STANDARD OPERATING PROCEDURES MANUAL

Expulsion from Membership: District President or Officer

BYLAW SECTION 2.15

2010 *Handbook*
The Lutheran Church—Missouri Synod

(Revised September 2011)

Table of Contents

I. GENERAL PRINCIPLES FOR BYLAW SECTION 2.15 3

II. GENERAL REGULATIONS FOR BYLAW SECTION 2.15 7

A. Purpose of General Regulations 7
B. Process Administrator 7
C. Definitions of Terms 7
D. Parties to the Matter 8
E. Filing a Complaint 8
F. Required Consultation 8
G. Investigations 9
H. Provision of Notices 9
I. Evangelical Care 9
J. Advisors 9
K. Attendance at Hearings 9
L. Witnesses and Evidence 9
M. Burden of Proof 10
N. Expenses 10
O. Blind Draws 10
P. Disqualifications of Ecclesiastical Supervisors or Panel Members 11
Q. Confidentiality 11
R. Communication with and Deportment of Panel Members 12
S. Exclusion from Liability 12
T. Involvement of Insurers 12
U. Involvement of a Party's Congregation 12
V. Continuation of Support 12
W. Right to Object 12
X. Consequences of Violations 13
Y. Retention of Records 13
Z. Distribution of Manual 13
AA. Interpretation and Application of *SOPM* Provisions 13
BB. Exceptions to Time Limits 13

III. FLOW CHART FOR BYLAW SECTION 2.15 14

IV. FLOW CHART DETAIL FOR BYLAW SECTION 2.15 15

1. Consultation with District or Synod President 15
2. Commencing an Action 17
3. Commencing Formal Proceedings 21
4. Hearing Panel 23
5. Final Hearing Panel 28

***APPENDIX A* DECISION OF HEARING PANEL 32**
***APPENDIX B* DECISION OF FINAL HEARING PANEL 34**

[Note: All Part IV quotations from the 2010 *Handbook* and are in **bold** face type.]

I. General Principles for Bylaw Section 2.15

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 (cf. Bylaws 1.2.1 [g] and 2.1.1–2.1.2).

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 2.15.9.3).

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. Art. XIII).

D. The procedures of Bylaw section 2.15 (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, and 9[2]. Bylaw section 2.15 and this manual must be understood within the entire context of and subordinate to the Synod's Constitution and Bylaws.

E. With the exception of Bylaw Section 2.17, 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 2.15, a concerned lay member of a member congregation can make use of the constitutional provisions of his/her congregation or visit/consult with the circuit counselor and/or district president.

F. Matthew 18 and the Eighth Commandment provide the foundation for this Bylaw section 2.15 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

---

[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)

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 2.15 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) also 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 2.15), 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 ecclesiastical supervisor to inform the ecclesiastical supervisor of the accused (or other appropriate official) that a consultation is underway; (3) for the ecclesiastical supervisor to consult with others; (4) for the ecclesiastical supervisor of the accuser to obtain opinions from the Commission on Theology and Church Relations and/or the Commission on Constitutional Matters; (5) for the ecclesiastical supervisor of the accuser to make certain that a face-to-face meeting has taken place between the accuser and the accused (Matthew 18:15); (6) for the persons involved to receive evangelical supervision, counsel, and care; (7) for the ecclesiastical supervisor, in consultation with the ecclesiastical supervisor of the accused, to appoint a small committee to assist in reconciliation efforts; and to fulfill the Synod's requirement for previous admonition (Constitution, Art. XIII).

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 and 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 or represent them upon their request.

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

O. All the constitutional and bylaw functions of the ecclesiastical supervisor, including offering any 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 corporate 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 2.15 allow ample opportunity for the ecclesiastical supervisors to obtain advice and help in this servant role.

Q. In the provisions and procedures set forth in Bylaw section 2.15 (cf. Constitution, Art. XIII), the purpose of a requested CCM opinion is to "interpret the Synod's Constitution, Bylaws, and resolutions upon the written request of a member (congregation, ordained or commissioned minister), official, board, commission, or agency of the Synod" (Bylaw 3.9.2.2).

R. In the provisions and processes set forth in Bylaw section 2.15 (cf. Constitution Art. XIII), the purpose of a requested CTCR opinion is to present what the Scriptures and the Lutheran Confessions teach on the doctrinal point(s) at issue in a matter, in conformity with the collective understanding of the Synod as expressed in its officially adopted doctrinal statements and resolutions (Bylaw 3.9.5.2.1).

S. These provisions and processes do not establish positions of the Synod. Such positions are established according to the provisions set forth in Article VIII of the Constitution and in Bylaw sections 1.3, 1.4, 1.6, 1.7, and 3.1.

T. In protecting the rights of its members, the Synod has also made provision for challenging the decisions of ecclesiastical supervisors that may result in suspension and loss of membership. Such provision in Bylaw section 2.15 serves to protect the rights of both the accuser and the accused.

U. The official and formal provisions and processes of Bylaw section 2.15 (expulsion from membership) are not to take the place of or be confused with the brotherly acts of encouraging and admonishing one another and with the "mutual conversation and consolation of brethren" (Smalcald Articles, Part III, Article IV [Tappert translation, p. 310]). 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.

