

# LCMS

## Commission on Constitutional Matters Minutes – 2007

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## MINUTES

### COMMISSION ON CONSTITUTIONAL MATTERS Saint Louis Airport Crown Plaza Hotel February 2, 2007

#### **169. Call to Order and Opening Prayer**

Chairman Albert Marcis called the meeting to order. Gordon Tresch provided an opening prayer and a devotion on Christian leadership, diversity, and tension based in part on 1 Corinthians 14.

#### **170. Resolution 7-02A Committee Consultation**

The Commission discussed the consultation with the chairman and representatives of the 7-02A Committee scheduled later in the meeting per the committee's request.

#### **171. Policy Manuals**

Review of the following policy manuals was deferred due to the shortness of time for proper consideration:

- **06-2457** – Board for Communication Services Policy Manual
- **06-2471** – Board for Pastoral Education Policy Manual and Campus Policy Manual
- **06-2472** – Board for University Education Policy Manual and Campus Policy Manual
- **06-2473** – Board for Black Ministry Services Policy Manual
- **06-2474** – Board for World Relief/Human Care Ministries Policy Manual
- **06-2475** – Board for Mission Services Policy Manual
- **06-2476** – Board for District and Congregational Services Policy Manual

In general discussion of the policy manuals currently being reviewed, the Commission noted that reference in a manual had been made to the document "For the Sake of Christ's Commission: The Report of the Church Growth Study Committee" (authorized by 1995 St. Louis convention Res. 3-09 "To Address the Church Growth Movement"). It was determined that, in order for the Commission to be able to review that manual appropriately, a request should be submitted to the Commission on Theology and Church Relations for a review of the referenced report to evaluate whether the theological position of that report is consistent with the adopted theological positions of the Synod.

#### **172. Board of Directors Consultation**

The Commission discussed the consultation with the Synod's Board of Directors scheduled for Saturday, February 3, 2007, at the Board's request.

#### **173. Communication Regarding Opinion 06-2477**

The Commission discussed a letter from a member of the Synod regarding Opinion 06-2477. The Secretary will assign a number to this request. The chairman assigned the request to a member of the Commission for the preparation of a draft response.

**174. Communications re Inappropriate Dissemination of Information re Matters Under Consideration**

The Commission reviewed communications and responses from the Board of Directors regarding the publication of a letter provided by the Commission to the Board for input under Bylaw 3.9.2.2 (b). It was decided that until the Board adopts appropriate procedures to assure the confidentiality of such communications, the Commission will exercise its option to consult only with the Synod's legal counsel. The Commission was advised that this issue was under consideration by the Board of Directors and that action might be taken by the Board prior to the publication of these minutes.

**175. Standard Operating Procedures Manual for Concordia University System (06-2466)**

The Commission discussed the draft *Bylaw 3.8.3.8.9 Standard Operating Procedures Manual* and directed that a phone consultation take place to include Secretary Raymond Hartwig, Gordon Tresch, and Board for University Education Executive Director Kurt Krueger. Dr. Krueger will also be asked to assure that his board and the presidents of each of the colleges and universities have reviewed the draft and have been provided opportunity for input.

**176. Commission on Constitutional Matters Report to Convention (06-2479)**

The Commission reviewed an initial draft of its report to the 2007 convention. After receiving additional input, the chairman was directed to submit the final report to the Synod.

**177. Participation in Legal Actions by Members of the Board of Directors (06-2480A)**

A pastor of the Synod in an August 18, 2006 E-mailed letter submitted two related questions regarding the meaning and application of Bylaw 1.5.12.1 (b) (5).

Question 1: Do the provisions of Bylaw 1.5.12.1 (b) (5) providing for the vacating of a position in the event of a continued inappropriate activity by a member of a board allow said board to remove such member and create this vacancy?

Opinion: The Commission notes initially that Bylaw 1.5.12.1 (b) (5), providing that “[a]ny inappropriate activity shall cease or the position will be vacated” is contained in a section dealing with conflict of interest disclosures defined in Bylaw 1.5.12.1 (a) and with prohibited activities cited in Bylaw 1.5.12.1 (b) (1–4). Bylaw 1.5.12.1 (b) (5) clearly is meant to apply only in the context of a conflict of interest violation. The provision does not specify the manner in which a position is to be vacated in the event of the continuation of a conflict of interest violation, nor does it specify who is empowered to make such a determination. Constitution Article XI A 2 states: “The Synod at all times has the right to call its officers to account and, if circumstances require it, to remove them from office in accordance with Christian procedure.” That said, there is no provision in the Constitution or Bylaws that provides the specific method to be used if a position is to be vacated by a board or by the Synod itself if inappropriate activity does not “cease.”

Question 2: If not, if a board adopts a resolution providing the reason for vacating of the position of one of its members serving on such board pursuant to Bylaw 1.5.12.1 (b) (5), such member having engaged and continues to engage in inappropriate action detrimental to the Synod and its agencies, may the President, pursuant to Bylaw 3.3.1.3, after consultation with the Board of Directors and/or the Council of Presidents, and/or the vice-presidents, exercise his executive power to effect the vacating of the position on the board held by such member?

Opinion: Bylaw 3.3.1.3(k), in discussing the powers of the President, states:

He shall be authorized in the event that the affairs of the Synod require the exercise of executive power for a purpose for which there is no specific directive of the Synod, to exercise such after consultation with the vice-presidents, the Board of Directors of the Synod, or the Council of Presidents, whichever in his judgment is most appropriate. Any member of the Synod shall have the right to appeal such action to the Commission on Constitutional Matters and/or the Synod in convention, whichever is appropriate.

Bylaw 3.3.1.2 requires that the President oversee the activities of all officers, executives and agencies of the Synod to see to it that they are acting in accordance with the Constitution, Bylaws and resolutions of the Synod. The Commission has previously held that, in fulfilling these responsibilities, “[t]he President may exercise executive power in the absence of a specific directive of the Synod should affairs of the Synod require it in his opinion after appropriate consultation with the vice-presidents, Board of Directors, or Council of Presidents of the Synod” (06-2462). In the absence of other provisions to carry out the terms of vacating an office under Bylaw 1.5.12.1, should a board pass a resolution identifying the reasons for the vacating of a position of one of its members serving on such board pursuant to Bylaw 1.5.12.1(b) (5), appropriately documenting that such member engaged and continues to engage in inappropriate action detrimental to the Synod and its agencies, the President pursuant to Bylaw 3.3.1.3, after consultation with the Board of Directors and/or the Council of Presidents, and/or the vice presidents, may choose to exercise his executive power to vacate the position on the board held by such member.

