

ILIFF SCHOOL OF THEOLOGY
2016 Winter Session
Discipline & Polity – Rev. Charles Schuster

***Legal And Disciplinary Things
New Pastors Should Know
About Their Jobs And Local Churches***

(Outline of Conference Chancellor Remarks)
February 8, 2016

BOOK OF DISCIPLINE

Book of Discipline as “Book of Church Law”

In 1953, the Council of Bishops asked the Judicial Council of The United Methodist Church to answer the question: “Is the Discipline of the Methodist Church a Book of Law?” The Judicial Council answered:

“It is the Decision of the Judicial Council that the Discipline of The Methodist Church is a Book of Law governing every aspect of the life and work of the Church, including regulations relating to its temporal economy and to the ownership, use and disposition of church property. It is the only official and authoritative law book of the Church.” *Judicial Council Decision No. 96 (1953).*

First, the *Discipline* is the “Book of Law” for purposes of regulating the internal affairs of the United Methodist Church and its agencies and local churches. The *Discipline* is not secular law. Think of the *Discipline* as a set of bylaws for the operations or internal affairs of jurisdictional, central, annual and charge conferences, as well as local churches. Second, not all parts of the *Discipline* are treated as church law. For example, the preface to the Social Principles states that the Social Principles are “not to be considered church law”. (2012 BOD ¶¶ 160 et seq.)

Trust Clause -- Historical – Deed of Declaration (1784)

During his lifetime, John Wesley acquired various chapels and dwelling houses throughout Great Britain. By owning the chapels and dwelling houses, Wesley secured a place to preach and live for himself, his brother Charles, and other Methodist preachers he appointed.

Wesley’s legacy to church organization was the trust he created in these properties. Prior to his death, he conveyed these properties in trust *forever* and required the Trustees and their successors to “permit and suffer...such persons



as should be appointed at the yearly Conference of the people called Methodists.” (See, Deed of Declaration, 1784, included with this Outline.)

By this trust, Wesley sought to secure an independent pulpit and a source of material (earthly) support for Methodist clergy without fear of expulsion or eviction if the congregation didn’t like the preacher or what the preacher said from the pulpit.

In 1784, Wesley executed a Deed of Declaration in which he confirmed the terms of the trusts he had earlier created in these properties. He then set forth rules for deciding who was a “member” of the “Yearly Conference of the people called Methodists”. This Deed of Declaration is an early prototype of what became the *Book of Discipline*.

“Trust Clause” – Book of Discipline -- ¶2501 and 2503¹

All property (whether real, personal, tangible or intangible) of local churches is held in trust by the local church for the wider Church. The local churches hold all of their property subject to a denominational trust interest in favor of the United Methodist Church. For real property, the local church is typically the owner of record – the county clerk and recorder’s office will show the local church as the legal title owner. Put another way, the Annual Conference is not typically the owner of record. Instead, the rights of local church ownership are subject to a trust in favor of The United Methodist Church. The trust is created by the terms of the *Discipline*.

¶ 2501. Requirement of the Trust Clause for All Property—1. All properties of United Methodist local churches and other United Methodist agencies and institutions are held, in trust, for the benefit of the entire denomination, and ownership and usage of church property is subject to the Discipline. This trust requirement is an essential element of the historic polity of The United Methodist Church or its predecessor denominations or communions and has been a part of the Discipline since 1797. It reflects the connectional structure of the Church by ensuring that the property will be used solely for purposes consonant with the mission of the entire denomination as set forth in the Discipline. The trust requirement is thus a fundamental expression of United Methodism whereby local churches and other agencies and institutions within the denomination are both held accountable to and benefit from their connection with the entire worldwide Church.

In consonance with the legal definition and self-understanding of The United Methodist Church (see ¶ 140), and with particular reference to its lack of capacity to hold title to property, The United Methodist Church is organized as a connectional structure, and titles to all real and personal, tangible and intangible property held at jurisdictional, annual, or district conference levels, or by a local church or charge, or by an agency or institution of the Church, shall be held in trust for The United Methodist Church and subject to the provisions of its Discipline. Titles are not held by The United Methodist Church (see ¶ 807.1) or by the General Conference of The United Methodist Church, but instead by the incorporated

¹ Unless otherwise indicated, all references to the *Discipline* are to the 2012 edition.

conferences, agencies, or organizations of the denomination, or in the case of unincorporated bodies of the denomination, by boards of trustees established for the purpose of holding and administering real and personal, tangible and intangible property.

