

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS

Crowne Plaza Airport Hotel, St. Louis
May 11–13, 2012

124. Call to Order, Opening Devotion

Chairman Wilbert Sohns called the meeting to order and called on Philip Esala, chaplain for the meeting, to provide the opening devotion. All members of the commission were present for the meeting.

125. Southern District/Southern District Church Extension Fund (11-2605 [A,B,C])

In its November 11–13, 2011 minutes, the Commission on Constitutional Matters addressed the proposed Bylaws for the Southern District Church Extension Fund (hereafter “SD-CEF”) submitted by the LCMS Southern District. The commission received in response a communication from the SD-CEF indicating that it was unaware of the LCMS Southern District submission and that, as a separately incorporated entity, it was in the process of preparing its own documents for the commission’s review. Because of the apparent miscommunications and/or conflict between the LCMS Southern District and the SD-CEF, the commission notified appropriate parties and requested input regarding both sets of submissions, pursuant to Synod Bylaw 3.9.2.2 (b).

The commission has received four sets of bylaws: (1) the original set of Bylaws from the LCMS Southern District proposed to be submitted to its upcoming convention; (2) a set of Bylaws submitted by the district certified May 14, 2004, by the secretary of the SD-CEF; (3) a set of bylaws from the SD-CEF identified as proposed to be adopted by its board; and (4) a second set represented by the SD-CEF as being the “original” bylaws which have been used since incorporation. Although undated and formatted differently, this fourth set matches the set presented by the LCMS Southern District as certified May 14, 2004.

While the commission in this opinion will discuss generally the various documents submitted, it will not give final approval to any proposed bylaw changes, including those under which the SD-CEF apparently has actually been operating, until it is able to clarify the situation. A review of each of the versions, however, provides a number of consistent results which should provide the framework to resolve the issues in conflict.

First, all of the various versions indicate that the Nominations Committee of the SD-CEF may be the Nominations Committee of the LCMS Southern District, and the Elections Committee of the SD-CEF may be the Elections Committee of the LCMS Southern District. However, none of the versions provide an alternative mechanism if the committees of the LCMS Southern District are not used. As such, the commission finds that under any of the submitted sets of bylaws, the Nominations Committee of the LCMS Southern District and the Elections Committee of the LCMS Southern District are in fact the Nominations Committee and Elections Committee of the SD-CEF unless and until an alternate bylaw mechanism has been submitted and approved by the Commission on Constitutional Matters and adopted by the SD-CEF.

Secondly, each set of bylaws identifies that the members of the board of directors of the SD-CEF are to be elected by the accredited delegates to the convention of the LCMS Southern District. No version contains any mechanism for a delegate convention other than that of the district itself. As such, the election of members of the board of directors of the SD-CEF will take place at the LCMS Southern District

convention unless and until an alternative bylaw provision is submitted to and has been approved by the Commission on Constitutional Matters and adopted by the SD-CEF.

Finally, despite suggestions to the contrary, the SD-CEF is to be recognized as fully accountable to the LCMS Southern District through the district's responsibility to elect the board of directors of the SD-CEF, through the SD-CEF's responsibility to report fully to the district convention, through the district's responsibility to monitor the affairs of the SD-CEF (which it created under authorization of the Synod), and through the responsibility of the district president under LCMS Bylaw section 4.4 to assure that the resolutions of the Synod and the district are carried out, including the proper formation and continued proper operation of a district church extension fund.

Because the situation remains otherwise unclear, the following comments are preliminary only, offered in an effort to provide further guidance to the LCMS Southern District and to the SD-CEF. They should not be considered exhaustive or final expressions from the Commission on Constitutional Matters regarding the documents presented or the issues raised by them. Nor are they to be regarded as suggestions as to whether amendments to the governing documents of the SD-CEF ought to be considered and approved by the delegates to the upcoming convention of the LCMS Southern District, which shall also serve as the convention of the SD-CEF.

Proposed Articles of Incorporation and Bylaws Submitted by the LCMS Southern District

On August 8, 2011, the president of the LCMS Southern District submitted proposed Articles of Incorporation and Bylaws for the SD-CEF. The commission reviewed those proposed documents and has already issued recommended changes to the documents (CCM Opinion 11-2605) pursuant to its responsibility under Synod Bylaw 3.9.2.2.3. Those recommendations were formally transmitted to the LCMS Southern District in a December 13, 2011 letter and published as part of the minutes of the commission's November 11–13, 2011 meeting.

In response to the published recommendations contained in the minutes, the commission received correspondence from the chairman of the board of directors of the SD-CEF, who indicated that the board and staff of the SD-CEF were unaware that governing documents had been submitted by the district to the Commission on Constitutional Matters for review. The letter further indicated that the SD-CEF is a corporation separate from the LCMS Southern District and is "not controlled or operated by the district," also asserting that the submission of proposed governing documents was the responsibility of the board of directors of the SD-CEF and not the LCMS Southern District itself. Finally, his letter asserted that the board of directors of the SD-CEF was in the process of reviewing its Articles of Incorporation and Bylaws and intended to submit proposed documents for review by the commission at its February 2012 meeting. (No documents were received in time to be reviewed at that meeting.)

All agencies of the Synod are required, pursuant to Synod Bylaw 3.9.2.2.3, to submit to the commission for it to examine any proposed articles of incorporation, bylaws, and policy manuals to ascertain whether they are in harmony with the Constitution, Bylaws, and resolutions of the Synod, prior to the adoption of such governing documents. Although incorporated in 2004 and apparently functioning since that time, no articles of incorporation, bylaws, constitution or other governing documents of the SD-CEF had previously been submitted for review and approval prior to the August 8, 2011 submission by the LCMS Southern District.

The Commission on Constitutional Matters is required, pursuant to Synod Bylaw 3.9.2.2, 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. This would include both sets of submissions from the LCMS Southern District and from the SD-CEF. It is not the

responsibility of the commission to adjudicate disputes between agencies of the Synod, including disputes between a district and an agency operating within that district. Rather, it is the responsibility of the commission to answer properly submitted questions and, as described above, to review the articles of incorporation, bylaws, and other governing documents of agencies of the Synod and to review in advance any proposed changes to those documents. In reviewing the proposed bylaws submitted by the LCMS Southern District with its August 8, 2011 transmittal, the commission fulfilled that function. Such review, however, did not purport to determine who had the responsibility and authority to adopt those bylaws.

Additional Proposed Governing Document Submitted by the LCMS Southern District

In response to the letter from the SD-CEF, the LCMS Southern District submitted additional information with a letter dated February 6, 2012. This letter included (as Appendix B) Articles of Incorporation identified as those of the Southern District Church Extension Fund, adopted May, 2004, pursuant to 2003 Resolution 2-31 of the LCMS Southern District convention. That resolution authorized the separate incorporation of the Southern District Church Extension Fund. Again, while the purpose of the Commission on Constitutional Matters is not to determine which articles of incorporation are in fact the adopted Articles of Incorporation, its responsibility does include the review of proposed articles to determine any conflict with the Constitution, Bylaws, and resolutions of the Synod.

In that regard, the articles submitted by the LCMS Southern District do not appear to be in conflict with the Constitution, Bylaws and resolutions of the Synod. They expressly acknowledge in Article II that the operation and existence of the SD-CEF was authorized by The Lutheran Church—Missouri Synod and that, under Article VIII, Section 3, the initial directors are to serve until their successors are elected by the delegate convention of the LCMS Southern District. Those submitted articles also include Article IX, Section 2, indicating that the membership of the Southern District Church Extension Fund, Inc. shall be the member congregations of the Southern District of The Lutheran Church—Missouri Synod.

Submitted with the same February 6, 2012 letter were proposed bylaws certified as adopted May 14, 2004 (included as Appendix C, referred to below as “2004 Bylaws”) wherein Bylaw 5.02 indicates that the members of the board of directors (trustees of the SD-CEF) are to be elected by the members of the convention of the LCMS Southern District for three-year terms. The Bylaws do not specifically indicate, however, whether those members will be elected at the convention of the LCMS Southern District or at some separate, unspecified convention of the members of the SD-CEF solely limited to issues related to the SD-CEF. Given the possible confusion, this point would need to be clarified. In the absence of a clear indication to the contrary, the commission finds that it is in fact the LCMS Southern District to which this authority and responsibility is assigned.