It should also be noted that, in lieu of exercising such authority, a President may instead choose to exercise his constitutional authority under Article XI B in supervising the administration of officers of the Synod by submitting appropriate matters between conventions of the Synod to a written vote of its member congregations as provided in Article XI B 8:

When matters arise between meetings of the Synod in convention which are of such a nature that action thereon cannot be delayed until the next convention, the President is authorized to submit them to a written vote of the member congregations of the Synod only after full and complete information regarding the matter has been sent to member congregations by presidential letter and has been published in an official publication of the Synod. If such matters are related to the business affairs of the Synod, such a vote shall be conducted only after the President has consulted with the synodical Board of Directors. In all cases at least one-fourth of the member congregations must register their vote.

### **178. Bylaw 1.10.1.1 and Conflict Resolution Procedures (06-2482)**

A member of the Synod in an E-mailed letter dated August 24, 2006, submitted the following series of questions to the Commission regarding Bylaw 1.10.1.1: "The Synod, in the spirit of 1 Corinthians 6, calls upon all parties to a disagreement, accusation, controversy, or disciplinary action to rely exclusively and fully on the Synod's system of reconciliation and conflict resolution. The use of the Synod's conflict resolution procedures shall be the exclusive and final remedy for those who are in dispute."

Question 1A: Can a member of a congregation of the LCMS holding a position within the Synod itself avail and/or be subject to the dispute resolution process of the Synod?

Opinion: Bylaw 1.10.2 indicates that the dispute resolution process is the exclusive process, subject to the exceptions provided by Bylaw 1.10.3, to resolve disputes involving as parties “(1) members of the Synod, (2) the Synod itself, (3) a district or an organization owned and controlled by the Synod, (4) persons

involved in excommunication, or (5) lay members of congregations of the Synod holding positions with the Synod itself or with districts or other organizations owned and controlled by the Synod.” A member of a congregation of the LCMS holding a position within the Synod is expressly included within the list of those who may avail themselves of and/or are subject to the provisions of Bylaw section 1.10, to the extent that the dispute relates to the position of service with the Synod.

Question 1B: If so, can a member of the Board of Directors of the Synod both avail and be subject to the dispute resolution process of the Synod?

Opinion: Yes, a member of the Board of Directors of the Synod may both avail himself/herself of as well as be subject to the dispute resolution process of the Synod so long as the issue relates to the position held.

Question 1C: If 1B above is so, is a member of the Board of Directors of the Synod obligated pursuant to the Constitution and Bylaws of the Synod to avail himself or herself of the dispute resolution process if faced with an unresolved dispute relating to matters pertaining to the Synod and/or its members?

Opinion: Bylaw 1.10.2 includes the provision, “It shall be the exclusive remedy to resolve such disputes that involve theological, doctrinal, or ecclesiastical issues except those covered under Bylaw sections 2.14–2.17 and except as provided in Bylaw 1.10.3.” Bylaw 1.10.3 exempts from the dispute resolution process expulsion from membership under Bylaw sections 2.14–2.17 and board of regents’ supervision of faculty and administration under Bylaws 3.8.2.7.5–3.8.2.7.9 and 3.8.3.8.5–3.8.3.8.9, and also exempts “(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).” So long as the issue in consideration does not fall within one of the exceptions provided in the bylaw, the dispute resolution process of the Synod is the exclusive remedy for resolving such issues.

Question 2A: Is a member of the Board of Directors, whether or not such member is a member of the Synod, in wishing to express dissent with a synodical resolution (for example, 7-02A from the 2004 convention), required to follow the provisions of the Constitution and Bylaws of Synod?

Opinion: The dissent provisions of Bylaw section 1.8 are applicable only to members of the Synod. If a member of the Board of Directors is a member of the Synod, those provisions are applicable. If a member of the Board of Directors is not a member of the Synod, that member’s conduct is not governed by the dissent provisions of Bylaw section 1.8. A further description of duties and responsibilities as well as restrictions on the behavior of members of the Board of Directors who are not members of the Synod is discussed in Bylaw 3.3.5.

Question 2B: If not, is a member of the Synod, while serving as a member of the Board of Directors, in wishing to express dissent with a synodical resolution, required to follow the provisions of the Constitution and Bylaws of Synod?

Opinion: A member of the Synod is at all times bound by the provisions of the Constitution and Bylaws of the Synod, including during service on a board or commission or as an officer of the Synod.

Question 2C: If they are so required to follow the provisions of the Constitution and Bylaws of the Synod, is such expression of dissent to a resolution of the Synod restricted to the provisions of the Constitution and Bylaws of the Synod?

Opinion: Yes. If a member of the Board of Directors is a member of the Synod, the dissent provisions of Bylaw section 1.8 apply to any such expression of dissent.

Question 2D: What remedies exist in the Constitution and Bylaws of the Synod in the event that the manner of dissent to a synodical resolution exceeds that which is provided in the Constitution and Bylaws of the Synod?

Opinion: Bylaw section 1.10, detailing the dispute resolution process of the Synod, would generally apply to an assertion that a member is in violation of the dissent provisions of the Constitution and/or Bylaws of the Synod. If such conduct were sufficiently egregious or repetitive so as to implicate the expulsion provisions of Article XIII of the Constitution, Bylaw section 2.14 would also be applicable. See also Opinion 05-2444 for a discussion of dissent.

### **179. Formal Written Complaints, Public Rebuke, and Face-to-Face Meetings (06-2484)**

In a September 27, 2006 letter to the Commission, a pastor of the Synod asked a series of questions regarding the meaning of Bylaw 2.14.3, specifically the meaning of “any formal written complaint or accusation,” public rebuke of public sin, and the Matthew 18:15 face-to-face provision.

Question 1: Do the words “complaint” and “accusation” mean essentially the same thing? Do they or can they refer to different things?

Opinion: In the context of the bylaw, while the words “complaint” or “accusation” are clearly synonymous, essentially it is formal “allegations” or “information” (Cf. 2.14.3 and 2.14.4) that can lead to the expulsion of a member from the Synod under Article XIII (2.13.1; 2.14.1; 2.14.3; 2.14.4).

Question 2: In this bylaw, do the adjectives “formal” and “written” modify an “accusation” as well as a “complaint”? In other words, can this accusation be informal and/or unwritten?

Opinion: If it has been determined that Bylaw section 2.14 is the appropriate bylaw section and if an action is to be commenced, this bylaw section, which prescribes the procedure for expulsion from membership in the Synod, requires in Bylaw 2.14.4 “a formal written complaint or accusation made by a member of the Synod who has carried out the above provision (Bylaw 2.14.3)” unless the district president becomes aware of information that could lead to expulsion by his own personal knowledge (emphasis added).

Question 3: Can the noun “complaint” or the noun “accusation” refer to an expression that occurs outside the process for expelling a member from the Synod, such as a public rebuke of public sin?

