

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS

July 13–19, 2007

Houston, Texas

206. Call to Order and Opening Prayer

Chairman Albert Marcis called the meeting to order. Dan Lorenz provided an opening devotion, reading from 1 Corinthians 12 regarding gifts of the Spirit provided to members of the Body of Christ and relating the reading to the convention of the Synod before offering an opening prayer.

During the course of the meeting it was noted that the minutes of the Commission's previous meeting failed to mention the Commission's meeting with Synod's legal counsel. The correction will be made to the May 18–20, 2007 minutes.

The Commission continues to retain on its agenda its review of a number of policy manuals of program boards of the Synod (06-2457; 06-2471; 06-2472; 06-2473; 06-2474; 06-2475; 06-2476). This review will again wait for another meeting, given the large amount of other more pressing business to come before the Commission at this meeting.

207. Model Constitution and Article II (07-2492)

A pastor of the Synod in an April 9, 2007 letter raised an issue regarding paragraph 5.4.2 of the Commission's *Guidelines for Constitutions and Bylaws of Lutheran Congregations* pertaining to standards for excommunication, *i.e.*, whether a unanimous vote of a congregation is required for an excommunication. At its May 18–20, 2007 meeting, the Commission agreed to request input from the Commission on Theology and Church Relations before responding. A July 6 letter from CTCR Executive Director Samuel Nafzger acknowledged receipt of the Commission's letter and indicated that this request will be presented to the Commission on Theology and Church Relations at its next meeting scheduled for September 5–8, 2007.

208. Attendance at Special Sessions of the Synod (07-2495)

On May 21, 2007, a member of a convention floor committee asked a series of four questions regarding attendees of a special convention of the Synod if one were to be called.

Question 1: With reference to Article VIII, Article IX, Bylaw 3.1ff and any other pertinent articles or bylaws, in the calling of a special session of the Synod, who would be required to be in attendance in addition to voting delegates?

Opinion: The Commission on Constitutional Matters in Opinion 07-2490 has stated in answer to the question: "Is a 'special session' of the Synod the same as or different from a convention of the Synod?" Opinion: "The only difference is terminology. In one case the term used is a 'regular meeting' (Art. VIII A 1) and in another a 'special session' which can be called in different ways (Art. VIII B). Whether a 'regular meeting' or a 'special session,' either one is a convention of the Synod, and the appropriate provisions under Constitution Art. V, VIII, and IX and Bylaw section 3.1 apply to both in the same way." All of those required to attend a regular meeting would also be required to attend a special session. (Art. IX 1–3.)

Question 2: In the case that nonvoting, advisory delegates are to be in attendance at a special session of the Synod, would they be the same delegates from the prior regular convention of the Synod as the voting delegates selected by their electoral circuits who serve a three-year term would be?

Opinion: The Bylaws are silent on this question. Voting delegates have a specific function to carry out after the regular meeting as set forth in Bylaw 3.1.2.2, and that same bylaw specifically identifies their term as three years. No mention is made in the Bylaws concerning such a responsibility or term of service for advisory delegates. By way of clarification the attendance of advisory delegates at a convention is not determined by an election of the circuit.

Question 3: If nonvoting, advisory delegates do not serve the three-year term as voting delegates do, would it be up to the individual district’s determination in the course of time between the regular convention and the special session who would represent their advisory members?

Opinion: Advisory delegates and representatives are selected by various entities or serve by reason of their office according to Bylaws 3.1.3.1–3.1.4.5. This would also be the case for a special session of the Synod.

Question 4: According to the Constitution and Bylaws, is it possible that any advisory delegates from the districts or national leadership may be excluded from attendance, as a cost reduction for the special session?

Opinion: The same representation required for a regular meeting of the Synod is also required for a special session (Art. IX). See opinion to question 1.

209. Board for Pastoral Education Standard Operating Procedures Manual (07-2496)

The Secretary of the Commission called attention to the proposed Bylaw 3.8.2.7.9 (j) *Standard Operating Procedures Manual* for the Board for Pastoral Education and noted several minor recommended changes. The Commission gave its approval to the manual with the proposed changes, instructing the Secretary to inform the Board by letter of the changes to be made, also reminding the Board that any future changes should also be made in consultation with the Commission. The manual with changes in place reads as follows:

**STANDARD OPERATING PROCEDURES MANUAL
COMPLAINT/DISPUTE RESOLUTION: COLLEGES AND UNIVERSITIES**

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I. General

A. Preamble

The 2004 convention of The Lutheran Church—Missouri Synod amended the ecclesiastical supervision bylaws of the Synod for resolving complaints and disputes (Res. 8-01A), including complaints brought against members of a seminary faculty or administration under Bylaw sections 3.8.2.7.5 and 3.8.2.7.9 (formerly Bylaw sections 6.43 and 6.47 of the 2001 *Handbook*, pp. 107–110).

Bylaw 3.8.2.7.9 (j) provides that the Board for Pastoral Education, in consultation with the Commission on Constitutional Matters of the Synod, “shall maintain and amend, as necessary, a *Standard Operating Procedures Manual*, which shall serve as a comprehensive procedures manual for this bylaw.”

Accordingly, the Commission on Constitutional Matters has advised that a manual for seminaries be developed “that will set forth in detail a standard manner for carrying out the provisions of [Bylaw 3.8.2.7.9] by any and all boards of regents of the Synod’s educational institutions, dealing with all cases of complaints arising out of [Bylaw 3.8.2.7.9] and other such bylaws.” The commission advised that this *Standard Operating Procedures Manual* “be made available to and for the benefit of each board of regents, the president of each educational institution, the parties in dispute, each Review Committee that is formed, and others as necessary or required” (Opinion 05-2431).

