STANDARD OPERATING PROCEDURES MANUAL

Expulsion of Individuals from Membership in the Synod as a Result of:

Sexual Misconduct or Criminal Behavior

BYLAWS SECTION 2.17

2010 *Handbook*
The Lutheran Church—Missouri Synod

(Revised May 2011)

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(Note: All quotations from the 2010 *Handbook* are in **bold** face type.)

I. General Principles for Bylaw Section 2.17

A. The Synod has identified certain standards that must be met for continued membership. Furthermore, it has identified those responsible for the ecclesiastical supervision of its members, including such matters as provision of advice and counsel as well as suspension from membership for failure to continue to meet membership requirements (see also Bylaw 1.2.1 [g]).

B. Ecclesiastical supervisors, parties to the matter, and members of panels shall be governed in all their actions by the Holy Scriptures; the Lutheran Confessions; the Constitution, Bylaws, and resolutions of the Synod; and the procedures provided in this *Standard Operating Procedures Manual* (Bylaw 2.17.9.3).

C. According to provisions and procedures set forth in Article VIII of the Constitution and Chapter 1 of the Bylaws, the self-governing congregations of the Synod state in convention resolutions their collective understanding and application of the Holy Scriptures and the Lutheran Confessions (Constitution, Art. II) and the conditions of membership (Art. VI). These resolutions help to determine whether an act is contrary to Articles II and VI (cf. Constitution, Art. XIII).

D. The procedures of Bylaw section 2.17 (among other bylaws) and this *Standard Operating Procedures Manual* provide the means to carry out Article XIII[1] of the Constitution as well as the Synod's objectives as set forth in Article III, especially paragraphs 1, 8, & 9[2]. Bylaw section 2.17 and this manual must be understood within the entire context of and subordinate to the Synod's Constitution and Bylaws.

E. Unlike Bylaw sections 2.14–2.16, where only a member of the Synod can bring a formal complaint or accusation that could lead to expulsion of a member from the Synod, in the case of Bylaw section 2.17 any person who is aware of sexual misconduct or criminal behavior that could lead to expulsion of an individual member from the Synod should consult with an ecclesiastical supervisor.

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[1] *"1. Members who act contrary to the confession laid down in Article II and to the conditions of membership laid down in Article VI or persist in an offensive conduct, shall, after previous futile admonition, be expelled from the Synod.*

2. Expulsion shall be executed only after following such procedure as shall be set forth in the Bylaws of the Synod.

3. If the member expelled is a pastor or teacher in a congregation of the Synod, such congregation, unless it has already done so, is held to depose him from office and to deal with him in accordance with the Word of God, notwithstanding an appeal. If it persistently refuses to do so, the respective District is to deal with it. If all negotiations and admonitions fail of their purpose, such congregation forfeits its membership in the Synod.

4. Because of their expulsion those so expelled forfeit their membership and all share in the property of the Synod. The latter holds good also with respect to those who for any reason themselves sever their connection with the Synod." (Article XIII)

[2] *"The Synod, under Scripture and the Lutheran Confessions, shall—*

1. Conserve and promote the unity of the true faith (Eph. 4:3–6; 1 Cor. 1:10), work through its official structure toward fellowship with other Christian church bodies, and provide a united defense against schism, sectarianism (Rom. 16:17) and heresy;…

8. Provide evangelical supervision, counsel, and care for pastors, teachers, and other professional church workers of the Synod in the performance of their official duties;

9. Provide protection for congregations, pastors, teachers, and other church workers in the performance of their official duties and the maintenance of their rights;" (Article III 1, 8–9)

F. Matthew 18 and the Eighth Commandment provide the foundation for this Bylaw section 2.17 process governing expulsion of members from the Synod. While Matthew 18 provides the procedure for church discipline in a local congregation, it, along with the Eighth Commandment, also describes a manner of conduct for all Christians in general, one that is to be observed in this procedure as applicable. The reputations of the accused and accuser are to be protected.

G. This process for dealing with accusations that could lead to the expulsion of a member from the Synod is intended to reflect a presumption of innocence. The burden of proof is on the accuser and must be established by clear and convincing evidence. In addition, a member can be expelled from the Synod only after previous futile admonition whenever such admonition is possible (Constitution, Art. XIII).

H. The primary purpose of Bylaw section 2.17 and the procedure further provided in this manual is not to expel a member from the Synod but to foster repentance and reconciliation, to win and restore the brother or sister (Matt. 18:15–20; Gal. 6:1–5; cf. Bylaws 1.10.1–1.10.1.6). It (along with other bylaws) provides opportunities for the ministry of Law and Gospel to the accuser and the accused, opportunities for teaching moments, and opportunities for the practice of Christian love.

I. To begin this process (Bylaw section 2.17), consultation with an ecclesiastical supervisor is required. The purpose of this consultation is to provide opportunity (1) for the accuser to receive advice, direction, and spiritual ministry from an ecclesiastical supervisor; (2) for the accuser to receive assistance in determining the appropriate bylaw procedure under the circumstances; (3) for the ecclesiastical supervisor to inform the ecclesiastical supervisor of the accused (or other appropriate official) that a consultation is underway; (4) for the appropriate ecclesiastical supervisor to consult with others; (5) for the ecclesiastical supervisor to provide evangelical supervision, counsel, and care; and (6) for the ecclesiastical supervisor to advise the accuser that he/she will not be put under risk by requiring the accuser to meet fact-to-face with the accused in the manner described in Matthew 18:15, also advising that the reputations of accuser and accused will be protected.

J. Elected ecclesiastical supervisors alone shall assume the historic (LCMS) responsibility for ecclesiastical supervision as defined and described by the Constitution and Bylaws of the Synod. Those not elected to supervise are not to supervise. Ecclesiastical supervisors shall conduct themselves and their offices in an evangelical manner.

K. As its chief ecclesiastical officer, the President of the Synod shall supervise the doctrine taught and practiced in the Synod. Such supervision includes all synodwide corporate entities (Bylaw 3.3.1.1) as enumerated in Bylaw section 3.6; all officers of the Synod and its agencies (see Bylaw 1.2.1 [a]); the individual districts of the Synod, and all district presidents (Bylaw 3.3.1.1.1).

L. Each district president, in accordance with the Constitution of the Synod, shall supervise the doctrine, life, and official administration of the ordained or commissioned ministers who are members of his district or are subject to his ecclesiastical supervision (Constitution, Art. XII 7; Bylaw 4.4.5), and he shall inquire into the prevailing spiritual conditions of the congregations of his district (Bylaw 4.4.4). He shall also be responsible for maintaining the official rosters of his district (Bylaw 4.4.7).

M. Each circuit counselor shall assist the district president within his circuit. He shall serve under the direction of and be accountable to the district president, shall serve as his spokesman when so authorized and directed, and shall assist him in doctrinal and spiritual supervision (Bylaw 5.2.3 [a]). District vice-presidents shall also assist district presidents in discharging their responsibilities and represent them upon their request.

N. The ecclesiastical supervisor shall make every effort to resolve disputed matters on a timely basis, protect the integrity of the process, be consistent and fair, and guard against improper publicity.

O. All constitutional and bylaw functions of the ecclesiastical supervisor, including offering advice, admonition, and judgment, shall be circumscribed not by his private views, individual interpretation, or personal or public opinion, but by the official resolutions and confessional position of the Synod.

P. The ecclesiastical supervisor shall assume a servant role as he leads fraternal discussions and gives counsel, care, and protection (Constitution, Art. III 8–9) on behalf of the congregations of the Synod, to whom he is accountable. The provisions and procedures of Bylaw section 2.17 allow ample opportunity for the ecclesiastical supervisors to obtain advice and help in this servant role.

Q. In protecting the rights of its members (Constitution, Art. III 9), the Synod has also made provision for challenging the decisions of ecclesiastical supervisors that may result in suspension and loss of membership (Bylaw section 2.17). Such provisions serve to protect the rights of both the accuser and the accused.

R. The official and formal provisions and processes of Bylaw section 2.17 ("Expulsion of Individuals from Membership in the Synod as a Result of Sexual Misconduct or Criminal Behavior") are not to take the place of or be confused with the brotherly acts of mutual encouragement and admonishment and with the "mutual conversation and consolation of brethren" (Smalcald Articles, Part III ArticleIV) encouraged by Holy Scripture. These provisions and processes do not prohibit any Christian from following biblical and confessional principles in rebuking a Christian brother or sister so long as the constitutional responsibility for ecclesiastical supervision required of district presidents and the President of the Synod is not being assumed.

S. Provisions and procedures for doctrinal dissent (not a basis for expulsion from membership in the Synod) are set forth in Bylaw section 1.8. Provisions for doctrinal discussions are set forth in Bylaw 3.9.5.2.1 and Bylaw sections 4.8, 4.9, and 5.3. Provisions and procedures for doctrinal review are set forth in Bylaw section 1.9. Provisions and procedures for dispute resolution (not a provision for expulsion from membership) are set forth in Bylaw section 1.10. Other procedures for expulsion from membership are provided in Bylaw sections 2.14–2.16. Provisions and procedures for complaints against a member of the faculty or administration of one of the Synod's educational institutions (whether or not a basis for expulsion from membership in the Synod) are set forth in Bylaws 3.10.4.7.5–3.10.4.7.9 and 3.10.5.6.5–3.10.5.6.9.

II. General Regulations for Bylaw Section 2.17

A. ***Purpose of General Regulations***: These general regulations shall serve as guidelines for the implementation of Bylaw section 2.17 to ensure consistency and uniformity in the process. They also shall further define the guidelines referenced in Bylaws 2.17.7.8 and provided in Bylaws 2.17.9–2.17.9.4. If questions arise regarding proper procedure, they may be directed to the Secretary of the Synod or his designee via telephone, fax, or e-mail.

B. ***Process Administrator*:** The administrator of this process shall be the Secretary of the Synod. Challenges to his impartiality shall be made to the President of the Synod, who shall, if appropriate, appoint another administrator for the case.

When the Secretary is involved personally in a dispute, whether as a party, a witness, or someone who has a direct interest in the outcome, an alternate administrator shall be appointed. If a party intends to present testimony or evidence which would suggest the potential need for the Secretary to become a witness, such intention shall be raised in a timely manner so that the Secretary will have opportunity to recuse himself and a replacement administrator can be appointed.