V. 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, 5.3 and 5.4. 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 and 2.16–2.17. 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 2.15

A. ***Purpose of General Regulations*:** These general regulations shall serve as guidelines for the implementation of Bylaw section 2.15 to ensure consistency and uniformity in the process. They shall also further define the guidelines referenced in Bylaws 2.15.7.8 and provided in Bylaws 2.15.9–2.15.9.3. 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 2.15 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 2.15 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 all cases under Bylaw section 2.15, the right to file a signed and dated formal written complaint is limited to members of the Synod. 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, 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 inform the ecclesiastical supervisor of the accused (or other appropriate official) that a consultation is underway; (3) for the ecclesiastical supervisor to consult with others; (4) for the ecclesiastical supervisor of the accuser to obtain opinions from the Commission on Theology and Church Relations and/or the Commission on Constitutional Matters; (5) for the ecclesiastical supervisor of the accuser to make certain that a face-to-face meeting has taken place between the accuser and the accused (Matthew 18:15); (6) for the persons involved to receive evangelical supervision, counsel, and care; (7) for the ecclesiastical supervisor, in consultation with the ecclesiastical supervisor of the accused, to appoint a small committee to assist in reconciliation efforts; and (8) for the ecclesiastical supervisor to fulfill the Synod's requirement for previous admonition (Constitution, Art. XIII).

G. ***Investigations*:** A thorough investigation shall be conducted by the Synod president or an investigation committee in every case (Bylaw 2.15.4 [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 2.15 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 to 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 2.15.9).

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. 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 during a hearing, the panel chairman, the accused, and/or the ecclesiastical supervisor 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 of the Synod 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, Hearing Panels, and Final Hearing Panels under Bylaw section 2.15 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 the Referral Panel which is formed by the President of the Synod. 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 shall be actual partiality or the appearance thereof. When identified by blind draw, potential panel members shall be contacted personally to discuss their availability to serve. The Secretary or President 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. 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 President of the Synod or the Secretary of the Synod as appropriate.

If a hearing facilitator or panel member concludes that he/she has personal knowledge of the matter, he/she shall, upon becoming aware of the same, disclose the knowledge and nature thereof and his/her assessment that such will not adversely affect his/her service. This information shall be shared with the accused and the President of the Synod. Undue familiarity with those involved in the matter must not be demonstrated in any manner during the panel hearing.

In the event that the qualification of the President of the Synod is challenged under Bylaw 2.15.4.1, the question shall be decided by a majority vote of the Council of Presidents. If the challenge is successful, the next-qualified officer of the Council of Presidents shall function in the place of the President of the Synod.

Any party may challenge the eligibility of a panel member or hearing facilitator 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 some subsequent legal proceeding. Therefore, all parties and other participants acknowledge and agree, by their participation in the Bylaw section 2.15 process, that they will keep confidential all communications that take place during the process, except as provided in this confidentiality provision. 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 2.15 process.

(a) Those documents that existed prior to 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;
(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 shall have no liability.

R. ***Communication with and Deportment of Panel Members*:** Except as provided in this manual, neither the accuser nor the accused or anyone on their behalf shall communicate, either directly or indirectly, with the panel or a panel member without the full knowledge of the other. 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 2.15 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 2.15 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 2.15 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 terminate 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 2.15.9.1).

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 2.15.9.2).

X. ***Consequences of Violations*:** Any member 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 (Bylaw 2.15.7.8) are specifically to be included as violations that are subject to the disciplinary measures set forth in the process (Bylaw 2.15.9.2).

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*:** The accuser and the accused shall receive copies of this *Standard Operating Procedures Manual* when specified in this manual. It is the responsibility of the district or Synod president who serves as consultant to see that the accuser receives the manual. It is the responsibility of the Synod President 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 Procedure 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 2.15

1. Consultation with District or Synod President (2.15.3)

1.1 Member consults with district president or Synod President; receives manual
1.2 District/Synod president helps determine correct process to follow
1.3 District/Synod president may seek advice or ask for opinion
1.4 Accuser must meet face-to-face with the accused
1.5 Committee may assist in reconciliation efforts
1.6 Accuser brings matter to Synod President; receives manual

↓

2. Commencing Action (2.15.4 – 2.15.5)

2.1 President of Synod becomes/is made aware of allegations
2.2 President of Synod investigates (60 days)
2.3 President of Synod may appoint a small investigative committee
2.4 President of Synod may appoint committee for reconciliation
2.5 President of Synod may form Referral Panel
2.6 Decision not to proceed terminates the matter
2.7 Decision to proceed commences suspension

↓

3. Commencing Formal Proceedings (2.15.6)

3.1 President of Synod provides notification of suspended status
3.2 President of Synod provides statement with facts to the accused
3.3 President of Synod provides notification of right to request hearing
3.4 Failure of accused to request hearing results in expulsion (15 days)
3.5 Request for hearing commences panel process

↓

4. Hearing Panel (2.15.7)

4.1 President of Synod provides statement and memorandum
4.2 Secretary of Synod forms panel and selects hearing facilitator (30 days)
4.3 Statement and memorandum provided to the panel
4.4 Hearing facilitator selects date and location for hearing (45 days)
4.5 Panel conducts hearing according to guidelines
4.6 Panel issues written decision (30 days)
4.7 If not appealed, the decision of the panel is final
4.8 Accused or President of Synod may request a final hearing.