Opinion: Although the words “complaint” and “accusation” are used elsewhere in the Bylaws, the Constitution, Bylaws, and resolutions of the Synod do not address this question.

Question 4: Does this bylaw forbid any member of the Synod from publicly rebuking another member for public sin such as false doctrine prior to i.) the rebuker consulting with the appropriate district president (i.e., the consultation mentioned in this bylaw) and/or ii.) the process for expulsion which follows upon this consultation?

Opinion: The bylaw in question deals only with the process of expulsion from membership. The provisions and processes of the bylaw (expulsion from membership) do not prohibit any Christian from following biblical and confessional principles in rebuking a Christian brother or sister so long as the

constitutional responsibilities for ecclesiastical supervision are not being assumed and so long as the member will also abide by the bylaw when and if it is determined that Bylaw section 2.14 applies.

Commission Opinion 04-2401 opined: “This bylaw [2.14.3] and related bylaws do not apply to a person who has not entered a formal complaint.” Opinion 05-2422 also addressed this matter:

The question posed assumes that the person who wishes to speak out has become an accuser under Bylaw section 2.14. Should a member of the Synod choose to initiate the Bylaw section 2.14 process, that person must abide by the provisions of that process, including the prohibition of publicity under Bylaw 2.14.7.7 (g). In an earlier opinion (01-2243), the Commission offered definition of such publicity:

The word "publicity" as used in the bylaw is defined in Webster's New World Dictionary as "any information or action that brings a person, cause, etc. to public notice." Use of the press or other means by a party involved in the matter to bring to the attention of the public information regarding the matter or to advocate a position is “publicity” and is prohibited by the bylaw if it occurs while a matter in dispute is still undecided or while an appeal is contemplated or pending.

Members of the Synod walk together according to the covenants that they have mutually agreed upon by such membership, as delineated in the Synod’s Constitution, Bylaws, and resolutions. One of those covenants is provided in Bylaw 2.14.3 (c), which details how members of the Synod have agreed to respond “even if the alleged violation of Article XIII of the Constitution is considered to be ‘public.’” In such case Matthew 18:15 is still followed.

For further help, see Opinions 04-2401 (October, 2004) and 05-2422 (April, 2005) in their entirety.

Question 5: Does this point of the Bylaw [2.14.3 (c)] forbid any member of the Synod from publicly rebuking another member for public sin such as false doctrine prior to i.) the rebuker consulting with the appropriate district president (i.e., the consultation mentioned in Bylaw 2.14.3) and/or ii.) the process for expulsion which follows upon this consultation?

Opinion: The answer to question four applies.

Question 6: May a member of the Synod (member *Alpha*) be prohibited from bringing to the appropriate district president a matter which could lead to another member’s (member *Beta*’s) expulsion from the Synod on the grounds that member *Alpha* has previously publicly rebuked member *Beta* for a public sin such as false doctrine?

Opinion: Bylaw section 2.14 and the related bylaws have no such prohibition.

Question 7: May a member of the Synod (member *Gamma*) be prohibited from publicly rebuking another member of the Synod (member *Delta*) for a public sin such as false doctrine on the grounds that member *Gamma* has not yet engaged in steps enumerated in Bylaw 2.14.3ff. such as a face-to-face rebuke and/or communication with the appropriate District President?

Opinion: Bylaw section 2.14 and the related bylaws have no such prohibition. The answer to question four applies.

**Question 8:** Do the words in the bylaw, “this provision of Matthew 18:15 shall be followed,” make the following of this provision incumbent upon members of the Synod by reason of the fact that the provision is in Matthew 18:15? If so, why? If not, why not?

**Opinion:** The *Standard Operating Procedures Manual* that serves as a comprehensive procedures manual for the provisions set forth in Bylaw section 2.14, states, “Matthew 18 and the Eighth Commandment undergird the bylaws that set forth this Bylaw 2.14 process for expulsion of membership from the Synod. While Matthew 18 provides the basis for church discipline in a local congregation, it also provides guidance and a pattern for all Christians and, along with the Eighth Commandment, is to be observed in this procedure as applicable. The reputations of the accused and accuser are to be protected.” And further it states, “The primary purpose of Bylaw section 2.14 and the procedure in this manual is not for the expulsion of a member from the Synod but for repentance and reconciliation, to win and restore the brother or sister or sister congregation (Matt. 18:15–20; Gal. 6:1–5; Cf. Bylaws 1.10.1–1.10.1.6)...”

Finally, the Commission encourages the questioner to review the May, 2006 report of the Commission on Theology and Church Relations (CTCR) entitled, *Public Rebuke of Public Sin*, which is applicable and helpful.

### **180. South Wisconsin District Bylaws (06-2485)**

With a letter dated December 13, 2006, the secretary of the South Wisconsin District forwarded to the Commission for review the district’s Articles of Incorporation and Bylaws as amended by the district’s June 2006 convention. The documents as amended were reviewed and the following revisions are suggested.

- For the sake of consistency in official documents throughout the Synod, the grammar and capitalization principles followed by the Synod in its *Handbook*, e.g., using capitalization only for proper nouns, avoidance of the non-word “synodical,” etc., are encouraged to be followed.
- Bylaw 1.01 (p. 3): This bylaw is unclear and does not immediately correspond well to Synod Constitution Art. XII 1; Bylaws 1.3.2, 4.1.1, 4.1.1.3 (a); *et al.*—unless what is intended is the development of a proposal to a national convention of the Synod or the Board of Directors of the Synod encouraging their submission of the proposal to the President of the Synod as referenced in Bylaw 4.1.1.3 (b), since those are the only two entities eligible to submit such a proposal.
- Bylaw 1.02 (p. 3): Delegate representation at meetings of the districts of the Synod, as determined by Article V of the Synod’s Constitution, is to be one pastor and one lay delegate for each congregation or parish, not “one lay delegate from each congregation.” Where parishes of two or more congregations are concerned, those congregations share the lay delegate vote.
- Bylaw 1.09 a (p. 4): Synod Bylaw 3.1.6.1 provides a wider range of opportunity for reports to a convention than only those “authorized by the president or board of directors.” Synod Bylaw 4.2.1 (a) requires that “conventions of the districts shall be governed by the bylaws adopted by the Synod for its conventions, insofar as these may be applicable.”
- Bylaw 1.10 (p. 4): This bylaw makes the president of the district the editor of the convention workbook, whereas the editor of the national convention workbook is named in Synod Bylaw 3.1.8 as being the Secretary of the Synod, subject to the approval of the President. Since district Bylaw 1.38 on p. 8 provides that the duties of the district secretary are to be those of the Synod Secretary, the district secretary should be the editor of the district convention workbook.
- Bylaw 1.12 (p. 4): Since provision is made for daily minutes distribution, an additional provision for the approval and distribution of the final day’s minutes would be helpful.