C. ***Definitions of Terms***: Definitions of key terms used in this *Standard Operating Procedures Manual* as well as throughout Bylaw section 2.17 are provided by Bylaw 2.14.2, as follows:

2.14.2 The definitions of terms used in this bylaw are as follows:

(a) ***Accused***: The party named by the accuser as being in violation of Article XIII and under the procedural ecclesiastical supervision of Bylaw sections 2.14–2.17.

(b) ***Accuser***: The party who accuses a member under the provisions of Article XIII through the process of Bylaw sections 2.14–2.17.

(c) ***Conflict of interest***: Representation of two opposing interests. Carrying out the responsibility of ecclesiastical supervision does not give rise to conflict of interest.

(d) ***Ecclesiastical supervision***: See Bylaw 1.2.1 (g).

(e) ***Face-to-face***: A face-to-face meeting in person between the accuser and the accused in the manner described in Matthew 18:15. E-mail, regular mail, fax, or telephone call (or any combination thereof) does not satisfy this requirement. (Note: Failure to conduct a face-to-face meeting within 30 days or within such extension as may be established by the involved ecclesiastical supervisors shall result in dismissal if the fault lies with the accuser or movement to the next stage if the fault lies with the accused.)

(f) ***Facts***: Substantiated information of an alleged accusation.

(g) ***Fails to act***: No measures initiated within the required period of time to ascertain the truth or falsity of the accusations, or the stifling of a complaint by the refusal to act.

(h) ***Final Hearing Panel***: Two district presidents and a lay reconciler, assisted by a hearing facilitator, who when the decision of the Hearing Panel is appealed shall be selected according to these bylaws to give a final hearing.

(i) ***Formal Proceedings***: The proceedings that begin with the suspension of a member.

(j) ***Hearing Facilitator*:** One selected by blind draw by the Secretary of the Synod as described in Bylaw 1.10.13.2, trained to serve as a facilitator for hearings before panels.

(k) ***Hearing Panel***: Two district presidents and a lay reconciler, assisted by a hearing facilitator, selected according to these bylaws to hear the matter and render a final decision unless appealed.

(l) ***Investigation Committee***: Any number of persons appointed by the ecclesiastical supervisor to investigate thoroughly to determine the facts in the matter prior to the determination whether or not to proceed.

(m) ***Own personal knowledge***: A personal witness to the alleged violation—not second-hand or hearsay information.

(n) ***Party to the matter*:** A "party to the matter" is the accuser and the accused. Carrying out the responsibility of ecclesiastical supervision does not make the ecclesiastical supervisor a party to the matter, even if the accuser is the ecclesiastical supervisor.

(o) ***Persons involved***: "Persons involved" includes the accuser or whoever brings the matter to the attention of the ecclesiastical supervisor; also any parties to whom the matter is presented and who are required to thoroughly investigate whether the allegations can be substantiated, i.e., any ecclesiastical supervisor involved in the case, the accused, the Hearing Panel, the Final Hearing Panel, a witness or advisor, or any others involved in the matter.

(p) ***Publicity***: Any information or action, whether written, oral, or visual, that brings a person, cause, or an alleged accusation to public notice, including information that results in public notice, whether or not the person or persons delivering it gave approval to the bringing of the information to public notice.

(q) ***Reconciliation Committee***: A small committee appointed by the ecclesiastical supervisor (prior to the determination whether or not to proceed to assist in reconciliation efforts) if the matter warrants it.

(r) ***Referral Panel***: A panel that may be formed of three circuit counselors or district presidents, who shall be selected according to these bylaws to determine, according to the facts learned from the investigation, whether or not to proceed.

(s) ***Statement of the matter***: A written concise statement containing factual assertions involved in an accusation with a request for expulsion from membership.

(t) ***Witness***: A person called to give testimony regarding facts to a matter before a Hearing Panel or Final Hearing Panel. A member of any reconciliation committee appointed by a district president or the President of the Synod shall not testify as a witness before a Hearing Panel or a Final Hearing Panel in the same matter or case.

D. ***Parties to the Matter*:** The parties to a matter in the Bylaw section 2.17 process are the accuser and the accused. An ecclesiastical supervisor is not a party to the matter, even if he is the accuser. A member congregation bringing forward information or allegations shall be represented by its chairman or a designated member of the congregation. The congregation shall have identified and authorized its representative prior to his/her signing of a formal complaint.

E. ***Filing a Complaint*:** In cases under Bylaw section 2.17, the right to file a signed and dated formal written complaint is not limited to members of the Synod, as in Bylaw sections 2.14–2.16. The ecclesiastical supervisor may also act based upon "his own personal knowledge."

F. ***Required Consultation*:** Prior to any formal written complaint or accusation, when any person is aware of information or facts that could lead to the expulsion of an individual member from the Synod under Article XIII of the Constitution for alleged sexual misconduct or criminal behavior, the person shall consult with the appropriate ecclesiastical supervisor to seek advice, direction, and spiritual ministry as the needs and circumstances dictate. The purpose of the consultation will be to provide opportunity (1) for the accuser to receive advice, direction, and spiritual ministry from an ecclesiastical supervisor; (2) for the ecclesiastical supervisor to discuss with the accuser (if a member of the Synod or one of its congregations) whether Bylaw section 2.17 is the appropriate bylaw process under the circumstances; (3) for the ecclesiastical supervisor to inform the

ecclesiastical supervisor of the accused (or other appropriate official) that a consultation is underway; (4) for the appropriate ecclesiastical supervisor to consult with others; (5) for the ecclesiastical supervisor to provide evangelical supervision, counsel, and care; and (6) for the ecclesiastical supervisor to advise the accuser that it is understood that he/she will not be put under risk by requiring a face-to-face meeting with the accused in the manner described in Matthew 18:15. However, the reputation of all parties, the accuser and the accused, is to be protected as commanded in the Eighth Commandment.

G. ***Investigations*:** A thorough investigation shall be conducted by the district president of the accused or an investigation committee in every case (Bylaw 2.17.4 [a]). During the investigation, every effort shall be made to protect the anonymity of the accuser and the reputation of the accused. The investigation shall be conducted to determine the truth of the accusation(s), to assess the full extent and consequences of any misconduct, and/or to determine whether the facts learned form a basis for expulsion of the accused member from the Synod under Article XIII of the Constitution.

H. ***Provision of Notices*:** In the Bylaw section 2.17 process, notices are often required to be sent by certified mail or such other means as will result in a signed receipt to provide evidence of the delivery of the notice and determine the date of inception of time frames incorporated in the bylaws. In the event that a party cannot be located or seeks to avoid the process by refusing to sign a delivery receipt, ordinary first class mail sent to the last known address and allowance for sufficient time for delivery shall, after two failed delivery attempts by certified or other signature-requiring mail, suffice to provide notice.

I. ***Evangelical Care*:** The ecclesiastical supervisors of the accused and, when applicable, of the accuser(s) shall take those steps necessary to attend to the spiritual needs of all those affected, continuing efforts to resolve matters even when formal action is the outcome (Bylaw 2.17.9).

J. ***Advisors*:** The accused may obtain at personal expense the assistance of individuals familiar with the issues involved in the matter. The ecclesiastical supervisor may also obtain the assistance of such advisors. Such advisors may actively participate in research and preparation of necessary documents.

During hearings, however, while the accused and the ecclesiastical supervisor may have a single advisor present, they must represent themselves without public participation by their advisors. These advisors may communicate orally or in writing with their advisees so long as such communication is not disruptive. If the accused or the ecclesiastical supervisor does intend to have an advisor present at the hearing, the panel chairman and the opposing participant shall be provided the name and address of the advisor at least five (5) days in advance of the hearing.

K. ***Attendance at Hearings*:** The accused, the ecclesiastical supervisor, and their advisors, if any, may be present at all phases of the hearing except deliberations. Subject to the discretion of the panel as to the helpfulness of the presence of others at various times during the hearing process, attendance at hearings shall be limited to the members of the panel, the accused, the ecclesiastical supervisor, an advisor to the accused (if desired), an advisor to the ecclesiastical supervisor (if desired), and witnesses (for such period of time as they provide testimony) who can substantiate relevant facts to the matter.

L. ***Witnesses and Evidence*:** Accusers may be called as witnesses. All persons involved in hearings shall cooperate with ecclesiastical supervisors, hearing facilitators, panels, and each other in providing documents, names of witnesses, and other information that will contribute to an understanding of the matter. They may offer any evidence that they consider fair, relevant, and pertinent**,** and shall produce any additional evidence that the ecclesiastical supervisors and panels deem necessary. All documentation shall be adequately authenticated.

Although oaths are not administered, every witness shall be reminded prior to his or her testimony of the importance of speaking the truth and speaking the truth in love. Witnesses intended to provide "expert testimony" (v. factual testimony) shall be identified as such when their names are provided to the panel. The panel shall judge whether such testimony will be necessary and helpful to reach a decision.

Prior to the final selection of a panel, parties may send copies of written documents or other communications intended for distribution to the panel members and other party to the Secretary of the Synod for distribution when a panel is in place. It is the responsibility of the hearing facilitator and panel to establish the procedure to be followed to receive testimony and evidence and to determine its relevancy and materiality to the issues of the suspension.

The accused and the ecclesiastical supervisor shall be provided ample opportunity to present their positions.

(a) Any member of the Synod, officer of a congregation, or officer of any organization owned and controlled by the Synod shall, when called upon to do so, testify or produce records related to a dispute.

(b) Panels shall be the judge of the relevance and materiality of evidence offered. Relevance of testimony will be determined by whether such evidence will support (or not) an issue in contention.

(c) Conformity to legal rules of evidence shall not be necessary.

(d) Panels shall determine the number of witnesses necessary for a full and complete understanding of the facts involved in a matter. A panel may reject and not consider evidence or testimony from a witness that it deems unnecessary or unhelpful to its consideration of the issues in dispute. Testimony of witnesses via the Internet or other electronic means may be received at the discretion of the panel.

(e) Except as specifically provided elsewhere in this manual, all evidence shall be taken in the presence of all panel members, the accused party, and the ecclesiastical supervisor except when a party has waived the right or fails to be present.

M. ***Burden of Proof*:** Recognizing that commencement of formal proceedings for expulsion will require the strongest proof available (both to be effective in confronting the accused to take responsibility for wrongful behavior and to satisfy the burden of proof should a contested hearing ensue), an ecclesiastical supervisor or panel should commence formal proceedings only when satisfied that the quality, nature, and extent of the evidence available will likely prevail in a contested hearing. Victims of improper conduct are entitled to be made aware that the failure to make oneself available to testify, to provide written evidence, or to cooperate in the action will be considered in the evaluation of the quality, nature, and extent of available evidence, and may prevent the presentation of a case meeting the clear and convincing test required during a hearing.