B. Purpose

Bylaw 3.8.2.7.9 and this accompanying manual are intended to serve as a uniform process for the resolution of all complaints against members of the faculty or administration of the Synod’s seminaries, whether full-time or part-time faculty, whether serving under initial level or continuing level appointments, also including faculty members and administrators who are not members of The Lutheran Church—Missouri Synod. This process shall be used in response to complaints concerning any matter, including those specified under Bylaw 3.8.2.7.5.

Questions regarding procedure may be directed to the president of the seminary or the chairman of the board of regents in the early part of the process. When a Review Committee is in place, questions may be directed to the chairman of the committee.

C. Contract Statement

It is advisable to include in employee contracts a reference to the appropriate campus handbook or manual that spells out the seminary’s expected behavior and conditions of employment. This *Standard Operating Procedures Manual* should be included in the faculty and staff handbook/manual, either in its entirety or with specific reference to a copy in a designated office or embedded in the campus electronic information system. Employees should be encouraged to read this manual and its referenced 2004 LCMS *Handbook* provisions governing institutional procedures and processes for resolving complaints.

The following or a similar statement is provided as an example for inclusion in an employee’s contract:

Complaint Resolution

Both parties agree that any complaint/dispute brought against the employee as a result of his/her employment shall be reconciled, adjudicated, and/or appealed, as appropriate, in accordance with the rules and regulations governing such as provided by the Constitution and Bylaws of The Lutheran Church—Missouri Synod and, as applicable, by the *Standard Operating Procedures Manual* accompanying Bylaws 3.8.2.7.5 and 3.8.2.7.9. Both parties further agree to follow the procedures and processes for resolution of complaints and/or disputes as delineated in the aforementioned documents and accept and uphold any final decisions resulting from such processes as final with no resort to or review by civil courts or any other public forum. No other remedies shall be pursued unless and until the procedures referenced by this paragraph have been exhausted.

D. Exceptions

As with other dispute resolution processes of the Synod (e.g., Bylaw section 1.10) the process described in this *Standard Operating Procedures Manual* is intended to provide an evangelical procedure to respond to complaints. It is not intended to provide an exclusive remedy for the following matters, unless such matters involve theological, doctrinal, or ecclesiastical issues, including those arising under the divine call of a member of the Synod:

- (a) Disputes concerning property rights (e.g., real estate agreements, mortgages, fraud, or embezzlement); and
- (b) Disputes arising under contractual arrangements of all kinds (e.g., contracts for goods, services, or employment benefits).

E. Other Processes for Dispute Resolution

The process provided by Bylaw 3.8.2.7.9 and this *Standard Operating Procedures Manual* exists to address complaints brought against members of the faculty or administration of the Synod's seminaries. In addition, provisions and procedures for doctrinal dissent are set forth in Bylaw section 1.8; provisions for doctrinal discussions are set forth in Bylaw 3.9.6.2.1 and Bylaw sections 4.8, 4.9, and 5.3; provisions and procedures for doctrinal review are set forth in Bylaw section 1.9; provisions and procedures for dispute resolution (when not involving expulsion from membership) are set forth in Bylaw 1.10; and procedures for expulsion from membership are provided in Bylaw sections 2.14–2.17.

II. Definition of Terms

In order to communicate effectively and avoid misunderstanding, it is critical that terms be carefully defined:

A. Administration

Those persons responsible for managing the affairs and operations of the seminary (who may or may not also be faculty), with direct supervision of staff(s) to carry out the operational affairs of the seminary. In most cases these persons have a direct reporting relationship with and responsibility to the president of the seminary.

B. Blind Draw

Used by the Secretary of the Synod to select a name from the list of 25 hearing facilitators (Bylaw 1.10.12) to serve as a member of the Review Committee in the Bylaw 3.8.2.7.9 process. The name is drawn in the presence of two witnesses, who prepare and sign a written statement attesting to the proper conduct of the draw.

C. Board of Regents

For the purpose of this process, only the voting members of the governing board of the seminary. The president of the seminary participates without vote in the discussions unless personally involved in the complaint. Non-voting members of the board are excluded from participation.

D. Complainant

The individual or entity that brings a complaint against a member of the faculty or administration of a seminary under Bylaw 3.8.2.7.9 (a).

E. Complaint

Any complaint against a member of the faculty or administration directed to the board of regents, including matters arising out of Bylaw 3.8.2.7.5. The complaint should be concise, delivered to the president of the seminary except when the president is the subject of the complaint, in which case the chairman of the board of regents receives the complaint. In all cases, it is to be presented to the board of regents (Bylaw 3.8.2.7.9 [a]).

F. District President

For the purposes of this complaint process, the president of the geographical district of the Synod in which the seminary is located.

G. Face-to-Face

The nature of the meeting in person between the complainant and the respondent in the manner of Matthew 18:15. E-mail, surface mail, fax, or telephone call (or any combination thereof) will not satisfy the requirement of a face-to-face meeting. This meeting is an essential step in the process following the submission of a complaint.

H. Faculty

As defined by Bylaw 3.8.2.7, “the president, the full-time faculty and the part-time faculty” of the seminary.

I. Hearing Facilitator

The fifth member of a Review Committee, chosen by the Secretary of the Synod from the Synod’s roster of 25 hearing facilitators (Bylaw 1.10.12) as required by Bylaw 3.8.2.7.9 (d) (2). The hearing facilitator serves as chairman of the Review Committee.

J. Informal Reconciliation Effort

Includes all efforts of the complainant and respondent to reconcile a complaint and must include a face-to-face meeting. The president of the seminary is required to assist in this attempt (Bylaw 3.8.2.7.9 [a] [1]). In such case as the president is the respondent, the chairman of the board of regents assumes the role of assisting in this attempt (Bylaw 3.8.2.7.9 [a] [2]).

