

**REPORT TO ANNUAL CONFERENCE BY THE
LEGAL EXPENSES OVERSIGHT WORKGROUP
September 10, 2021**

I. INTRODUCTION AND EXECUTIVE SUMMARY

In response to the Motion of Rev. Janine Howard, Fairlington United Methodist Church, Alexandria District, and approved by the Annual Conference on June 18, 2021, the following members were appointed by Director of Connectional Ministries Steven Summers and Virginia Annual Conference Treasurer David Dommissie to serve on the Legal Expenses Oversight Workgroup:

- Gene Cross, Trustee Representative
- Elizabeth Godwin-Jones, Chair, Trustee Representative
- Rev. Dr. Victor Gomez, Harrisonburg/Winchester District Superintendent
- Bret Hrbek, CFA Representative
- Cindy Martin, CFA Representative
- Blair Mitchell, Rules Committee Representative
- Martha Stokes, Annual Conference Lay Leader
- Rev. Dr. Steve Summers, Convener/Ex Officio

The motion and related information can be found in Attachment I.

Our investigation involved interviews with Scott Diamond, Chair of the Rules Committee, Bryan Mills, General Counsel of the General Council on Finance and Administration of The United Methodist Church, David Dommissie, Conference Treasurer and Administrator, and Jay Rosenlieb, President, United Methodist Church Conference Chancellors Association. In addition, Chancellor Steven Brown provided responses to the issues raised in the Motion and answered a number of questions from our Workgroup.

A summary of the Workgroup's conclusions and recommendations are as follows:

- The engagement terms between the Chancellor's law firm and the Conference are appropriate and the billing rates are competitive;
- Legal fees from 2018-2020 experienced an increase due to the Boy Scouts of America (BSA) bankruptcy and the COVID-19 Pandemic, both of which were major, unanticipated events which required extensive responses. The BSA litigation is ongoing and will result in significant legal fees in 2021. Also, an employment litigation matter required a vigorous defense in order to ensure that the ministerial exception is still in place in Virginia and to deter others from filing such a lawsuit in the future; and
- Reporting to the Annual Conference should provide legal expenses broken down by category to provide greater transparency, and hybrid billing alternatives should be considered when possible.

II. THE ROLE OF THE LEGAL COUNSEL FOR THE VIRGINIA CONFERENCE

The *Book of Discipline of The United Methodist Church – 2016* describes the Conference Chancellor and any associate chancellors as legal advisors to the bishop and the annual conference. See Paragraph 603.8, *The Book of Discipline – 2016*, p. 412. See Attachment II. The Conference Chancellor, the locally-licensed attorney for the Annual Conference, is named upon nomination by the Conference Bishop and elected quadrennially by the Annual Conference(s) of their episcopal areas. Virginia’s Chancellor was most recently elected at the October 31, 2020, Annual Conference. Our Conference Chancellor does not charge any fees or costs for participating in the yearly Annual Conference.

A. ITEM 1--REVIEW OF THE CURRENT AGREEMENT FOR SERVICES INCLUDING INFORMATION ABOUT ACCOUNTABILITY

The Chancellor serves as legal adviser to the Bishop and the Annual Conference. When the Conference engages the Chancellor for legal services, the engagement can come from a variety of sources, most frequently the Bishop or the Assistant to the Bishop. The Treasurer and others may also utilize the Chancellor. If a District Superintendent or local pastor has an issue that may require the Chancellor’s advice and counsel, the District Superintendent or local pastor must go through the Assistant to the Bishop before contacting the Chancellor. This gate-keeping function allows the Conference to limit the amount of time the Chancellor is working on local church or District issues. Since the Chancellor represents the Bishop and the Conference, the Bishop also provides checks and balances on legal services, as well as an accountability loop.

Since August 2012, Steven D. Brown, Esq., has served as the Virginia Conference Chancellor. The agreement for services with Chancellor Brown began in 2012 with the engagement between the LeClair Ryan law firm and the Conference. The most recent, and current, agreement is between the Conference and the law firm of Isler Dare. Chancellor Brown moved his practice to Isler Dare on June 8, 2015 and is the founder and managing partner of the Richmond office. The engagement letters are as follows:

- August 7, 2012, engagement letter executed by Chancellor Brown for LeClair Ryan and Bishop Charlene Kammerer for the Conference, with a reduced rate for Conference matters;
- June 3, 2015, joint letter from LeClair Ryan and Chancellor Brown stating that Chancellor Brown was leaving LeClair Ryan and going to Isler Dare and giving the Conference the choice to stay with LeClair Ryan or transfer the matters to Isler Dare. Since Chancellor Brown was moving to Isler Dare, Bishop Young Jin Cho signed the transfer letter consenting to the transfer of the legal representation to IslerDare;
- September 10, 2019, letter from Chancellor Brown to Bishop Sharma Lewis confirming Isler Dare’s continuing representation of the Conference; and

- July 23, 2021, engagement letter¹ from Chancellor Brown confirming Isler Dare's continuing representation of the Conference, describing types of legal services rendered in the past and the present, as well as terms and hourly rates for services, and countersigned by Bishop Sharma Lewis.