Pursuant to various actions of the Synod in convention, districts have been authorized to create district church extensions funds. As such, by definition under Synod Bylaw 1.2.1 (a), such entities are agencies of the Synod within the meaning of that bylaw. As an agency of the Synod, not only are the minutes of each meeting of the board of trustees subject to disclosure to all regular and advisory members of the board and the auditing committee, as proposed by the 2004 Bylaws, but according to Synod Bylaw 1.5.3.5, official minutes of agency meetings are to be made available to all members of the Synod.

2004 Bylaw 5.20 also suggests that the Nominations Committee and the Elections Committee of the LCMS Southern District may also be the Nominations Committee and the Elections Committee of the SD-CEF. Unless and until an alternative mechanism is provided in the Bylaws and approved by the Commission on Constitutional Matters, the Nominations Committee and the Elections Committee of the district’s convention are recognized as the committees of the SD-CEF as well. If an alternative is intended, it will need to be specified, approved in advance by the Commission on Constitutional Matters, and adopted by the SD-CEF.

The 2004 Bylaws as presented also leave uncertainty as to whether the convention of the LCMS Southern District will also be the convention of the SD-CEF. For the same reasons given above, unless an alternative mechanism is provided in the Bylaws, approved by the Commission on Constitutional Matters and adopted by the SD-CEF, the convention of the LCMS Southern District will also serve as the convention of the SD-CEF.

Also enclosed with the submission from the LCMS Southern District was an undated, unsigned note (attached as "Appendix J") purporting to be from the SD-CEF to the congregations and delegates of the 2012 LCMS Southern District convention, which are also the member congregations and delegates of the SD-CEF. This unattributed letter contains a logo bearing the name "Southern Church Extension Fund" instead of "Southern District Church Extension Fund." It purports to suggest that all nominations submitted to or through the Nominations Committee of the LCMS Southern District will be considered invalid, and that the Nominations Committee of the SD-CEF is different from the Nominations Committee of the district. The commission notes, however, that the SD-CEF has never submitted for review, much less has had approved, any bylaws which empower any other entity to be the Nominations Committee for the SD-CEF. Until such approval is obtained, the Nominations Committee and the Elections Committee of the Southern District shall also serve as the Nominations Committee and Elections Committee of the SD-CEF. Until such approval is obtained, the committees of the LCMS Southern District shall also serve as the Nominations Committee and Elections Committee of the SD-CEF. Even the unattributed document (Appendix J) appears to indicate such, recognizing that "elections will continue on the floor of this 2012 Southern District LCMS Convention, June 14–16, 2012, in Metairie, LA."

Proposed Articles of Incorporation and Bylaws Submitted by the LCMS Southern District CEF

Subsequent to the submissions from the LCMS Southern District, as referenced, the Commission on Constitutional Matters received another transmittal from the SD-CEF by email on February 9, 2012, submitting for review additional articles of incorporation of the SD-CEF, represented as filed with the State of Louisiana, as well as bylaws proposed for adoption by the SD-CEF board some eight years after incorporation. The following comments relate to those documents.

First, the Articles of Incorporation submitted with this transmittal indicate, as did the initial articles submitted by the district, that the "initial directors shall serve until their successors are elected by the delegate convention of the Southern District Missouri Synod." The delegate convention of the LCMS Southern District is recognized as thus empowered by these articles of incorporation to elect the members of the board of directors of SD-CEF, continuing or replacing those individuals identified under the initial Articles of Incorporation.

The final article of these Articles of Incorporation, Article XII, indicates that the board shall have power to make, alter or amend, or repeal the bylaws which govern the affairs of the organization, but it fails to acknowledge that such amendments must be submitted and approved in advance by the Commission on Constitutional Matters. To the extent that these bylaws have in fact been adopted without prior approval and are operative, they need to be amended to reflect that requirement.

With respect to the proposed bylaws submitted with this February 9, 2012 transmittal, Article 5.01 A identifies that the members of the board of directors of the SD-CEF are to be elected by the accredited delegates to the convention of the LCMS Southern District. However, these bylaws do not contain any description of a delegate convention other than that of the district itself. As such, the election of members of the board of directors of the SD-CEF must take place at the LCMS Southern District convention and

not some separate, unspecified convention unless and until an alternative bylaw provision is submitted to and has been approved by the Commission on Constitutional Matters and adopted by the SD-CEF.

As already reflected in the commission's response to the bylaws proposed by the district, Bylaw 5.06 B as proposed by the SD-CEF must reflect that the minutes of meetings of the board of directors of the SD-CEF must be available to all members of the Synod.

Proposed Bylaw 5.09 A indicates that the board of directors of the SD-CEF "shall be accountable to the members of the convention of the Southern District of The Lutheran Church—Missouri Synod and shall present a complete report of its actions at each district convention." This properly reflects the relationship between the SD-CEF and the district and contradicts the suggestion of the cover letter that the SD-CEF is independent of and not responsible to or controlled by the district. It should also be expressly recognized in the governing documents of the SD-CEF that it is subject to Synod Bylaw 3.10.6 and the requirements of Bylaw 3.10.6.1 to "administer the district's church extension fund in conformity with the policies established by the Synod's Board for Church Extension and in accordance with district regulations."

The conflict of interest provisions and prohibition contained in proposed Bylaw 5.17 should reflect the requirements of Synod Bylaw 1.5.4.

Proposed Bylaw 5.18 is inadequate in that it implies that the Nominations Committee of the SD-CEF may be the Nominations Committee of the LCMS Southern District, and that the Elections Committee of the SD-CEF may be the Elections Committee of the LCMS Southern District, but it provides no alternative mechanism if the committees of the LCMS Southern District are not used. As such, the commission finds that, under these bylaws, the Nominations Committee and the Elections Committee of the LCMS Southern District are in fact the Nominations Committee and the Elections Committee of the SD-CEF unless and until an alternate mechanism has been submitted and approved by the commission and adopted by the SD-CEF.

Finally, while proposed Bylaw Article VI properly reflects that amendments to the Bylaws must be subject to the approvals required by the Bylaws of The Lutheran Church—Missouri Synod (consistent with Synod Bylaw 3.9.2.2), proposed Bylaw Article VII fails to reflect the same requirement with respect to amendments to the Articles of Incorporation.

Additional Proposed Governing Documents Submitted by the Southern District CEF

On February 16, 2012, the SD-CEF submitted additional documents, including the SD-CEF "original" Bylaws and a copy of a transmittal dated July 24, 2003, to the Chief Administrative Officer of the LCMS at that time, purporting to enclose a copy of those then-proposed Bylaws of the SD-CEF. The documents were not submitted to the Commission on Constitutional Matters for review and approval, as required. These Bylaws are asserted to have been in use since 2003, even though they were neither submitted to nor approved by the commission. The Bylaws, though undated and formatted differently from those submitted with the February 6, 2012 letter of the LCMS Southern District, are substantively the same. Thus the comments above that refer to what has been identified as the "2004 Bylaws" would be the same.

Additional Issues Raised by the LCMS Southern District

After a lengthy history of transactions involving the LCMS Southern District and the SD-CEF, the president of the district has asked: "If the Southern District Church Extension Fund, Inc. is an approved agency of the Synod and it answers only to the corporation 'members' in convention every three years, how is supervision over the agency exercised to insure on a regular basis that it is complying with the Bylaws of the Synod?"

The commission responds by noting that the SD-CEF was formed pursuant to a resolution of the Synod and is therefore an agency of the Synod under Synod Bylaw 1.2.1 (a). A district president is the chief executive officer of the district (Synod Bylaw 4.4.1) as well as being responsible for the ecclesiastical supervision of those within his district, including agencies of the Synod operating exclusively in that district (Synod Bylaw section 4.4).

In reviewing and approving governing documents of a district church extension fund, the documents must show that the church extension fund ultimately is responsible to the authorizing district in convention and may have additional restrictions and responsibilities for which it must answer to the district through its board of directors, president, or otherwise as provided in its governing documents.

To the extent that a district church extension fund has not submitted its documents for appropriate approval by the Commission on Constitutional Matters, such failure should be brought to the attention of the commission and other officers of the Synod as appropriate. To the extent that adopted governing documents of a church extension fund require responsibility and accountability to a district, the president of the district, as described in the district's governing documents, should assure that those requirements are being followed.