↓

5. Final Hearing Panel (2.15.8)

5.1 Request for a final hearing (15 days)
5.2 Opinion from CCM/CTCR may be requested by Synod President
5.3 Secretary of Synod forms Final Hearing Panel and selects hearing facilitator (30 days)
5.4 Hearing Panel chairman provides materials to Final Hearing Panel
5.5 Final Hearing Panel follows same procedure as Hearing Panel (45 days)
5.6 Panel conducts hearing according to guidelines
5.7 Panel issues written decision (30 days)
5.8 Final decision is binding on all parties

IV. Flow Chart Detail for Bylaw Section 2.15

1. Consultation with District or Synod President (Bylaw 2.15.3)

1.1 *Member consults with district president or Synod president; receives manual*

When a member congregation or individual member of the Synod is aware of information which could lead to the expulsion of a district president or an officer of the Synod from the Synod's membership under Article XIII of the Constitution, prior to any formal written complaint or accusation the member shall consult with the member's district president or with the President of the Synod if the member's district president is the accused… [2.15.3]

- The right and responsibility to bring forward information which could lead to expulsion of a member from the Synod is reserved only for members of the Synod, that is, its congregations and ministers of religion—commissioned and ordained.
- When a member congregation brings forward a complaint or accusation, it shall be represented by its chairman or a designated member of the congregation.
- The representative of the congregation or the individual member bringing forward an accusation or complaint shall meet with its/his/her district president as ecclesiastical supervisor or the President of the Synod if the accused is the member's district president prior to presenting a formal complaint or accusation.
- The meeting of the accuser/complainant and the district president or President of the Synod shall be private and no formal record shall be kept of the discussion. The complainant shall be provided with a copy of Bylaw 2.15.3 and a copy of this *Standard Operating Procedures Manual* to guide the discussion.
- Throughout the consultation with the accuser, it is also the responsibility of the district president or the President of the Synod to provide counsel and care in an evangelical manner, doing everything possible to avoid harm to the reputations of the parties involved in the matter.

1.2 *District/Synod President helps determine correct process to follow*

…to seek advice and also so that it can be determined whether this is the appropriate bylaw procedure (Bylaw section 2.15) or whether the matter falls under Bylaw sections 2.14, 2.17, or 1.8, or dispute resolution under Bylaw section 1.10. [2.15.3]

> **(b) The district president or the President of the Synod shall require the accuser to follow the correct bylaw provision under the circumstance, and shall provide for evangelical supervision, counsel, and care to the persons involved.** [2.15.3 (b)]

- It is the sole responsibility of the district president or President of the Synod to evaluate the information that is being 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 district president or the President of the Synod, since his decision shall be followed.
- It is the responsibility of the district president or the President of the Synod also to provide counsel and care to the accuser and to other congregations and individuals who may become involved. He may request assistance from circuit counselors and others as necessary.
- The district president or the President of the Synod shall, as appropriate, inform the ecclesiastical supervisor of the accused that this consultation is underway. To protect the reputations of all involved, this conversation shall be held in strict confidence.
- As part of informing that a consultation is underway, the district president of the accuser or the President of the Synod shall share information that has been provided to him with the ecclesiastical supervisor of the accused, inviting such response as will assist him in providing proper direction to the member who has come forward with the information.
- The ecclesiastical supervisor of the accused shall provide all relevant information to the ecclesiastical supervisor of the accuser. To do so, he shall consult with the accused, providing a copy of this *Standard Operating Procedures Manual* at first contact.
- It is essential that these conversations and exchanges of information consistently reflect a presumption of innocence.

1.3 ***District/Synod President may seek advice or ask for opinion***

(a) If and when the accuser's district president (if the district president is not the one accused or if the accused is an officer of the Synod) is the one consulted, the district president shall consult with the President of the Synod. Whether the President of the Synod is the one consulted directly by the accuser or by the district president, the President of the Synod may consult with the vice-presidents of the Synod, with the district president of the accused (if an officer of the Synod), with the chairman of the Council of Presidents, or with the Commission on Theology and Church Relations (CTCR). The President of the Synod may also ask an opinion of the Commission on Constitutional Matters (CCM). The President of the Synod must follow any opinion received from either the CCM or the CTCR, which shall be rendered within 30 days or such additional time as the President of the Synod may allow. [2.15.3 (a)]

- Because ecclesiastical supervisors have sole responsibility for providing proper direction to the accuser, they may consult with others who share such responsibility for ecclesiastical supervision prior to providing the required direction.
- Further clarification may be obtained from the CCM and/or the CTCR. When requesting opinions, care should be taken to represent the matter as carefully and objectively as possible, accepting all counsel received as binding. Questions should be phrased in a non-case-specific manner so as not to give cause for rumor or alarm in the Synod.
- Due to the nature of the request, the CCM and the CTCR shall do everything possible to respond to requests for opinions within the 30-day time requirement. If a commission will be unable to respond to requests for opinions within the required time frame, the President of the Synod shall be notified and an extension of the 30-day time period shall be requested.