N. ***Expenses*:** Accusers, the accused, and their witnesses shall assume their own expenses. Expenses of ecclesiastical supervisors shall be borne by their districts, with the exception of the President and Secretary of the Synod, whose expenses shall be covered by the Synod. Expenses of witnesses or evidence produced upon request of ecclesiastical supervisors or panels shall be borne by their districts or the Synod, depending upon the origin of the request. The expenses of Referral Panels shall be the responsibility of the districts. The expenses of Hearing Panels and Final Hearing Panels shall be the responsibility of the Synod.

O. ***Blind Draws*:** Blind draws for the selection of panels are the responsibility of the Secretary of the Synod, with the exception of Referral Panels, in which case the blind draw is the responsibility of the involved district president. The pool from which names are drawn shall include all eligible names, excluding the persons named in the pertinent bylaws. To accomplish a blind draw, such method shall be used as will accomplish a truly "blind" draw, to be carried out in the presence of at least two office staff or other neutral persons. A statement attesting to the proper conduct of the blind draw shall be prepared, signed, and dated by the witnesses to the blind draw. Names shall be used in the order in which they were surfaced by the blind draw.

P. ***Disqualification of Ecclesiastical Supervisors or Panel Members*:** The standard for disqualification is actual partiality or the appearance thereof. When identified by blind draw, potential panel members shall be contacted personally by the district president or the Secretary of the Synod to discuss their availability to serve. The district president or Secretary of the Synod shall provide general information regarding the matter and identify the persons involved in the matter in order to uncover potential conflict of interest concerns. Any ecclesiastical supervisor or panel member may disqualify himself/herself from service. Circumstances that are thought to or are likely to affect performance of duties and the outcome of a formal process shall be disclosed to the district president or the Secretary of the Synod, as appropriate.

If a hearing facilitator or panel member concludes that he/she has personal knowledge of one or other of the parties to the dispute, he/she shall, upon becoming aware of the same, disclose to the administrator the knowledge and nature thereof and his/her assessment that such will not adversely affect his/her service. The administrator shall share this information with the parties to the dispute. Undue familiarity with the party to the dispute must not be demonstrated in any manner during the panel hearing.

Any party may challenge the <u>eligibility of an ecclesiastical supervisor</u> to serve. In the event that a district president's service as ecclesiastical supervisor is challenged under Bylaw 2.17.4.1 and he does not agree with the challenge, the question shall be decided by the President of the Synod. If the challenge is successful, the next-qualified district vice-president shall function in the place of the district president.

Any party may challenge the <u>eligibility of a panel member or hearing facilitator</u> to serve. In the event that the service of a panel member or hearing facilitator is challenged and the panel member or hearing facilitator disagrees with the challenge, the question shall be decided by a panel of three (3) district presidents not involved in the case, selected by blind draw by the Secretary of the Synod for this purpose. In the event of disqualification of a panel member, another panel member shall be selected in the same manner as the disqualified member was selected.

Q. ***Confidentiality*:** It is anticipated that all parties will openly and candidly admit their offenses, which requires an environment in which parties may speak freely, without fear that their words may be used against them in a subsequent legal proceeding. Therefore, all parties and other participants acknowledge and agree, by their participation in the Bylaw section 2.17 process, that they will keep confidential all communications that take place during the process, except as provided here following. This confidentiality agreement extends to all oral and written communications of all ecclesiastical supervisors, parties, and panels, and includes all records, reports, letters, notes, and other documents received or produced as part of the Bylaw section 2.17 process.

(a) Those documents that existed prior to the initiation of the bylaw process and were otherwise open to discovery apart from this process are excepted.

(b) Parties agree not to attempt to compel panel members to divulge any documents or to testify regarding the process in any judicial or adversarial proceeding, whether by personal testimony, deposition, written interrogatory, or sworn affidavit.

(c) Appropriate and necessary information may be divulged under the following circumstances, for which the parties will hold panel members harmless, as when

(1) as part of normal office operations, the Synod and its representatives consult with staff members or outside experts regarding particular issues or problems related to a matter;

(2) information is divulged when compelled by statute or court of law;

(3) an agreement or decision has been contested or appealed outside the Synod's process;

(4) an action has been brought against the Synod or its representatives as a result of a related matter;

(5) the Synod or its representatives deem it appropriate to discuss a case with the church leaders of parties; or

(6) the Synod or its representatives deem it necessary to contact appropriate civil authorities to prevent personal harm.

(d) In spite of these confidentiality protections, some of the information discussed during panel proceedings may become discoverable outside the process and used in other legal proceedings, for which the Synod and its representatives have no liability.

R. ***Communication with and Deportment of Panel Members*:** Except as provided in this manual, no party to a dispute or anyone on the party's behalf shall communicate, either directly or indirectly, with the panel or a panel member without the full knowledge of the other party. All other communication shall take place at joint meetings. A panel may decide at any time during the process not to accept any communication outside of joint meetings or hearings.

In the interest of the integrity, trustworthiness, and credibility of the Bylaw section 2.17 process in the eyes of all parties, the hearing facilitator and panel members shall take care consistently to conduct themselves in a professional manner, maintaining objectivity and impartiality and avoiding all appearance otherwise, treating all parties equally and fairly, and pursuing no relationship with any of the parties to the dispute until after a final decision has ended the process.

S. ***Exclusion from Liability*:** All parties agree not to hold the Synod, its ecclesiastical supervisors, its panels, and all panel members liable for any acts or omissions that occur during the process described in Bylaw section 2.17 and in this manual.

T. ***Involvement of Insurers*:** If a dispute involves an alleged injury or damage that may be covered by a party's insurance, the insurer shall be notified and may be invited to participate in the Bylaw section 2.17 process in order to facilitate a prompt solution. In the event that an insurer decides to participate in the process, the insurer must also agree to be bound by its final decision.

U. ***Involvement of a Party's Congregation*:** Sinful words and actions of a party are a concern of that party's congregation (Matt. 18:15–20; 1 Cor. 5:1–13; Gal. 6:1–2), as when a party fails to acknowledge and confess a serious sin or fails to demonstrate repentance, or especially when a party has his/her membership in the Synod terminated. When the membership of a party called by a congregation is terminated, this has serious ramifications for the calling congregation (Bylaw section 2.5). The ecclesiastical supervisor shall forward a copy of the decision to the party's congregation, urging the congregation to review the matter and take appropriate steps to fulfill its scriptural and Synod-related responsibilities.

V. ***Continuation of Support*:** When a matter involves an individual's membership, the calling or contracting body shall be encouraged to continue the member's financial support and existing housing and insurance benefits until a final decision is rendered (Bylaw 2.17.9.1).

W. ***Right to Object*:** If any party learns that any provision of this *Standard Operating Procedures Manual* has not been complied with and fails to object in writing within three (3) days after learning that the provision has not been complied with, the party shall be deemed to have waived the right to object. Issues raised in a timely manner shall be considered and resolved by the appropriate panel (Bylaw 2.17.9.2).

X. ***Consequences of Violations*:** Any member of the Synod involved in this bylaw procedure who intentionally and materially violates any of its requirements or is persistent in false accusations is subject to disciplinary measures. Violations of the prohibition against publicity while a matter is still undecided or while an appeal is contemplated or pending (Bylaws 2.17.7.8; 2.14.7.8 [g]) are specifically to be included as violations that are subject to the disciplinary measures set forth in the process (Bylaw 2.17.9.2).

Y. ***Retention of Records*:** After a final decision has been rendered, all panel records shall be sealed and placed in the custody of Concordia Historical Institute. They can be opened only for good cause shown and after permission has been granted by a panel of three (3) district presidents selected by blind draw by the Secretary of the Synod.

Z. ***Distribution of Manual*:** All parties to a dispute shall receive copies of this *Standard Operating Procedures Manual* when specified in this manual. It is the responsibility of the district president who serves as consultant to see that the accuser receives the manual. It is the responsibility of the district president of the accused to see that the accused receives the manual when he/she is notified that a consultation is underway.

AA. ***Interpretation and Application of Standard Operating Procedures Manual Provisions*:** Panels and ecclesiastical supervisors are responsible for interpreting and applying the principles, regulations, and other provisions provided in this manual. General questions regarding the process may be discussed with the Secretary of the Synod. Specific questions may be directed to the Commission on Constitutional Matters, whose

responsibility it is to maintain this manual in consultation with the Secretary of the Synod and with the concurrence of the Council of Presidents. Should the provisions of this manual vary from the Constitution or Bylaws of the Synod, the Constitution and Bylaws shall control and supersede.

BB. ***Exceptions to Time Limits*:** Pending criminal or civil court proceedings permit exceptions to the time limits specified, at the discretion of the administrator of the process in consultation with the ecclesiastical supervisor.

III. Flow Chart for Bylaw Section 2.17

1. Consultation with District President (2.17.3)

1.1 Accuser consults with district (or Synod) president; receives manual
1.2 Ecclesiastical supervisor may consult with others as appropriate

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2. Commencing Action (2.17.4 – 2.17.5)

2.1 Ecclesiastical supervisor of accused becomes/is made aware of allegations
2.2 Ecclesiastical supervisor informs accused at earliest opportunity; provides manual
2.3 Ecclesiastical supervisor thoroughly investigates
2.4 Ecclesiastical supervisor may appoint an investigative committee
2.5 Referral Panel may be formed to make a determination
2.6 Decision not to initiate formal proceedings terminates the matter
2.7 Decision to proceed commences suspension

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3. Commencing Formal Proceedings (2.17.6)

3.1 Ecclesiastical supervisor provides notification of suspended status to the accused
3.2 Ecclesiastical supervisor provides statement with facts to the accused
3.3 Ecclesiastical supervisor provides notification of right to request hearing (15 days)
3.4 Failure of accused to request hearing results in expulsion
3.5 Request for hearing is forwarded by ecclesiastical supervisor to Secretary of Synod

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4. Hearing Panel (2.17.7)

4.1 Ecclesiastical supervisor provides statement and memorandum
4.2 Secretary of Synod forms Hearing Panel and selects hearing facilitator (15 days)
4.3 Secretary of Synod forwards statement and memorandum to the panel
4.4 Hearing facilitator selects date and location for hearing (45 days)
4.5 Hearing Panel conducts hearing according to guidelines
4.6 Hearing Panel issues written decision (30 days)
4.7 If not appealed, the decision of the panel is final