K. Limited Activities

The relieving by the president or board of regents of a respondent’s teaching and/or administrative duties pending final resolution of a conflict when in the best interest of the seminary (Bylaw 3.8.2.7.9 [e]) or parties involved. Contractual obligations of the seminary shall, however, continue to be honored until the matter is resolved.

L. Parties to the Matter

In the narrow sense, the complainant and the respondent. If the complainant is a board or commission or district, it shall be represented by its chairman or a designated member. In a broader sense, the members of the panel and the board of regents are also parties to the matter.

M. Private Hearing

The nature of all hearings conducted by a Review Committee, such hearings to include only the panel, the complainant and respondent, and any witnesses called upon to substantiate facts relevant to the complaint. Unless otherwise decided by the committee, witnesses are allowed to be present only while giving their testimony.

N. Request for Opinion

A request for an opinion from the Commission on Theology and Church Relations (in matters of doctrine and doctrinal application) or the Commission on Constitutional Matters (in matters requiring constitution and bylaw interpretation) made through the Review Committee (which shall determine the wording of the question[s]), to be made within four weeks of the selection of the Review Committee or later only by or with the approval of the committee. Opinions received must be followed by the Review Committee.

O. Reply of Respondent

A written response by the accused party to a complaint, submitted to the board of regents and the complainant and containing factual assertions in response to the complainant’s written statement of the matter in dispute (Bylaw 3.8.2.7.9 [c]).

P. Respondent

The named member of the faculty or administration of a college or university of the Synod in a complaint submitted to the board of regents of the institution under Bylaw 3.8.2.7.9 (a).

Q. Review Committee

The committee of five persons selected according to Bylaw 3.8.2.7.9 (d) to decide regarding the validity of a complaint received against a member of a college or university faculty or administration. It conducts its business according to Bylaw 3.8.2.7.9 (f).

R. Witnesses

Persons called upon by the complainant or respondent to substantiate facts relevant to a complaint during a hearing before a Review Committee.

III. General Principles and Regulations

These general principles and regulations accompany the process provided by Bylaw 3.8.2.7.9 to ensure consistency and uniformity when complaints brought against members of faculties and administrations of the seminaries of the Synod are resolved.

A. Governing Authority

The complainant and respondent, the president and board of regents of the involved seminary, and the Review Committee involved in this complaint resolution process shall be governed in all their actions by the Holy Scriptures, the Lutheran Confessions, the Constitution and Bylaws of The Lutheran Church—Missouri Synod, and this *Standard Operating Procedures Manual*.

B. Governing Principles

Matthew 18 and the Eighth Commandment undergird this process for bringing and resolving complaints against members of faculties and administrations of the Synod's colleges and universities. While Matthew 18 provides the structure for carrying out church discipline in a local congregation, it also provides guidance and a pattern that is to be observed in this procedure whenever applicable. And in accord with the Eighth Commandment, everything possible should be done to protect the reputations of complainants and respondents.

C. Primary Purpose

The primary purpose of this procedure is to achieve reconciliation and, when necessary, repentance, and to bring healing to the seminary community. The goal will be to resolve matters of complaint in an amicable manner, if possible without resorting to the use of a Review Committee. The process is intended to provide opportunity for the ministry of law and gospel, for teaching, and for the practice of Christian love.

D. Removal of Members of Faculties or Administrations

Whereas Bylaw 3.8.2.7.9 (a) allows for complaints "concerning any matter," only those complaints associated with Bylaw 3.8.2.7.5 may result in the dismissal of a faculty or administration member.

IV. Flow Chart of Bylaw 3.8.2.7.9 Process

1. Reception of Complaint

- 1.1 Board of regents receives complaint
- 1.2 Complainant directed to have face-to-face meeting
- 1.3 Complainant receives assistance from president or chairman of board

2. Request for Formal Process

- 2.1 Complainant prepares written statements
- 2.2 Respondent submits written reply
- 2.3 Board of regents forms Review Committee

3. Formation of Review Committee

- 3.1 Selections of two committee members by each party
- 3.2 Selection of fifth committee member by Secretary of the Synod
- 3.3 Possible limitation on activities of respondent

4. Review Committee Formal Hearing

- 4.1 Arrangements for hearing
- 4.2 Opinions from CTCR and CCM
- 4.3 Conduct of hearing

5. Review Committee Decision

- 5.1 Committee issues decision
- 5.2 Board of regents takes appropriate action
- 5.3 Board of Regents actions are final and binding

V. Detailed Bylaw 3.8.2.7.9 Process

1. Reception of Complaint

1.1 Board of regents receives complaint

3.8.2.7.9 *The board of regents shall have authority to investigate, hear, and act on any complaint arising out of Bylaw 3.8.2.7.5.*

(a) If the board of regents receives a complaint against a member of that institution's faculty or administration concerning any matter, including those specified under Bylaw 3.8.2.7.5,...

- A complaint may be brought against a member of an institution's faculty or administration concerning matters that are not cause for removal from office. Complaints may also pertain to matters that may result in removal from office, i.e., "(1) professional incompetency including but not limited to the failure to meet the criteria identified in Bylaw 3.8.2.7.2 (d); (2) incapacity for the performance of duty; (3) insubordination; (4) neglect of or refusal to perform duties of office; (5) conduct unbecoming a Christian; (6) advocacy of false doctrine (Constitution, Art. II) or failure to honor and uphold the doctrinal position of the Synod as defined further in Bylaw 1.6.2 (b)" (Bylaw 3.8.2.7.5).
- Complaints ordinarily are received by the president of the institution except when the president is the respondent, in which case they are received by the chairman of the institution's board of regents.
- Because of its biblical nature, Christian conflict resolution encourages parties to openly and candidly admit their offenses. Thus it requires an environment where parties may speak freely without fear that their words may be used against them later, especially should there be subsequent legal proceedings. Therefore, all communications that take place shall be regarded as strictly confidential.