Operations Manual Submitted by the Southern District CEF

With a transmittal dated May 3, 2012, the SD-CEF also submitted a series of individual operations policies (rather than an integrated comprehensive operations manual). The policies generally are identified as having been originally adopted in May of 2004, with a last revision date of March 2012. The policies appear to be consistent with the Constitution, Bylaws, and resolutions of the Synod.

The "Loan Policy Procedures" policy appears to limit eligible borrowers from the fund to members of The Lutheran Church—Missouri Synod located in the LCMS Southern District, to related LCMS agencies and recognized service organizations located and operating in the geographical area of the LCMS Southern District, and to the LCMS Southern District itself. While loans outside the district may be permissible, this policy properly reflects the limitations on the function of the SD-CEF to members, agencies, and entities of or related to The Lutheran Church—Missouri Synod.

The commission will make a full review of these policies after the Articles of Incorporation and Bylaws have been finally reviewed and approved.

126. Kansas District Articles of Incorporation/Bylaws Review (11-2606 [A])

With an email dated May 7, 2012, the secretary of the Kansas District supplied his district's Articles of Incorporation and Bylaws for final review, calling attention to changes to the Bylaws that are being proposed to the district's 2012 convention. Upon review of the documents, the commission advocated the following additional changes before submission to the convention (new wording underscored).

- Bylaws Article III, paragraph 1 (e): Correction of this paragraph must also include the deletion of the words "shall be elected from the pastors of the member congregations of the circuit or pastors emeriti who" and adding the words "upon election" before the words "shall hold membership."
- Bylaws Article V, paragraph 2: The terminology "ordained ministers" and "commissioned ministers" should be used consistently throughout this paragraph, as in Synod Bylaw sections 4.8 and 4.9.

- Bylaws Article V, paragraph 3: This paragraph remains unclear by confusing visitation circuit forums and electoral circuit meetings. It will be helpful to provide separate paragraphs for each, as follows:
 3. **Visitation Circuit Forums**: The congregations of a visitation circuit, represented by a pastor and one member of each congregation (Synod Bylaw 5.3.2), shall meet in circuit forums at least once triennially to select circuit counselors (Synod Bylaw 5.2.2), to participate in the triennial process of suggesting mission and ministry emphases to the district convention (Synod Bylaws 5.3.4; 5.3.1 [b] [5]; 4.2.1 [b]), and to consider submitting other overtures to the district or national conventions of the Synod (Synod Bylaw 3.1.6.2). In addition, the forum is encouraged to meet at least two times a year to carry out other functions as described in Synod Bylaw 5.3.1 and to pursue other interests deemed important such as lay leadership development, teacher training, and participation under existing district policy in future local mission development.
 4. **Electoral Circuit Meetings**: The congregations of a visitation circuit or two adjacent visitation circuits (Synod Bylaw 3.1.2 [a]) shall meet once triennially to carry out the responsibility of electing delegates to the general convention of the Synod and to consider sending overtures to the national convention (Synod Bylaw 3.1.6.2).
 5. **Circuit Convocations**: ...
- Bylaws Article VI: This paragraph should read: “Changes in these Bylaws and additions thereto may be made provided they are not contrary to the Constitution, Bylaws, and resolutions of the Synod, have received prior approval of the Synod’s Commission on Constitutional Matters, are presented to the congregations of the district at least thirty (30) days prior to the time they are presented for vote, are separately considered and acted upon, and are passed by a majority of the voting delegates at a district convention.”

The commission thanks the Kansas District for its cooperation in this review process and requests a final clean copy of the district’s Bylaws be provided to the Office of the Secretary of the Synod following convention action, with all adopted changes in place.

127. Indiana District Bylaws Review (11-2619 [A])

Upon receipt of the latest version of the Indiana District Articles of Incorporation and Bylaws following the commission’s earlier review, final attention was given to the documents and the following additional comments were offered by the commission (new wording underscored):

- Bylaw 1.11: The reference to Chapter 2 of the Synod’s Bylaws will more clearly read “Bylaws Chapter 2.”
- Bylaw 2.14, paragraph a: The reference to the electoral circuit will more clearly read: “The electoral circuit forum shall be....”
- Bylaw 2.43, paragraph a: The word “emphasis” in the new wording will more correctly read: “...mission and ministry emphases within the district.”
- Bylaw 2.45, paragraph a: The proposed words “member of the” in the first sentence will need to be deleted.
- Bylaw 2.95: The proposed lettering of the paragraphs requires correction.
- Bylaw 6.21: The first *Handbook* reference should be “2.2.1” rather than “2.2.2.”

With these changes, the commission gives its approval to the Bylaws of the Indiana District, thanks the district for its cooperation, and requests that a clean copy with all changes in place be provided to the Office of the Secretary of the Synod upon their adoption by the district convention.

128. Iowa District East Bylaws Review (11-2621 [A])

Upon receipt of the Iowa District East Bylaws following the commission's earlier review, final attention was given to the documents and the following additional comments were offered by the commission (new wording underscored):

- Bylaws 4.3 and 4.4: The commission notes the use of the word “pastors” in both bylaws and assumes that “parish pastors” is intended, as in Bylaw 4.2. If such is not intended, these references will need to be changed to “ordained ministers.”
- Bylaw 4.4: The word “verification” in the final line will need to be changed “approval,” as in Synod Bylaws 2.2.1 and 2.4.1.
- Bylaw 4.8.2: The new wording at the beginning of the bylaw will better read: “Unless otherwise specified in these Bylaws or the Bylaws of the Synod,....”
- Bylaw 5.1.1: Given the fact that this bylaw's listing of duties differs from that provided in the Constitution and Bylaws of the Synod, the introductory phrase to this bylaw should read: “Examples of the manner in which the district president may fulfill his ecclesiastical role in the district include but are not limited to the following:....”
- Bylaw 5.1.2: Here again, for the reason given above under 5.1.1, the introductory phrase to this bylaw will need to read: “Examples of the manner in which the district president may serve as the chief executive of the district include but are not limited to the following:....”
- Bylaw 6.1: The final sentences of the initial paragraph will better read as follows, using the wording provided by Synod Bylaw 4.5.1: “The board shall have such powers and duties as are accorded to it by the Constitution, Bylaws, Articles of Incorporation, resolutions, and policies of the Synod, as well as those of the district. With this authority and responsibility....”
- Bylaw 6.1, deleted paragraph j: District Bylaw 14.1 indicates the continued existence of district policy. The commission therefore repeats its request for a copy of district policies for its review (Synod Bylaw 3.9.2.2.3).
- Bylaw 13.3: This bylaw requires clarification with the addition of the word “lay” prior to “member.” The fact that this is to be a lay member has been determined by the commission in its Opinion 11-2617.

With these changes, the commission gives its approval to the Bylaws of Iowa District East, thanks the district for its cooperation, and requests that a clean copy with all changes in place be provided to the Office of the Secretary of the Synod after action by the district convention.

129. Central Illinois District Bylaws Review (11-2623 [A])

Upon receipt of the latest version of the Central Illinois District Bylaws following the commission's earlier review, final attention was given to the documents and the following additional comments were offered by the commission (new wording underscored):

- Constitution, paragraph 1: This statement should accurately mirror Synod Bylaw 1.3.2 and should read: “The Central Illinois District is a component part and division of The Lutheran Church—Missouri Synod....”
- Bylaw 2.02 (Explanation of Terms): The commission cannot agree with redefining terms in a manner that is contrary to the usage of the Synod in its Bylaws (which are also primarily the bylaws of the district—Synod Bylaw 4.1.1.2). According to the Bylaws of the Synod, (1) “parish pastor” and “pastor” are synonymous, referring to called pastors of member congregations of the Synod. “Ordained minister” or “minister of religion—ordained” are the terms to use when speaking of all categories on the clergy roster of the Synod. Similarly, (2) “teacher” and “parish

teacher” are synonymous, referring to one category of “commissioned ministers” or “ministers of religion–commissioned,” which is the general category that includes directors of Christian education, deaconesses, etc. (3) The term “layman” refers not only to voting lay members of a congregation but all lay members of Synod congregations. This entire section “(Explanation of Terms)” is unnecessary and cannot remain as is, since a district cannot contradict or restrict what the Synod determines or allows.