- Bylaw 1.20 (p. 5): Definitions for “conference,” “council,” and “department” (paragraphs c, d, e) define terms that are never again used in the Bylaws. In addition, “conference” is already used and defined differently in the Bylaws of the Synod (Bylaw 4.8.2).
- Bylaw 1.22 (p. 5): Since there is only one board, this bylaw would better be titled “Board of Directors” rather than “Boards.”
- Bylaws 1.26 a (p. 6), 1.37 (p. 8), and 1.67 e (p. 13): An inconsistency exists regarding how a vacancy in a vice-presidency is to be filled.
- Bylaw 1.41 (p. 8): The listing of the First Vice-President, a non-voting member of the Board of Directors, in the list of voting members is unusual and confusing. Better if the reference to him under current paragraph a were made the first sentence of current paragraph b.
- Bylaw 1.43 c (p. 9): The provision for reinstatement of an officer or director is inconsistent with the Bylaws of the Synod.
- Bylaw 1.50 (p. 10): While quite detailed, the description of the functions of the district Committee on Constitutional Matters does not include those functions required by Synod Bylaws 2.2.1 (b) and 2.4.1 (b). Instead, a questionable function is described under paragraph d in that the Synod’s Bylaws do not grant district constitution committees the authority to review existing documents of member congregations unless a congregation is proposing change.
- Bylaw 2.01 (p. 14): Paragraph a of this bylaw suggests that the national Synod is the entity that changes district bylaws, also offering a Synod *Handbook* reference that is unclear. Paragraph b offers Synod bylaw references that need to be updated to “Synod Bylaws 4.1.1.2 and 3.9.2.2.4.” Item 1 under paragraph b should be clarified to indicate that it is the Constitution “of the Synod” that is being referenced.

### **181. Synod Governance (06-2486)**

With a letter dated January 3, 2007, a parish pastor of the Synod submitted a series of questions regarding the non-profit laws of the State of Missouri and the Constitution of the United States. Commission member Dan Lorenz was asked to submit this inquiry to the legal counsel of the Synod for input.

### **182. Meeting with Representatives of the 7-02A Committee**

According to prior arrangement, the Friday evening session of the meeting included a joint conference with the chairman and representatives of the 7-02A Committee.

### **183. Adjournment**

According to prior arrangement, the Saturday morning session of the commission included a joint conference with the Synod’s Board of Directors. Following the joint conference, allotted time having elapsed, the chairman closed the meeting with words of benediction.

Raymond L. Hartwig, Secretary

## MINUTES

### COMMISSION ON CONSTITUTIONAL MATTERS St. Louis Airport Crowne Plaza Hotel April 21–22, 2007

#### **184. Call to Order and Opening Devotion**

The meeting was called to order by Chairman Albert Marcis with all members of the Commission present. He also provided an opening devotion that included a meditation on the story of Jesus' post-resurrection appearance to the two disciples on the road to Emmaus (Luke 24: 13ff).

#### **185. Resolution 7-02A Committee Report**

Also present at the start of the meeting was Walter Tesch, chairman of the Resolution 7-02A Committee, who had requested opportunity to meet with the Commission and discuss his committee's final report to the 2007 convention. Each section of the report with its recommended bylaw changes was discussed. The Commission thanked the 7-02A Committee's chairman for being present to share the report and commended the committee for its work.

#### **186. Board of Directors Confidentiality Matter**

Prior to its February meeting the Commission had expressed concern to the Board of Directors that an item that it had forwarded to the board that was intended to remain confidential had become known outside the board and commission and had been widely circulated. The commission had requested that the board investigate and resolve the matter.

The secretary of the Commission reported that the Board of Directors discussed the Commission's concern at its most recent meeting and directed its Policy Review Committee to bring to its May meeting a policy proposal that will satisfy the concern of the Commission. The Commission asked the secretary to express its appreciation to the board for its intention to develop a policy that will govern its handling of materials received from the commission in a manner that will honor the commission's interest in the confidentiality of those materials.

#### **187. Board for University Education *Standard Operating Procedures Manual* (06-2466)**

A latest draft of the *Standard Operating Procedures Manual* required by Bylaw 3.8.3.8.9 (j), to be developed by the Board for University Education in consultation with the Commission, was briefly reviewed. It was agreed that the secretary of the Commission will continue to work with the executive director of the board to produce a final draft for review by the Commission at its May 2007 meeting.

#### **188. Program Board Policy Manuals**

Policy manuals have been received upon request by the Commission from the Board for Communication Services, the Board for Pastoral Education, the Board for University Education, the Board for Black Ministry Services, the Board for Human Care Ministry, the Board for Mission Services, and the Board for District and Congregational Services. Given its other responsibilities, especially those related to the upcoming convention, the Commission was again unable to begin its formal review process and will set aside time at its next meeting for this

purpose. It was agreed that the Commission will share the results of its review with the Board of Directors, since the board also has been given policy manual responsibilities by the Bylaws of the Synod.

### **189. Review of Southeastern District Bylaws (06-2478)**

Bylaw 3.9.2.2.4 requires all agencies of the Synod to submit to the Commission in advance all proposed amendments to articles of incorporation and bylaws for its examination to ascertain that they are in harmony with the Constitution, Bylaws, and resolutions of the Synod. Although a number of amendments were already approved by its 2006 Southeastern District convention, the Commission reviewed the changes and offers the following responses.

In the following case, the Commission finds the amendment to be contrary to the Constitution, Bylaws, and resolutions of the Synod and therefore should not be considered in force until appropriate changes have been made and approved by a convention of the district:

- In the Preamble section to the Bylaws, line 31, the Commission notes that the provision to support Recognized Services Organizations in their mission and ministry is placed on the same level as support to congregations of the district. This is contrary to the Bylaws of the Synod where it is clear that such organizations are recognized for *their support* of the mission and ministry of the Synod and not vice versa (Bylaw 6.2.1) and where it is clear that it is the purpose of the Synod to support *above all* its member congregations (Bylaw 1.1.1 [a]). Therefore, while supporting ministries of recognized service organizations is a good thing, such support is not intended to rise to the level advocated in the district's document.

In the following cases, the Commission has noticed statements in newly amended or already existing sections of the district's Bylaws for which additional attention by the district is recommended:

- In the Preamble section, line 42, although this is not one of the newly amended paragraphs, the statement that the district "is a voluntary association of congregations..." is not entirely accurate. Congregations voluntarily join and retain membership in the Synod, and it is the Synod that is the voluntary association of congregations. Congregations belong to the Synod, and such membership is held through a district, which is the Synod in that place.
- Under Article IV, lines 130ff., the Commission has noted inconsistency in statements regarding number of directors, sometimes said to be "seven," but in this article potentially eight. The district may also want to give further consideration to the terminology in its provision for "an ethnic member" on its board of directors, it being unclear what is intended since all persons are "ethnic" in the strict sense of the word.
- Under Article V, lines 206 and 209, the proper terminology for commissioned ministers is "ministers of religion-commissioned."
- Under Article VI, line 290, the Commission suggests that by providing that vice-presidents are required to perform duties as requested by the board of directors, while this may be technically appropriate, the clear lines the Synod tries to maintain between ecclesiastical responsibilities (the usual bailiwick of vice-presidents in our Synod structure) and business responsibilities (reserved to a large extent to boards of directors and not usually included in the duties of vice-presidents) may be blurred.