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5. Final Hearing Panel (2.17.8)

5.1 Accused may request final hearing (15 days)
5.2 Final Hearing Panel selected (30 days)
5.3 Hearing Panel chairman provides statement and record
5.4 Final Hearing Panel conducts hearing according to guidelines (45 days)
5.5 Final Hearing Panel issues written decision (30 days)
5.6 Final Hearing Panel decision is binding

IV. Flow Chart Detail for Bylaw Section 2.17

1. Consultation with District (or Synod) President (Bylaw 2.17.3)

1.1 *Accuser consults with district president (or President of Synod); receives manual*

Prior to any formal written complaint or accusation, when any person is aware of information or facts that could lead to the expulsion of an individual member from the Synod, including a district president, an officer of the Synod, or the President of the Synod under Article XIII of the Constitution for alleged sexual misconduct or criminal behavior, the person shall consult with the appropriate ecclesiastical supervisor, which would be a district president of the Synod or the President of the Synod, to seek advice, direction, and spiritual ministry as the needs and circumstances dictate. If the accused is the President of the Synod, the person shall consult with the chairman of the Council of Presidents. [2.17.3]

- Filing a formal written complaint or accusation under Bylaw section 2.17 is not a right and responsibility reserved only for members of the Synod, that is, its congregations and ministers of religion—commissioned and ordained. This is a right available to any person who has information regarding sexual misconduct or criminal behavior information that could lead to expulsion of a member from the Synod. The accuser will be asked to provide the information in writing or to sign a written statement prepared by the ecclesiastical supervisor.
- The person who brings forward information must meet with an appropriate ecclesiastical supervisor to receive advice, direction, and spiritual care. In the case that the subject of the information is the President of the Synod, the person bringing the information should be directed to the chairman of the Council of Presidents, who shall fill the role of the ecclesiastical supervisor.
- The meeting with the ecclesiastical supervisor shall be private and no formal record shall be kept of the discussion. The ecclesiastical supervisor shall provide the accuser with a copy of the *Standard Operating Procedures Manual* at this time.
- Throughout the consultation with the accuser, it is the responsibility of the ecclesiastical supervisor to provide counsel and care in an evangelical manner that does everything reasonable to avoid harm to the reputations of the parties involved in the matter.

1.2 *Ecclesiastical supervisor may consult with others as appropriate*

In regard to this consultation:

(a) The appropriate ecclesiastical supervisor may consult with any others as considered appropriate under the circumstances.
(b) If the accuser is a member of the LCMS or a member of an LCMS congregation, the ecclesiastical supervisor shall discuss with the accuser whether this bylaw provision or Bylaw section 1.10 is appropriate under the circumstances.
(c) The ecclesiastical supervisor shall provide evangelical supervision, counsel, and care.
(d) The ecclesiastical supervisor shall advise the accuser that it is understood that he/she shall not be put under risk by requiring the accuser to meet face-to-face with the accused in the manner described in Matthew 18:15. However, the reputation of all parties, the accuser and the accused, is to be protected as commanded in the Eighth Commandment. [2.17.3]

- It is the sole responsibility of the ecclesiastical supervisor to evaluate the information that has been shared and to provide proper direction to the accuser regarding the proper bylaw process to be used. Much rests upon the good judgment of the ecclesiastical supervisor, since his decision shall be followed.

- It is the responsibility of the ecclesiastical supervisor also to provide counsel, and care to the accuser and to other individuals and congregations who may become involved. He may request assistance from circuit counselors and others as necessary.
- The ecclesiastical supervisor may consult with others as appropriate, including the ecclesiastical supervisor of the person who is the subject of the information that is being shared, such conversation to assist in providing proper direction to the person bringing the information forward.
- To protect the reputations of all who are involved, all conversation and exchange of information shall be held in strict confidence by all who are involved, including ecclesiastical supervisors. Assurance must be given to the person bringing forward the information that his/her safety will not be put at risk.
- It is essential that these conversations and exchanges of information consistently reflect a presumption of innocence.

2. Commencing an Action (Bylaw 2.17.4–2.17.5)

2.1 *Ecclesiastical supervisor of accused becomes/is made aware of allegations*

Under this bylaw (Bylaw section 2.17), the ecclesiastical supervisor of the accused shall commence the following action when he becomes aware of information or facts that could lead to expulsion of the member from the Synod under the provisions of Article XIII of the Constitution. The district president, the President of the Synod, or the chairman of the Council of Presidents may become aware of such information or facts by his own personal knowledge. Such information or facts may also be conveyed to him in a formal written complaint or accusation made by any person. In commencing such action, the ecclesiastical supervisor of the accused:

> **(a) Shall determine whether the provisions in Bylaw 2.17.3 have been followed…** [2.17.4]

In the event the district president has a conflict of interest or is unable to act, the next qualified officer of the district shall function in his place. The President of the Synod, who is ecclesiastical supervisor of the district president, shall determine any challenge to the eligibility of the district president to act, which is not agreed to by the district president.

> **(a) In the event that the district president is the accused, the President of the Synod shall function in such instance;**
> **(b) In the event that the accused is an officer of the Synod, the President of the Synod shall function in such instance;**
> **(c) In the event that the accused is the President of the Synod, the chairman of the Council of Presidents shall function in such instance, and the matter shall thereafter proceed as set forth in Bylaw 2.16.4.4–2.16.10.4** [2.17.4.1]

- Use of this bylaw section is reserved solely for addressing information or allegations of sexual or criminal behavior misconduct that could lead to expulsion of an individual member from the Synod. Information or allegations of a different nature or of lesser consequence shall be addressed using other bylaw sections.
- Ordinarily, a formal written complaint shall be signed and dated, the ecclesiastical supervisor also verifying that the required consultation has taken place. In situations in which a victim of sexual misconduct is reluctant or refuses to put a complaint in writing, the ecclesiastical supervisor shall proceed with an investigation and appropriate discipline even without a written and signed complaint.
- A member congregation bringing forward information or allegations shall be represented by its chairman or a designated member of the congregation. The congregation shall have identified and authorized its representative prior to his/her signing of a formal complaint.
- The formal written complaint and all communications become a part of the official record of the matter that is begun by the ecclesiastical supervisor who served as consultant and transmitted to the district president of the accused.

- Challenges to the eligibility of an ecclesiastical supervisor shall be handled as instructed by Bylaw 2.17.4.1. In cases in which the eligibility of the district president is challenged, and the district president does not agree, the matter must be explained in writing to the President of the Synod by the district president, with opportunity for input also provided to the challenger. The President of the Synod will communicate his decision in writing, with all communications included in the official record of the matter.

2.2 *Ecclesiastical supervisor informs the accused at earliest opportunity; provides manual*

(b) Shall inform the accused of the accusation at the earliest appropriate time (cf. Matthew 18:15). [2.17.4 (b)]

- The accused shall be asked to meet with his/her ecclesiastical supervisor to be informed regarding the written statements and allegations that have been received and to have opportunity to respond. A written record of this meeting shall be prepared and shared with the accused prior to its inclusion in the official record of the investigation in order to provide to the accused opportunity for additional written comment.
- The ecclesiastical supervisor shall provide a copy of the *Standard Operating Procedures Manual* accompanying this Bylaw section 2.17 process to the accused.
- The accused shall be informed that he/she is expected to refrain from initiating any personal or private contact with the accuser(s) while the investigation is underway.

2.3 *Ecclesiastical supervisor thoroughly investigates*

…and shall thoroughly investigate whether the allegations of the accuser can be substantiated. [2.17.4 (a)]

- The purpose of the thorough investigation will be (1) to determine the truth of the accusations that have been raised, (2) to assess the full extent and consequences of any misconduct that may have taken place, and/or (3) to determine whether sufficient reason exists to warrant the member's expulsion from the Synod under Article XIII of the Constitution.
- A thorough investigation shall begin with an initial inquiry, conducted to determine whether evidence exists to support the allegation(s) and warrant continuation of the investigation. To the extent possible, effort shall be made during this initial inquiry to protect the anonymity of the accuser and to protect the reputation of the accused.
- In cases of insufficient evidence to support the allegation(s) and to warrant the continuation of the investigation, the ecclesiastical supervisor shall close the investigation, terminating the matter. The person bringing forward the information or accusation shall be informed. The accused shall also be informed.
- In cases in which sufficient evidence exists to support continued concern regarding the conduct of the accused, the ecclesiastical supervisor shall continue the thorough investigation.
- Care shall be taken during the investigation to offer spiritual support and guidance to the involved parties.
- The ecclesiastical supervisor of the accused shall attempt to meet or speak with the complainant(s). A written record of all meetings and conversations will be maintained and shared with the accuser(s) prior to its inclusion in the official record of the investigation. If additional accusations surface, signed detailed written statements shall be obtained. Accusers shall be informed that, in the interest of fairness to the accused, their names may be revealed in the course of the Bylaw section 2.17 process.
- The investigation shall also include interviews with persons suggested by the accuser(s) or the accused, as well as other witnesses as necessary for a full and thorough investigation. A written summary of these interviews shall be prepared for inclusion in the official record of the case. Other documents that surface during the investigation shall also be requested and retained for inclusion in the official record of the investigation.

- The ecclesiastical supervisor shall give consideration to all evidence relating to the allegations brought forward against the accused, presuming innocence/fitness for ministry until otherwise established by clear and convincing evidence.

2.4 *Ecclesiastical supervisor may appoint an investigative committee*

… He may appoint a small investigation committee (cf. Bylaw 4.4.6); [2.17.4 (a)]

- The ecclesiastical supervisor may authorize other persons to assist him in reviewing the allegations and in conducting the investigation.
- In those cases in which the ecclesiastical supervisor did not personally conduct the investigation, his representative(s) shall submit to him a full report that includes all materials surfaced by their investigation.

2.5 *Referral Panel may be formed to make a determination*

In the determination whether or not to initiate formal proceedings, the district president may form a Referral Panel consisting of three circuit counselors of the district.