Chancellor Brown's hourly rate for Conference work is discounted and is consistent with what other Chancellors provide for their various Conferences. Confirmation engagement letters are sent by Chancellor Brown when new matters are opened (this takes the place of the longer form engagement letter and these letters confirm that the terms of the engagement letter are in place), and a budget is provided for large litigation matters in the secular courts. In addition, the Chancellor provides the Bishop with a quarterly status report for any major Conference matters.

Specific items that will require extensive legal work and may be pending for some time are tracked and billed individually for logistic and billing purposes. Other matters that arise on a daily or weekly basis and require less time to address are grouped and billed together in the Conference's General matter category. The General matter is used for most recurring legal work for the Conference. Examples include local church personnel issues pending with the SPRC, local church facilities issues, local church day care or day school issues, Conference issues involving crisis public relations issues, personnel issues for clergy and non-clergy, and program issues and training. "Informal and Formal Clergy Complaints", like other personnel issues associated with clergy, are either categorized under the General matter or they may be under a separate matter for tracking purposes. The processing of informal and formal clergy complaints is a normative matter in the life of Annual Conferences which, unfortunately, typically incur some legal costs to ensure the integrity of the Complaint process for all involved. Beginning in May 2021, a monthly fixed fee of \$9,000 was established for services provided for the Conference's General matter. Legal expenses for General matters are paid from Annual Conference funds received through apportionments, market gains, or Conference reserves as set by CFA policy.

The Conference receives detailed monthly billing statements for each matter. The monthly bills show the name of the attorney or attorney or paralegal working on a specific matter, the date of the work being billed, the time in tenths of an hour, and an exact description of what the attorney or paralegal did on behalf of the Conference. The Workgroup has reviewed some redacted billing statements, and finds that billing by the Chancellor complies with industry standards. The monthly bills are reviewed by the Office of the Bishop and again by the Treasurer's office. The Council on Finance and Administration also provides a review and oversight function for the Conference, as further detailed in Item 3 below. Therefore, we have determined that there is and has been full accountability of legal services provided by Chancellor Brown and his firm to the Conference offices, and that accountability also exists between the Chancellor, the Bishop, the Treasurer and Council on Finance and Administration.

¹ Chancellor Brown could not locate the current engagement letter between Isler Dare and the Conference and he drafted a new one dated July 23, 2021. Although one is not legally necessary because the Conference agreed to transfer all files to Isler Dare on June 3, 2015, Chancellor Brown decided it was a good idea to have an engagement letter on file.

It is also important to note that separate legal counsel is used by the Conference Board of Trustees, whose duties deal with the legal responsibilities for property and are determined by the *Book of Discipline*, state and federal laws, and decisions of state and federal courts. The Conference Board of Trustees is currently represented by Andrew W. White with the law firm of Williams Mullen in Richmond. Mr. White and Chancellor Brown sometimes work together since some Trustee matters also impact matters with the Conference.

Outside legal expertise may also become necessary to address specific general or local church concerns. One of the most recent examples demonstrating this type of legal work, which is difficult to anticipate, is the current bankruptcy case filed by the Boy Scouts of America. The Virginia Conference, along with a number of other annual conferences in the United States, engaged the law firm of Bradley Arant Boult Cummings, LLP of Tampa, Florida to represent the Conference and its electing local churches with respect to filing proofs of claim documentation in the BSA bankruptcy. The local church is a chartered organization with the BSA. The arrangement with Bradley Arant has allowed coordination of drafts of various forms among Chancellors for other Conferences, thereby reducing our legal fees in this matter. Since the Boy Scouts bankruptcy case is still pending additional legal fees will be incurred. Chancellor Brown is also providing legal advice to the Conference on several important issues associated with the BSA bankruptcy.

