

## DOCKET ITEM 1021-23

### ***In Re: Petition for Declaratory Decision from the Council of Bishops on Questions Related to the Separation of an Annual Conference Within the United States from The United Methodist Church***

#### **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 questions presented in the above-referenced petition for declaratory decision (the “Petition”) in the context of church (or annual conference) disaffiliations. Accordingly, this brief focuses specifically on question 5(c) of the Petition (“question 5(c)”).

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

Pursuant to the Petition, the Council of Bishops of the UMC has requested a declaratory decision from the Judicial Council on whether an annual conference *per se* can separate from the denomination under the provisions of the *Discipline* and on the related requirements that would apply to such a separation. As it relates to retirement benefits administered by Wespath, question 5(c) asks: “If an annual conference within the United States may separate from the UMC, what are

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

the requirements under the Discipline for a separation, including, but not limited to: ... (c) maintenance of retirement benefits and compliance with civil law and the requirements of WESPETH concerning the same; ....”

We begin by noting that all questions presented in the Petition beyond question 1 are relevant only if the Judicial Council concludes that an annual conference may separate from the UMC. If the Judicial Council concludes that an annual conference may *not* separate from the UMC, all questions after question 1 are moot. In such a case, Wespeth would expect that existing provisions of the *Discipline*, together with the written terms of its benefits plans (“Plan Terms”) as required by civil law, would apply to local church separations on a church-by-church basis. These include provisions of the *Discipline* that were designed to protect pension benefits—consistent with Wespeth’s mission and in the interests of clergy members—such as the requirement for a separating local church to make a pension withdrawal liability payment (a “Withdrawal Payment”) under ¶¶1504.23 or 2553 of the *Discipline* and the related retention of such local church’s pension liabilities by remaining UMC plan sponsors, as well as provisions related to clergy members separating from the UMC under ¶360 of the *Discipline*.

Alternatively, if the Judicial Council answers question 1 in the affirmative, i.e., that an annual conference *per se* may separate from the UMC, Wespeth urges the Judicial Council to address two additional pension-related questions that are fundamental to answering question 5(c):

- How does ¶1504.23 of the *Discipline* apply to the local churches within an annual conference that votes to separate from the UMC? Would the Withdrawal Payment apply to each of the local churches that separate with the annual conference? This will impact the pension funding obligations of local churches within the annual conference.

- How does ¶360 of the *Discipline* apply to active clergy members in an annual conference that votes to separate from the UMC? Would the separation of an annual conference be deemed to trigger ¶360 of the *Discipline* for all active clergy members within the conference? This will impact the pension benefits of individual clergy members within the annual conference.

The answers to these fundamental questions will help answer question 5(c). However, as explained below, the comprehensive answer to question 5(c) will involve other details that may depend on how the Judicial Council answers other questions presented in the Petition, including logistical matters raised by question 6. Question 6 asks: “Must any separation of an annual conference from the UMC provide dissenting members, local churches, districts, clergy, and affiliated entities such as camps, Wesley Foundations, and health facilities an option to remain a part of the UMC and join another annual conference?” (“question 6”).

As you will see, in this brief, we refer to the Plan Terms of the Clergy Retirement Security Program (“CRSP”). CRSP is a retirement benefits program for eligible clergy and includes defined benefit (i.e., pension) and defined contribution (i.e., retirement account) components. CRSP is grounded in UMC tradition. It and its predecessor pension plans were adopted by the UMC as a mandatory benefit for eligible clergy to support its connectional polity, including the itineracy. Annual conferences are required by the *Discipline* to sponsor and fund the benefits under CRSP for eligible clergy members throughout the denomination.<sup>2</sup> This shared commitment to funding CRSP benefits reflects the Church’s tradition of connectionalism, which ¶132 of the *Discipline* describes as “a vital web of interactive relationships.” As a financial commitment made by annual conferences and local churches to eligible clergy members, CRSP is analogous in spirit to the

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<sup>2</sup> See ¶¶1504.1, 1504.8(b), 1506.7, 1506.8, and 1506.14 of the *Discipline*.