- Under Article VIII, line 404, the district may wish to give further thought to who it is that actually extends calls to district workers in the context of our Synod’s understanding of the call. The congregations of a district collectively are the calling body. District boards of directors may be authorized to act on behalf of the congregations, but it is the congregations that actually extend such calls to the workers.
- For the sake of consistency and good order, the district is encouraged to approximate as closely as possible in its official documents the terminology and rules of grammar, especially capitalization, that the Synod uses in its *Handbook*.

**190. Synod Governance Issues (07-2486)**

In a letter received January 5, 2007, a pastor of the Synod asked a series of questions regarding Synod governance issues. The first specifically relate to Bylaw 1.2.1 (c) (3), which states: “The Lutheran Church—Missouri Synod, in referencing the laws of the State of Missouri in these Bylaws and in the Synod’s Articles of Incorporation, intends to acknowledge its responsibility to be subject to civil authority. In all such references, however, the Synod intends to retain all authority and autonomy allowed a church under the laws and Constitution of the United States and the State of Missouri.”

[Note: Along with his questions the pastor provided a background memorandum regarding constitutional 1<sup>st</sup> Amendment issues, referencing quotations from various United States Supreme Court opinions as well as State of Missouri Nonprofit Corporation Law Section 355.316 (2).]

Question 1: (a) If the Synod wishes “to retain all authority and autonomy allowed a church” under various laws, what laws should the Synod more closely observe, especially if there is a conflict between the laws and Constitution of the U.S. granting “free exercise” and the non-profit laws of the State of Missouri? (b) What then takes greater priority for the Synod’s Board of Directors to follow? The non-profit laws of the State of Missouri, or the “free exercise” rights as ruled by the U.S. Supreme Court in order “to retain all authority and autonomy allowed a church under the laws and Constitution of the United States”?

Opinion: The role and responsibility of the Commission on Constitutional Matters under Bylaw 3.9.2.2 includes the interpretation of the Synod’s Constitution, Bylaws, and resolutions. The Commission does not have the authority to interpret the laws and Constitution of the United States or the State of Missouri. The Commission does certainly attempt, however, to be cognizant of that constitution and those laws. For example, where two reasonable interpretations of a resolution of the Synod would be possible, one of which would clearly violate state or federal law and one of which would not, a fundamental rule of interpretation that is assumed is that the Synod intended to follow a lawful course of conduct rather than one which is unlawful.

In fulfilling its specific service function to the Synod, the Board of Directors is required to follow the directions of the Synod in convention. Presumably in doing so, to the extent some challenge whether actions of the Synod are contrary to Missouri state law, the Board of Directors will inquire, through legal counsel, whether or not the Synod can legitimately and in good faith urge that the rights granted under the state and federal constitution supersede or preempt an apparent conflict with non-profit laws of the State of Missouri. To the extent considered necessary or appropriate, the board may choose to interact with secular authorities to assure that the State of Missouri recognizes the validity of the governance model chosen by the Synod.

Question 2: Bylaw 3.3.5.2 states: “The Board of Directors shall have the powers and duties that have been accorded to it by the Articles of Incorporation, Constitution, Bylaws, and resolutions of the Synod, and the laws of the State of Missouri. If there is a conflict between the “governing” documents of the Synod and “the laws of Missouri,” should the Synod’s Board of Directors, as the Synod’s legal representative, defend the Synod’s right to govern itself (granted under its First Amendment rights) or turn over the governance of the Synod’s ecclesiastical and secular business to a “secular” state government’s directives (laws)?

Opinion: See the answer to question 1.

[Note: After again referencing Bylaw 1.2.1 (c) (3) and Bylaw 3.3.5.2, as well as sections of the Missouri Religious Freedom Restoration Act, the writer referenced excerpts from section 175 of the November 2006 Board of Directors minutes:

The chair ruled that the motion was in order because it was not included in the previous action. After discussion, the resolution was adopted as follows (Yes: 7; No: 6):

*Resolved*, That in consideration of the Board’s discussions of its authority held on November 16, 2006, the Board reaffirms its responsibility to abide by civil law, recognized in Bylaw 1.2.1 (c) (3).]

Question 3: (a) In addition to honoring the non-profit laws of the State of Missouri (Chapter 355), would not the Board of Directors also have to protect the rights of the Synod as granted in Missouri Law as found in Section 1.303, 1.307, and 1.020 (11)? (b) Even if Missouri’s non-profit laws are considered “laws of general applicability,” would the laws of the State of Missouri’s own Religious Freedom Restoration Act (as found in the Missouri Code Section 1.302 [and 1.307]) serve to maintain the Synod’s “authority and autonomy”?

Opinion: In response to part (a) of this question, the Synod has expressed clearly in Bylaw 1.2.1 that it intends to retain all authority and autonomy allowed a church under the laws and Constitution of the United States and the State of Missouri. It is the responsibility of the Board of Directors to carry out that bylaw. Regarding part (b) of this question, again, the Commission is not charged with the responsibility for interpretation of the laws of the state of Missouri.

[Note: The questioner here quotes in part Bylaw 3.9.2.2 of the Synod’s Bylaws: “The Commission on Constitutional Matters shall interpret the Synod’s Constitution, Bylaws, and resolutions upon the written request of a member...of the Synod.” He then notes that the “Brief Statement” was adopted in a resolution by the Synod in 1932 and quotes from it:

Accordingly we condemn the policy of those who would have the power of the State employed “in the interest of the Church” and who thus turn the Church into a secular dominion; as also of those who, aiming to govern the State by the Word of God, seek to turn the State into a Church.]

Question 4: What is meant in Chapter 34 of the “Brief Statement” by the phrase “turn the Church into a secular dominion,” as in the statement: “Accordingly, we condemn the policy of those who would have the power of the State employed ‘in the interest of the Church’ and who thus turn the Church into a secular dominion”?