On August 19, 2021, U.S. Bankruptcy Judge Laurie Selber Silverstein approved an \$850 million settlement involving the Boy Scouts of America and its local councils to settle tens of thousands of child sex abuse claims. An August 25, 2021 press release from the United Methodist Church leaders said, "Questions remain about how that agreement might affect chartered organizations, including thousands of United Methodist congregations that have sponsored scouting programs." This will be an important area of legal focus in the Virginia Conference in the coming months, and will result in significant attorney fees in 2021, for work performed both by the Chancellor and by Bradley Arant. Legal fees for services performed both by the Chancellor and by outside counsel are all included in the Legal Expenditures report category.

Other legal issues can arise that are not anticipated but require timely attention and can be costly. A good example of this was the COVID-19 Pandemic. The Conference was forced to act quickly to put in place protocols in response to a number of legal issues associated with keeping everyone safe to the extent possible. Chancellor Brown explained that this involved multiple issues of first impression dealing with health and safety matters having many legal implications. This was not done by the Chancellor along, however. Drafting and revising the original Handbook for Return to In Person Worship and the drafting and editing of the Technical Assistance Manual required a lot of work, which was done in conjunction with the Back to In Person Worship Group. Many others contributed substantially to these materials, which were used by other Conferences and denominations, as well as by the Governor's office. With the recent spike in COVID-19 cases in the United States caused by the Delta variant, further legal work on various issues may still be required. These recent incidents demonstrate why legal expenses can vary widely from one year to the next, thereby making comparisons year over year difficult to analyze just by considering the bottom line.

Legal fees in the categories of Pre-Litigation and Litigation also showed a large increase from 2018-2020 due to one lawsuit with important ramifications for the Conference. Chancellor Brown provided this overview of the case and its significance:

During this time period, the Conference was involved in an extensive employment litigation case about whether a former Conference employee was properly classified as a ministerial employee or should instead have been classified as a secular employee. If an employee is a ministerial employee, the state and federal employment laws do not apply and that employee cannot recover for claims of employment discrimination, harassment, or retaliation against the Conference. The Conference's classification of this employee was a ministerial employee.

Because the nature of the classification (ministerial or secular) had widespread implications for a number of Conference employees and many ministerial employees working for the local churches, this issue needed to be litigated to ensure that the ministerial exemption was a proper classification going forward. The Conference decided to file extensive motions to dismiss early in the case to ask the federal judge to rule on this issue as a matter of law without any discovery. The federal judge denied the motions to dismiss and instructed the parties to conduct discovery so he had a full record of the actual job duties being performed by this employee.

Because the initial settlement demands from the former employee were too high and the issues concerning the ministerial exemption were complicated, extensive discovery was required. Discovery included written questions (interrogatories) and an exchange of documents (requests for production of documents), which required the Conference to gather, review, and produce thousands of pages of paper and electronic documents. Discovery also involved taking the deposition of the former employee and defending the depositions of several current and former Conference witnesses. The written discovery and the deposition testimony clarified that the ministerial classification was proper based on the job duties the former employee admitted to performing on a daily basis. The Conference was in the process of filing a Motion for Summary Judgment (a process that allows the court to decide the case without a trial) when the case was settled for less than the early demands from the former employee.

This is not the only time this issue has been raised in the Conference, and it is another example of an area where we collaborate with other Conferences. We helped other Conferences with our work product and expertise so they are able to save money when this issue is being litigated, and it seems to be litigated with more frequency these days. We were also able to ensure that the ministerial exception is still in place in Virginia and we expect that this litigation will deter others from filing such a lawsuit in the future. It also helps the local churches with their application of the ministerial exception if they seek guidance from the Conference.

David Dommissé has served as the Conference Treasurer since 2009 and has worked with Chancellor Brown since he began in that position in 2012. He informed the Workgroup that in the early years of Chancellor Brown's tenure there was little or no litigation, and none of the major issues that the Conference has faced in the past few years. In addition, the Chancellor has helped with some issues on the local church level that could have impacted the reputation of the Church as a denomination.

Mr. Dommissé stressed that the high expenses associated with the one major lawsuit, which could have set an expensive precedent without a vigorous defense, account for the spike in legal fees. Absent the legal fees incurred in defending this one case, the expenses from the BSA bankruptcy and the COVID-19 legal work, the legal fees have not been out of line with what they have been in the past. Aside from additional legal fees in connection with the BSA bankruptcy case, which will remain high for 2021, and possible further COVID-19 issues with the Delta variant, Mr. Dommissé is not aware of any other major potential lawsuits so he anticipates seeing the legal expenses decline.

