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<sup>3</sup> Wespath notes that this *amicus brief* is not intended to address the question of whether ¶2548.2 is available as a standalone path to separation from the UMC.

The answer to this question seems self-apparent on its face, but it is important to help annual conferences interpret and implement the provisions of ¶ 2548.2. For example, if a local church has pension obligations that must be honored for disaffiliation under ¶¶ 2553 and 1504.23, can a comity agreement nullify those requirements of the Discipline? The COB does not believe pension obligations can be nullified or ignored. There are other examples that the COB will identify in its opening brief, but the resolution of this question is also a matter of orderly and uniform interpretation and implementation of ¶2548.2.”

As discussed above, the express terms of ¶1504.23 of the *Discipline* require a Withdrawal Payment to be made in connection with a local church separation under ¶1504.23, regardless of whether ¶1504.23 is exercised separately or in conjunction with other paragraphs of the *Discipline*. ¶2553 similarly has express language with the same effect. Wespeth accordingly believes a comity agreement cannot nullify or otherwise circumvent the express requirement that a Withdrawal Payment is required by ¶¶1504.23 or 2553 of the *Discipline*. Thus, if any terms of a comity agreement relate to the Withdrawal Payment requirement (such as due date(s), use of an escrow account or collateral, interest accrual, etc.), such terms should not conflict with or be inconsistent with the requirements of ¶¶1504.23 or 2553, as applicable.


#### **IV. CONCLUSION**


Consistent with its mission to maintain the denomination’s connectional pension plans for U.S. clergy, Wespeth respectfully requests, in the interest of protection and continuity of benefits for plan participants and beneficiaries, that the Judicial Council address the issues described above to help ensure that clergy pension benefits are provided for and administered appropriately and consistently with the *Discipline*.

**[SIGNATURES ON NEXT PAGE]**

**Respectfully submitted,**

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