1.4 ***Accuser must meet face-to-face with the accused***

(c) If this Bylaw section 2.15 applies, the district president or the President of the Synod shall ensure that the accuser has met face-to-face with the accused in the manner described in Matthew 18:15. Even if the alleged violation of Article XIII of the Constitution is considered to be "public," this provision of Matthew 18:15 shall be followed. The reputation of all parties is to be protected as commanded in the Eighth Commandment. [2.15.3 (c)]

(e) The requirement of the Synod of previous admonition called for in Article XIII of the Constitution commences at this stage, if applicable. [2.15.3 (e)]

- The required face-to-face meeting must be a face-to-face, good-faith effort in the manner described in Matthew 18:15. The meeting shall be in person, limited to the accuser and the accused. E-mail, regular mail, fax, or telephone call (or any combination thereof) shall not satisfy this requirement.
- If applicable, this face-to-face meeting contributes toward satisfying the requirement for previous admonition called for in Article XIII of the Constitution.
- If such a meeting has not taken place at the time of the consultation, the accuser and the accused shall be directed by their ecclesiastical supervisors to participate in such a face-to-face meeting initiated by the accuser within 30 days or within such extension of time as may be established by the involved ecclesiastical supervisors. It is the responsibility of the accuser to initiate the meeting at the convenience of the accused. Failure to conduct this meeting shall result in dismissal of any accusation if the fault lies with the accuser or result in movement to the next stage if the fault lies with the accused.

1.5 ***Committee may assist in reconciliation efforts***

(d) The district president of the accuser or the President of the Synod may appoint a small committee to assist in reconciliation efforts. The goal throughout is always one of admonition and reconciliation, of repentance and forgiveness (even if the following proceedings result in expulsion from membership). [2.15.3 (d)]

(e) The requirement of the Synod of previous admonition called for in Article XIII of the Constitution commences at this stage, if applicable. [2.15.3 (e)]

- A reconciliation committee may consist of any number of persons, chosen by the district president of the accuser or the President of the Synod according to his understanding of the situation and persons involved and in consultation with the ecclesiastical supervisor of the accused.
- An expulsion from membership cannot take place without previous admonition (Constitution Art. XIII) when such previous admonition is possible, even if futile. The activity of a reconciliation committee contributes to satisfying this requirement.
- Eighth Commandment protection of reputations is essential to this portion of the process as other persons become involved.

1.6 *Accuser brings matter to Synod President; receives manual*

(f) Only after all the requirements of the consultation provided in this bylaw (Bylaw 2.15.3) have been followed may the accuser bring the matter to the President of the Synod for action under the correct bylaw provision determined by the accuser's district president (paragraph [b] above). [2.15.3 (f)]

- It is the responsibility of the district president of the accuser or, when appropriate, the President of the Synod to make certain that all of the requirements of a consultation have been followed.
- Only after all reconciliation efforts included in the consultation requirements have failed to bring about resolution of the matter and the accuser desires to proceed shall the district president of the accuser or, when appropriate, the President of the Synod provide direction regarding the correct bylaw process to be followed.

2. Commencing an Action (Bylaw 2.15.4–2.15.5)

2.1 *President of Synod becomes/is made aware of allegations*

Under this bylaw, the President of the Synod shall commence the following action when he becomes aware of information or allegations that could lead to expulsion of a member from the Synod under the provisions of Article XIII of the Constitution. The President of the Synod may become aware of such information by his own personal knowledge. Such information or allegations may also be conveyed to him in a formal written complaint or accusation made by a member of the Synod who has carried out the above provision (Bylaw 2.15.3). [2.15.4]

- The right and responsibility to bring forward information that could lead to expulsion of a member from the Synod is reserved for members of the Synod, that is, its congregations and ministers of religion—commissioned and ordained.
- A member congregation bringing forward information 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.
- Use of this bylaw section is reserved solely for addressing information or allegations that could lead to expulsion of district presidents or officers of the Synod from the Synod.
- Information or allegations of lesser consequence, or that accuse a congregation or individual member of the Synod or the President of the Synod, or that pertain to sexual misconduct or criminal behavior are to be addressed by processes provided by other bylaw sections.
- The formal written complaint, signed and dated, becomes a part of the official record of the matter begun by the ecclesiastical supervisor who served as consultant and transmitted to the ecclesiastical supervisor of the accused.