In conclusion, the Workgroup is satisfied that the engagement terms between the Chancellor's law firm and the Conference are appropriate and the billing rates are competitive. Referrals to the Chancellor are screened by the Assistant to the Bishop, and the Bishop also provides checks and balances on legal services. Monthly billing statements provide accountability concerning the work that has been done for the Conference, and review of the bills by the Bishop, the Assistant to the Bishop, the Treasurer and the Council on Finance and Administration provide additional accountability. A recent change in billing for the Conference General matter should increase budgeting predictability in the future. Increases in legal expenses in the past three years were largely caused by exceptional events which required immediate responses. Except for anticipated 2021 BSA litigation expenses and COVID-19 issues, overall legal expenses should decline.

B. ITEM 2-- CONSULTATION WITH THE UNITED METHODIST CHURCH CONFERENCE CHANCELLORS ASSOCIATION

The Workgroup reached out to Bryan Mills, General Counsel at General Council on Finance and Administration of The United Methodist Church, as well as Jay L. Rosenlieb, President, United Methodist Church Conference Chancellors Association. Without exception they both stated there is no standardized or "Best Practices" established across all the various Annual Conferences. There are more procedures for engagement, billing, access, etc. than there are annual conferences. There is no standardized oversight or reporting beyond what is considered ethical or good business practice. Where reporting is done, attorney-client privilege and privacy are primary considerations. In some situations, the work is done *pro bono*. This may include meetings, counsel, document review or other uncomplicated work. For example, Chancellor Brown provides *pro bono* representation at each annual conference every June. When complex work, such as litigation, requires the engagement of a firm's partners or extensive research, billing the Conference for fees and costs is most common. Often billing is done at a discounted rate but not universally. Chancellor Brown also informed us that collaboration among the Church Conference Chancellors is done quite often and on a variety of topics.

A salient comment summarized the exchanges by observing that “with 50+ Annual Conferences there are perhaps 65 or more methods.”

C. CONFERENCE STANDING RULES

Blair Mitchell, a member of the Rules Committee, reviewed the current Standing Rules, and consulted with Scott Diamond, the Chair of the Rules Committee, about a possible modification of the Standing Rules concerning how legal costs are incurred and paid.

Accountability to the Conference for the payment of legal fees and costs is primarily a function of the Council on Finance and Administration, which is responsible for reviewing and accounting to the Annual Conference for the disbursement of funds. The Rules of Order and Procedure already provide that “[t]here shall be a Conference Council on Finance and Administration elected and organized with responsibilities as set forth in the *2016 Book of Discipline* (See paragraphs 611-619).” (Rule V.B.9.) The *Book of Discipline* provides that “the council shall be amenable and report directly to the annual conference.” (Paragraph 612.6) and that the council “account to the annual conference for the disbursement of funds in accordance with budgets approved by the conference.” (Paragraph 613.9). The Council, like other conference agencies, is required to provide an annual report, which is published in a book of reports available to each clergy and lay member of the annual conference. (Rule II.A.1.)

Neither the *Book of Discipline* nor the Standing Rules prescribe in detail what should be included in the reports. To do so, for the Council, and for other agencies, would not only be voluminous, but would likely fail to include anything unexpected and would inhibit any flexibility in the Council’s reporting.

Accordingly, the Workgroup feels that modification of the Standing Rules is not the proper manner to address this accountability for legal services. Any accountability issues are within the purview of the Conference Treasurer and finance team. Since the Council is already tasked by *The Book of Discipline* with providing this oversight, adding what would need to be a very broad and vague rule on this into the Standing Rules is unnecessary.

Instead, accountability and more detailed reporting of legal costs should be a part of the Finance report to the Annual Conference, with a summary breakdown of categories and amounts of costs that does not breach confidentiality, the attorney-client privilege, and the work product doctrine/privilege. This would not require a rule change, but just a reporting change by Finance. Proper wording and accounting would bring transparency to the legal costs portion of the Finance Report.

III. SUMMARY OF FINDINGS AND RECOMMENDED CONTROL MEASURES FOR LEGAL SERVICES EXPENDITURES

The Workgroup found that the recent increase in legal fees can largely be attributed to matters that are unusual and could not have been anticipated. These are the BSA bankruptcy and the COVID-19 Pandemic, both of which remain pending and will require additional legal services. The other factor was a large employment law case with potentially significant legal and policy

consequences which required a vigorous defense to protect the Conference from similar litigation in the future. Legal expenses for 2018-2020 are in line with those from prior years when these matters are subtracted from the 2018-2020 expenses. The current legal engagement letter (contract) is competitive and reasonable, and recent changes such as the establishment of a monthly fixed fee for services provided for the Conference's General matter should increase billing predictability in the future. The Bishop and the Assistant to the Bishop provide gate-keeping roles in controlling work done by the Chancellor. The Legal Oversight Workgroup believes the monthly and quarterly statements furnish proper accountability to the Bishop and the Conference for legal work and legal costs. Consequently, the Workgroup does not recommend any revisions to the current legal services agreement.

