

1023-2 Upper New York Annual Conference Questions Submitted For Bishop's Ruling

Pursuant to ¶¶ 51 and 2609.6, I rise to request a ruling of law on two questions pertaining to the just adopted resolution, “Request to Allocate the Cost of the Child Victims Act Legal Fees and Settlement Costs.”

This resolution sought to provide authority to reallocate up to approximately \$11m from the Upper New York Annual Conference (UNYAC) pension and health benefits program funds. The UNYAC pension and health benefits program has an approximate position of \$30.1m in unrestricted assets against \$38.1m in combined unfunded pension liability and retiree healthcare liability.

First question, pursuant to ¶¶ 1506 and 1507 of *The Book of Discipline*, and any other applicable provisions of the *Discipline* or Judicial Council Decisions, does the UNYAC have lawful authority to authorize taking funds from pension and health benefits program funds and utilizing it for another purpose?

Second question, pursuant to ¶ 1507.3 of *The Book of Discipline*, and any other applicable provisions of the *Discipline* or Judicial Council Decisions, if such an action could be permissible, is it lawful for the UNYAC to take such funds without the approval of the Conference Board of Pension and Health Benefits (CBPHB)? Stated another way, can the UNYAC override a determination of the CBPHB that the identified amount of pension funds—\$10,956,075—are necessary for maintaining a stable pension and health benefits program and re-purpose those pension and health benefits program funds?

**UPPER NEW YORK ANNUAL
CONFERENCE OF THE UNITED METHODIST CHURCH**

**REQUEST TO ALLOCATE THE COST OF THE CHILD VICTIMS ACT LEGAL FEES AND
SETTLEMENT COSTS**

WHEREAS, the Child Victims Act (CVA), signed into law in August 2019, opened a window for retroactive filing of civil cases by victims of childhood sexual abuse against entities and organizations like schools, churches, and annual conferences. The retroactive filing provisions of the law expired in August of 2021 and the final cases were served against the conference and its local churches by the end of that year.

WHEREAS, under the provisions of CVA, The Upper New York Annual Conference of the United Methodist Church (UNY) had 63 cases filed against it in New York State Courts. Fortysix of those cases were related to Boy Scouts of America (BSA) troops that were chartered in our local churches. The remaining 17 cases were unrelated to the BSA.

WHEREAS, paragraph 2512.4 of the *Book of Discipline (BOD)* gives the Conference Board of Trustees authority to “intervene and take all necessary legal steps to safeguard and protect the interests and rights of the annual conference anywhere and in all matters relating to property and rights to property whether arising from gift, device, or otherwise, or where held in trust or established for the benefit of the annual conference or its membership.” With this authority the Conference Board of Trustees have engaged attorneys to respond and resolve the CVA cases. The Conference Board Trustees has and will continue to access unrestricted cash to pay the legal fees and settlement costs related to the defense of the Conference.

WHEREAS, as of Dec. 31, 2022, UNY has used \$2,500,000 in unrestricted cash to pay for legal fees and four (4) non-BSA settlements. In addition, the United Methodist conferences located in the United States have agreed to a \$30,000,000 settlement related to the BSA legal cases. UNY’s portion of that settlement is approximately \$1,250,000. The Conference Board of Trustees still has 13 cases to resolve.

WHEREAS, the Conference Council on Finance and Administration (CFA) is given authorization in paragraph 613.8 of the *BOD* to recommend to the Annual Conference procedures for dealing responsibly with situations in which budgeted funds are inadequate to meet the needs of unforeseen circumstances.

WHEREAS, in accord with paragraph 613.8 and in consultation with other teams, CFA has considered options to allocate CVA costs including apportioning every local church an additional charge each year to cover the prior year’s CVA expenses. CFA does not support this option and believes the financial burden this would create would be detrimental to the life and ministry of our already struggling local churches.

WHEREAS, another option considered by CFA was to allocate CVA costs to the unrestricted fund balances of the Conference. UNY has over \$18,000,000 in unrestricted fund balances between the Trustee fund, the General fund, and the Pension/Health fund. These fund

balances are a result of monies paid by our local churches over the years and were retained and invested after all current expenses were paid. CFA believes utilizing these unrestricted funds is the best option to care for the cash expended to date as well as all future expenditures related to the Conference's CVA defense. CFA believes these allocations can be done without causing significant harm to any of the three (3) funds listed. Indeed, in regard to the Pension/Health fund, CFA believes that use of this fund will be replenished over the next 5-10 years through continued investment income along with pension liability payments from disaffiliating churches.