UMC's trust clause. In addition, as a tax-qualified benefit plan, CRSP is subject to federal law. Specifically, CRSP is a retirement benefit plan under Section 403(b)(9) of the Internal Revenue Code. Under applicable federal law and state contract law, retirement plans such as CRSP must be administered according to their Plan Terms. Pursuant to ¶1504.1 of the *Discipline*, the Plan Terms of CRSP "shall be incorporated by reference into the *Discipline* and shall have the full force of law as if printed in the *Discipline*." Finally, under Section A5.1 of CRSP, the Plan Terms of CRSP may be amended only by General Conference, unless amendments are *required* by federal law.<sup>3</sup>

## **II. HOW DOES ¶1504.23 OF THE *DISCIPLINE* APPLY TO THE LOCAL CHURCHES WITHIN AN ANNUAL CONFERENCE THAT VOTES TO SEPARATE FROM THE UMC?**

### **A. APPLICATION OF ¶1504.23 OF THE *DISCIPLINE***

The Withdrawal Payment required under ¶1504.23 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 in the future have sufficient assets to do so. Under ¶1504.23 of the *Discipline*, if a local church "changes its relationship to The United Methodist Church through closure, 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>4</sup>

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<sup>3</sup> See Judicial Council Decision Number 1008, April 28, 2005.

<sup>4</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) adds a requirement that the payment occur *prior* to the effective date of the church's disaffiliation.

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.

If the Judicial Council determines that an annual conference may separate from the UMC, a question for the Judicial Council is whether and how ¶1504.23 of the *Discipline* would apply to the local churches within an annual conference that votes to separate from the UMC. For example, would the annual conference's separation constitute a “[change in] relationship to The United Methodist Church through closure, abandonment, or release from the trust clause pursuant to ¶2548, ¶2549, or otherwise” by *all* of the local churches of the annual conference or, alternatively, *only* the local churches that (perhaps after a discernment period) vote to leave the UMC with the conference? If the Judicial Council rules that a separation by the annual conference constitutes such a change in relationship between the local churches and the UMC, presumably the Withdrawal Payment required by ¶1504.23 would apply under such circumstances. This would raise other questions, discussed below.

Based on the existing provisions of the *Discipline*, it appears there is nothing that would render ¶1504.23 inapplicable to local churches that separate from the UMC as part of the separation of an annual conference. Thus, unless the Judicial Council issues a different interpretation, Wespath believes that the Withdrawal Payments required by ¶1504.23 apply to local churches in the context of an annual conference separation. To hold otherwise 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 ¶1504.23 was approved by the General Conference.

If the Judicial Council agrees with this interpretation, other questions are raised regarding the details of how the Withdrawal Payments will work in this context. Those questions are addressed in Section B below.

## **B. ADDITIONAL WITHDRAWAL PAYMENT DETAILS**

If the Judicial Council determines that an annual conference may separate from the UMC and Withdrawal Payments under ¶1504.23 of the *Discipline* apply, the additional questions below will arise regarding such payments. Wespath notes that the details at issue in these questions, as well as several other technical and administrative details related to the impact of an annual conference separation on pension benefits, were addressed in petitions submitted by various parties for General Conference 2020. As such, many of the questions and related details would have been answered by those petitions or would be moot if those petitions were enacted. The questions below are included as examples of details that would need to be resolved and are not intended to be a complete list of such details.

**Q:** Would the aggregate Withdrawal Payment be calculated based on the annual conference's *total* unfunded pension obligation (as determined by Wespath consistent with past practice), or only a *portion* of that amount based on the collective share of the local churches that choose to separate with the annual conference?

Wespath's interpretation of ¶1504.23 is that the Withdrawal Payment should be based on the sum of the proportionate shares of those local churches that choose to separate from the UMC (either with the separating annual conference or on their own). It likely would not be consistent with the purpose of ¶1504.23 to require local churches remaining in the UMC to make a Withdrawal Payment. This interpretation would presumably require some type of discernment period for local churches to decide whether to separate from the UMC after their annual conference

has voted to separate. However, we believe that some sort of discernment period or delayed effective date would be critical to ensuring an orderly transition and avoiding unintended negative consequences to impacted clergy members (see, e.g., our discussion of employee benefits consequences in Section IV of this Brief).