The Workgroup recommends that the Treasurer's Report or Council on Finance and Administration Report to Annual Conference should add information about legal expenses broken down by category. This should be general in order to preserve attorney-client privilege and protect work product doctrine issues. In addition, alternate billing rates should be considered when possible, such as hybrid hourly rates and fixed fee matters depending on the project or task.

ATTACHMENTS

- I. Motion on Legal Expenses Adopted at 2021 Virginia Annual Conference
- II. Paragraph 603.8, The *Book of Discipline of The United Methodist Church – 2016*
- III. Summary of Legal Expenses By Category from 2016-2021

Attachment I
The Virginia Annual Conference
Daily Proceedings – 239th Conference
June 18, 2021, pp. 31-32
Text of Legal Expenses Resolution and Related

Rev. Janine Howard, Fairlington United Methodist Church, Alexandria District, moved to create oversight and restrictions for legal expenses.

- 1.) Move to create a Legal Expenses Oversight Work Group, with the following members
 - a. Two members Conference Council on Finance and Administration
 - b. Two members of the Conference Trustees
 - c. The Conference Lay Leader, or a member of the Board of Laity, named by the Lay Leader
 - d. One representative from the Committee on Rules
 - e. One District Superintendent

The purpose of the work group is to

- 1) Review current agreement for services/contract for the position of Chancellor, offering recommendations for revisions to provide accountability to the Annual Conference
- 2) Consult with the United Methodist Church Conference Chancellors Association (United Methodist Church³) to determine if Virginia “best practices” are consistent with those of other Annual Conferences
- 3) Determine if the Conference Standing Rules should be modified to establish accountability protocols
- 4) Recommend control measures on expenditures for legal services

5) Report back to the Annual Conference within 90 days of adoption of this motion

The motion was seconded. The motion was debated. Rev. Brian Siegle, South Hill United Methodist Church, Farmville District, called the question. There was a second. The motion to call the question was approved.

The motion from Rev. Howard was approved.

Attachment II
Paragraph 603.8
**The *Book of Discipline of*
The United Methodist Church – 2016**

8. The annual conference shall designate a chancellor, and may designate one or more associate chancellors. The chancellor and any associate chancellors must be members in good standing of a local church or an annual conference in the episcopal area, and be licensed to practice law in the episcopal area. The chancellor and any associate chancellors shall be nominated by the bishop and elected quadrennially by the annual conference. If a vacancy should occur during the quadrennium, the bishop shall fill the vacancy until the next session of the annual conference. The chancellor, assisted by the associate chancellors, if any, shall serve as legal adviser(s) to the bishop and the annual conference. Each annual conference shall report its election of the chancellor and any associate chancellors to the General Council on Finance and Administration.

Attachment III
 Summary of Legal Expenses By Category
 2016-2020
 Conference Legal Expenses by Category

	2020 Amount	Pct	2019 Amount	Pct	2018 Amount	Pct	2017 Amount	Pct	2016 Amount	Pct
Bishop's Way Forward Work Group		0.0%	16,336	7.1%	16,083	10.1%		0.0%		0.0%
Formal and Informal Clergy Complaints	5,780	1.2%	55,223	23.9%		0.0%	16,084	14.4%	12,089	28.0%
General corporate and counsel advise	46,783	9.6%	25,255	10.9%	95,711	59.9%	54,235	48.5%	18,650	43.2%
Pandemic guidance	129,212	26.5%		0.0%		0.0%		0.0%		0.0%
Pre-litigation and litigation	237,815	48.8%	96,950	42.0%	25,313	15.8%	1,836	1.6%	5,971	13.8%
Scouting	26,901	5.5%		0.0%		0.0%		0.0%		0.0%
Trustee matters	40,850	8.4%	37,122	16.1%	22,795	14.3%	39,562	35.4%	6,421	14.9%
	487,341	100.0%	230,886	100.0%	159,902	100.0%	111,717	100.0%	43,130	100.0%

Notes:

1 - Legal expenses may differ slightly from Financial Reports due to invoicing dates.

2 - The Bishop's Way Forward Work Group brought together Conference leaders, beginning in the summer of 2018 and continuing through the spring of 2019, to consider strategic directions, communications and actions needed in preparation for possible outcomes of the 2019 Called General Conference session.