(a) If three circuit counselors from the district are not available to serve by reason of conflict of interest or otherwise, the district president may select a sufficient number from other districts in order to form the panel.
(b) This panel shall be formed by blind draw and shall not include the circuit counselor of the accused or the accuser. The blind draw shall be administered by the district president audited by witnesses. [2.17.5]

If the district president fails to act within 60 days after receipt of the formal written complaint or accusation, the accuser may present a formal written request to the district president for the forming of the Referral Panel, which request the district president must grant. If the provisions of Bylaw 2.17.4 have not been carried out, the Referral Panel shall carry out these provisions in the process of making its determination whether or not to initiate formal proceedings. [2.17.5.4]

In the event that the accused is a district president, an officer of the Synod, or the President of the Synod, the Referral Panel shall consist of three district presidents selected by a blind draw administered by the chairman of the Council of Presidents and audited by witnesses. Such panel, which shall exclude any involved district president, shall function as set forth hereafter. [2.17.5.1]

After reviewing the accusation and the results of the investigation, the Referral Panel shall make the determination whether or not to initiate formal proceedings. [2.17.5.2]

- It is the responsibility of the ecclesiastical supervisor or his representative to act within 60 days of receipt of the formal written complaint. He may choose to form a Referral Panel to assist him by reviewing the accusation and the results of the investigation and make a determination whether or not to initiate formal proceedings. A Referral Panel shall also be formed if the ecclesiastical supervisor or his representative fails to act within 60 days of the receipt of a formal written complaint.
- "Fails to act" is to be regarded as "no measures taken within the required period of time (60 days from the date of receipt of the formal written complaint) to ascertain the truth or falsity of the accusations or the stifling of a complaint by the refusal to act" (paragraph [g] of Bylaw 2.14.2). A request for a Referral Panel by an accuser must be granted in all cases in which the ecclesiastical supervisor of the accused has failed to act within the required 60-day time period.
- When a Referral Panel is formed, it also is responsible for determining that the provisions of sections 2.1 to 2.4 (above) have been carried out. In such case as a Referral Panel determines that the above provisions have not been carried out, it shall under the leadership of its chairman carry out those provisions as part of its responsibility for making its required determination.

- The Referral Panel shall be selected by blind draw by the involved ecclesiastical supervisor. To accomplish a blind draw, such method shall be used that will accomplish a truly "blind" draw and shall be carried out in the presence of at least two (2) other neutral persons, with written verification signed and dated by the witnesses to the blind draw attesting to the proper conduct of the draw.
- A blind draw shall be used when more than three (3) circuit counselors (or, when applicable, district presidents) are available for service. If only three (3) are available, they shall constitute the panel. If less than three (3) are available (in the case of circuit counselors), those available shall serve on the panel and a blind draw that includes at least two (2) names of circuit counselors for each panel position to be filled from neighboring circuits in an adjacent district shall be conducted to complete the selection of the panel. If a panel member withdraws or is unable to perform his/her required duties after a panel has been formed and has begun its work, the remaining panel members shall continue without the vacancy being filled.
- Upon its selection and notification by the ecclesiastical supervisor (who shall identify a convener), the panel shall meet initially in person or by telephone conference to select its chairman and a secretary. The chairman shall provide leadership to the panel, make arrangements for its meetings and otherwise represent the panel as necessary. The secretary of the panel shall maintain a record of the panel's activity and findings.
- The ecclesiastical supervisor shall provide to the Referral Panel all documents and information regarding the matter that are at his disposal, including copies of documents in the official report received from the accuser's district president. The panel shall also retain a written record of its own activities and findings leading up to its decision. This written record shall be included in the official record of the case.
- A majority of the members of the Referral Panel shall constitute the required quorum. A decision of the panel shall require a minimum of two (2) affirmative votes from the panel. In the event that a decision cannot be reached, a new panel shall be formed immediately.
- Decisions shall be rendered in writing and signed by the chairman of the panel. A decision shall state the facts determined by the panel and the facts supporting its decision. If agreement is reached between parties during the course of the panel's work and prior to its rendering a decision, the panel shall nonetheless arrive at a final decision, setting forth in its decision the terms of any such agreements to the extent that they were relied upon in reaching the decision.
- Any pending criminal or civil court proceedings permit exceptions to any of the time limits specified, at the discretion of the ecclesiastical supervisor.

2.6 ***Decision not to initiate formal proceedings terminates the matter***

Whether made by the district president or the Referral Panel, if the determination is not to initiate formal proceedings, the district president shall in writing so inform the accuser, any other district president involved, and the involved member, which shall terminate the matter. [2.17.5.3]

- If the validity of accusation(s) received has not been established or if the investigation fails to uncover sufficient cause for suspension, the ecclesiastical supervisor shall close the inquiry and inform the accuser(s) and the accused of the decision.
- The ecclesiastical supervisor shall offer to issue a public statement as necessary to aid in restoring the accused member's reputation.
- Sensitivity shall be shown to accusers and their concerns, and referral to professional resources shall also be provided according to perceived need for restoration and healing.
- As necessary, attention shall be given to enabling the accused to take responsibility for any behavior and consequences associated with any concerns uncovered by the investigation that, while valid, did not warrant suspension of membership.
- Accurate information shall be provided to the peers of the accused as judged necessary and helpful by the ecclesiastical supervisor.

- District and Synod legal counsel shall be informed if the accuser threatens legal action or retains representation by counsel upon receipt of the ecclesiastical supervisor's decision not to initiate formal proceedings.

2.7 ***Decision to proceed commences suspension***

If the district president or the President of the Synod or the chairman of the Council of Presidents or the Referral Panel, whichever the case may be, concludes that the facts form a basis for expulsion of the member under Article XIII of the Constitution,… [2.17.6]

- When the validity of accusation(s) received has been established by clear and convincing evidence, the ecclesiastical supervisor shall proceed to carry out his supervisory responsibility, including consulting with other resource persons as appropriate to assess professional and personal consequences, and initiating formal proceedings for expulsion of the member from the Synod when warranted under Article XIII of the Synod's Constitution.
- Sensitivity shall continue to be shown to all victims of the actions of the accused, to include referral to professional resources as necessary for assistance in assessing needs and obtaining resources for restoration and healing.
- Diligent attention shall continue to be given to enabling the accused to take full responsibility for wrongful behavior and its consequences and to make use of the services of qualified professionals to assist with moral and spiritual rehabilitation.
- In the case of the suspension of individual members, the involved ecclesiastical supervisor shall inform and spend time with the family of the worker to assess needs, provide reasonable support, and offer referral to competent professional care as appropriate.
- Accurate information shall be provided to those affected by the investigation and the decision to suspend on a need-to-know basis as judged necessary and helpful by the involved ecclesiastical supervisor.
- Leaders of the affected congregation(s) and the church-at-large shall be consulted to evaluate needs for information and assistance, especially when misconduct has been established and/or a resignation has been tendered.
- District and Synod legal counsel shall be consulted if the accused threatens legal action or is represented by counsel to determine the need to inform insurers and as otherwise deemed appropriate by the involved ecclesiastical supervisor.

3. Commencing Formal Proceedings (Bylaw 2.17.6)

3.1 ***Ecclesiastical supervisor provides written notification of suspended status to the accused***

If the district president or the President of the Synod or the chairman of the Council of Presidents or the Referral Panel, whichever the case may be, concludes that the facts form a basis for expulsion of the member under Article XIII of the Constitution, the appropriate ecclesiastical supervisor in commencing the formal proceedings shall

(a) provide to the member a written notification of the member's suspended status under Bylaw 2.13.4;… [2.17.6 (a)]

- When possible, notification shall be made in a manner that results in a signed receipt to verify delivery, thereby to provide evidence that the notification was received by the accused member and to establish the date of its receipt.
- In the event that a party cannot be located or appears to be avoiding the process by refusing to sign a delivery receipt, ordinary first class mail sent to the last known address, with allowance for sufficient time for delivery, shall, after two (2) failed attempts by certified or other signature-requiring mail, suffice to provide notice.

- The notification of suspended status shall include reference to Bylaws 2.13.4–2.13.4.3 and their provisions for such status.

3.2 *Ecclesiastical supervisor provides statement with facts to the accused*

(b) provide to the member a written statement of the matter which sets forth the facts and states that he is requesting expulsion of the member from the Synod in accord with Article XIII of the Constitution;… [2.17.6 (b)]

- This written statement of the matter requires careful preparation, since it will serve as the basis for the proceedings that follow. It will also serve as the subject of the defense of the accused. The statement should be concise, contain factual assertions regarding the issues of the case, and demonstrate their relevance to Article XIII of the Constitution and its stated causes for expulsion from membership in the Synod.
- The statement becomes a part of the official record of the matter maintained by the ecclesiastical supervisor.

3.3 *Ecclesiastical supervisor provides notification of right to request hearing (15 days)*

(c) provide to the member a written notification that the member has 15 days from the date of receipt of the statement of the matter to advise his ecclesiastical supervisor that there is a desire to have the matter heard and resolved. [2.17.6 (c)]

- When possible, notification shall be made in a manner that results in a signed receipt to verify delivery, thereby to provide evidence that the notification was received by the accused member and to establish the date of its receipt.
- This notification, which accompanies the notification of suspended status and a written statement of the matter must make clear to the accused how the end date of the 15-day period will be calculated, also making clear that a request for a hearing must be directed back to him as the ecclesiastical supervisor.
- When an individual member is placed on suspended status, the ecclesiastical supervisor shall encourage his/her congregation or other calling entity to continue to provide to the worker financial and other support at current levels until a final decision is reached.

3.4 *Failure of accused to request hearing results in expulsion*

Failure by the member to file such written request for hearing and resolution within the 15-day period shall be deemed to be consent to expulsion from membership in the Synod. [2.17.6.1]

- A written request for a hearing and resolution of the matter must include means of verification that it was sent within the required 15-day period of time.
- After sufficient time has passed to ascertain that a written request for a hearing will not be filed by the suspended member, the involved ecclesiastical supervisor shall inform the member of his/her expulsion from the Synod.
- The ecclesiastical supervisor shall inform the Synod's Department of Rosters and Statistics and the members of the Council of Presidents of the termination of membership. The date of termination to be reported is the date on which the member was notified of expulsion from the Synod.
- The ecclesiastical supervisor shall also inform other members and entities of the Synod of the expulsion on a need-to-know basis.
- The ecclesiastical supervisor shall take such steps as are possible and necessary to assure that the spiritual needs of the expelled member are met.
- If a written request for hearing and resolution is not filed within the prescribed time, the member's membership ceases and all records of the matter shall be retained in the office of the ecclesiastical supervisor for future reference.