2. The trust is and always has been irrevocable, except as provided in the Discipline. Property can be released from the trust, transferred free of trust or subordinated to the interests of creditors and other third parties only to the extent authority is given by the Discipline.

The ideal world is where all real estate deeds and titles to local church property contain “magic” words of trust as set forth in the *Discipline*. (See, 2012 BOD ¶ 2503.1.) Reality is that fewer and fewer deeds and titles to local church property contain the trust language outlined in the *Discipline*. There are many reasons for this, including market forces that discourage title restrictions that might impede fluidity of transfer and marketability of title.

The *Discipline* anticipates this trend by providing that the trust exists *regardless* of whether “magic” language appears in the vesting deed or whether “magic” trust language appears in the vesting deed. The following “catch-all” provisions in the *Discipline* trace their origin back to the 1952 *Discipline*.

¶2503. Trust Clauses in Deeds.

6. However, the absence of a trust clause stipulated in §§ 1, 2, 3, 4, or 5 above in deeds and conveyances executed previously or in the future shall in no way exclude a local church or church agency, or the board of trustees of either, from or relieve it of its connectional responsibilities to The United Methodist Church. Nor shall it absolve a local church or church agency or the board of trustees of either, of its responsibility and accountability to The United Methodist Church, including the responsibility to hold all of its property in trust for The United Methodist Church; provided that the intent of the founders and/or a later local church or church agency, or the board of trustees of either, is shown by any or all of the following:

- a) the conveyance of the property to a local church or church agency (or the board of trustees of either) of The United Methodist Church or any predecessor to The United Methodist Church;
- b) the use of the name, customs, and polity of The United Methodist Church or any predecessor to The United Methodist Church in such a way as to be thus known to the community as a part of such denomination; or
- c) the acceptance of the pastorate of ordained ministers appointed by a bishop or employed by the superintendent of the district or annual conference of The United Methodist Church or any predecessor to The United Methodist Church.

Together with district superintendents, pastors are the front-line protectors of the denominational trust interest. Pastors need to remember that:

- All property of the local church is held in trust. This includes the buildings, the furniture, computers, musical instruments, bank accounts, endowment funds, etc.

- Where real property is concerned, any sale, lease, grant of easement or other transfer will almost always require a charge conference.
- All charge conferences are called by the district superintendent.
- Meaning...that the local church cannot sell or buy real property without involving the district superintendent.
- Do not let your chairperson or trustees tell you otherwise.

Practice Pointer

The *Book of Discipline* changes every four years following each General Conference of The United Methodist Church. This can include formatting and paragraph numbering.

Always make sure that you use the current or applicable *Book of Discipline*. Church libraries may or may not contain the current version. Get your own version if you can. The local church may even pay for your own copy every four years. Ask your district superintendent.

LOCAL CHURCHES

The local church is governed by both secular and church law. The *Discipline* provides generally that secular law will prevail over conflicting church law in matters related to property, corporate formation and operation, mandatory reporting of child abuse and neglect, and numerous other matters. However, constitutional issues may lurk in the application of secular law to church property or operations. Attached to this Outline is a Memorandum of Law on the Free Exercise Clause filed in a pending Utah lawsuit involving the property of the Tonga United Methodist Church. This Memorandum provides some idea of the confusing mix of secular and church law.

The pastor of a local church needs a working acquaintance with the major areas of secular law affecting the local church. You can get some idea of the breadth of secular law topics from the attached list of *Matters Handled For Churches & Conference*.

Local Churches and Secular Law - Local, State and Federal

Secular law includes local, state and federal law.

a. Local Law Examples (Municipal or County):

Zoning; land use regulations; building permits for construction or renovation; signage; licensed trade workers; certain employment matters.

A church building or relocation project may implicate land use and building code restrictions and require licensed trade workers for certain kinds of work. A change in building use may require a change in zoning.

Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA): state and local governments cannot discriminate on the basis of religion or denomination in the regulation of land use and real property rights. For example, Islamic mosque in lower downtown Manhattan.

b. State Law Examples

Incorporation. Is the local church incorporated? Is its corporate registration current with the Secretary of State? These questions can affect the church's corporate authority to enter into contracts and agreements, as well as the personal liability of leadership members of the church, and other matters.

Churches incorporate under state law as nonprofit corporations or organizations. This incorporation does *not* exempt the church from federal tax law, but does exempt the church from state tax obligations like property, sales and use taxes. The exemption from federal taxation must be sought under federal law, usually in the form of a 501c3 designation or as a member qualified under a Group Exemption.

Employment. Minimum wage, working conditions, worker compensation insurance for lay employees.

All three states in which the Rocky Mountain Conference has local churches are "at-will" employment states. The local church should periodically review its employment practices for lay employees to see whether they are consistent with the "at-will" doctrine.

State employment law in all three states also governs to some degree the extent and use of background employment checks. It is important for the local church to have a background check policy and to implement it consistently.

Property ownership and transfer. State law generally governs rights and obligations of property ownership and property transfer.

Church schisms over doctrinal issues sometimes lead to litigation over who owns the local church property. Recent examples include Episcopal Church CANA litigation in Virginia, Grace Church in Colorado Springs, Tonga UMC litigation in Salt Lake City.

Property, Sales and Use Tax Exemptions. Local church property is generally exempt from property taxation. Local church purchases and most casual sales (e.g., bake sale or rummage sale) are exempt from sales tax. Income from

sources unrelated to church mission (e.g., office rental) may be taxable as unrelated business income (UBIT), and can imperil exemption. A local church needs to maintain current property and sales tax exemptions with the relevant state agencies. A failure to do so places the exemption at risk and may result in an unexpected tax obligation.

c. Federal Law Examples

Employment. Federal anti-discrimination and equal opportunity laws can and usually do apply to most lay employees, whereas the same laws generally do *not* apply to clergy.

Hosanna Tabor case (USSCt 2011) – who is a “minister”?

Income Tax Exemption. Most local churches are exempt from federal income taxation. Churches may apply for their own 501c3 certification, or take advantage of the Group Exemption maintained at the General Council of Finance and Administration in Nashville. Most churches in the Conference do not have their own certification, but instead rely upon the GCFA Group Exemption.

Lobbying and political action can put certification at risk.

Local Churches and Book of Discipline (Church Law)

The *Discipline* governs how a local church must be organized and administered. By *Discipline*, the basic organizational plan for a local church must include the following six units (§244):

1. Charge Conference (§246-47);
2. Church or Administrative Council (§252);
3. Nominations Committee (§258.1);
4. Staff-Parish or Pastor-Parish Relations Committee (§258.2);
5. Board of Trustees (§258.3); and
6. Committee on Finance (§258.4).

Organization starts with the charge (or church) conference. (§§246-248) The charge conference is the “connecting link” between the local church and the general Church. (§247.1)

Together with the district superintendent and the pastor, the charge conference establishes the key committees, boards and councils of the local church. (*Ibid.*, §247.2) All committees, boards and councils of the local church are “amenable” or answerable to the charge conference.

The administrative and organizational paragraphs in the 2012 *Discipline* are found at §§ 243 to 258. These paragraphs are similar to corporate bylaws.



a. Charge (or Church) Conference (§246-248)

As mentioned, the Charge Conference is the basic “ground-floor” unit in the connectional system of The United Methodist Church. It is also the name often given to the annual meeting mandated by *Discipline* for all local churches. Key features of the Charge Conference:

1. Charge Conferences can only be called by a district superintendent (or bishop).
2. The presiding officer at the meeting is the district superintendent or h/her designee.
3. The agenda for the regular *annual* charge conference is largely set by *Discipline*. It includes reports from the major administrative and program committees/boards, as well as approval of the budget and the pastor’s compensation package.
4. The voting members of the charge conference are (with minor exception) the same persons who are on the church council or administrative council.
5. There are no proxy votes allowed.