**Q:** Under ¶1504.23, the annual conference determines each local church's share of the unfunded pension obligation (i.e., the amount of the Withdrawal Payment). If the annual conference itself is separating, should the amount of the Withdrawal Payment be determined instead by an entity remaining in the UMC, such as the annual conference(s) which absorb the local churches that seek to remain part of the UMC, or the jurisdictional conference? Or, if the separating annual conference has had local churches that have separated or disaffiliated in the past, should the Withdrawal Payment be calculated based on the same methodology used by the annual conference in the past for those local churches?

We do not think ¶1504.23 addresses this issue in the context of an annual conference separation. However, it seems it would be consistent with the spirit of ¶1504.23 for the entity that retains the pension liability to make that determination. In addition, if a separating annual conference has consistently used a particular methodology in the past for determining a disaffiliating church's share of the annual conference's unfunded pension obligation, it may be appropriate for the entity to continue to apply that methodology.

**Q:** Under ¶1504.23, the annual conference is entitled to receive the Withdrawal Payment owed by a disaffiliating or separating local church. In the context of an annual conference separation, which entity should receive the payment?

We do not think ¶1504.23 directly addresses this issue in the context of an annual conference separation. However, it seems it would be consistent with the spirit of ¶1504.23 for the aggregate Withdrawal Payment to be made to the entity that retains the pension liability.

### **III. HOW DOES ¶360 OF THE *DISCIPLINE* APPLY TO ACTIVE CLERGY MEMBERS IN AN ANNUAL CONFERENCE THAT VOTES TO SEPARATE FROM THE UMC FOR PURPOSES OF PENSION BENEFITS?**

If the Judicial Council determines that an annual conference may separate from the UMC, a question for the Judicial Council is whether and how ¶360 of the *Discipline* and Section B9.1(h) of CRSP would apply to clergy members of an annual conference that votes to separate. At General Conference 2019, legislation was enacted that was designed to prevent the UMC from having to maintain long-term pension responsibilities with respect to active clergy who choose to leave the UMC and to give certainty to those clergy by changing the form of their benefit to an individual account balance.

Specifically, General Conference 2019 enacted Petition 90017, which directed Wespath to amend CRSP to convert the accrued pension benefits of active clergy who withdraw from their annual conference under ¶360 of the *Discipline* to an actuarially equivalent account balance and transfer the balance to the United Methodist Personal Investment Plan (“UMPIP”)<sup>5</sup>, along with other existing account balances under other components of CRSP (i.e., “CRSP-DC” and Ministerial Pension Plan accounts). As directed, Section B9.1 of CRSP was amended to add a new subsection (h) that provides as follows:

“(h) *Mandatory Conversion of Aggregate DB Benefit.* Notwithstanding any provision of the Program to the contrary, a Participant who is neither Retired nor a Terminated Participant at the time of terminating his or her annual conference relationship under ¶360 of the *Discipline* will be treated as a Terminated Participant for purposes of determination of benefits under the

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<sup>5</sup> UMPIP is a defined contribution benefit plan under Section 403(b)(9) of the Internal Revenue Code administered by Wespath. The retirement account of a clergy member who withdraws under ¶360 of the *Discipline* can be maintained in UMPIP after such withdrawal. In addition, a separated or disaffiliated local church may be eligible to sponsor UMPIP for retirement benefits contributed or earned by eligible clergy members after the separation or disaffiliation.



entire Program. Such Participant's Aggregate DB Benefit will be converted to an Actuarially Equivalent Account Balance, using factors corresponding to those used for determining Plan Sponsor Contributions to the Program, i.e., the assumptions determined under the Funding Policy. Such converted Aggregate DB Benefit and the Participant's Vested Account Balances in this Program will be transferred to UMPIP, with such transferred amounts becoming subject to the terms of UMPIP."

As noted in Section I above, Wespath is required by federal law and state contract law to administer CRSP according to its Plan Terms. In addition, payments from CRSP must comply with strict parameters under Section 403(b) of the Internal Revenue Code and federal regulations thereunder. Accordingly, it is critically important that Wespath know if and when an eligible clergy member withdraws from his or her annual conference under ¶360 of the *Discipline*.