- Bylaw 2.30, paragraph b: The commission repeats its earlier comment that the reference to circuit counselors as “executors of the board of directors” is foreign to the Synod’s Bylaws. According to Synod Bylaw section 5.2, the primary duty of circuit counselors is to assist the district president with his responsibilities within the circuit. The commission advocates deleting that phrase from the bylaw.
- Bylaw 2.33, paragraph b i: The final two sentences require modification as follows: “Once a congregation’s application for membership has been approved by the district board of directors or, if denied by the board of directors and requested by the congregation, approved by the district convention, a copy of its Constitution and Bylaws shall be forwarded to the secretary of the district and retained in the district office for future reference (Synod Bylaw 2.3.2).
- Bylaw 2.33, paragraph b iv: Approval by the Commission on Constitutional Matters is required prior to submission to the district convention. The final words of the first sentence therefore must read: “...revisions for its prior approval.”
- Bylaw 2.34, paragraph a: The reference to “two pastors” will need to be changed (see comment to Bylaw 2.02 above) to “ordained ministers.”
- Bylaw 2.40, paragraph b: The reference to “committee” in the final remaining sentence will also need to be changed to secretary of the district, as was done twice before in the paragraph.
- Bylaw 2.45, paragraph a: This paragraph must be made to comply with Synod Bylaw 4.3.1 regarding the election of officers (including circuit counselors) of the district, *i.e.*, they may be elected from the entire clergy roster of the Synod.
- Bylaw 2.47, paragraph a: A sentence should be added calling attention to Synod Bylaw 4.3.1 and its requirement that nominations for secretary of the district (an officer position) may be made from the entire clergy roster of the Synod.
- Bylaw 3.04, paragraph a: The Commission on Constitutional Matters has clarified (Opinion 11-2617) that the member representing a congregation at a circuit forum must be “one lay member designated by the congregation.”
- Bylaw 13.01 b: This statement should read: “submitted to the Commission on Constitutional Matters of the Synod for review and prior approval. Amendments not approved prior to the convention shall not take effect until approved by the commission.”

With these changes, the commission gives its approval to the Bylaws of the Central Illinois District, thanks the district for its cooperation, and requests that a clean copy with all changes in place be provided to the Office of the Secretary of the Synod upon adoption by the district convention.

130. Mid-South District Bylaws Review (11-2624 [A])

Upon receipt of the latest submission of the Mid-South District Bylaws following the commission’s earlier review, final attention was given to the documents. The Bylaws and proposed amendments stand approved by the commission. The district is requested to provide a clean copy with all changes in place to the Office of the Secretary of the Synod following the district convention.

131. Northwest District Articles of Incorporation/Bylaws Review (12-2626 [B])

Upon receipt of the Northwest District Articles of Incorporation and Bylaws in response to the commission's initial review, final attention was given to the documents, with the following additional comments offered by the commission (new wording underscored):

- Articles of Incorporation VII: This statement should read: "Amendments to the Northwest District Articles of Incorporation shall conform to the Constitution and Bylaws of the Synod and are to be approved by the Synod's Commission on Constitutional Matters prior to the convention."
- Bylaw 2.3.2: This bylaw must parallel the wording of Synod Bylaw 4.1.1.2, so as to read: "The Bylaws of the Synod shall be primarily the bylaws of the district,...." (See earlier CCM response to the Northwest district addressing this issue.)
- Bylaw 2.3.3: The reference to the Constitution and Bylaws of the Synod should read: "...the Constitution, Bylaws, and resolutions of the Synod." (See earlier CCM response to the Northwest district addressing this issue.)
- Bylaw 2.3.4: The final lines of this bylaw must include review and approval by the Commission on Constitutional Matters, so as to read: "...at least 30 days in advance of the convention, provided that such amendments are not inconsistent with the Constitution and Bylaws of the Synod or the laws of the State of Oregon, and provided that they have received prior approval by the Commission on Constitutional Matters."
- Bylaw 3.3.3: Because of the requirement of Synod Bylaws 4.3.1 and 4.3.3 that such nominations and elections are to be from the clergy roster of the Synod, the first sentence of this bylaw must instead read: "Regional vice-presidents shall be nominated and elected from the clergy roster of the Synod for each of the following geographical regions, it being understood that the vice-presidents must relocate to the appropriate geographical region if elected."

With these changes, the commission gives its approval to the Bylaws of the Northwest District, thanks the district for its cooperation, and requests that a clean copy with all changes in place be provided to the Office of the Secretary of the Synod upon their adoption by the district convention.

132. Priority of a Pastor's Call (12-2627)

With an email dated January 23, 2012, an ordained minister member of the Synod submitted for the commission's "consideration and clarification" the following question regarding "the hierarchy of call documents vs. a congregation's Constitution and Bylaws." He prefaced his question with a description of his situation and shared some of his thinking regarding the question.

Question: When it comes to the duties of a pastor, which has priority: a pastor's call documents or the congregation's Constitution and Bylaws?

Opinion: The responsibility and authority of the Commission on Constitutional Matters is to interpret the Constitution, Bylaws, and resolutions of the Synod. There is nothing in the Synod's Constitution, Bylaws, and resolutions that addresses this question. The questioner may want to request an opinion from the Synod's Commission on Theology and Church Relations.

133. SELC District Bylaws Review (12-2631)

The commission reviewed the Bylaws of the SELC District and offered the following responses (proposed new wording underscored). Since there will not be opportunity for the commission to provide

final approval prior to the district's convention, amendments to the affected Bylaws that are adopted by the convention will not take effect until final approval has been granted by the commission.

- The commission has begun to recommend to districts that their Bylaws be introduced with a “preamble” section defining their purpose and objectives and their relationship to the Synod and its Constitution and Bylaws.
- Article 1: This article appears to be a listing of the membership of the district's board of directors (Article 9). The commission comments that adding members to the board of directors who are not ordinarily considered officers does not require making them officers of the district. In this listing, however, circuit counselors must also be listed, as they are district officers (Synod Bylaw 4.3.1).
- Article 1 8 a: The statement naming “Two pastoral representatives” to the board will need to be changed to clarify whether parish pastors are intended or whether “two ordained minister representatives” are what is intended.
- Bylaw 2.1: This sentence must be changed to “from the clergy roster of the Synod” as provided by Bylaw 4.3.1.
- Bylaw 2.2.2: The mention of the Synod's Constitution should read: “...in accordance with the Constitution, Bylaws, and resolutions of the Synod,...”
- Bylaw 2.2.5, paragraph a: The mention of the Synod's Constitution should instead read: “...in accordance with the Constitution and Bylaws of the Synod;...”
- Bylaw 2.2.7: This description of the power and authority of the district president will more correctly read: “...restrict, suspend, or implement the Synod's bylaw processes for removal from membership congregations and ordained and commissioned ministers...” Past CCM opinions (e.g. 02-2280) have clarified that while a district president begins the expulsion process of members from the Synod, it is the Synod through its expulsion processes that carries out removals.
- Bylaw 2.2.8, paragraph c: This paragraph, using the nomenclature of the Synod, would better read: “Conduct or direct to be conducted the ecclesiastical ordination or commissioning of the candidates for ordained and commissioned ministries entering the district, as well as the installation of all ordained and commissioned ministers called by the congregations of the district;”
- Bylaw 2.2.9: The provision for special sessions in “cases of extreme emergency” conflicts with the Synod's Constitution, Art. XII 15, which does not allow the resolution of issues by such means as special mailings. The final sentence of this bylaw must therefore be deleted.
- Bylaws 3.1 and 4.1: Mention of the “clergy roster of the circuit(s)” will need to be changed to “clergy roster of the Synod” as required by Synod Bylaw 4.3.1.
- Bylaw 4.2.2: This bylaw fails to take into account the addition of a third vice-president and his role in the succession to the office of the president.
- Bylaws 5.1 and 6.1: In accordance with Synod Bylaw 4.3.1, the wording of these bylaws must be changed to “...from the clergy roster of the Synod.”
- Bylaw 6.2, paragraph b: This bylaw provision is in conflict with Synod Constitution Art. XII 9 d unless augmented to read: “In addition to the president of the district, draw...up and sign official papers and documents...”
- Bylaw 9.1, paragraph h: The intention of the word “pastoral” will require clarification as to whether parish pastors or ordained ministers in general are intended.
- Bylaw 8.2: Reference should also be made to Synod Bylaw section 4.5 which details the primary responsibilities (“powers and duties”) of a district board of directors.
- Bylaws 8.2: Attention will need to be given to the numbering of the Bylaws in this section, as it moves from 8.2 (Duties of the Financial Secretary) to 9.1 (Board of Directors Composition) and then to 8.2 again (Board of Directors Duties).