Church Conference (§248)

A “Church Conference” (§248) is similar to a Charge Conference except that the voting members of a church conference also include all members of the local church. A rough analogy is a shareholder meeting of a for-profit corporation. It is often sound advice for the pastor to ask for a “Church Conference” instead of a “Charge Conference” where the matters to be voted upon are significant or sensitive. This is for the reason that all church members have a vote, whether or not they choose to attend the meeting and exercise their vote. A Church Conference reduces objections from those church members who might complain by action taken by leadership at a Charge Conference. The complaining member cannot be heard to complain about not being able to vote on the matter in question.

Special Charge or Church Conferences (§246.7)

Special Charge Conferences are available to address special matters arising between regular annual charge conference meetings. They are called and conducted just like a regular charge or church conference.

Protection of the Denominational Trust Interest



A Charge Conference *must* be called for most real property transactions, including but not limited to purchase, sale, lease, easement, historic landmark and mortgage transactions. Examples of easements are solar panels or cell towers. So also must a Charge Conference be called to amend or modify the governing corporate documents of a local church, such as the articles of incorporation. (§2529.1) The district superintendent and pastor *must consent in writing* to these transactions.

The charge conference and signature requirements for such transactions is the primary connectional protection of the trust interest in favor of the general Church. clause. If the district superintendent believes that a transaction may hurt or impair the trust interest, the district superintendent can withhold consent, and there is very little the local church can do about it.

If you have any doubts as to whether a specific transaction requires a Charge Conference, contact your district superintendent.

Always document action voted on at a charge or church conference. Included with this Outline are *Sample Charge Conference Resolutions* for property and debt transactions.

b. Administrative or Church Council (§252)

The administrative or church council typically coordinates and oversees the overall program and administrative needs of the local church. It is amenable (subject) to the local church charge conference.

c. Staff-Parish Relations Committee (SPR) (§258.2)

Sometimes (archaically) called the Pastor-Parish Relations Committee.

SPR relates to all staff, including clergy. Similar to an HR department at a business. Only has ultimate hiring/firing authority for lay staff. Clergy staff are appointed by the bishop or district superintendent. An SPR committee should have a liaison member of the committee for each paid staff person.

SPR is responsible for church employment practices with lay staff and volunteers. Best practices include a personnel or employment manual that the “at-will” nature of lay employment and carefully deals with all conditions and aspects of the employment or volunteer relationship. SPR is also responsible for screening, background checks, job descriptions, application process.

SPR works with district superintendent in the appointment of new clergy to the church.

SPR meetings are confidential. No meeting can be held without the knowledge of either the pastor or the district superintendent. This means the SPR Committee could meet with the district superintendent without the pastor's knowledge.

SPR must meet at least quarterly. Meetings can be called by bishop, district superintendent, pastor, SPR chair or any person accountable to the committee.

SPR is the go-to committee for disruptive church members or constituents.

d. Board of Trustees (§§2525 et seq.)

The Board of Trustees is by *Discipline* the board of directors of an incorporated local church. (§2507) It is amenable (subject) to the local church charge conference. (§2528)

As discussed above, *all* local church property owned by the local church subject to the trust interest in favor of the wider denomination. This includes real, personal, tangible and intangible property. Bank accounts, gifts, endowments, cash, furniture, stocks, AV equipment, computers, websites, every type of property. (§2501)

Any transfer of *any* interest in church-owned real estate requires a charge or church conference. (§§2540, 2541) This includes lease and building use agreements, historic or solar easements, mortgage debt, and so forth.

In addition to building repair and upkeep, the Board of Trustees is responsible for all legal matters involving the church. This includes contracts and agreements with 3rd parties. The Board is also responsible for all property and casualty insurance coverages.

e. Finance Committee (§258.4)

Work with Finance Comm'ee to determine your expense allowance (auto, gas, books, supplies, travel, etc.). Some churches have adopted reimbursable expense policies. Samples of such policies are on the Rocky Mountain Conference website.

Tax withholdings. Determine whether the local church withholds income and social security from your paycheck. If not, you are responsible for self-reporting and payment.

Don't handle money. Don't sign checks.

Local church should have accountable financial practices. Same person should not collect and spend church money. All groups who collect or deal with cash are accountable to the annual Charge Conference.



f. Nominations Committee(¶258.1)

By *Discipline*, pastor is chairperson. This committee nominates members to the church's committees, boards and councils, typically on staggered terms. Pastor can influence leadership and future direction of church through careful nomination and selection.