1.2 Complainant directed to have face-to-face meeting

3.8.2.7.9 *...(a) If the board of regents receives a complaint against a member of that institution's faculty or administration concerning any matter, including those specified under Bylaw 3.8.2.7.5, it shall direct the complainant first to meet face to face with the respondent in an attempt to resolve the issue (Matthew 18:15).*

- The board of regents must develop a procedure to exercise its responsibilities without delay as soon as a complaint is submitted.
- An informal attempt to resolve the complaint that includes a face-to-face meeting of the complainant and the respondent precedes further formal measures.
- Although the complainant and respondent will likely have communicated before this time, perhaps even face-to-face, they are to be directed to meet to attempt to resolve the issue between them.
- This private face-to-face meeting should reflect a spirit of repentance and forgiveness on the part of both parties.
- The complainant may at any time during this stage of the process withdraw his complaint, provided such withdrawal is in writing with copies provided to the president, the board of regents, and the respondent.

1.3 Complainant receives assistance from president or chairman of the board

3.8.2.7.9... (a)...(1) *The president of the institution shall assist in this attempt.*

(2) *If the president himself is the respondent, the chairman of the board shall act in his stead.*

- A face-to-face meeting of the complainant with the respondent is a primary interest of this process in order to serve its ultimate interest, *i.e.*, reconciliation, repentance, and forgiveness.
- The president of the institution is required to assist in the attempt of the complainant to have a meaningful and fruitful meeting with the respondent.
- In the event that the president is the respondent, the chairman of the board has the responsibility for assisting in this attempt to have a meaningful and fruitful meeting.
- This is a fitting time for the president or chairman of the board to supply a copy of this *Standard Operating Procedures Manual* to the complainant and respondent.
- Unwillingness on the part of the complainant to participate in a face-to-face meeting halts the process. Unwillingness on the part of the respondent becomes a matter of record as the process proceeds.

2. Request for Formal Process

2.1 Complainant prepares written statements

3.8.2.7.9 ...*(b) If the complainant is of the opinion that such informal reconciliation efforts have failed and there is a wish to pursue the matter, the complainant shall prepare a written statement of the matter in dispute and a written statement setting forth, in detail, the efforts that have been made to achieve informal reconciliation and forward such statements to the board of regents and to the respondent.*

- At this point the process can still be halted by the complainant if informal reconciliation efforts succeed or there is no wish to pursue the matter. If there is a wish to pursue the matter and statements are prepared and forwarded, the process must be carried out to completion and a decision by the Review Committee.
- The statement of the complainant requires careful preparation, since it will serve as the basis for the proceedings that may follow, in which case it will be the subject of the complainant's case and of the response of the accused.
- The statement should be concise, contain factual assertions regarding the issues of the complaint, and, if the content of Bylaw 3.8.2.7.5 is involved, demonstrate their relevance to the stated causes for removal from office or position.
- The secretary of the board of regents receives the statement on behalf of the board and maintains the official record of the case.

2.2 Respondent submits written reply

3.8.2.7.9 ...*(c) Within 21 days after receipt of the written statement of the matter in dispute, the respondent shall submit a written reply to the board of regents and the complainant. If the respondent fails to reply, the allegations of the statement of the matter in dispute shall be deemed accepted.*

- When possible, notification and response shall be made in a manner that results in verification of date of delivery, thereby to provide evidence that notification was received and to verify the date of its receipt.
- Notification must make clear to the respondent the end-date of the 21-day period of time and the consequences of not submitting a written reply to the board of regents and the complainant by that date.
- In the event that a party seeks to avoid this process by refusing to sign a delivery receipt, ordinary first class mail to the last known address and allowance for sufficient time for delivery will suffice.
- If the respondent fails to reply, the statements of the complainant, now deemed "accepted," are retained by the board of regents for delivery to the Review Committee upon its selection.

2.3 Board of regents forms Review Committee

3.8.2.7.9 ...*(d) Upon receipt of a reply from the respondent or if no reply is received, and the board of regents determines that all informal reconciliation efforts have failed,...*

- The Review Committee is not to be formed until such time as the president and board of regents are satisfied that all efforts to reconcile the matter are exhausted.
- So long as the matter at issue is undecided, there shall be no publicity regarding the matter by any party. Any violation of this rule shall be brought to the attention of the chairman of the Review Committee.

3. Formation of Review Committee

3.1 Selections of two committee members by each party

3.8.2.7.9 ...*(d)...*the board of regents shall form a Review Committee of five persons (Matthew 18:16), which shall be chosen as follows:

(1) Each party shall select one faculty member and one regent.

- It is the responsibility of the secretary of the board of regents to notify the parties of their need to select two members for the Review Committee, one to be a member of the faculty of the institution and the other a member of its board of regents.
- Notifications must make clear the need to respond promptly so that the selection of the Review Committee can be completed within the allotted time, *i.e.*, within one month of the date of the decision to form the committee.
- When possible, notification and response shall be made in a manner that results in verification of date of delivery, thereby to provide evidence that notification was received and to verify the date of its receipt.

3.2 Selection of fifth committee member by Secretary of the Synod

3.8.2.7.9 ...*(d)...**(2)The Secretary of the Synod shall select the fifth member by blind draw from the Synod's roster of hearing facilitators, who shall serve as chairman.*

(3) The selection shall be completed within one month of the date on which the board decides to form the Review Committee.