- Bylaw 8.2.2: The final sentence requires clarification regarding the board’s responsibilities over against those of the district president. It will better read: “They shall also govern and attend to all matters pertaining to the SELC District of The Lutheran Church—Missouri Synod between regular conventions of the SELC District of The Lutheran Church—Missouri Synod except for ecclesiastical supervision and any other matters for which the president of the district is responsible.”
- Bylaws 8.3 and 8.4: Again, the use of the word “pastoral” throughout these bylaws will need to be clarified as in Bylaw 9.1 h above. The second sentence of Bylaw 8.3 begs attention, as the change to a plural noun has not been reflected throughout.
- Article 9: The word “officials” in the first sentence can be changed to “officers” since the district only has officers.
- Bylaw 10.1.2: This bylaw must also include mention of the Bylaws and resolutions of the district and Synod, so as to read: “...called according to the Synod’s Constitution and the Bylaws of the Synod and district.”
- Bylaw 11.1: The reference to “two (2) pastoral representatives” is unclear as to whether two parish pastors are intended. It is also unclear whether the two “representatives” intended are the two representatives on the board of directors of the district or whether this bylaw would more accurately read: “...shall consist of two (2) clergy members, not members....”
- Bylaw 11.3.1, paragraph (a): Here again, “clergy roster of the district” and “clergy roster of each circuit” will need to be changed to “clergy roster of the Synod” as per Synod Bylaw 4.3.1. An additional sentence will also be helpful: “Upon assuming office, all officers will be required to be residents in the district or circuit as appropriate.”
- Bylaw 11.3.1.1: Concerns in this paragraph with compliance with Synod Bylaw 4.3.1 should be resolved by the change of the preposition in the second sentence: “Candidates for the offices of vice-president shall be all the ordained ministers for each circuit receiving any votes in the nominating ballots of the congregations.”
- Bylaw 11.3.2: This bylaw should also include mention of the third vice-president.
- Bylaw 11.3.3: The provision calling for removal from the ballot for district president those candidates receiving less than 15 percent of the total vote is contrary to Synod Bylaw 4.7.3 and therefore must be removed from this bylaw.
- Bylaws 11.3.6 (b) and 11.3.8 (a) and (b): These bylaws will require the addition of wording such as: “unless prior consent has been given to relocate as necessary to hold office.”
- Bylaws 11.3.9 and 11.4: There is no provision following Bylaw 11.3.9 for the election of circuit counselors (ratification of circuit forum selections) prior to the report of the Nominating Committee. Such provision could be included as a new Bylaw 11.3.10. Bylaw 11.4 will also require amending to read: “After the president, the first, second, and third vice-presidents, and the circuit counselors are elected,....”
- Bylaw 11.5: Mention and exception should be made in this bylaw to the appointment of circuit counselors by the district president, which are not subject to board of directors’ ratification. The paragraph will better read: “If a vacancy occurs in an office of circuit counselor, the president shall fill the vacancy by appointment. If a vacancy occurs in any other office other than that of president or vice-president, the president shall appoint a replacement subject to ratification by the Board of Directors.”
- Bylaw 11.7: Reference should be made in this section to the Synod’s conflict of interest bylaw (Bylaw 1.5.2) and also to appropriate Synod Board of Directors policies governing reception of gifts.
- Bylaw 11.7.4: This bylaw must also include mention of the Synod’s bylaw governing removal of board members, so as to read: “Any inappropriate activity shall cease or the position shall be vacated using the procedure provided by Synod Bylaw section 1.5.7 for the removal of board members.”

- Bylaw 11.8.2: This bylaw should also include mention of the requirement to follow Synod Bylaw 1.5.4 governing full financial disclosure.
- Bylaw 12.1: Mention must also be made in paragraph a to the Synod’s Bylaws and resolutions, so as to read: “a. not contrary to the Constitution, Bylaws, and resolutions of the Synod;...” Paragraph e should also read: “e. approved in advance by the Commission on Constitutional Matters of the Synod;...”

134. New England District Bylaws Review (12-2633)

In July 2009, the commission provided its initial review and response to the Bylaws of the New England District (09-2558). It has noted that not all of its recommendations were incorporated into the latest document, received February 27, 2012. Upon review of the newly submitted bylaws and proposed amendments, the following changes are recommended by the commission (new wording underscored):

- Bylaw 3.32: Synod Bylaw 5.2.2.1 does not require board of directors’ approval for the appointment of circuit counselors. This bylaw should therefore read: “Vacancies in all other offices except circuit counselor shall be filled for the unexpired term through appointment by the president with the approval of the board of directors. In the case of circuit counselor appointments, the president shall make these appointments without board of directors’ approval.”
- Bylaw 4.21: Mention should be made of Synod Bylaw 4.5.1 as the primary source for a description of the powers and duties of a district board of directors.
- Bylaw 8.20: This bylaw must agree with Synod Bylaw 4.3.1 and therefore must read: “...may nominate two candidates from the clergy roster of the Synod for the office of vice-president.” A new paragraph d should then be added: “d. All vice-presidents shall be members of congregations within the regions which they serve upon assuming office and during the course of their tenure.”
- Bylaw 9.02: This bylaw must be changed to read: “In the event that an action by the Synod affects any provision of these Bylaws, the board of directors shall be empowered, upon review and approval by the Synod’s Commission on Constitutional Matters, to amend these Bylaws to conform to those of the Synod.

With these changes, the commission gives its approval to the Bylaws of the New England District, thanks the district for its cooperation, and requests that a clean copy with all changes in place be provided to the Office of the Secretary of the Synod upon adoption by the district convention.

135. Concordia University Wisconsin/Concordia University Ann Arbor Transaction (12-2635)

As discussions progressed in efforts to affiliate Concordia University–Ann Arbor (CUAA) with Concordia University–Wisconsin (CUW), the commission was actively involved in a review of documentation essential to the transaction. Beginning with a Letter of Intent to be signed by all involved parties (CUAA, CUW, Concordia University System, LCMS Board of Directors), which the commission initially reviewed (that review subsequently reflected in the input it provided to the other more critical documents), the commission assisted the parties in developing and coordinating the remaining documents in light of the Constitution and Bylaws of the Synod.

Upon final review, the commission gave its approval to the following documents essential to the transaction:

- LCMS Board of Directors Affiliation Resolution
- CUAA Board of Regents Resolution
- CUW Board of Regents Resolution

- Revised CUA Articles of Incorporation
- Revised CUA Bylaws
- Reversion Release Agreement
- Affiliation Agreement

Two documents await final review and approval by the commission, to be accomplished prior to the completion of the affiliation transaction:

- Revised CUW Articles of Incorporation
- Revised CUW Bylaws

136. Pacific Southwest District Bylaws Review (12-2637)

The commission reviewed the Bylaws of the Pacific Southwest District and offered the following responses (proposed new wording underscored). Since the commission is making a number of recommendations without opportunity for final approval prior to the district convention, amendments to the affected bylaws that are adopted by the convention cannot take effect until final approval has been granted by the commission.