If the Judicial Council determines that an annual conference may separate from the UMC, a question for the Judicial Council is whether and how ¶360 of the *Discipline* would apply to clergy members of an annual conference that votes to separate. Would that vote constitute a withdrawal under ¶360 of the *Discipline* for some or all of the annual conference's active clergy? If so, Wespath would be required by Section B9.1(h) of CRSP to convert their pension benefits from future annuities to actuarially equivalent account balances and transfer their account balances to UMPIP. A related question is: when would such a withdrawal under ¶360 by active clergy be deemed to occur? For example, would it occur on the effective date of the annual conference vote, after a discernment period for the active clergy (and after such clergy have decided to leave the UMC), or at some other point in time?

We would interpret ¶360 of the *Discipline* and Section B9.1(h) of CRSP to apply in the context of an annual conference separation, but only after active clergy (who are otherwise eligible to withdraw under ¶360) have been given a reasonable time to make an individual decision and decide to leave the UMC. Otherwise, clergy members could see their pension benefits converted to an account balance prematurely, before having decided whether to leave. This could complicate

administration or cause the clergy member to inadvertently lose the ability to receive retirement benefits in the form of an annuity.

#### **IV. WHAT IS THE EFFECTIVE DATE OF AN ANNUAL CONFERENCE SEPARATION?**

If the Judicial Council determines that an annual conference may separate from the UMC, it would also be helpful for the Judicial Conference to consider how to determine the effective date of the annual conference separation. For example, may the effective date be determined on a case-by-case basis, or must the answer be uniform across all annual conferences?

To assist with diligent management of pension liabilities and minimize gaps in employee benefit plan coverage for impacted clergy members and lay employees, Wespath's suggestion is that the effective date provide all parties involved (e.g., the separating annual conference, local churches, clergy members, and Wespath) sufficient time to prepare for the impacts of such separation.

The effective date of separation will impact benefit plan sponsorship and administration – not only for CRSP, but also for voluntary employee benefit plans such as UMPIP and the HealthFlex Plan.<sup>6</sup> Having a clear effective date that provides local churches and active clergy sufficient time to decide whether to separate from or remain a part of the UMC would prevent administrative complications related to determining when coverage under the UMC plans ends and when coverage under a plan sponsored by the separating annual conference or local church (or by a new Methodist denomination for those conferences and churches that join a new Methodist denomination) begins. In addition, sufficient time would be needed for the applicable jurisdictional conference(s) to adjust conference boundaries so that clergy members in the separating annual

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<sup>6</sup> UMPIP and the HealthFlex Plan provide defined contribution retirement benefits and health care coverage, respectively, to many clergy members and lay employees throughout the UMC.

conference who wish to remain in the UMC do not experience a period of time in which they are not aligned to any entity that sponsors benefit plans.

For example, if an annual conference votes to separate in January 2023 and join another denomination, is the annual conference no longer sponsoring any UMC benefit plans, and are the clergy no longer accruing benefits in those plans effective immediately upon that vote? What if certain local churches or clergy decide in February 2023 to remain a part of the UMC – how would benefits be provided for the preceding month? This example illustrates the importance of having a clear effective date of the separation that gives all parties ample time to make an informed, final decision on whether to separate and helps minimize any gaps in benefit plan coverage.

## V. CONCLUSION


For more than a century, the pension support of clergy members has been a shared covenant reflecting the connectional polity of the Church. UMC pension plans, similarly to the trust clause, are part of the “vital web of interactive relationships” that shapes the UMC—relied upon by congregations, conferences, lay employees, and clergy members. Disentwining these relationships raises novel and unanswered questions about protections, rights, liabilities, and promises. It is Wespath’s duty to protect *all* participants, and it is Wespath’s intent to help annual conferences and local churches ensure the security of these promises, while navigating these uncharted waters.


If the Judicial Council determines that an annual conference may separate from the UMC, then to address question 5(c), Wespath believes that the Judicial Council should address the issues described above to help ensure that clergy pension benefits are administered appropriately (e.g., consistently with the *Discipline* and the Plan Terms of CRSP) to ensure the protection and

continuity of those benefits, in the interests of the plan participants and beneficiaries and consistent with Wespath's mission of caring for those who serve.

**Respectfully submitted,**

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