- It is the responsibility of the secretary of the board of regents to notify the Secretary of the Synod of the need for him to select by blind draw from the Synod's roster of hearing facilitators a fifth member of the Review Committee to serve as chairman.
- The secretary of the board of regents shall notify the board of regents, the complainant, and the respondent of the members of the Review Committee when the selection of the committee has been completed.
- Copies of all documents pertaining to the case shall be provided to the members of the committee by the secretary of the board of regents.
- Parties shall not communicate with members of the Review Committee after the committee is in place, except with the chairman of the committee to determine the time and place of a hearing.
- The standard for disqualification of any Review Committee member shall be actual partiality or the appearance thereof. Any committee member may disqualify him/herself from service. Circumstances that are thought to or are likely to affect performance of duties and the outcome of the process shall be disclosed to the chairman of the committee. If the chairman disqualifies him/herself, the Secretary of the Synod shall select another facilitator to serve as chairman. The complainant or respondent may challenge the eligibility of a member of the Review Committee, in which case the committee shall review the challenge and make a determination. In the event of the disqualification of a Review Committee member, another member shall be selected in his/her place.
- If a Review Committee member withdraws or is unable to serve after the Review Committee has been established, the remaining members of the committee shall continue without filling the vacancy.

3.3 Possible limitation on activities of respondent

3.8.2.7.9 ...*(e) If the board decides that the matter is of such a nature that the interests of the institution will best be served, it may limit the activities of the respondent. It may do so by relieving the respondent of teaching and/or administrative duties pending final resolution of the conflict. However, contractual obligations of the institution shall continue until the matter is resolved.*

- Notification of limitations on teaching and/or administrative duties must be specific and in writing. While the respondent's service may be placed on hold, the institution shall honor its obligations to the respondent.
- While a limitation on duties is in place, the president (or chairman of the board of regents when appropriate) continues to work with the respondent directly or through others, concerns himself with the spiritual well-being of the respondent, and continues to resolve the matters that have resulted in limitations on duties.

4. Review Committee Formal Hearing

4.1 Arrangements for hearing

3.8.2.7.9 ...*(f) The Review Committee shall proceed as follows:*

- (1) The committee shall hold its first hearing no later than 60 days after the last committee member has been appointed.*
- (2) The chairman of the committee shall notify the complainant and the respondent, at least 28 days in advance, of the date, time, and place of the said hearing.*

- The Review Committee shall meet initially via conference call arranged by the hearing facilitator, who serves as chairman of the committee. The purpose of the meeting will be to select a secretary, to make certain that all members have received necessary documentation, and to make the chairman aware of special needs and considerations.
- The preference and convenience of the parties shall be taken into consideration in determining the time and place of hearings. The chairman of the Review Committee shall contact the parties to discuss possible dates and shall set the time and place of the hearing.
- The committee chairman shall notify the parties and the members of the committee at least 28 days in advance of the hearing. Parties are responsible for notifying their own witnesses.
- No party nor anyone on a party's behalf shall either directly or indirectly communicate with the Review Committee without the full knowledge of the other party. All other communications shall take place only in the presence of the Review Committee. Copies of all printed documents and other materials submitted to the Review Committee shall also be provided to the other party.

4.2 Opinions from the CTCR and CCM

3.8.2.7.9...*(f)... (3) 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. If it involves questions of Constitution or Bylaw interpretation, each party shall have a right to an interpretation from the Commission on Constitutional Matters. The request for an opinion must be made through the Review Committee, which shall determine the wording of the question(s). The request for an opinion must be made within four weeks of the final formation of the Review Committee. If a party does not request such an opinion within the designated time, such a request may still be made to the Review Committee, which shall, at its discretion, determine whether the request shall be forwarded. The Review Committee shall also have the right, at any time, to request an opinion from the Commission on Theology and Church Relations or the Commission on Constitutional Matters. When an opinion has been requested, the time limitations will not apply until the opinion has been received by the parties. Any opinion received must be followed by the Review Committee.*

- If the complainant or respondent has a question regarding doctrinal or constitutional matters, this question should be submitted to the chairman of the Review Committee who will consult with the committee to determine the wording.
- If a request for an opinion is submitted later than four weeks after the formation of the committee, the chairman shall consult with the committee to determine whether the request should be honored.
- The four-week time constraint does not apply to the Review Committee itself, which has the right to request opinions at any time.
- Opinions will be provided as promptly as possible, but may result in delay depending upon commission meeting schedules, during which time the process is placed on hold. Once received, commission opinions are binding upon the committee.

4.3 Conduct of hearing

3.8.2.7.9 ...*(f)...(4) All hearings shall be private, attended only by the parties and the witnesses who can substantiate the facts relevant to the matter in dispute. The Review Committee shall follow the procedures set forth in the*

Standard Operating Procedures Manual for this bylaw to be followed in the hearing and shall establish the relevancy of evidence so that each party shall be given an opportunity to present fully its respective position. In performing its duty, the Review Committee shall continue efforts to reconcile the parties on the basis of Christian love and forgiveness. If a party is a board or commission of the Synod or its districts, it shall be represented by its chairman or a designated member.