THEREFORE, BE IT RESOLVED, on recommendation of CFA, the Annual Conference directs the Conference Treasurer to allocate CVA previously incurred expenses along with all future CVA expenditures to each of the three (3) Conference funds on a pro-rata allocation based on the balances in the last audited financial statements of 2020. Below is a list of those fund balances and the proposed pro-rata based allocation:

Unrestricted		
Fund Name	Balance	Percentage
General Fund	\$ 4,478,983	24%
Trustee Fund	\$ 3,270,526	17%
Pension/Health Fund	\$10,956,075	59%

**RULING OF LAW
UPPER NEW YORK CONFERENCE
THE UNITED METHODIST CHURCH**

Héctor A. Burgos Núñez, Resident Bishop

June 26, 2023

STATEMENT OF FACTS

On Saturday, June 2, 2023, during the morning plenary of the 14th session of the Upper New York Annual Conference (UNY), a resolution entitled *“Request to Allocate the Cost of Child Victims Act Legal Fees and Settlement Costs”*¹ (CFA Resolution), was presented for the consideration of the body by the UNY Council on Finance and Administration (CFA). During the resolution discussion, an amendment to substitute was presented in writing per UNY Rules and seconded². After discussion, the body approved the motion to substitute and adopted the new main motion³.

The motion adopted by the body, as amended by the substitution, reads:

“That the Conference Leadership Team be tasked with providing a comprehensive examination of every feasible funding source (i.e. sale of conference property, temporary changes in the church sale proceeds formula, etc.) for payment of the CVA cases (settlements and legal fees) to be reported back with recommendations to this body no later than Annual Conference 2024. In the meantime, the sources of any funds spent in the next year on resolution of CVA cases must be tracked and understood that such funds may be restored by the Annual Conference.”

Following the vote, a lay member submitted the following question of law:

“Pursuant to ¶¶ 51 and 2609.6, I rise to request a ruling of law on two questions pertaining to the just adopted resolution, “Request to Allocate the Cost of the Child Victims Act Legal Fees and Settlement Costs.”

This resolution sought to provide authority to reallocate up to approximately \$11m from the Upper New York Annual Conference (UNYAC) pension and health benefits program funds. The UNYAC pension and health benefits program has an approximate position of \$30.1m in unrestricted assets against \$38.1m in combined unfunded pension liability and retiree healthcare liability.

First question, pursuant to ¶¶ 1506 and 1507 of The Book of Discipline, and any other applicable provisions of the Discipline or Judicial Council Decisions, does the UNYAC have

¹ Exhibit A

² Exhibit B

³ Exhibit D

lawful authority to authorize taking funds from pension and health benefits program funds and utilizing it for another purpose?

Second question, pursuant to ¶ 1507.3 of The Book of Discipline, and any other applicable provisions of the Discipline or Judicial Council Decisions, if such an action could be permissible, is it lawful for the UNYAC to take such funds without the approval of the Conference Board of Pension and Health Benefits (CBPHB) Stated another way, can the UNYAC override a determination of the CBPHB that the identified amount of pension funds—\$10,956,075—are necessary for maintaining a stable pension and health benefits program and re-purpose those pension and health benefits program funds?”

JURISDICTION

The Judicial Council has jurisdiction under paragraphs 51 and 56.3 of the Constitution of The United Methodist Church and paragraph 2609.6 of the 2016 Book of Discipline as modified by Judicial Council Decision 1244.

ANALYSIS AND RATIONALE

The question of law submitted by its specific words and terms directly relates to the CFA Resolution. It expressly assumes that the body has approved the resolution. However, this was not the case, as the resolution was amended by substitution with a completely different resolution that called for the UNY Conference Leadership Team (CLT) to study and investigate all possible funding sources for the allocation of legal fees and settlement costs for the CVA cases and make a recommendation to the Annual Conference than the regular 2024 session. The amendment by substitution was allowed by the body and then adopted. The adopted motion does not mention funds managed by the UNY Board of Pensions (BOP). The question of law was made from the floor once the debate had ended, and the body adopted the motion, as amended by substitution.