2.2 *President of Synod investigates*

In commencing such action, the President of the Synod:

(a) Shall determine whether Bylaw 2.15.3 provisions have been carried out and shall thoroughly investigate the matter to determine whether the facts learned from his investigation form a basis for expulsion of the member under Article XIII of the Constitution…. [2.15.4 (a)]

(b) Shall proceed in the manner described in Matthew 18:15–16 as the requirement of "admonition" in Article XIII of the Constitution, if applicable, continues to be carried out. [2.15.4 (b)]

In the event the President of the Synod is disqualified because he has a conflict of interest or is unable to act, the chairman of the Council of Presidents or the next qualified officer of the Council of Presidents shall function in his place in carrying out any of the following bylaw provisions. The majority vote of the district presidents of the Council of Presidents, excluding the involved district presidents, shall determine any challenge to the eligibility of the President of the Synod to act which is not agreed to by the President of the Synod. [2.15.4.1]

- The President of the Synod, prior to beginning his investigation of any information that he has received, shall inquire whether the required consultation with the accuser's ecclesiastical supervisor has taken place in all its parts. If the consultation has not taken place, the President of the Synod shall redirect the accuser to his ecclesiastical supervisor to carry out the provisions of Bylaw 2.15.3.
- In cases in which a conflict of interest exists or the President of the Synod is unable to act, the chairman of the Council of Presidents or its next qualified officer shall be asked to function in the President's place. In cases in which the eligibility of the President of the Synod is challenged and he does not agree, the matter shall be presented to the Council of Presidents with opportunity for input by the challenger and the President. The final determination shall be made by majority vote of the Council of Presidents, excluding the participation of involved district presidents. All communications and record of the final decision shall be included in the official record of the investigation.

2.3 *President of Synod may appoint a small investigative committee*

…He may appoint a small investigation committee (cf. Bylaw 4.4.6). If the accused is a district president, the investigation shall include consultation with that president's district board of directors and district vice-presidents. He may also consult with the circuit counselors of the given district. [2.15.4 (a)]

- If the accused is an officer of the Synod, the investigation shall include consultation with the officer's district president. If a district president, the consultation shall include consultation with that president's district board of officers, vice-presidents, and circuit counselors.
- The purpose of the thorough investigation shall be (1) to determine the truth regarding 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 Constitution Art. XIII.
- Care shall be taken during the investigation to offer spiritual support and guidance to the involved parties.
- The President of the Synod may authorize other persons to assist him in reviewing the allegations and in conducting the investigation.
- The President of the Synod or his representative(s) shall attempt to meet and/or speak with the accuser(s). A written record of all such meetings and conversations shall be maintained and shared with the accuser(s) prior to its inclusion in the official record of the case. 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 2.15 process.
- The President of the Synod or his representative(s) shall also arrange to meet with and inform the accused of the allegations that have been received and to provide opportunity for a response. A written record of this meeting shall be maintained and shared with the accused prior to its inclusion in the official record of the case. Opportunity shall be provided for additional written comment by the accused.
- The accused shall refrain from initiating any personal or private contact with the accuser(s) while the investigation is underway, except in the presence of two or three witnesses.
- The investigation shall also include interviews with persons suggested by the accuser(s) or the accused as well as with 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.

- The President of the Synod shall give consideration to all evidence relating to the allegations brought forward against the accused, presuming innocence/fitness for ministry until evidence clearly establishes otherwise.
- In those cases in which the President of the Synod did not personally conduct the investigation, his representative(s) shall submit, upon completion of their investigation, a written report to the President that includes all written materials surfaced by the investigation.

2.4 *President of Synod may appoint committee for reconciliation*

(b) Shall proceed in the manner described in Matthew 18:15–16 as the requirement of "admonition" in Article XIII of the Constitution, if applicable, continues to be carried out. [2.15.4 (b)]
(c) May, apart from the investigation, also appoint a small committee to assist in reconciliation efforts (see Bylaw 2.15.3 [d] above). [2.15.4 (c)]

- Throughout the investigation, the required admonition of Constitution Art. XIII 1 (if applicable) and the spirit of Matthew 18:15–16 shall continue to be carried out.
- Throughout the entire process, it shall be borne in mind that its primary purpose is not to expel a member from the Synod but to bring about repentance and reconciliation—to win and restore, even if the process results in expulsion from membership.
- If used, a reconciliation committee should be small, consisting of persons chosen by the President of the Synod from his understanding of the matter under investigation and the persons involved.

2.5 *President of Synod may form Referral Panel*

In the determination of whether or not to initiate formal proceedings, the President of the Synod may form a Referral Panel consisting of three district presidents.

(a) This panel shall be formed by blind draw and shall not include the district president that is a party to the matter or the district president of an accused officer or the district president of the accuser.
(b) The blind draw shall be administered by the chairman of the Council of Presidents audited by witnesses. [2.15.5]

After reviewing the accusation and the results of the investigation, the Referral Panel shall make the determination whether or not to initiate formal proceedings. [2.15.5.1]

If the President of the Synod 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 President of the Synod for the forming of the Referral Panel, which request the President of the Synod must grant. If the provisions set forth in Bylaw 2.15.4 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. [2.15.5.3]

- It is the responsibility of the President of the Synod (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 proceed with formal proceedings.
- A Referral Panel shall be formed if the President of the Synod 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 initiated within the required period of time [in this case, 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 shall be granted in all cases in which the President of the Synod has failed to act within the required 60-day time period.