3.5 *Request for hearing is forwarded by ecclesiastical supervisor to Secretary of Synod*

If the request for hearing as granted in Bylaw 2.17.6 (c) is made, the ecclesiastical supervisor shall inform the Secretary of the Synod… [2.17.7]

- After the ecclesiastical supervisor receives a request for hearing from the accused, it is solely his responsibility to inform the Secretary of the Synod that a Hearing Panel will be needed.
- The written request for a hearing and resolution of the matter shall be forwarded immediately to the Secretary of the Synod to allow maximum time for the formation of the Hearing Panel. When possible, verbal notification should precede the delivery of the written request.
- The original signed copy of the written request shall become a part of the official record of the matter along with all previous documentation heretofore retained by the district president.
- When the Secretary is involved personally as a witness or has a direct interest in the outcome of the matter, an alternate administrator shall be appointed by the President of the Synod. If a party intends to present testimony or evidence which would suggest the potential need for the Secretary to become a witness, such intention must be raised in a timely manner so that the administrator has opportunity to recuse himself and a replacement administrator can be appointed.

4. Hearing Panel (Bylaw 2.17.7)

4.1 *Ecclesiastical supervisor provides statement and memorandum*

At the time that the request for hearing is made, the ecclesiastical supervisor shall forward to the Secretary of the Synod the statement of the matter and a written memorandum describing the manner in which there was compliance with the provisions of Bylaws 2.17.3 – 2.17.7. [2.17.7.1]

- The "statement of the matter" that is to be provided to the Secretary of the Synod is a copy of the statement that was provided to the accused member at the time of notification of the member's suspended status. The Secretary will forward copies of the statement to the members of the Hearing Panel when it is formed. The copy of the statement of the matter received by the Secretary shall be included in the official record of the matter, which now remains with the Secretary for the duration of the process.
- The additional "written memorandum" requires careful preparation by the ecclesiastical supervisor of the suspended member, as copies will be forwarded to the Hearing Panel via the Secretary of the Synod to demonstrate to the panel that all constitutional and bylaw requirements were met. This document, too, is to be included in the official record of the matter that remains with the Secretary of the Synod for the duration of the process.

4.2 *Secretary of Synod forms Hearing Panel and selects hearing facilitator*

…who [the Secretary of the Synod] **shall initiate the formation of a Hearing Panel, such formation to be accomplished within 30 days of the request in accordance with the provisions in this bylaw.** [2.17.7]

A Hearing Panel consisting of two district presidents (excluding the involved district presidents) and one reconciler who is a layperson, selected as follows, shall conduct the hearing:

(a) One district president shall be selected by the accused;

(b) One district president shall be selected by the ecclesiastical supervisor who imposed the suspended status (a district president may not choose himself);

(c) One reconciler who is a layperson shall be chosen by blind draw from the Synod's roster of reconcilers, with the blind draw administered by the Secretary of the Synod and audited by witnesses.
(d) Each Hearing Panel shall be assisted by a nonvoting hearing facilitator selected according to Bylaw 2.14.2 (j).
(e) The hearing facilitator shall administrate the hearing, shall serve as chairman of the panel, and may draw upon persons and resources as he/she deems necessary for conducting a hearing in a fair and equitable manner.
(f) The hearing facilitator shall serve as an advisor to the panel on the form but not the substance of the decision. [2.17.7.2]

Upon receipt of a request for hearing, the Secretary of the Synod shall promptly notify the accused and the involved ecclesiastical supervisor of their respective right to choose one Hearing Panel member and direct that the identity of their selection be transmitted to the Secretary of the Synod within 15 days from the date of such notice. If either party declines to make a selection within such 15-day period, the Secretary of the Synod shall then make such selection within five days. [2.17.7.3]

The Secretary of the Synod shall also promptly select a lay reconciler to serve as a third member of the Hearing Panel and a hearing facilitator to assist the panel. [2.17.7.4]

When the Hearing Panel members and hearing facilitator have so been chosen, they shall promptly be notified of their selection to the Hearing Panel. [2.17.7.5]

- When a request for a hearing has been made, the Secretary of the Synod shall facilitate the formation of the requested panel in the manner described in the bylaw. He shall also serve as timekeeper to assure that the panel observes the time requirements provided in the bylaws, a service that his office will continue to provide throughout the remainder of the panel process.
- When possible, notifications to the accused and the ecclesiastical supervisor who imposed the suspended status should be made in a manner that will result in a signed receipt to verify delivery, thereby to provide evidence that the notifications were received and to verify the date of their receipt.
- Responses to the notification must be postmarked within the required time limits. After sufficient time has passed to make certain that any required responses will not be received, the Secretary of the Synod shall proceed to move the panel selection process forward.
- If either party fails to make a selection, the Secretary of the Synod shall make the necessary selection by blind draw. To accomplish a blind draw, such method shall be used as will accomplish a truly "blind" draw, to be carried out in the presence of at least two (2) other neutral persons. Written verification signed and dated by the witnesses to the blind draw shall be required to attest to the proper conduct of the draw.
- To facilitate the honoring of limited time requirements imposed by the bylaws, telephone, e-mail, or fax messages may precede original copies of signed responses, thereby allowing the Secretary of the Synod to proceed with his responsibilities prior to his reception of the official responses.
- Upon completion of the formation of the Hearing Panel, information regarding the membership of the panel shall be provided by the Secretary of the Synod to the accused, the ecclesiastical supervisor, and the panel members.
- All documentation associated with panel selection shall be included in the official record of the matter maintained by the Secretary of the Synod.

4.3 *Secretary of Synod forwards statement and memorandum to the panel*

The Secretary of the Synod shall forward to the Hearing Panel the statement of the matter together with the written memorandum describing the manner in which there was compliance with the provisions of Bylaws 2.17.3–2.17.7. [2.17.7.7]

- Certified copies of the documents previously forwarded by the ecclesiastical supervisor of the accused to the Secretary of the Synod [Bylaw 2.17.7.1] are forwarded by the Secretary to the members of the Hearing Panel at the time of their notification of selection to the panel.
- When the members of the panel have been notified, the hearing facilitator shall arrange for an initial meeting of the panel, in person or by telephone conference.
- The panel shall designate one of its members to serve as its secretary to prepare and maintain a record of the panel's meetings and proceedings. The secretary of the Hearing Panel shall be responsible for the official record of the matter before the panel. He/she shall retain for the record his/her copies of the statement and memorandum documents upon their receipt from the Secretary of the Synod, and maintain a record of the panel's activity, its hearing(s), the evidence received, and its findings, acquiring and retaining for the official record original copies of all documents provided to the panel prior to and during the hearing(s).
- A majority of the members of the panel shall constitute the quorum required in all stages of the panel process. If a panel member withdraws or is unable to perform required duties after a panel has begun its work, the remaining panel members shall continue without filling the vacancy. Decisions by the panel shall continue to require two (2) "yes" votes.

4.4 *Hearing facilitator selects date and location for hearing*

Within 15 days after the Hearing Panel is constituted, the hearing facilitator shall, after conferring with the panel, the accused, and the involved ecclesiastical supervisor, select a location and date within 45 days after the Hearing Panel was constituted for the panel to hear and consider the matter. [2.17.7.6]

- A preliminary conference of the hearing facilitator, the accused, and the ecclesiastical supervisor of the accused may be scheduled to arrange for the exchange of information and the stipulation of uncontested facts to expedite the panel proceedings. Such conferences may also arrange for the production of relevant evidence, identify potential witnesses, schedule a hearing, and consider other matters that will expedite the panel proceedings.
- Panels may require that the accused and the ecclesiastical supervisor deliver to the panel and to each other copies of the documents that they plan to introduce and a list of the witnesses they plan to call. All documents shall be delivered through the office of the Secretary of the Synod by such method and dates as are determined by the panels. The panel may decide at any time during the process, however, not to accept any communication outside of hearings.
- The formal hearing before the Hearing Panel shall take place within 45 days after the date that the Secretary of the Synod notified the members of the panel of their selection.
- Meeting arrangements shall be the responsibility of the hearing facilitator after conferring with the accused, the members of the panel, and the ecclesiastical supervisor to identify a suitable time and place for the hearing(s). He/she may call upon the travel and meeting department of the Synod for assistance with meeting, lodging, and travel arrangements.
- The preference of the accused shall be taken into consideration when determining the time, place, and other requirements of a hearing. Ordinarily the hearing shall be located in the vicinity of the residence of the accused member on a date and at a time that will be convenient for the witnesses asked to testify.
- The hearing facilitator shall provide at least ten (10) days' written notice of the time and place of a hearing unless both parties waive such notice requirement. Each party and the panel are responsible for notifying their witnesses.
- Neither party to the matter, or the ecclesiastical supervisor, nor any person acting on either's behalf shall directly or indirectly communicate regarding the matter with a panel or a member of a panel outside of hearings, except as otherwise specifically provided in this manual.

4.5 *Hearing Panel conducts hearing according to guidelines*

The Hearing Panel and all parties shall follow the guidelines as set forth in Bylaw 2.14.7.8 (a)–(j). [2.17.7.8]

(a) Holy Scripture, the Lutheran Confessions, and the Constitution and Bylaws of the Synod shall govern the panel in all its actions.
(b) The hearing before the panel shall be private, attended only by the persons involved and the witnesses who can substantiate the facts relevant to the matter. The only exception is stated under paragraph (h) below.
(c) The panel shall establish the procedure to be followed in the hearing and the relevancy of the evidence so that each party involved shall be given an opportunity fully to present its respective position.
(d) Any member of the Synod, officer of a congregation, or officer of any organization owned or controlled by the Synod shall, when called upon by the panel to do so, testify or produce records related to the matter.
(e) Each party to the matter shall assume its own expenses. The expenses of the panel shall be borne by the district or the Synod.
(f) No party to the matter nor anyone on the party's behalf shall communicate either directly or indirectly with the panel or any member of the panel without the full knowledge of the other party to the matter.
(g) While the matter is still undecided or while an appeal is contemplated or pending, publicity shall not be given to the issues in the matter by any of the persons involved during any part of the procedures outlined in this bylaw. However, at his discretion and as the needs dictate in order to "promote and maintain unity of doctrine and practice" (Constitution Art. XI B 3) and in order to provide counsel, care, and protection for all the members of the Synod (Article III 8, 9), the President of the Synod or the district president in consultation with the President of the Synod, as the case may be, may properly advise or inform the involved congregation(s) and/or the district or the Synod.
(h) Any party to the matter may seek, at its own personal expense, the assistance of individuals familiar with the issues involved in the matter. They may actively participate in research and the preparation of necessary documents. At the hearing, however, each party involved may have an adviser present but must represent itself, with no public participation by the adviser.
(i) The panel shall determine the number of witnesses necessary for a full and complete understanding of the facts involved in the matter. It shall question persons involved and witnesses directly and may also permit the persons involved to do so (cf. paragraph (h) above).
(j) All panel records in which the panel has rendered a final decision shall be placed in the custody of Concordia Historical Institute. All such records shall be sealed and shall be opened only for good cause shown and only after a panel of three district presidents, selected by blind draw for that purpose by the chairman of the Council of Presidents and audited by witnesses, has granted permission.
(k) If any part of the dispute involves a specific question of doctrine or doctrinal application, each party shall have the right to an opinion from the Commission on Theology and Church Relations (CTCR). If it involves questions of constitution or bylaw interpretation, each party shall have a right to an interpretation from the Commission on Constitutional Matters (CCM).