DISCIPLINARY NATURE OF PASTOR'S JOB

Pastor Responsibilities and Duties (¶340)

The scope of work of an elder or licensed pastor is Word, Sacrament, Order, & Service. (¶340)

The pastor is “administrative officer of the local church” (¶340.2c1) What is scope of that authority?

See also, “*Chancellor’s Ten Practical Suggestions For Clergy*”, included with this Outline.

a. Job Guarantee

¶334.1: “Every effective elder in full connection who is in good standing shall be continued under appointment by the bishop.”

¶337.1: “All elders in full connection who are in good standing in an annual conference shall be continued under appointment by the bishop.”

The historic guaranteed appointment is undergoing change. The 2012 General Conference by a evenly-split vote, approved a petition to eliminate the guaranteed appointment language in ¶337.1. But, the petition did not address ¶334.1. The legislation was immediately appealed to the Judicial Council and challenged on church constitutional grounds. In October 2012, the Judicial Council declared the petition and change unconstitutional. (See, Judicial Council Decision No. 1226, 10/27/2012) This will likely resurface at the 2016 General Conference.

b. Change in Conference Relations

From time to time, changes are necessary to a pastor's relationship with the annual conference. This includes things like voluntary or maternity/paternity leave and voluntary retirement. It also includes involuntary status changes such



as involuntary leave, involuntary retirement and surrender of credentials as the result of chargeable offenses.

A pastor in full connection holds a status something akin to the professional license of a doctor or lawyer. The status cannot be taken away involuntarily without cause, and then only after the pastor has had notice of the wrongdoing and opportunity to be heard on the matter. In the secular world, this is called due process. In UM-speak, this is called “fair process”. Generally, fair process applies any time a pastor’s conference relationship is subject to involuntary change.

Index to 2012 *Discipline* concerning “Changes of Conference Relationship”

<u>¶ #</u>	<u>Relationship</u>
353:	General
354:	Voluntary LOA – by agreement, clergy session
355:	Involuntary LOA – BOM, clergy session, fair process
356:	Maternity/Paternity
357:	Medical or Incapacity Leave – health or disabling condition
358:	Retirement
	Mandatory at age 72
	Voluntary
	Involuntary – BOM, clergy session, fair process
359:	Honorable Location
360:	Administrative Location – involuntary, BOM, fair process
	Discipline where “effectiveness” is questioned
361:	Withdrawal (Resignation, Surrender)
363:	Complaints – misconduct or chargeable offense, fair process
2702.1	Chargeable Offenses
	“Hot” areas = Same-sex marriage, LGBT clergy
2702.4	Statute of Limitations
2701	Fair Process – Judicial Complaint

Examples of Chargeable Offenses - ¶ 2702.1

Included with this Outline is the decision of the Judicial Council in a case involving a former clergy member of the Rocky Mountain Annual Conference, named Wesley Kendall. See, JCD #1094: *In re Kendall* (2008). This case illustrates what can happen in the event chargeable offenses are filed against a clergyperson and the clergyperson chooses to go to trial.

The most controversial chargeable offenses involve gender orientation; specifically, “self-avowed, practicing homosexual” and same-gender marriages or unions. Included with this Outline is a Just Resolution Agreement reached in a 2014 case involving a clergy member of the New York Annual Conference who officiated at a same-gender marriage ceremony involving his son. The resolution

called for discussion of the covenant that binds United Methodists at a public forum. There was no suspension in pay or benefits, and no change in clergy status.

List of documents provided with Outline

1. Wesley Deed of Declaration
2. Excerpts 2012 Discipline: Property & Trust Clause
2. Sample Charge Conference Resolutions (borrowing and easement)
3. "Chancellor's 10 Practical Suggestions For Clergy"
4. "Matters Handled For Churches and Conference"
5. Judicial Council Decision #1094: In re Kendall (2008)
6. Terms of Just Resolution-Ogletree Case-NYAC-2014 and Clarification
7. Memorandum Of Law-MPA.MSJ.Constitution.as filed 2015.08.13



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