- The Referral Panel shall be selected by blind draw by the chairman of the Council of Presidents. All district presidents not involved in the matter shall be included in the blind draw. 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 other neutral persons. Written verification signed and dated by the witnesses to the blind draw shall attest to the proper conduct of the draw.
- Upon its selection and notification by the chairman of the Council of Presidents (who shall also identify a convener), the panel shall meet initially in person or by telephone conference to select a chairman and a secretary. The chairman shall provide leadership to the panel, arranging its meetings and representing the panel as necessary. The secretary shall maintain a record of the panel's activity and findings.
- The President of the Synod shall provide to the Referral Panel all documents and information regarding the matter that are at his disposal. The panel shall also retain a written record of its own activities and findings leading up to its decision. This written documentation shall be included in the official record of the case.
- The Referral Panel is responsible for determining that the provisions of sections 2.2 and 2.3 (above) have been carried out. If not, it shall carry out those provisions as part of its responsibilities under the leadership of its chairman.
- 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 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 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 proceed terminates the matter*

Whether made by the President of the Synod or the Referral Panel, if the determination is not to initiate formal proceedings, the President of the Synod shall in writing so inform the accuser, any other district president involved, and the involved member, which shall terminate the matter. [2.15.5.2]

- If the validity of accusation(s) received has not been established or if the investigation fails to uncover sufficient cause for suspension, the President of the Synod or his representative shall close the inquiry and inform the accuser(s) and the accused of the decision.
- The President of the Synod 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 be provided according to perceived need for restoration and healing.
- As necessary, attention shall be given to enable 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 President of the Synod.
- District and Synod legal counsel shall be informed if the accuser(s) threaten(s) legal action or retain(s) representation by counsel upon receipt of the decision not to initiate formal proceedings.

2.7 *Decision to proceed commences suspension*

If the President of the Synod or the Referral Panel concludes that the facts form a basis for expulsion of the member under Article XIII of the Constitution,… [2.15.6]

- When the validity of accusation(s) received has been established by clear and convincing evidence, the President of the Synod or his representative shall proceed to carry out 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 Art. XIII of the 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 a suspension, the President of the Synod 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 on a need-to-know basis and as judged necessary and helpful by the President of the Synod shall also be provided by the President of the Synod to others affected by the investigation and the decision to suspend.
- Leaders of 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 President of the Synod or his representative.

3. Commencing Formal Proceedings (Bylaw 2.15.6)

3.1 *President of Synod provides notification of suspended status*

If the President of the Synod or the Referral Panel concludes that the facts form a basis for expulsion of the member under Article XIII of the Constitution, the President of the Synod, 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; [2.15.6 (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 failed delivery 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 *President of Synod 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;… [2.15.6 (b)]

- The 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 by the accused. The statement should be concise, contain factual assertions regarding the issues of the case, and demonstrate their relevance to Art. XIII of the Constitution and its stated causes for expulsion from membership in the Synod. This statement becomes a part of the official record of the matter maintained by the President of the Synod.

- A memorandum describing how the accuser met face-to-face with the accused in the manner described in Matthew 18:15–16 (Bylaw 2.15.4 [b]) shall also be prepared and becomes part of the official record of the matter maintained by the President of the Synod.

3.3 *President of the Synod provides notification of right to request hearing*

(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 the President of the Synod that there is a desire to have the matter heard and resolved. [2.15.6 (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 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 failed delivery attempts by certified or other signature-requiring mail, suffice to provide notice.
- This written notification by the President of the Synod which accompanies the notification of suspended status and the written statement of the matter shall 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 is to be directed back to him as the ecclesiastical supervisor.
- When a member is placed on suspended status, the President of the Synod shall encourage his 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 the accused to request a 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. [2.15.6.1]

- 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 a suspended member, the President of the Synod shall inform the member of his expulsion from the Synod.
- The President of the Synod shall inform the 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 President of the Synod shall also inform other members and entities of the Synod of the expulsion on a need-to-know basis.
- The President of the Synod 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 delivered to and retained in the office of the president of the district through which the member held roster status in the Synod for future reference.

3.5 *Request for hearing commences panel process*

If the request for hearing as granted in Bylaw 2.15.6 (c) is made, the President of the Synod shall inform the Secretary of the Synod… [2.15.7]

- After the President of the Synod 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 President of the Synod and shall be forwarded to the Secretary of the Synod along with previous documentation.
- 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 2.15.7)

4.1 *President of the Synod provides statement and memorandum*

At the time that the request for hearing is made, the President of the Synod 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 guidelines provided in Matthew 18:15–16 and "previous futile admonition" (Constitution, Art. XIII), as well as all of the provisions of Bylaws 2.15.3–2.15.6.1. [2.15.7.1]

- The "statement of the matter" that is to be provided to the Secretary of the Synod is a copy of that statement that was provided to the accused officer or district president at the time of notification of suspended status. The Secretary of the Synod shall 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 President of the Synod, as copies of it will be forwarded to the Hearing Panel by the Secretary of the Synod to demonstrate to the panel that all constitutional and bylaw requirements were met. This document also shall 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 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.** [2.15.7]