(1) The request for an opinion must be made through the panel, which shall determine the wording of the question(s).
(2) The request for an opinion must be made within 30 days of the final formation of the panel. If a party does not request such an opinion within the designated time, such a request may still be made to the panel, which shall, at its discretion, determine whether the request shall be forwarded. The panel shall also have the right, at any time, to request an opinion from the CCM or the CTCR.
(3) Any opinion so requested shall be rendered within 30 days or such greater time as the panel may allow.
(4) When an opinion has been requested, the time limitations will not apply until the parties have received the opinion. The panel must follow any opinion received from either the CCM or the CTCR. [2.14.7.7]

- The issue to be decided by a Hearing Panel shall be whether the suspension of the accused member of the Synod will be upheld, including whether the ecclesiastical supervisor followed prescribed procedures and whether the burden of proof for expulsion has been met under Bylaw section 2.17 and Article XIII of the Constitution.
- The proceedings of the hearing shall be conducted according to the guidelines provided in this *Standard Operating Procedures Manual*, a copy of which shall have been provided to the accused member at the time that such member was informed that an accusation had been made (see 2.2 above).
- Hearings shall be private, attended only by the panel members, the accused, the ecclesiastical supervisor, and one advisor each if desired. The advisor shall not address the panel or directly participate in the discussions during the hearing. A party to the matter and his/her advisor may be present at all phases of the hearing except deliberations. Subject to the discretion of the panel as to the helpfulness of the presence of others at various points in the hearing process, attendance at hearings shall be limited to witnesses who can substantiate relevant facts to the matter and other "persons involved" (including a witness or advisor or any others involved in the matter).
- The panel shall establish the procedure to be followed to receive evidence and testimony and to determine their relevancy to the decisions to be made by the panel, so that each party in the matter is provided opportunity fully to present its case. Relevance is determined by whether particular evidence will (or will not) support the suspension of the member.
- Witnesses who are able to substantiate the facts relevant to the matter may be called before and address the panel at the request of the accused, the ecclesiastical supervisor, or the panel. The panel may require the ecclesiastical supervisor and the accused to deliver to the panel and to each other a list of witnesses they plan to call and copies of documents they plan to produce. "Expert witnesses" should be designated as such in the witness list provided. When "expert witnesses" are listed, it is the responsibility of the panel to determine whether such testimony will be helpful or necessary for reaching a decision.
- Unless otherwise determined by the panel, witnesses shall attend hearings only during the time that they are giving their own testimony. The panel shall question witnesses directly and may also permit the accused and the ecclesiastical supervisor to do so. The panel will establish the process by which witnesses will testify and be available for questioning.
- The hearing facilitator serves as the moderator of the formal hearing.
- Subject to other specific provisions in this manual, all evidence shall be received in the presence of all panel members, the accused, and the ecclesiastical supervisor of the accused except when a party has waived the right to be present or when a hearing proceeds in the absence of a party who fails to be present.
- When a panel proceeds with its hearing in the absence of a party, a decision shall not be made solely on the basis of the default of a party. The panel still shall allow the party to submit such evidence as the panel may find beneficial for reaching its decision. The panel also may, but need not, allow the absent party an opportunity to appear at a subsequent hearing attended by all parties.
- As the panel carries out its responsibilities, it shall continue efforts to reconcile the parties on the basis of Christian love, forgiveness, and justice.
- A panel may reopen a case for good cause and conduct additional hearings at any time before a final decision is rendered.
- At its discretion, the panel may make audio recordings of the proceedings solely for its own use. Such recordings are not to be regarded as part of the record of the matter. No other recording of the proceedings of a hearing, aside from the participants' personal notes, may be made in any manner.

4.6 ***Hearing Panel issues written decision***

Upon completion of the hearing, the Hearing Panel shall deliberate and then issue its written decision within 30 days, a copy of which shall be mailed to the accused, the involved district president, the accuser and the ecclesiastical supervisor who initially served as consultant to the accuser, the Secretary of the Synod, and the President of the Synod.

(a) The decision of the Hearing Panel shall have no precedential value and shall be final and binding subject to appeal by the accused. [2.17.7.9]

- The written decision of the panel shall be issued within 30 days of the date of the completion of the hearing.
- A panel decision of any matter shall be decided by two (2) votes of the panel. In the event that a decision cannot be reached, a new panel shall be formed immediately and the matter reheard.
- Decisions shall be rendered in writing and signed by the chairman of the panel. The decision of the panel shall state the facts determined by the panel and the basis for the panel's decision (see *Appendix A* of this manual).
- If agreement is reached by reconciliation or resignation during the course of the hearing prior to a decision being rendered, the panel shall nonetheless arrive at a final decision. The final decision in such case shall set forth the terms of the agreement(s) to the extent relied upon in reaching the decision. A written copy of the agreement shall include the basis for the resolution of the matter, signed by the accused and the ecclesiastical supervisor and approved by the panel.
- The decision shall be provided to the accused by mail in a manner that requires a signature upon receipt, thereby to furnish evidence that the document has been received and to verify the date of the receipt of the notification, which triggers the 15-day prescribed time period for an appeal. The decision shall be provided to the ecclesiastical supervisor who imposed the suspension, the accuser, and the President and Secretary of the Synod without return receipt signature requirements.
- Notification shall make clear to the accused how the 15-day period for appeal is determined and to whom a request for a final hearing may be directed.
- All earlier documentation of the matter and all records of the panel, including an original signed copy of the panel's decision and post office receipts indicating the date of reception of the decision by the parties, shall accompany the notification sent to the Secretary of the Synod.

4.7 *If not appealed, the decision of the panel is final*

(b) The decision shall be carried out by the district president or President of the Synod and publicized as deemed appropriate under the circumstances by the district president or the President of the Synod, if not appealed by the accused. [2.17.7.9 (b)]

- Reception of signed receipts from the post office or other carrier indicates reception of the written decision and establishes the date for the beginning of the 15-day time allowance for a response.
- Publicity regarding the panel decision shall not be provided by the ecclesiastical supervisor or the President of the Synod until it is clear that time has elapsed for the request for a final hearing.
- The Secretary of the Synod shall be responsible for the transmission of the complete record of the case to Concordia Historical Institute after a final decision has been rendered. Such records shall remain sealed, to be opened only for good cause shown and after permission has been granted by a panel of three (3) district presidents selected by blind draw for this purpose by the Secretary of the Synod (cf. Bylaw 2.14.7.8 [j]).

5. Final Hearing Panel (Bylaw 2.17.8)

5.1 *Accused may request a final hearing*

Within 15 days after receiving the decision of the panel, the accused may request a final hearing.

(a) Such request for a hearing shall be submitted to the Secretary of the Synod with copies supplied to the ecclesiastical supervisor ministering to the accuser, if applicable, the district president of the accused, the chairman of the Hearing Panel, the accuser, and the President of the Synod.

(b) A written memorandum stating the basis for the request shall accompany the request for a final hearing. [2.17.8]

- The written request for a final hearing with its accompanying memorandum stating the basis for the request shall be submitted to the Secretary of the Synod no later than the 15th day after the decision of the Hearing Panel was received. If sent by mail, it shall be postmarked no later than the 15th day. If sent by fax or electronic mail, it shall be dated and transmitted no later than the 15th day.
- The request for a final hearing may be made by the accused for any reason related to the conduct of the hearing or the decision of the Hearing Panel.
- The accompanying memorandum stating the basis for the request should be specific to assist the Final Hearing Panel, identifying areas of concern or disagreement with the Hearing Panel's decision.
- To allow maximum time for the formation of the Final Hearing Panel, verbal notification, when possible, should precede the formal submission of the request for a final hearing and its accompanying memorandum. The receipt of the written request determines the beginning date of the 30-day allowance for selection of Final Hearing Panel members.
- The original copies of the written request and memorandum, retained by the Secretary of the Synod, become a part of the official record of the matter.

5.2 *Final Hearing Panel is selected*

Within 30 days after receipt of the request, a Final Hearing Panel shall be selected.

(a) The panel shall be constituted in the same manner as described in Bylaws 2.17.7–2.17.7.6, except that the district presidents that constituted the Referral Panel and the district presidents, reconciler, and facilitator associated with the Hearing Panel or any other involved district presidents are omitted from consideration for the Final Hearing Panel. [2.17.8.1 (a)]

- The Secretary of the Synod shall facilitate the formation of the requested panel in the manner described in the bylaws mentioned. He shall also serve as timekeeper to assure that the panel observes the time requirements, a service he shall continue to provide throughout the remainder of the panel process.
- The Final Hearing Panel shall be selected in the same manner as the earlier Hearing Panel, except that the two (2) district presidents, the reconciler, the hearing facilitator who provided assistance to the Hearing Panel, and any other involved district presidents are not to be considered.
- When possible, notifications to the accused and to the involved ecclesiastical supervisor who imposed the suspended status shall be made in a manner that results in a signed receipt to verify delivery, thereby to provide evidence that the notifications were received and to verify the date of their receipt, which establishes the beginning date for the 15-day time requirement.
- Responses to the notifications shall be postmarked within the required time limits. After sufficient time has passed to make clear that the required responses will not be received, the Secretary of the Synod shall proceed to move the panel selection process forward.
- If either party fails to make a selection, the Secretary of the Synod shall make the necessary selection by blind draw. To accomplish a blind draw, such method shall be used as will accomplish a truly "blind" draw, to be carried out in the presence of at least two (2) other neutral persons. Written verification signed and dated by the witnesses to the blind draw shall be required to attest to the proper conduct of the draw.
- To facilitate complying with the limited time requirements imposed by the bylaws, telephone, e-mail, or fax messages may precede original copies of signed responses, thereby to allow the Secretary of the Synod to proceed with his responsibilities prior to his reception of the official responses.
- Upon completion of the formation of the Final Hearing Panel, information regarding the membership of the panel shall be provided by the Secretary of the Synod to the accused, the involved ecclesiastical supervisor, the hearing facilitator, and the panel members. All

documentation associated with panel selection shall be included in the official record of the matter maintained by the Secretary of the Synod.