Since the allocation recommendation made through the CFA Resolution was neither accepted nor rejected, it will not be implemented now. Therefore,

1. The question of law was not germane as it specifically references and focuses on the CFA resolution, which has been “just adopted.” This is incorrect; on its face, the question is irrelevant to the resolution that was substituted and adopted by the body. Also, the allocation that CFA had recommended is not moving forward, and further study instead by the CLT is to occur as mandated in the motion adopted by the body.
2. The question of law was not connected to a specific action of the Annual Conference. As noted above, the question of law was explicitly connected to the original resolution, which was never adopted or rejected. As a result, the proposed allocation in question will not be implemented at this time. This scenario is different from what occurred in JC Decision 1329, where the BOOM policy that was at issue remained in place after the resolution was rejected. The BOOM policy and the failed attempt to overturn it was the subject of the question of law in JC Decision 1329. Here, the CFA allocation recommendation is not happening, and instead, the body adopted a motion to have the CLT further study how CVA costs will be allocated. It is important to note that the Chair of the Board of Pensions and Benefits is a member of the CLT. The motion adopted by the body does not mention using the BOP reserve funds for these costs. This situation is more akin to JC Decision 396, where the

body deleted the legislation that was the subject of the question of law before the question of law was raised. The question of law was therefore found to be moot.

3. The question of law was not raised during the deliberation of the CFA resolution. In parliamentary procedure, if a substitute motion passes, it essentially deletes the prior motion(s). For example, see Rule 28, General Conference Rules of Order, 2019 (“If the motion to substitute prevails by majority vote, the substitute motion becomes the main motion”). The Upper New York Annual Conference session held June 1-3, 2023, was governed by the General Conference Rules of Order as noted in the Organizational Motion approved by the body⁴. Again, by its terms, the question of law was directed to the CFA resolution, which was replaced by a substitute resolution. When the question of law was raised after the substitute resolution was approved and adopted as the new main motion, it was technically not raised during the deliberation of the CFA resolution.

RULING OF LAW

Overall, questions of law must be viewed literally, and they should not be reshaped or revised by a Bishop to make them proper. This question of law is dismissed as moot and hypothetical based on the precedents set by the Judicial Council on decisions 33 (1946), 396 (1975), 799 (1997), and 1329 (2016).

⁴ Exhibit C

Exhibit A – Resolution

Exhibit B – Amendment by Substitution

Exhibit C – Organizational Motion

Exhibit D – Relevant Detailed Minutes from AC Session, June 3

Docket 1023-2
Upper New York Annual Conference
INTERESTED PARTIES

Rev Carolyn Stow [Conf Secy] <unysecretary@unyumc.org>,
Karyn McCloskey [Asked Qs] <KLMcCloskey@verizon.net>,
Rev Sara Baron [Chair Conf Pensions] <s.baron@gmail.com>,
Holly Rousch [Chair CCFA] <roushhe@yahoo.com>,
Bishop Héctor Antonio Burgos-Núñez [Presiding Bishop] <BishopBurgos@unyumc.org>,
Rev. Bill Gottschalk-Fielding [Bishop's Asst] <BillG-F@unyumc.org>,
Mary Bradley [Office Mgr] <bishopsoffice@unyumc.org>,

Conference Secretary

Rev. Carolyn Stow
7481 Henry Clay Blvd, Liverpool, NY 13088
Unysecretary@unyumc.org

Author of the Question of Law

Karyn McCloskey
1058 Garner Ave, Schenectady, NY 12309 518-429-7289
KLMcCloskey@verizon.net

Chair of Council on Finance and Administration

Holly Rousch
12016 Fletcher Chapel Rd. Medina, NY 14103
roushhe@yahoo.com
585-297-4304

Chair of Board of Pensions

Rev. Sara Baron
603 State St.
Schenectady, NY 12305
s.baron@gmail.com
(607) 435-2201

Presiding Bishop

Héctor A. Burgos Núñez
7481 Henry Clay Blvd., Liverpool, NY 13088
315-898-2020
bishopburgos@unyumc.org