Opinion: The full text of the referenced section of the “Brief Statement” reads:

34. Although both Church and State are ordinances of God, yet they must not be commingled. Church and State have entirely different aims. By the Church, God would save men, for which reason the Church is called the "mother" of believers Gal. 4:26. By

the State, God would maintain external order among men, "that we may lead a quiet and peaceable life in all godliness and honesty," 1 Tim. 2:2. It follows that the means which the Church and State employ to gain their ends are entirely different. The Church may not employ any other means than the preaching of the Word of God, John 18:11, 36; 2 Cor. 10:4. The State, on the other hand, makes laws bearing on civil matters and is empowered to employ for their execution also the sword and other corporal punishments, Rom. 13:4.

Accordingly we condemn the policy of those who would have the power of the State employed "in the interest of the Church" and who thus turn the Church into a secular dominion; as also of those who, aiming to govern the State by the Word of God, seek to turn the State into a Church.

In the abstract, it would be impossible for us to discuss or delineate all of the implications of this section of the "Brief Statement." Fundamentally, the Synod recognizes that the church is ordained by God to save men, and the state is ordained by God to maintain civil order among men. The questioned reference is to those who would have the state assume the responsibilities and functions of the church, and attempt to make the functions of the church the functions of the state.

Question 5: After making further references to excerpts from the October 30, 2006 and November 15-17, 2006 minutes of the Board of Directors regarding motions made and not adopted, the questioner raised issues regarding the potential applicability of the earlier quoted section from the "Brief Statement" to the action proposed and defeated.

Opinion: Because the motions from the minutes of the Board of Directors quoted by the questioner were defeated and therefore never adopted by the board, the commission believes that it would be unhelpful to the Synod to comment on such failed motions.

[Note: The questioner here quotes from Synod Constitution Art. XI, Section A, line 1: "Officers of the Synod must assume only such rights as have been expressly conferred upon them by the Synod," and from the minutes of the October 30, 2006 and November 15-17, 2006 Board of Directors meetings: "This can be accomplished by a declaration of the board explicitly stating that it will at all times and in all respects follow Missouri Law and not allow the CCM to usurp the legal authority of the Board of Directors" (sections 162 and 172 of the minutes). The questioner then adds that this specific request was made in the minutes by a member of the Board of Directors seemingly to restructure the Synod and more specifically to restructure the authority of the Commission on Constitutional Matters supposedly to comply with Missouri non-profit law without convention approval.]

Question 6: (a) Since the Synod's structure was established by the convention of the Synod, is this particular request by a member of the Board of Directors to restructure the Synod an exceeding of its authority and responsibility as granted to the board by the Synod? (b) Does the Board of Directors of the Synod have constitutional authority as found in the Synod's organizational documents (Articles of Incorporation, Constitution, or Bylaws) to even demand such a change in the Synod's structure and disavow rulings of the Commission on Constitutional Matters without Synod convention approval? (c) Is this proposed request and/or motion of the Board of Directors also in direct violation of Bylaw 3.3.5.5 (a) (2), and possibly 3.9.2.2 (b), and even more so Article V of the Articles of Incorporation? And (d) Can the Synod's Board of Directors restructure the Synod's governance without the approval of the Synod in convention?

Opinion: Again, the Commission on Constitutional Matters believes it would be unhelpful to the Synod to comment on such a failed motion, the board majority having rejected the proposed restructuring.

Question 7: Bylaw 1.4.1 states: “The delegate convention of the Synod is the legislative assembly that ultimately legislates policy, program, and financial direction to carry on the Synod’s work on behalf of and in support of the member congregations. It reserves to itself the right to give directions to all officers and agencies of the Synod.” (a) Is there a specific reason(s) that the Synod is structured in such a manner with no individual officer or board having “ultimate authority or control” and all being accountable to the Synod in convention? (b) Does the Synod’s Board of Directors have “sole authority” in even “secular or legal matters” or should it still be subject to the opinions of the Commission on Constitutional Matters and ultimately answerable to the convention of the Synod? (c) What course of action should be employed by the Synod if an officer and/or a board of the Synod presumes, on its own, to rewrite the Synod’s structure and governance? And (d) What would be a more correct and appropriate constitutional procedure if an officer or a board of the Synod wished to change the Synod’s structure of governance?

Opinion: (a) It is not the authority or responsibility of the Commission on Constitutional Matters to speculate as to why the Synod has chosen to structure itself in the manner it has. (b) The Synod in convention chooses its governance model and determines whether or not the Synod’s Board of Directors should have “sole authority” even in “secular or legal matters.” Under the Synod’s current governance model, the Board of Directors is to be subject to the opinions of the Commission on Constitutional Matters and ultimately answerable to the Synod in convention. (c) No officer and/or board of the Synod is authorized to rewrite the Synod’s structure and governance. It remains the responsibility of the President, who has supervision regarding the doctrine and administration of all officers of the Synod, as well as all such who are employed by the Synod, to assure that such actions are not taken. Actions taken by a board or officer of the Synod are ultimately subject to the review of the Synod in convention, which ultimately has the authority to declare any such action taken beyond the authority of an officer or board as null and of no fact. (d) Amendments to the Constitution of the Synod may be made pursuant to Article XIV and the processes described therein. Amendments to the Bylaws may be made pursuant to Chapter VII of the Bylaws and the processes described therein.

**191. Clarification of Opinion 06-2477, “District Convention Resolution re CCM ‘Guidelines’” (07-2487)**

The Commission on Constitutional Matters has been made aware of confusion resulting from its Opinion 06-2477, “District Convention Resolution re CCM Guidelines.” In the opinion, the Commission called attention to its statement in its *Guidelines for Constitutions and Bylaws of Lutheran Congregations*, “A congregation’s confessional standard must not go beyond that of the Synod.” It also restated an earlier commission opinion (August 2003 Opinion 03-2352) that “individual members or congregational members of the Synod may not add to or remove items from Article II [of the Synod’s Constitution]” and that “other confessional statements, confessions of faith, or common confessions may in fact be correct interpretations of our Lord’s teaching and may be used for a variety of purposes, but such other confessions may not be used as a condition for acquiring and holding membership in the Synod.” The Commission recognizes that imprecise use of terminology has caused the confusion that has resulted from Opinion 06-2477 and therefore offers this clarification.

When a congregation becomes a member of the Synod and thereby subscribes to the Synod's Constitution, it also subscribes to the confessional basis of the Synod as articulated in the Synod's Constitution, Article II (see Constitution Art. V, "who confess and accept the confessional basis of Article II," and Article VI [1], "Acceptance of the confessional basis of Article II"). In Bylaw 1.6.1, the same is referred to as the "confessional position of the Synod [as] set forth in Article II of the Constitution, to which all who wish to be and remain members of the Synod shall subscribe." In Bylaw 1.3.4, the same is again referred to as the "confessional position of the Synod." The intent of Opinion 06-2477 was to reiterate from prior commission opinions the important point that this confessional "basis" or "position" may not be added to or subtracted from by a member congregation. Subscription to Article II of the Synod's Constitution is a condition of membership in the Synod.