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

(a) One district president shall be selected by the accused (a district president, if he is the accused, may not choose himself);
(b) One district president shall be selected by the President of the Synod;
(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 and may draw upon persons and resources that 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.
(g) If a Referral Panel was formed, the three district presidents that served in that capacity are not eligible to serve on a Hearing Panel. [2.15.7.2]

Upon receipt of a request for hearing, the Secretary of the Synod shall promptly notify the accused and the President of the Synod 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 15 days, the Secretary of the Synod shall then make such selection within five days. [2.15.7.3]

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. [2.15.7.4]

When the Hearing Panel members and hearing facilitator have so been chosen, they shall be promptly notified of their selection. [2.15.7.5]

- 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 functions according to the time requirements provided in the bylaws, a service that he will continue to provide throughout the remainder of the panel process.
- When possible, notifications to the accused and the President of the Synod shall be made in a manner that results in a signed receipt to verify delivery, thereby to provide evidence that notifications were received and to verify the date of their receipt.
- Responses to the notification shall 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 President of the Synod, 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.
- When the members of the Hearing Panel have been notified, the hearing facilitator shall arrange for an initial meeting of the panel, in person or by telephone conference.
- At its first meeting, the panel shall select one of its members to serve as chairman of the panel, to provide leadership to the panel and to serve as its spokesman.
- The panel shall also designate one of its members to serve as its secretary to prepare and maintain a record of the panel's meetings and proceedings, and to acquire and retain 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.

4.3 *Statement and memorandum provided 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 guidelines provided in Matthew 18:15–16 and "previous futile admonition" (Constitution, Art. XIII), as well as all of the provisions of Bylaws 2.15.3–2.15.6.1. [2.15.7.7]

- The basis for the panel to begin its work are the referenced "statement of the matter" and the "memorandum."
- Copies of the documents previously forwarded by the President of the Synod to the Secretary of the Synod [Bylaw 2.15.7.1] shall be forwarded by the Secretary to the members of the Hearing Panel at the time of their notification of selection to the panel.
- The secretary of the Hearing Panel shall be responsible for the official record of the matter before the panel. He shall retain for the record his copies of the statement and memorandum documents upon their receipt

from the Secretary of the Synod and shall maintain a record of the panel's activity, to include its hearing(s), the evidence received, and its findings.

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 President of the Synod, select a date and location within 45 days after the panel was constituted for the panel to hear and consider the matter. [2.15.7.6]

- A preliminary conference of the hearing facilitator, the accused, and the President of the Synod 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 President of the Synod 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 President of the Synod to identify a suitable time and place for the hearing(s). He 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.
- No party to the matter or the President of the Synod nor any person acting on either's behalf shall either 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 *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 with the exception of paragraph (g) and instead shall follow this guideline in its place:… [2.15.7.8]

(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, with one exception. Due to the fact that this bylaw procedure deals with a district president or an officer of the Synod, which necessarily means that the case will most likely have a high public exposure, as the ecclesiastical supervisor, the President of the Synod, at his discretion, may carry out his duties to properly advise the Synod 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 of the members of the Synod (Constitution, Art. III 8, 9). [2.15.7.8]

(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 Secretary of the Synod 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. [2.14.7.8]

- The issue to be decided by a Hearing Panel shall be whether the suspension of the accused district president or officer of the Synod will be upheld, including whether the President of the Synod followed prescribed procedures and whether the burden of proof for expulsion has been met under Bylaw section 2.15 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 1.2 above).
- Hearings shall be private, attended only by the panel members, the accused, the President of the Synod, 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 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 adviser 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 President of the Synod, or the panel. The panel may require the President of the Synod and the accused to deliver to the panel and to each other a list of the 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 President of the Synod 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 Synod President 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 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 ***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 district president or officer, the President of the Synod, the accuser and his district president, and the Secretary 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 or the President of the Synod. [2.15.7.9]

- 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 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 the decision. A written copy of the agreement shall include the basis for the resolution of the matter, signed by the accused and the President of the Synod and approved by the panel.
- The decision shall be provided to the accused district president or officer of the Synod 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 accuser and his or her district president 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 President of the Synod and be publicized as deemed appropriate under the circumstances by the President of the Synod if not appealed by the accused or by the President of the Synod. [2.15.7.9 (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 President of the Synod until it is clear that time has elapsed for the request for a final hearing.
- 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.
- 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 only 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]).

4.8 *Accused or President of Synod may request a final hearing*

(b) Such request for a final hearing shall be submitted to the Secretary of the Synod with copies supplied to the district president of the accuser and the accused (depending upon whether it is a district president or an officer of the Synod that is the accused), the chairman of the Hearing Panel, the accuser, and the President of the Synod, and shall be accompanied by a written memorandum stating the basis for the request. [2.15.8 (b)]

- A written request for a final hearing with its accompanying memorandum stating the basis for the request may 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. Final Hearing Panel (Bylaw 2.15.8)

5.1 *Request for a final hearing*

Within 15 days after receiving the decision of the Hearing Panel, the accused, or the President of the Synod if a question of doctrine or practice is involved (Constitution, Art. XI B 1–3), may request a final hearing. [2.15.8]

- The President of the Synod may request a final hearing only if he believes that a question of doctrine or practice exists that may have had a significant or adverse bearing upon the decision of the Hearing Panel.
- Requests shall be made to the Secretary of the Synod and included in the official record of the case.