- 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 parties at the time the complainant is provided assistance by the president or chairman of the board of the institution (see 1.3 above). If any provision of this manual has not been complied with, it must be brought to the attention of the chairman of the Review Committee within three days, or the right to object shall be considered waived.
- The complainant shall be responsible for his/her own travel, lodging, food, and witness costs. The expenses of the panel and essential expenses of the respondent shall be covered by the institution.
- Hearings shall be private, attended only by the panel members, the complainant, and the respondent.
- A majority of the members of the Review Committee shall constitute a quorum. A quorum shall be required during all stages of the committee's work.
- The panel shall establish the procedure to be followed to hear and determine the relevancy of evidence so that each side of the matter is given opportunity fully to present its position.
- Witnesses who can substantiate facts relevant to the matter(s) at issue may be called before and address the panel at the request of the complainant, respondent, or panel. Unless otherwise determined by the panel, witnesses shall attend hearings only during the time that they are giving their own testimony. The panel may question witnesses directly and may permit the parties to do likewise.
- Copies of all documents presented as evidence shall be provided to all parties.
- At its discretion, panels may make audio recordings of hearings for their own sole use. Such recordings are not to be regarded as part of the official record. No recording of the proceedings of a hearing aside from personal notes may be made by the parties involved.

5. Review Committee Decision

5.1 Committee issues decision

3.8.2.7.9...(f)...(5) Within 60 days after completion of the final hearing, the Review Committee shall issue a written decision which shall state the facts determined by the committee and the reasons for its decision and forward them to the parties and the board of regents...

- It is the responsibility of the Review Committee to make a final recommendation regarding the validity of the complaint to the board of regents within 60 days of the hearing. The decision shall be by majority vote and shall be communicated in writing following the outline provided in Appendix A of this manual and shall be signed by the chairman and secretary of the committee.
- In the event that a majority decision cannot be reached, a new panel shall be formed immediately and the matter reheard.
- If the parties have settled their dispute during the course of the committee hearing or prior to the rendering of a decision, the committee may set forth the terms of the agreed-upon settlement in its decision.
- If the Review Committee determines that there is a valid complaint regarding matters under Bylaw 3.8.2.7.5, it may make recommendations to the board of regents for actions it deems appropriate, distinguishing between items (1-4) and (5-6).
- The decision of the Review Committee shall be provided to the complainant and respondent. It shall also be provided to the board of regents, which alone has the authority to take any appropriate action.

5.2 Board of regents takes appropriate action

3.8.2.7.9 ... (g) If the committee decides there is a valid complaint:

- (1) Regarding matters under Bylaw 3.8.2.7.5, 1-4, it may take whatever action it deems appropriate, including recommendation for termination of the employment contract.*
- (2) Regarding matters under Bylaw 3.8.2.7.5, 5-6, if the member of the institution's faculty or administration is a member of the Synod, it must also refer the complaint to the district president, who shall follow the procedure set forth in Bylaw sections 2.14 or 2.17.*

- If the Review Committee determines that there is a valid complaint regarding matters other than those under Bylaw 3.8.2.7.5, the board of regents is responsible for determining appropriate actions to be taken to resolve the matter.
- If the Review Committee determines that there is a valid complaint regarding matters under Bylaw 3.8.2.7.5, the board of regents must distinguish between complaints under items (1-4) and (5-6) and follow the provisions of paragraph (g) of Bylaw 3.8.2.7.9.

5.3 Board of regents actions are final and binding

3.8.2.7.9 ...*(f)...*(5) *The board of regents shall then take appropriate action, which shall be final.*

- The action(s) which the board of regents takes shall be regarded as final and binding without opportunity for appeal.
- If and when a faculty, administrative, or professional staff member is dismissed for conduct described in Bylaw 3.8.2.7.5, the president of the institution shall take steps to bring healing to the institutional community.
- All records of the proceedings shall be obtained by the chairman of the Review Committee from the committee's secretary and provided to the president of the institution for confidential storage.
- The president of the institution shall assume responsibility for fostering the reestablishment of a positive relationship between the complainant and respondent.

VI. Appendix A: Review Committee Decision Report

Outline of Decision of the Review Committee

I. Names of Parties

Complainant: _____

Respondent: _____

Review Committee: _____

II. Review Committee Hearing

[Provide location, date, and time of hearing. List names of witnesses if applicable. Briefly describe in general outline the procedures followed for the hearing(s).]

III. Issue(s) to be Decided

[Describe the complaint(s) at issue. Be as specific as possible.]

IV. Determinations to be Made

- What are the facts of the matter and how were they substantiated by relevant evidence and testimony?
- What are the facts upon which the Review Committee has based its recommendation to the board of regents?

V. Decision of the Committee

[State clearly the decision of the committee and the reasons for arriving at the decision. Suggestions may be offered to the board of regents for actions to be taken.]

VI. Signatures

[The chairman and secretary of the committee shall sign the final decision on behalf of the committee.]

_____	_____
Chairman	Secretary

Date	

210. Voting Delegate and Restricted Status (07-2497)

On June 13, 2007, the Commission on Constitutional Matters received a request from the President of the Synod with respect to a pastor on restricted status serving as a voting delegate to a Synod convention.

Question: Does such restricted status, imposed after the pastor was duly elected to be a voting delegate, affect his status as a voting delegate to the convention?

Opinion: Under the provision of *Restricted Status*, Bylaw 2.13.3.2 states:

- An individual member of the Synod on restricted status is ineligible to
- (a) perform functions of ministry except in the position of service, if any, held at the inception of restricted status and otherwise only if approved by the district president; and
 - (b) accept a call to any other position of service in the Synod.

This provision (Bylaw 2.13.3.2), unlike the provision under *Suspended Status* (Bylaw 2.13.5.2), does not explicitly relieve an individual member of the Synod of one's membership duties (e.g., as a delegate to a district or Synod convention or as a member of any district or Synod board or commission).

Thus restricted status does not affect one's status as a voting delegate to a convention of the district or national Synod.