If, therefore, a congregation wishes to restate this "confessional basis" in its own Constitution, it should do so (as the Commission's guidelines suggest) by staying as close as possible to the language of the Synod's "Article II Confession," so that its confessional basis is demonstrated to be the same as that of the Synod. There is, however, no essential need for the congregation to reiterate this confessional basis, since this is already established by its membership in the Synod.

Congregations may and often wish to, however, include in their official documents a confessional statement of their own, perhaps using words like "inspired" and "inerrant" to emphasize important aspects of their confession. This is appropriate so long as such statements, as well as all of the content of their Constitutions and Bylaws "are in harmony with the Holy Scriptures, the Confessions, and the teachings and practices of the Synod" (Bylaws 2.2.1 [b]; 2.4.1 [b]). Care should therefore be taken in congregational documents that terminology used properly differentiates between a confessional "basis" paragraph which may be included and which mirrors the Synod's Article II and confessional "statement" paragraphs that may be included to emphasize certain aspects of the confession of the congregation but must be in harmony with the Holy Scriptures, the Confessions, and the teachings and practices of the Synod.

It is the responsibility of district constitution committees to review constitutions and bylaws when a congregation initially applies for membership (Bylaw 2.2.1) and when a congregation revises its official documents (Bylaw 2.2.1). The committees should pay careful attention to terminology that is used, to differentiate between "confessional basis" paragraphs and "confessional statement" paragraphs, and to advise congregations accordingly as part of their review process.

For its part, the Commission recognizes the need to revise its *Guidelines for Constitutions and Bylaws of a Lutheran Congregation* as follows:

### **3.0 CONFESSIONAL BASIS OR STATEMENT**

The Lutheran Church—Missouri Synod requires that its member congregations accept the confessional basis of the Synod. Congregations do so when they become members of the Synod, which includes subscription to the Synod's Constitution (Constitution Art. V and VI [1]; Bylaws 1.3.4 and 1.6.1). If a congregation chooses to reflect this confessional basis in its own constitution, it is recommended that Article II of the Synod's Constitution be adopted for inclusion in congregations' constitutions. A congregation's confessional *basis* must not go beyond that of the Synod.

*Example:*

This congregation accepts without reservation:

3.1 The Scriptures of the Old and the New Testament as the written Word of God and the only rule and norm of faith and practice.

3.2 All the Symbolical Books of the Evangelical Lutheran Church as a true and unadulterated statement and exposition of the Word of God, to wit: the three Ecumenical Creeds (the Apostles' Creed, the Nicene Creed, the Athanasian Creed), the Unaltered Augsburg Confession, the Apology of the Augsburg Confession, the Smalcald Articles, the Large Catechism of Luther, the Small Catechism of Luther, and the Formula of Concord.

If a congregation chooses to do so, it may also include confessional *statements*, even when it does not restate its confessional basis. Should a congregation do so, it is the responsibility of the district constitution committee to assure that such confessional *statements* are in harmony with the Holy Scriptures, the Confessions, and the teachings and practices of the Synod.

### **192. Review of Concordia Historical Institute Articles of Incorporation (07-2488)**

The Director of Concordia Historical Institute, in a letter dated February 8, 2007, requested that the commission review the Institute's Articles of Incorporation "to see if they are in compliance with [2004 convention] Resolution 4-11."

Bylaw 3.9.2.2.4 does provide for the examination by the Commission of articles of incorporation of agencies of the Synod "to ascertain whether they are in harmony with the Constitution, Bylaws, and resolutions of the Synod." The Commission therefore has examined the Institute's articles of incorporation in light of 2004 convention Resolution 4-11 and finds them in compliance with the expectations of the resolution.

Resolution 4-11 resolved that every incorporated agency of the Synod (such as Concordia Historical Institute) include the following provisions in its Articles of Incorporation to promote the unity and to safeguard the interests of the Synod:

1. This corporation, as part of The Lutheran Church—Missouri Synod (the Synod), acknowledges its allegiance to the Synod and to the convention of the Synod (the convention).
2. It submits to the authority of the Synod and the convention.
3. It accedes to, recognizes, and accepts the doctrine taught and practiced in the Synod (Art. II) and the Articles of Incorporation, Constitution, and Bylaws of the Synod, as currently in effect and as may hereafter be amended from time to time.
4. In the event of any conflict or inconsistency between the organizational documents of this corporation and the Articles of Incorporation, Constitution, or Bylaws of the Synod, as may hereafter be amended from time to time, the Articles, Constitution, or Bylaws of the Synod shall control and govern.
5. In the event this corporation is dissolved or its existence otherwise terminates or is terminated, all right, title, and interest in and to its property, whether tangible or intangible or whether real or personal, shall thereupon automatically vest in the Synod, and this corporation covenants and agrees to execute and deliver to the Synod such documents and instruments and to take such other and further actions as the Synod may deem reasonably necessary or desirable, in order to evidence and give full effect to the foregoing.

6. The above provisions may not be altered or deleted without the written consent of the Synod.

After review of the Articles of Incorporation of Concordia Historical Institute, the Commission concludes that the six numbered requirements of 2004 Resolution 4-11, while not quoted verbatim, are nonetheless incorporated into the Institute's articles as follows:

1. Article III A acknowledges allegiance to the Synod and its convention by stating that Institute is "an agency of The Lutheran Church—Missouri Synod and shall be subject to the Constitution and Bylaws of The Lutheran Church—Missouri Synod," adding that "the Board of Governors of the Corporation, its officers, employees, agents, and all of its activities shall be subject to the duly enacted Bylaws...and resolutions duly enacted by The Lutheran Church—Missouri Synod, assembled in convention.... to the same extent as if all of those individuals and activities were directly those of The Lutheran Church—Missouri Synod."
2. With Article III A, the Institute also submits to the authority of the Synod and its convention by subjecting its officers, employees, agents, and activities to the Synod's Bylaws and resolutions "to the same extent as if all of those individuals and activities were directly those of The Lutheran Church—Missouri Synod."
3. The Institute accedes to, recognizes, and accepts the doctrine taught and practiced in the Synod by its consistent subjection to the Constitution and Bylaws of the Synod (Art. III A; Art. VII), which necessarily includes "Article II Confession" of the Constitution of the Synod.
4. In the event that there is conflict or inconsistency between the organizational documents of the corporation and the Articles of Incorporation, Constitution, or Bylaws of the Synod, the Institute states that the Synod's documents shall control, declaring that nothing in its documents "shall be inconsistent with" the documents of the Synod (Art. III A) and that the Bylaws it establishes shall be consistent with the Constitution and Bylaws of the Synod (Art. VII).
5. The Institute clearly states that upon its own dissolution and liquidation, "all assets of the corporation remaining after all liabilities and obligations of the corporation have been paid, satisfied, and discharged...shall be transferred, conveyed, and distributed to The Lutheran Church—Missouri Synod or its corporate successors...." (Art. VIII).
6. The Institute's Article IX requires that any changes to its Articles of Incorporation or Bylaws "shall, prior to approval by the members, have previously been reviewed and approved by the Board of Directors of The Lutheran Church—Missouri Synod and the Commission on Constitutional Matters of The Lutheran Church—Missouri Synod."