- The chairman of the panel will provide leadership to the panel and serve as its spokesman. It will be his/her responsibility to communicate with the accused and the ecclesiastical supervisor and the panel members to establish the date and location of the panel hearing; arrange any preliminary conferences with the accused and ecclesiastical supervisor for exchange of information, as necessary; make arrangements for facilities and services for the hearing; oversee the provision of documentation to the panel members, the accused, and the ecclesiastical supervisor; establish the agenda for the hearing; and serve as its moderator.
- The panel shall also designate one of its members to serve as its secretary of the panel. The secretary will be responsible for preparing and maintaining a complete record of the panel's meetings and proceedings, and for acquiring and retaining for the record original copies (when available) of all documents provided to the panel prior to and during the hearing(s).
- A majority of the members of the panel shall constitute the quorum required in all states of the panel process. If a panel member withdraws or is unable to perform required duties after a panel has begun its work, the remaining panel members shall continue without the vacancy being filled. Decisions by the panel will continue to require two (2) "yes" votes.
- The formal hearing by the Final Hearing Panel shall take place within 45 days after the date upon which the Secretary of the Synod notified the members of the panel of their selection.
- Meeting arrangements shall be the responsibility of the hearing facilitator after conferring with the accused, the members of the panel, and the ecclesiastical supervisor to identify a suitable time and place for the hearing(s). He/she may call upon the travel and meeting department of the Synod for assistance with meeting, lodging, and travel arrangements.
- The preference of the accused shall be taken into consideration when determining the time, place, and other requirements of a hearing. Ordinarily the hearing shall be located in the vicinity of the residence of the accused member on a date and at a time that will be convenient for the witnesses asked to testify.
- The hearing facilitator shall provide at least ten (10) days' written notice of the time and place of a hearing unless both parties waive such notice requirement. Each party and the panel are responsible for notifying their witnesses.
- Neither party to the matter, or the ecclesiastical supervisor, nor any person acting on either's behalf shall directly or indirectly communicate regarding the matter with a panel nor a member of a panel outside of hearings, except as otherwise specifically provided in this manual.

5.3 ***Hearing Panel Chairman provides statement and record***

The chairman of the Hearing Panel shall provide the Final Hearing Panel and the accused with a written statement of the matter and the Hearing Panel's report, minutes, records, and proceedings. [2.17.8.1 (c)]

- Copies of the documents previously forwarded by the ecclesiastical supervisor of the accused to the Secretary of the Synod and copies of all other records of the matter, including the record of the Hearing Panel's activity, hearings, evidence received, and findings, and including also the request for a final hearing and its accompanying memorandum shall be forwarded by the Secretary of the Synod to the members of the Final Hearing Panel at the time that they are notified of their selection to the panel.
- When informed that a final hearing has been requested, the chairman of the Hearing Panel shall provide a "written statement of the matter" in response to the written memorandum by the accused member supporting his/her request for a rehearing of the matter by a Final Hearing Panel. These documents are the basis upon which the Final Hearing Panel begins its work. This document is provided to the Secretary of the Synod and also becomes a part of the official record, with copies provided to the members of the panel.
- The secretary of the Final Hearing Panel now becomes responsible for the official record of the matter. He/she also maintains a record of the panel's activity, its hearing(s), the evidence received, and its findings.

5.4 *Final Hearing Panel conducts hearing according to guidelines*

(b) The procedures for the final hearing shall be the same as prescribed in Bylaws 2.17.7.6 –2.17.7.8. [2.17.8.1 (b)]

- See section 4.5 of this *Standard Operating Procedures Manual* for details regarding the procedures to be followed for the final hearing.

5.5 *Final Hearing Panel issues written decision*

Upon completion of the hearing of the Final Hearing Panel, the panel shall deliberate and then issue its written decision within 30 days, a copy of which shall be mailed to the accused, the involved district president, the accuser, the ecclesiastical supervisor who initially served as consultant to the accuser, the Secretary of the Synod, and the President of the Synod. [2.17.8.2]

- The written decision of the Final Hearing Panel shall be issued within 30 days of the date of the completion of the hearing.
- A panel decision of any matter shall be decided by two (2) votes of the panel. In the event that a decision cannot be reached, a new panel shall be formed immediately and the matter reheard.
- Decisions shall be rendered in writing and signed by the chairman of the panel. The decision of the panel shall state the facts determined by the panel and the basis for its decision (see *Appendix B* of this manual).
- If agreement is reached by reconciliation or resignation during the course of a hearing prior to a decision being rendered, the panel shall nonetheless arrive at a final decision. The final decision in such case shall set forth the terms of the agreement(s) to the extent relied upon in reaching a decision. A written copy of the agreement shall include the basis for the resolution of the matter, signed by the accused and the ecclesiastical supervisor and approved by the panel.
- The decision may be provided without return receipt signature requirements since there is no further opportunity for appeal.

5.9 *Final Hearing Panel decision is binding*

The final decision of the Final Hearing Panel shall

(a) be binding upon the parties and not be subject to further appeal;
(b) have no precedential value;
(c) be carried out by the district president or the President of the Synod;
(d) be publicized as deemed appropriate under the circumstances by the district president or the President of the Synod. [2.17.8.2]

- All records of the panel shall accompany the original signed copy of the decision sent to the Secretary of the Synod.
- The Secretary of the Synod shall be responsible for transmitting all records of the case to Concordia Historical Institute. Such records shall be sealed and shall be opened only for good cause and only after permission has been granted by a panel of three district presidents selected by blind draw by the Secretary of the Synod.

Appendix A

Decision of Hearing Panel

Names of Persons Involved:

Suspended Member: _____

District President: _____

Hearing Information:

- *[Provide date, place, and time of hearing(s), persons present, names of witnesses if any, general outline of hearing(s).]*

Issues to Be Decided:

The main issue to be decided by the panel:

- Should the suspension of _____*[name]*_____ be upheld, or should the suspension not be upheld and the full membership of the accused in the Synod be restored?

In order to answer the main issue, the following sub-issues were decided:

- Was proper procedure followed by the district president in suspending the member of the Synod (Constitution, Art. XIII 2; Bylaws 2.17.3–2.17.9.4)?

- Was clear and convincing evidence provided to support the accusations that led to suspension?

- Was the burden of proof for expulsion under Bylaw section 2.17 and Article XIII 1 of the Constitution of the Synod met by the district president?

Summary of Decisions on the Issues:

- The panel determined that proper procedure *[was/was not]* followed by the district president in suspending the member of the Synod.

- The panel determined that clear and convincing evidence *[was/was not]* provided to support the accusations that led to suspension.

- The panel determined that the burden of proof for expulsion under Bylaw section 2.17 and Article XIII of the Constitution *[was/was not]* met.

- Therefore, the panel has determined that the decision to suspend *[should/should not]* be upheld.

Basis for Panel Decisions

- The panel determined that proper procedure *[was/was not]* followed by the district president in suspending the member of the Synod.

  [Provide facts to support decision]
  [Summarize reason(s) for conclusion reached]

- The panel determined that clear and convincing evidence *(was/was not)* provided to support the accusations that led to suspension for the following reasons(s):

  [Provide facts to support decision]
  [Summarize reasons(s) for conclusion reached]

- The panel determined that the burden of proof for expulsion under Bylaw section 2.17 and Article XIII of the Constitution *(was/was not)* met for the following reason(s):

  [Provide facts to support decision]
  [Summarize reasons(s) for conclusion reached]

- Therefore, the panel has determined that the decision to suspend *[should/should not]* be upheld.

Appeal to a Final Hearing Panel

As provided by Bylaw 2.17.8, within 15 days after receiving a Hearing Panel decision, "the accused may request a final hearing." Such request for a second (and final) hearing, submitted to the Secretary of the Synod, must include a written memorandum stating the basis for the request and must be submitted within 15 days after receiving the decision of the panel. A more detailed description of this process is provided in the *Standard Operating Procedures Manual*.

Signature of Panel Chairman

This concludes the decision of this panel.

Respectfully submitted,

Signed: _____*[Signature of Panel Chairman]*_____ Date: _____

Appendix B

Decision of Final Hearing Panel

Names of Persons Involved:

Suspended Member: _____

District President: _____

Hearing Information:

- *[Provide date, place, and time of hearing(s); persons present; names of witnesses, if any; general outline of hearing(s).]*

Issues to Be Decided:

The main issue to be decided by the panel:

- Should the suspension of _____*[name]*_____ be upheld, or should the suspension not be upheld and the full membership of the accused in the Synod be restored?

In order to answer the main issue, the following sub-issues were decided:

- Was proper procedure followed by the district president in suspending the member of the Synod (Constitution, Art. XIII 2; Bylaws 2.17.3–2.17.9.4)?

- Was clear and convincing evidence provided to support the accusations that led to suspension?

- Was the burden of proof for expulsion under Bylaw section 2.17 and Article XIII 1 of the Constitution of the Synod met by the district president?

Summary of Decisions on the Issues:

- The panel determined that proper procedure *[was/was not]* followed by the district president in suspending the member of the Synod.

- The panel determined that clear and convincing evidence *[was/was not]* provided to support the accusations that led to suspension.

- The panel determined that the burden of proof for expulsion under Bylaw section 2.17 and Article XIII of the Constitution *[was/was not]* met.

- Therefore, the panel has determined that the decision to suspend *[should/should not]* be upheld.

Basis for Panel Decisions:

- The panel determined that proper procedure *[was/was not]* followed in suspending the member for the following reason(s):

  [Provide facts to support decision]
  [Summarize reason(s) for conclusion reached]

- The panel determined that sufficient evidence *[was/was not]* provided to support the accusations that led to suspension for the following reasons(s):

  [Provide facts to support decision]
  [Summarize reasons(s) for conclusion reached]

- The panel determined that the burden of proof for expulsion under Bylaw section 2.17 and Article XIII of the Constitution *[was/was not]* met for the following reason(s):

  [Provide facts to support decision]
  [Summarize reasons(s) for conclusion reached]

- Therefore, the panel has determined that the decision to suspend *[should/should not]* be upheld.

Signature of Final Hearing Panel Chairman

This concludes the decision of this panel.

Respectfully submitted,

Signed: *[Final Hearing Panel chairman]* Date: _____