211. Disability Issues (07-2498)

The Commission received a letter from a district president, dated June 29, 2007, asking questions regarding possible actions by a congregation when its pastor is placed on disability. The Commission asked the Secretary to respond that the question does not involve an interpretation of the Constitution and Bylaws of the LCMS but is a matter of local congregational governance. The Commission notes and supports the intention that the question is also being sent to the CTCR.

212. Specific Ministry Pastor Program (07-2499)

A pastor of the Synod, in a letter dated July 9, 2007, asked a question regarding the proposed Specific Ministry Pastor Program to come before the 2007 convention. After introductory comments regarding the status of specific ministry pastors and their relationship with other pastors, he asked the following question.

Question: In view of the foregoing, would not the implementation of the Specific Ministry Pastor Program require a change of the Synod's Constitution, and would that not require a two-thirds majority approval of the congregations of the Synod after the convention?

Opinion: The implementation of the program will not require a change of the Synod's Constitution and therefore will not require a two-thirds majority approval of the congregations of the Synod after the convention.

213. Specific Ministry Pastor Program (07-2500)

A pastor of the Synod, in a letter dated July 9, 2007, asked the following question regarding the proposed Specific Ministry Pastor Program to come before the 2007 convention.

Question: Should not the specific ministry pastor have to be listed in Article V B of the Constitution? Simply changing Bylaw 2.13 to accommodate this new category of pastor would seem to be very contrary to the purpose of Article V—namely, to list every sort of member of the Synod that there can be. The proposed Specific Ministry Pastor Program pastors are not envisioned as an existing category of pastor put on restricted status (the purpose of Bylaw section 2.13) but a wholly new category of pastor. Therefore, wouldn't amending Article V B to add a new category of pastor be necessary? And thus, wouldn't avoiding amending Article V B by trying to fit the Specific Ministry Pastor Program into Bylaw 2.13 in fact be unconstitutional?

Opinion: All specific ministry pastors would be ordained and their relative placement under Constitution Art. V A or B would depend upon their ministry role. If in charge of a congregation, they will fall within Article V A; if not, they will fall under Article V B in one of the categories listed.

214. Amendments for Specific Provisions of Special Sessions of the Synod (07-2501)

In a letter received July 9, 2007, a member of the Blue Ribbon Task Force on Structure and Governance submitted the following question regarding possible bylaw changes governing special sessions of the Synod.

Question: Is it in harmony with the Constitution and Bylaws of the Synod to add or amend bylaws which establish specific provisions (such as the provisions set forth in Bylaws 3.1.6–3.1.10.1) for the implementation of a special session (convention) of the Synod?

Opinion: Yes, it is in harmony with the Constitution and Bylaws of the Synod to add or amend the Bylaws to establish specific provisions for implementation of a special session of the Synod. Article VIII of the Constitution does not specify the manner in which special sessions are to be held or conducted. The specifics of Synod conventions are left to the provisions of the Bylaws.

Any amendment to the Bylaws must be presented to and examined by the Commission on Constitutional Matters prior to presentation to the convention to determine that it is not in conflict with the Constitution and Bylaws of the Synod, as required by Bylaw 7.1.1 (c).

215. Certification of Voting Delegates (07-2502)

In a letter dated July 10, 2007, the President of the Synod submitted a series of questions regarding the certification process for voting delegates to Synod conventions.

Question: Does Bylaw 3.1.3.2 constitute the entirety of the process of certification of all voting and nonvoting delegates to a convention of the Synod who are duly elected in accordance with Bylaws 3.1.2, 3.1.2.1, 3.1.3.1, and 3.1.4ff.?

Opinion: Yes. Bylaw 3.1.3.2 states,

All district voting and nonvoting advisory delegates and representatives and their alternates shall be certified before attending a convention of the Synod.

- (a) The names and addresses of all voting and nonvoting advisory delegates and representatives and their alternates shall be forwarded by the district secretary before the announced registration deadline to the Secretary of the Synod on registration forms provided by the latter.
- (b) This procedure shall constitute certification.

This is the sole provision for and completes the certification of convention delegates.

Question 2: Would it be a violation of the Constitution or Bylaws of the Synod for a convention of the Synod to declare ineligible or in any other way to challenge or remove the certification of any delegate elected in accordance with the bylaws referenced in question #1 above and certified by the process defined in Bylaw 3.1.3.2 or in any other bylaw of the Synod?

Opinion: Once a delegate is certified pursuant to Bylaw 3.1.3.2, there is no express provision in the Synod's Constitution and Bylaws to challenge said certification at a convention. In the absence of such a provision, accepted parliamentary procedure applies. Bylaw 3.1.9 (i) (3) requires the President to "conduct the sessions according to accepted parliamentary rules."

Question 3: May a convention of the Synod violate the Constitution or Bylaws of The Lutheran Church— Missouri Synod?

Opinion: No, a convention may not violate the Constitution or Bylaws of the Synod.

216. Floor Committee Request for CCM Chairman to be Present on Convention Podium

In a June 7, 2007 letter, the chairman of Floor Committee 8 of the 2007 convention asked the chairman of the Commission to join him and several others on the podium when the floor committee presents proposed Res. 8-01 addressing the Res. 7-02A Report. In a June 13 reply letter, the Commission chairman noted the extraordinary request but agreed to accept the invitation due to the issue to be addressed. The Commission agreed with his decision.

[Note: This concluded the business of the regular meeting of the Commission on July 13, 2007. The meeting was closed with prayer. The Commission was requested on several occasions during the course of the 63rd Regular Convention to provide additional formal opinions regarding issues before the convention, as follows, in addition to numerous informal requests for responses during the course of the convention proceedings.]