- For future consideration, the district is encouraged to consider providing a Preamble paragraph or section to the Bylaws which speaks of the goals and objectives of the district and of the relationship of the district to the Constitution, Bylaws, and resolutions of the Synod.
- Bylaw 1.31: This bylaw requires review and amendment to mirror the content of Synod Bylaw 1.5.1.2, which allows for one elected or two appointed offices.
- Bylaw 1.41111: In accordance with Synod Bylaws 4.3.1 and 4.3.3, this bylaw will require amendment to read: “Six months prior to the district convention, the secretary of the district will request from all congregations of the district the nomination of up to two ordained ministers from the clergy roster of the Synod for the office of district president.
- Bylaw 1.4123: This bylaw must be amended to reflect accurately Synod Bylaws 4.3.1 and 4.3.3. The paragraph will better read: “Nominations for each of the four regional vice-presidents shall be made by the congregations within each region. Six months prior to the district convention, the district office shall supply to the congregations of each region a list of eligible ordained ministers from within the region for the office of vice-president for its region. Each congregation may nominate from this list and from the entire clergy roster of the Synod two ordained ministers, and shall provide their names to the district office. The four nominees for each region who receive the most votes and who, with their consent to serve, consent also to live within the geographical boundaries of the region if and when elected, shall be placed upon the convention ballot and information about each candidate shall be published prior to the convention.
- Bylaw 1.4211: This bylaw must be in agreement with Synod Bylaw 4.3.1 and therefore read: “Every voting congregation of each circuit shall nominate as candidates for the office of circuit counselor two men from the clergy roster of the Synod. Nominations may also be suggested by the district president.”
- Bylaw 1.4213: This bylaw should be removed, as it does not reflect the process provided by Synod Bylaw 5.2.2.
- Bylaws 1.441 and 1.451: The references to “pastors(s)” in these bylaws need to be changed to “ordained minister(s)” in order to agree with Synod Bylaw 3.10.5.2.
- Bylaws 4.3ff: The terminology in this section will need to be brought into agreement with the terminology used in Synod Bylaw 4.8.2.
- Bylaw 5.1: The final phrase of this bylaw will better read: “...except as supplemented in these Bylaws.”

- [WJS1]Bylaw 5.54: The final phrase of this bylaw should be deleted, leaving the bylaw to read: “The job descriptions for these positions shall be prepared by the district president in consultation with the board of directors.”
- Bylaw 7.11: This bylaw would provide opportunity to add a reference to the forum’s opportunity to submit suggestions for triennial mission and ministry emphases for the Synod, to be forwarded via overture to the district convention.
- Bylaw 7.13: The final phrase of this bylaw should also reference the Synod: “...in order to share the hopes and needs of the circuit, the district, and the Synod.”
- Bylaw 7.21: This bylaw as stated is incorrect regarding the composition of circuit forums (see Synod Bylaws 5.3.2; 3.1.2.1 [c]) and its first sentences should read: “Each circuit forum shall consist of the pastor and one lay member from each congregation of the circuit. The circuit lay delegate to the Synod convention shall function as an advisory member” (Synod Bylaw 3.1.2.2).
- Bylaw 7.22: This bylaw can be deleted, as it is inaccurate (see Synod Bylaw 5.3.2 [c]) and unnecessary (see proposed wording for district Bylaw 7.24, here following).
- Bylaw 7.24: The circuit counselor is more than a resource to the circuit forum. This bylaw will more accurately read: “The circuit counselor shall ordinarily serve as the chairman of the circuit forum, providing...”
- Bylaw 8.11: The reference to “two pastors” may not be accurate if the more general “ordained ministers” is intended.
- Bylaw 8.12: The Synod’s Bylaws do not require that the district review the constitutions of auxiliary organizations. They do require the review of congregations’ bylaws in addition to their constitutions.
- Bylaw 8.13: In light of Synod Bylaw 2.2.1 (b), this bylaw will more accurately read: “The Committee on Constitutions shall examine the constitution and bylaws of congregations to ascertain that they are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod in order that any necessary changes may be made by the congregation before the application is acted upon.”
- Bylaw section 8.0 Standing Committees: This section would be an appropriate place to include a bylaw provision for the district committee or board for stewardship required by Synod Bylaw section 4.6.
- Bylaw 8.14: This bylaw will more accurately read: “If at any time there is a disagreement between the committee and a congregation applying for membership on any scriptural doctrine or Synod policy that cannot be resolved by the district president or board of directors, and if the board of directors denies the application, the district president shall submit the application to the next convention of the district (Synod Bylaw 2.3.1 [c]).”
- Bylaw 10.1: This bylaw will more accurately read: “The Constitution and Bylaws of the Synod and the rules contained in the current edition...”
- Bylaws 12.11 and 12.12: Both of these bylaws should have the following statement added to them: “Prior review and approval by the Commission on Constitutional Matters will be required. When prior approval is not possible, actions taken will not become effective until and unless such approval has been obtained.”

137. Eastern District Bylaws Review (12-2639)

With an April 26, 2012 email, the president of the Eastern District explained that a comprehensive review of the district’s Bylaws is underway in preparation for the 2015 district convention, and that the district is requesting approval at this time only of the proposed amendment to the portion of the Bylaws governing the election of circuit counselors. The commission reviewed the specific bylaw submitted for review, “Part IV, C, 2.03,” and herewith grants its approval pending changes to paragraphs (a) and (b) as follows (proposed wording underscored):

- The term “pastors” (which is the terminology the Synod uses to refer exclusively to parish pastors) will need to be changed in both paragraphs (a) and (b) to “ordained ministers” (the term used by the Synod for ordained ministers in general).
- In addition, the words “of the district” and “of the region” in the paragraphs will need to be changed to “from the clergy roster of the Synod” in keeping with Synod Bylaw 4.3.1.

The commission looks forward to receiving the district’s entire Bylaws along with additional proposed bylaw changes in advance of the 2015 convention.

138. Texas District Bylaws Review (12-2640)

With an April 25, 2012 email, the president of the Texas District submitted a series of proposed bylaw amendment resolutions. Upon review of the submitted documents in light of the existing bylaws of the district, the commission offered the following comments and recommendations (proposed wording underscored). Since the commission is making a number of recommendations without opportunity for final approval prior to the district convention, amendments that are adopted by the convention cannot take effect until final approval has been granted by the commission.

Regarding the resolutions proposing amendments to the Bylaws of the district:

- Resolution 03-01-12: The resolve paragraph will more accurately read: “That the words clergy and clerical in Article V of the Preamble to the Bylaws of the Texas District be changed to “pastoral.”
- Resolution 03-05-12: Synod Bylaw 3.12.2.1 (a) requires the retention of the words “in writing” in district Bylaws 1.021 and 1.045. The commission notes, however, that “in writing” can refer to documentation that is communicated electronically.
- Resolution 03-07-12: As written, the resolve paragraph is out of order, as the Synod’s definition of a parish cannot be changed by a district. That definition is: “Two or more congregations being served by the same pastor constitute a parish with the right of representation by one lay delegate and one pastoral delegate” (CCM Opinion 11-2618).
- Resolution 03-11-12: The change advocated for this bylaw should also be reflected in the heading of the Bylaw: “4.025 Availability of Committee Resolutions.”

Regarding the existing Bylaws of the district:

- Preamble to the Bylaws: In preparation for a future convention, the commission advises that the district give consideration to replacing the existing preamble section with a true preamble which elaborates on the relationship of the district to the Synod’s Constitution and Bylaws and defines the district’s goals and objectives.
- Preamble, Art. III, paragraph 3 C: The commission is interested in knowing whether the referenced “Commissioned Pastoral Assistant Programs” are equivalent to the Synod’s licensed deacon program.
- Bylaws Article I: This section contains no mention of the election of regents to the Board of Regents of Concordia University Texas by the Texas District (Synod Bylaw 3.10.5.2 [2]).
- Bylaw 1.015, paragraph c: This sentence will require a change to read: “Doubtful cases shall be decided by the President of the Synod.”
- Bylaw 1.043, paragraph a: This paragraph requires amendment in light of Synod Bylaw 4.3.1: “Each voting congregation shall be entitled to nominate for its area (A, B, C, and D) two ordained ministers for vice-president from the clergy roster of the Synod.”