5.2 *Opinion from the CCM/CTCR may be requested by Synod President*

(a) The President of the Synod may also request that an opinion of the Commission on Constitutional Matters (CCM) or Commission on Theology and Church Relations (CTCR) be obtained.

(1) Any opinion so requested shall be rendered within 30 days or such greater time as the panel may allow.

(2) When an opinion has been requested, the time limitations will not apply until the parties have received the opinion.

(3) The panel must follow any opinion received from either the CCM or the CTCR. [2.15.8 (a)]

- The bylaw limits the right to obtain opinions from the CCM and CTCR at this stage of the panel process to the President of the Synod.
- The President of the Synod may, upon receiving a copy of the decision of the Hearing Panel, conclude that an opinion from the CTCR and/or CCM in response to a question of doctrine or practice may be essential to the case and helpful to a Final Hearing Panel.
- Care shall be taken that questions are not phrased in a case-specific manner. The Final Hearing Panel is required to follow any opinions received from the CCM or CTCR.
- Until the requested opinion(s) of the CTCR and/or CCM has/have been received, the time limitations for a request for a final hearing, the selection of a Final Hearing Panel, and the conduct of the final hearing shall be suspended.

5.3 *Secretary of the Synod forms Final Hearing Panel and selects hearing facilitator*

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

(a) The panel shall be constituted in the same prescribed manner as described in Bylaws 2.15.7.2–2.15.7.6, except that the district presidents, reconciler, and facilitator associated with the Hearing Panel and the three district presidents that constituted a Referral Panel and any other involved district presidents are omitted from consideration for the Final Hearing Panel. [2.15.8.1 (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 that 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 eligible to be considered.
- When possible, notifications to the accused and to the President of the Synod 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 formal 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 President of the Synod, 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.
- When the members of the Hearing Panel have been notified, the hearing facilitator shall arrange for an initial meeting of the panel, in person or by telephone conference.
- At its first meeting, the panel shall select one of its members to serve as chairman of the panel, to provide leadership to the panel and to serve as its spokesman.
- The panel shall also designate one of its members to serve as its secretary to prepare and maintain a record of the panel's meetings and proceedings, and to acquire and retain 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.

5.4 *Hearing Panel chairman provides materials to Final Hearing Panel*

(c) The chairman of the Hearing Panel shall provide the Final Hearing Panel with a written statement of the matter and the Hearing Panel's report, minutes, records, and proceedings. [2.15.8.1 (c)]

- Copies of the documents previously forwarded by the President of the Synod 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 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 maintaining a record of the panel's activity, its hearings(s), the evidence received, and its findings.

5.5 *Final Hearing Panel follows same procedure as Hearing Panel*

(b) The procedures for the final hearing shall be the same as prescribed in Bylaws 2.15.7.6–2.15.7.8. [2.15.8.1 (b)]

- See section 4.4 of this *Standard Operating Procedures Manual* for details regarding the selection of the date and location for the final hearing.

5.6 *Panel conducts hearing according to guidelines*

(b) The procedures for the final hearing shall be the same as prescribed in Bylaws 2.15.7.6–2.15.7.8. [2.15.8.1 (b)]

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

5.7 *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, any involved district president, the accuser, the Secretary of the Synod, and the President of the Synod…. [2.15.8.2]

- 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 ~~rendering~~ 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 President of the Synod and approved by the panel.
- The decision may be provided without return receipt signature requirements since there is no further opportunity for appeal.

5.8 ***Final decision is binding on all parties***

…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 President of the Synod; and
(d) be publicized as deemed appropriate under the circumstances by the President of the Synod. [2.15.8.2]

- 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: _____

Synod 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 President of the Synod in suspending the member of the Synod (Constitution, Art. XIII 2; Bylaws 2.15.3–2.15.9.3)?
- Was clear and convincing evidence provided to support the accusations that led to suspension?
- Was the burden of proof for expulsion under Bylaw section 2.15 and Article XIII 1 of the Constitution of the Synod met by the President of the Synod?

Summary of Decisions on the Issues:

- The panel determined that proper procedure *[was/was not]* followed by the President of the Synod 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 2.15 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 President of the Synod 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 2.15 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 2.15.8, within 15 days after receiving a Hearing Panel decision, "the accused or the President of the Synod if a question of doctrine or practice is involved (Constitution, Art. XI B 1-3) 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: _____

Synod 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 President of the Synod in suspending the member of the Synod (Constitution, Art. XIII 2; Bylaws 2.15.3–2.15.9.3)?
- Was clear and convincing evidence provided to support the accusations that led to suspension?
- Was the burden of proof for expulsion under Bylaw section 2.15 and Article XIII 1 of the Constitution of the Synod met by the President of the Synod?

Summary of Decisions on the Issues:

- The panel determined that proper procedure *[was/was not]* followed by the President of the Synod 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 2.15 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 2.15 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: _____