217. Elections Restrictions (07-2503)

During the course of the 2007 convention, a member of the Commission on Constitutional Matters reported that the chairman of Committee 9: Registration, Credentials, and Elections had requested opinions regarding the following election issues:

Question 1: Based on the election of a candidate to become a member of the Synod's Board of Directors, may another candidate from the same district remain on the ballot or be elected?

Opinion: No. Bylaw 3.3.5.1 (1) precludes the election of more than one elected member of the Board of Directors from any one district. The election of one member from a district renders ineligible any other candidate from the same district. Other candidates from that district must be removed from the ballot as ineligible.

Question 2: If the number of candidates remaining eligible for election to a category (i.e., ordained, commissioned, or lay) on the Synod's Board of Directors is less than two times the number of positions to be elected because of the prior election of another candidate from the same district, must additional nominations be added before the election?

Opinion: No. Bylaw 3.12.3.6 (a) requires the Committee for Convention Nominations to make initial nominations of at least two candidates for each such position. Once those candidates have been nominated at the convention, that bylaw has been fulfilled. Should a candidate become ineligible, withdraw, or in some other manner the number of candidates is narrowed before balloting, there is no provision in the Constitution or Bylaws which requires or allows the nominations committee to add additional names.

Question 3: In what order should the election of members to the Synod's Board of Directors take place?

Opinion: Bylaw 3.12.4 (c) provides: "The committee shall be empowered to adopt procedures and methods that will insure efficiency and accuracy, including the use of mechanical, electronic, or other methods of casting, recording, or tabulating votes." The Committee on Elections must therefore determine the order in which it chooses to present the slate for election.

218. Convention Presidential Elections Procedure (07-2504)

During the course of the 2007 Synod convention, the chairman of the convention requested clarification of an earlier opinion of the Commission.

Question: What is the reason why the Commission on Constitutional Matters previously opined that a motion from the floor to require 10 minute presentations by presidential candidates would be inconsistent with the bylaws, but that requiring disclosure of whether a floor nominee was plaintiff in litigation against the Synod is consistent with the Bylaws. The Commission responded as follows:

Opinion: The proposal to require a 10 minute presentation by candidates for President would change the process directed by the Bylaws for election, as described in CCM Opinion 04-2396. The request for information requiring disclosure as to whether a potential nominee was a plaintiff in the lawsuit is a request for information regarding qualifications and does not change the process of elections. Bylaw 3.12.3.6 (c) requires the Committee for Convention Nominations to provide information such as age, occupation, etc. Nothing precludes the convention from requesting or requiring additional information to be supplied as a condition of their consideration of floor nominations.

219. Amendments to the Bylaws of the Synod (07-2505)

The following questions were submitted by the President of the Synod during the course of the 2007 convention of the Synod.

Question 1: To which sorts, kinds, or types of amendments to the Bylaws of the Synod do the provisions of Bylaw 7.1.1 apply?

Opinion: Bylaw 7.1.1 applies to all amendments to the Bylaws. The Synod has long recognized the importance of careful consideration of changes to its governing documents. At least as early as 1966, the Bylaws required that amendments be "submitted to the Commission on Constitutional Matters for clearance prior to presentation to the convention."

During the 1983 convention, the issue arose regarding proposed bylaws establishing a Board of Theological Education and a separate Commission on Church Literature. The opinion included the following:

In the case of the proposal for a Board of Theological Education, the Commission ruled that these proposed bylaws had not been submitted to the Commission on Constitutional Matters for clearance prior to presentation to the convention (Bylaw 14.01 d) and could not therefore properly be brought before the convention.

In the case of the proposed Commission on Church Literature, the Commission ruled that since the proposal and the proposed bylaws had not been submitted to the President of the Synod no less than sixteen weeks prior to the opening date of the convention, it could not properly come before the convention unless it were adjudged a matter of overriding importance and urgency and had been accepted for convention consideration by the committee consisting of the President, First Vice-President, and Secretary of the Synod (Bylaw 2.19 2 b). Furthermore, the Commission ruled that it could not be properly considered because it had not been submitted to the Commission on Constitutional Matters for clearance prior to presentation to the convention (Bylaw 14.01 d).

In 1997, the bylaw now numbered 7.1.1 (d) was considered as the basis for a proposed special standing rule which read:

The chair shall require written or oral certification that proposed constitutional or bylaw amendments have been examined by the Commission on Constitutional Matters and found not to be in conflict with the Constitution and Bylaws of the Synod.

The process required for amending the Bylaws is contained in Bylaw 7.1.1 (a) which requires that said amendments be presented in writing to the convention. Paragraph (b) requires that such bylaw changes are specifically identified as bylaw amendments, and that they be considered by a convention floor committee. Bylaw 3.1.7 (f) then requires the floor committee to consider the proposed amendment and report its findings and recommendations to the convention. Next, Bylaw 7.1.1 (c) requires that such amendments must be considered by the Commission on Constitutional Matters prior to presentation to a convention.

Question 2: May a convention of the Synod consider a minor amendment to a proposed amendment to the bylaws (which proposed amendment has been moved by the Synod in compliance with Bylaw 7.1.1) without following the provisions of Bylaw 7.1.1?

Opinion: All amendments to the Bylaws must follow the process of Bylaw 7.1.1. No exception has been made in the bylaw for “minor” amendments. However, if the “minor” amendment is considered by the floor committee as fairly within the scope of that which the floor committee considered prior to bringing the matter to the floor, and is within the scope of what the Commission on Constitutional Matters examined in advance and found not to be in conflict with the Constitution and Bylaws, no separate referral need be made.

220. Adjournment

The business of the Commission was concluded when the final session of the convention was adjourned.

Raymond L. Hartwig, Secretary