- Bylaw 1.055, paragraph a: Because districts do not have their own constitutions and only Bylaws, this paragraph should read: “a. perform the usual duties outlined in the district Bylaws, receiving....”
- [WJS2]Bylaw 1.057, paragraph a: According to Synod Bylaw 4.3.1, this bylaw must be changed to read: “The district secretary shall be elected from the clergy roster of the Synod according to established district procedure.
- Bylaws 1.077, 11.043, 12.001: The commission notes the mention and existence of a district “personnel manual” and, in keeping with its responsibilities (Synod Bylaw 3.9.2.2.3), requests a copy for review.
- Bylaw 2.005, paragraph a: As this paragraph is replaced with the process provided by Synod Bylaw section 5.2, it will also need to reflect the requirement of Synod Bylaws 4.3.1 and 4.3.3 that nominations may be made from the entire clergy roster of the Synod, provided those nominated consent to relocate as necessary if elected.
- Bylaw 4.005, paragraph b: For the sake of consistency with terminology used by the Synod, this paragraph would better read: “Overtures for programs, requiring....” The same would apply in paragraph c: “Late overtures will not be accepted unless....” See also the mention of “memorials” in the title and wording of Bylaw 4.043, which would better read: “Late overtures....”
- Bylaw 4.031, paragraph d: Circuit counselors should also be included with the president and vice-presidents as those for whom the Nominations Committee is not responsible: “d. The Nominations Committee shall send to all delegates a list of all nominees for offices other than those of president, vice-presidents, and circuit counselors, with information....”
- Bylaw 5.001, paragraph b: For the sake of consistency, the paragraph will better read: “b. All ordained and commissioned ministers on the district roster....”
- Bylaw 5.001, paragraph d: For the sake of consistency, item 3 would better read: “3. District Ordained Ministers’ Conference. In addition, items 4 and 5 are not “official district conferences” and warrant a separate listing like that in the Synod’s *Handbook*, p. 198: “Other District Meetings.”
- Bylaw 6.003: The existing wording “voting delegates present” is different from how the voting for elections ordinarily takes place in the Synod, where “a majority of votes cast at the district convention” is required.
- Bylaw 8.005, paragraph f: The first sentence of this bylaw is more restrictive than Synod Bylaw 5.1.2 and should be deleted.
- Bylaw 8.013, paragraph h: The commission notes the mention of a Texas District Church Extension Fund “policy manual” and, in keeping with its responsibilities (Synod Bylaw 3.9.2.2.3), requests a copy for review.
- Bylaw 15.001, paragraph (1) (d): This statement will more accurately read: “(d) submitted to the Synod’s Commission on Constitutional Matters for approval prior to the presentation to the convention;....” Similarly, the final sentence of paragraph (2) will also more accurately read: “Such amendments shall be drafted by the secretary of the district, approved by the board of directors, and reviewed and approved by the Commission on Constitutional Matters of the Synod.”

139. CUS Prior Approval of University Theological Faculty (12-2643)

With a May 2, 2012 email, the interim Executive Director of Concordia University System requested an opinion regarding bylaws related to the prior approval of theology faculty members for the Synod’s colleges and universities in light of an apparent discrepancy in the 2010 *Handbook* of the Synod. In keeping with the provision of Bylaw 3.9.2.2 (b) requiring notification of “an officer or agency of the Synod if a request for an opinion involves an activity of that officer or agency,” also allowing the officer

or agency “to submit in writing information regarding the matter(s) at issue,” the commission determined to request such input from the Board of Directors of Concordia University System, the boards of regents of the Synod’s institutions of higher learning, the Commission on Handbook, and the Office of the President.

140. Review of LCEF Overture for 2013 Convention (12-2644)

With a letter dated May 3, 2012, the president of Lutheran Church Extension Fund submitted a proposed convention action for review by the commission. The commission found the proposed action to amend Bylaw 1.5.7.1 and to insert a new Bylaw 3.6.4.3.1 to be in order for submission to the 2013 convention of the Synod.

141. Dispute Resolution Process Procedural Questions (12-2645)

With a May 9, 2012 email, a member of the Synod submitted a series of questions related to the dispute resolution process under Bylaw 1.10. The actual questions submitted have been amended by the commission to avoid argumentative assumptions and to approach the issues in a more neutral manner.

Question 1: May an individual involved in an investigation or proceeding under Bylaw sections 2.14–2.17 initiate a dispute resolution process under Bylaw section 1.10 against witnesses because they offer testimony relating to the allegations in the underlying action?

Opinion: No. Bylaw 2.14.1 recognizes that “[t]ermination of membership in the Synod is a serious matter involving both the doctrine and life of those to whom it has been granted.” The need to obtain accurate and complete information necessary to consider allegations which could lead to termination of membership has resulted in the requirement (Bylaw 2.14.7.8 [d]) that “[a]ny 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.” Members are thus encouraged to cooperate in an investigation and are required to provide testimony in order to bring such an action to conclusion quickly where not warranted, and to facilitate the prompt expulsion from membership where warranted.

In order to maintain the integrity of the process, Bylaw 2.14.7.8 (i) gives the panel hearing such an action the authority to determine which witnesses are necessary. Paragraph (g) of the bylaw requires that “[w]hile 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.” The seriousness of maintaining that confidentiality is emphasized in Bylaw 2.14.9.2, which further provides that “[a]ny member participating in this bylaw procedure that violates any of the requirements or procedures in this bylaw or is persistent in false accusations is subject to the same disciplinary measures as set forth in this bylaw. Violations of the prohibition against publicity while a matter is still undecided or while an appeal is contemplated or pending (Bylaw 2.14.7.8 [g] above) by any of the persons involved are specifically included as violations subject to the same disciplinary measures set forth in this bylaw.”

Question 2: When an investigation or action is pending under Bylaw sections 2.14–2.17, is that a matter to be delayed if there is a dispute resolution process under Bylaw 1.10 involving one or more of the parties or witnesses to the expulsion action simultaneously pending?

Opinion: No. While the same parties may be involved in both the Bylaw section 1.10 dispute resolution process and a Bylaw section 2.14–2.17 expulsion process over related facts and issues, the two processes are independent of each other, and neither process should be unduly delayed. The Synod recognizes the

need both to restore a member promptly following unsubstantiated allegations resulting in an expulsion proceeding and to expel a member promptly when expulsion is justified.

Question 3: If a member disapproves of testimony offered by a witness relating to allegations against the member in a Bylaw section 2.14–2.17 matter, is the appropriate forum to challenge the witness’ testimony within the Bylaw section 2.14–2.17 process itself, or is the appropriate forum the dispute resolution process under Bylaw section 1.10?

Opinion: The entirety of a Bylaw section 2.14–2.17 process is the evaluation of conflicting information and testimony, a determination of the facts involved, and the appropriate action based upon those facts. It is expected that challenges to all evidence and testimony will occur within that process. A dispute resolution action under Bylaw section 1.10 would only be appropriate for actions occurring outside that process, or for violation of the Bylaw section 2.14–2.17 process itself.

Question 4: If the complainant refuses to meet face-to-face with the respondent under Bylaw 1.10.5, may the complainant nonetheless proceed to the formal reconciliation process under Bylaw 1.10.6?

Opinion: As stated above, the entire purpose of a Bylaw section 1.10 action is a God-pleasing reconciliation. Such reconciliation cannot occur without communication between the parties in dispute. Bylaw 1.10.5 recognizes this when it indicates that “the parties involved in a dispute must meet together.” Recognizing that such failure to communicate in a God-pleasing manner often causes a dispute to come to the attention of a district president in the first place, Bylaw 1.10.5 (c) requires the district president to “require the complainant to meet face-to-face with the respondent in the manner described in Matthew 18:15, if the complainant has not already done so,” before any formal process can continue under that bylaw.

Question 5: If a complainant refuses to attend a formal reconciliation meeting under Bylaw 1.10.6, can the complainant nonetheless proceed to a Dispute Resolution Panel under Bylaw 1.10.7?

Opinion: As suggested by Bylaw 1.10.4 (f), the matter should not proceed to a Dispute Resolution Panel if the reconciler determines that it was the accuser who refused to participate in the reconciliation process. On the other hand, the process may move forward if such a meeting did not occur because the accused refused to participate. A matter may not proceed to a Dispute Resolution Panel under Bylaw 1.10.7 until the requirements of the preceding bylaws have been met, including the preparation of the reconciler’s report under Bylaw 1.10.6.5, which would report the failure of the accused as the basis to move forward if such were the case.

Question 6: Can a non-party attend the formal reconciliation meeting held under Bylaw 1.10.6.4?

Opinion: Yes, Bylaw 1.10.6.4 includes the provision that “[w]ith the approval of the reconciler, each party may, in the manner described in Matthew 18:16, bring one or two persons to the meeting ‘so that every matter may be established by their testimony.’” The reconciler may exercise discretion to allow any person who may assist the process attend the formal reconciliation meeting.

142. Procedural Matters re Bylaw Section 1.8 (Dissent) (12-2646)

A member of the Synod, in a May 10, 2012 email, addressed a series of statements and corresponding questions to the commission regarding procedural matters pertaining to Bylaw section 1.8 (“Dissent”).

Bylaws 1.8.1 and 1.8.2 describe the process by which members of the Synod express dissent from doctrinal resolutions and statements adopted by the Synod. Bylaw 1.8.2 indicates that before a member of the Synod may submit an overture to a convention calling for the revision or rescision of a resolution adopted by the Synod, that member must first express that dissent within the fellowship of peers and then bring it to the attention of the Commission on Theology and Church Relations (CTCR). Having done that, the member of the Synod (either an individual or a congregation) may proceed with the process of bringing an overture to a convention.

Synod Bylaw 3.1.6.2 specifies those eligible to submit overtures. Among those listed is the forum of a circuit. Therefore, a member of the Synod (individual or congregation) who has followed the requirements for dissent described in Bylaw 1.8.2 may submit a proposed overture to a circuit forum, which if adopted by the circuit forum may be submitted either to a convention of a district or a convention of the Synod. In this instance, the circuit forum and/or the district convention become(s) a channel through which the member submits an overture to revise or rescind “doctrinal resolutions and statements” to a convention of the Synod.

Based on this process prescribed by the Bylaws of the Synod, the commission replies to the four statements and their following questions submitted by the member of the Synod. In the interest of brevity and clarity, the commission has summarized a number of the questions submitted under statements 2–4, taking care to retain the general content and intent of the original questions.

Statement 1: A circuit forum submits to its appropriate district convention an overture proposing that the district in turn call upon the Synod to revise or rescind a doctrinal resolution adopted by the Synod.

Question 1.1: If the circuit forum member who made the motion to place the matter in question before the circuit forum is a pastor, is it relevant whether this pastor had previously discussed his point of dissent within the fellowship of peers and brought this matter to the attention of the CTCR before expressing his dissent in the form of an overture for eventual convention consideration?

Opinion: Yes. Bylaw 1.8.2 requires that a member (individual or congregation) follow this process before expressing dissent by presenting an overture to a circuit forum calling for the revision or rescision of a doctrinal resolution or statement of the Synod.

Question 1.2: Would there be a difference if the circuit forum member who made the motion to place the matter in question before the circuit forum were a layperson?

Opinion: The process of dissent in Bylaws 1.8.1 and 1.8.2 applies only to members (individuals and congregations) of the Synod. Such an overture could not be submitted by a layperson unless done on behalf of a congregation which had previously followed the process.

Question 1.3: Before a circuit forum adopts the kind of overture mentioned in item 1 above, would it be incumbent upon that circuit forum to take the steps enjoined upon members of the Synod in Bylaw section 1.8? If so, who is the “peer” of a circuit forum? Would two or more circuit forums have to hold official joint meetings for discussion?

Opinion: Since a circuit forum is not a member of the Synod but rather a channel through which a member of the Synod submits such an overture, the provisions of Bylaw 1.8.2 do not apply to those present and voting at the circuit forum.

Statement 2: An agency of the Synod (especially but not limited to a district, through its convention, or a circuit forum) submits to the Synod in convention an overture that calls upon the Synod to revise or rescind a doctrinal resolution adopted by the Synod.

Question 2.1: Must every member of a circuit forum, agency of the Synod (including a district), or district or Synod floor committee considering such an overture participate in the Bylaw 1.8.2 steps of dissent required of a member of the Synod before that circuit forum, agency, or floor committee can submit such an overture to a convention?

Opinion: As stated above, neither a circuit forum nor a district convention is a member of the Synod, but rather a proper channel through which a member presents his/her/its concerns. After a member involved in the Bylaw 1.8.2 process has initiated a matter and an overture is before a convention, the matter no longer belongs to the individual. The individual who initiated the process is not required to participate.

Question 2.2: As a related question, Bylaw 1.8.2 mentions an “overture to *the* convention” (emphasis added to highlight the definite article). To which convention? Is “the convention” in view here exclusively the national convention (which is the only convention that can actually revise or rescind a doctrinal resolution adopted by the Synod) or does “the convention” include any convention of the synod at the national or district level, *i.e.*, also district conventions?

Opinion: Ultimately it is a convention of the Synod that decides the matter. However, such an overture could also be presented to a district convention as an appropriate channel through which the matter is presented to a convention of the Synod.

Statement 3: At a circuit forum or district convention, a pastor (an individual member of the Synod) casts a vote in favor of (a) a properly submitted motion that calls upon the district to memorialize the Synod to revise or rescind a doctrinal resolution adopted by the Synod, or (b) a properly submitted motion that calls upon the Synod to revise or rescind a doctrinal resolution adopted by the Synod.

Question 3.1: Is it relevant whether this pastor had previously discussed his point of dissent within the fellowship of peers and brought this matter to the attention of the CTCR and expressed his dissent in the form of an overture for convention consideration?

Statement 4: At a convention of the Synod, a pastor (an individual member of the Synod) casts a vote in favor of a properly submitted motion by which the Synod revises or rescinds a doctrinal resolution adopted by the Synod.

Question 4.1: Is it relevant whether this pastor had previously discussed his point of dissent within the fellowship of peers and brought this matter to the attention of the CTCR and expressed his dissent in the form of an overture for convention consideration?

Opinion: Statements 3 and 4 and the questions that follow each statement (referencing those in attendance at circuit forums or conventions who vote on the overture) are irrelevant because neither a circuit forum nor a district convention is a member of the Synod, and such voting at a circuit forum or district convention is part of the process by which such an overture from a member comes to a convention of the Synod, where delegates decide the issue voting according to their own convictions.

143. Other Matters Discussed by the Commission

During the course of the meeting, a number of additional matters were surfaced and discussed at length by the commission:

- The Secretary of the Synod requested that the commission informally review a policy that is being developed governing the ordination, commissioning, installation, and ecclesiastical supervision of missionaries called by the Synod's Board for International Mission.
- The commission discussed several sensitive matters in executive session.
- The commission is in the process of planning a November joint meeting with the Commission on Handbook and the President of the Synod and his staff to continue discussion of matters related to the *Handbook* of the Synod resulting from 2010 Synod convention actions.

144. Agenda Items for the Commission's August 10–12, 2012 Meeting

Upon review of unfinished business by the Chairman Sohns, the following items remain on the commission's active agenda, to be addressed when the commission next meets August 10–12:

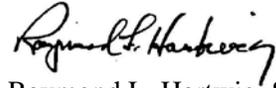
- Bylaw Section 2.16 *Standard Operating Procedures Manual*
- Bylaw 3.10.5.6.9 (j) *Standard Operating Procedures Manual* for Colleges and Universities
- Bylaw 3.10.4.7.9 (j) *Standard Operating Procedures Manual* for Seminaries
- Women's Service in Congregations (11-2596)
- Review of Concordia University System Articles of Incorporation and Bylaws (11-2602)
- Review of English District Operations Manual and Employees Handbook (11-2613 [B])
- Review of Ohio District Governance Policies (12-2630 [B])
- Review of Montana District Policies (12-2632)
- Review of Concordia University Wisconsin Articles of Incorporation and Bylaws (12-2635)
- Constitution Guidelines Update Request (12-2641)
- Review of Concordia University Nebraska Articles of Incorporation and Bylaws (12-2642)
- Concordia University System Question: Prior Approval of Theological Faculty (12-2643)

In addition, the following remain on the commission's agenda as items that await further input or receive regular attention at commission meetings:

- Concordia Historical Institute Policy Manual (08-2533)
- Article VI and Heterodox Congregations (09-2544)
- Commission on Handbook Matters
- LCMS Structure and Governance Matters
- 2010 *Handbook* Errors Reports
- Council of Presidents Policy Manual Review
- Commission Web Site Review
- Commission Internal Governing Document
- Commission "Aberrations and Concerns" Document
- Consideration of District and College/University Template for Articles of Incorporation
- Status Review of Agency Governing Documents' Review
- Retention of Historical Documents (e.g. "Reports of Synodical Survey Commission)
- Duties of Commission Related to 2013 Synod Convention

144. Adjournment

After discussion of future meeting dates (August 10–12, 2012; November 2–4, 2012; February 1–3, 2013; May 16–20, 2013; July 18–25, 2013) and responsibilities, and available time having expired, the meeting was closed with words of benediction.


Raymond L. Hartwig, Secretary