### **193. Gender of University Provost (07-2489)**

In a letter dated February 26, 2007, a chairman of a board of regents of a university of the Synod, after quoting several bylaws of the Synod, concluded that the provost of the school must be male given that position's responsibility to serve as acting and/or interim president when the president is unable to serve. He asked the Commission for its opinion, stating his intention to provide the response of the Commission to the Provost Search Committee of the school.

Opinion: In a March 16, 1984 opinion, the Commission on Constitutional Matters stated:

The Synod has stated that a woman is not to exercise authority over man, particularly in spiritual matters. It is true that the president of an institution may delegate certain responsibilities to staff members. One of these responsibilities that may be delegated is that of spiritual leadership of the institution. However, for the reason that the power to delegate is just that and is not a release of the responsibility, and ultimate responsibility for supervision is that of the person delegating the responsibility, the Commission rules that on the basis of present bylaws and resolutions of the Synod, a woman may not serve as president since the president is to serve as the spiritual academic and administrative head of the institution according to Bylaw 6.15. The board of regents may not delegate this ultimate responsibility either since the bylaws specifically assign it to the president of the institution.

When asked to reconsider this opinion, the Commission on April 6, 1984, reaffirmed its previous decision, stating “that when Bylaw 6.15 designates the president as the “spiritual head” of the institution, service in the position of president by a woman would be in conflict with the position of the Synod as stated in Resolution 2-17 of the 1969 Denver convention, and reaffirmed in conventions which followed.” This opinion was reaffirmed by a later commission in a September 14, 1999 opinion (99-2160), which stated in part:

It is the opinion of the Commission that until the Synod clearly indicates that the term, “spiritual head,” does not involve the president of the institution in the distinctive functions of the pastoral office and/or exercising authority over men in spiritual matters, its decision is consistent with the position adopted by previous conventions.

In response to the current question, the commission therefore answers that because current Bylaw 6.12 retains the content and terminology of the Bylaw 6.15 referred to in the 1984 opinion, including the requirement that a president of an institution serve as its “spiritual head,” the 1984 ruling of the Commission stands because it was never overruled by a synodical convention.

Noting these earlier commission opinions, and noting that a president of an educational institution continues to “serve as the spiritual, academic, and administrative head of the institution” (Bylaw 3.8.3.7), remains “responsible for the provision of spiritual care and nurture for every student” (Bylaw 3.8.3.7 [h]), and “shall carefully watch over the spiritual welfare...of the students and in general exercise such Christian discipline, instruction, and supervision as may be expected at a Christian educational institution” (Bylaw 3.8.3.7 [i]), the Commission concludes that it continues to be necessary for a university president to be male. And given the fact that the job description of the position in question (provost) requires that person to serve as acting and/or interim president when the president is unable to serve, the Commission further concludes that this position (provost) must also be held by a male, since the responsibilities of the position remain with the position, even were they to be delegated to another person for a period of time.

The Commission notes that the above response pertains to the matter as it stands, with the provost serving as “acting or interim president” during a vacancy in the office of president. It is conceivable that the responsibilities of a provost during a vacancy in the office of president could be defined/described in such manner as would avoid using the terms “acting or interim president,” instead specifying certain functions of the office of president to be carried out by the provost while excluding those particular functions of the office that exercise authority over men

in spiritual matters and assigning them to a male member of the administration or faculty during a vacancy.

It may also be helpful, given developments in the Synod pertaining to the service of women, to request counsel also from the Commission on Theology and Church Relations.

#### **194. Calling a Special Convention of the Synod (07-2490)**

In a letter dated February 16, 2007, a district president asked a series of questions related to the calling of a special convention of the Synod, especially in light of Constitution Article VIII and Bylaw section 3.1.

Question 1: Is “the Synod” in convention authorized by the Constitution to call a special session?

Opinion: Yes. Constitution Article VIII B 1 states: “The Synod may under circumstances call a special session if two-thirds of the voting representatives so decide” (emphasis added). In referring to the regular meetings of the Synod, Article VIII A 1 uses the same term: “The Synod convenes every three years for its regular meeting” (emphasis added). And Bylaw 3.1.1, in setting forth the provisions for a national convention, states:

The national convention of the Synod...is the principal legislative assembly, which amends the Constitution and Bylaws, considers and takes action on reports and overtures, and handles appropriate appeals. It establishes general positions and policies of the Synod, provides overall program direction and priorities, and evaluates all such positions, programs, policies, directions, and priorities in order to provide responsible service for and on behalf of its members....” (emphasis added).

Question 2: Is there any definition of the “circumstances” necessary for calling a special session of the Synod?

Opinion: No. The Constitution and Bylaws of the Synod are silent with respect to the definition of “circumstances” in this Article VIII B 1. Thus, the Synod in convention determines the conditions that affect the calling of a special session.

Question 3: 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.

Question 4: Do the existing bylaws (3.1.2–3.1.5.2; 3.1.6–3.1.10.1; 5.3.3) provide for the implementation of Article VIII B?

Opinion: Yes. See the answer to question #3 above.

Question 5: As long as any amendments to the Bylaws are in harmony with Constitution Art. VIII B 1, Art. IX, Art. V, may bylaws be added or amended in order to provide for the implementation of “special sessions of the Synod” only?

Opinion: Yes. However, the amendment process must be in accord with Chapter VII of the Bylaws, “Amendments to Bylaws” (Cf. 2004 *Handbook*, pp. 202–203).

Question 6: Is any specific process delineated to appoint delegates or representatives to a “special session” of the Synod?

Opinion: No. Bylaw 3.1.2.2 states that “voting delegates shall serve a three-year term...” The delegates elected to attend the convention at the beginning of a triennium continue to serve as needed throughout their three years of service.

Question 7: Do the existing bylaws call for the election of “new” delegates for a special session of the Synod or do they require the delegates from the “previous” convention to be the delegates to a special session of the Synod?

Opinion: No, the existing bylaws do not call for the election of new delegates. See the answer to question #6 above.

Question 8: If circumstances warrant, would it be possible to elect different voting delegates to the special session?

Opinion: There is no such provision under the current Constitution and Bylaws of the Synod.

Question 9: If so, what would the process be?

Opinion: If the convention desired to develop a procedure to elect new voting delegates for a special session of the Synod, this would require the adoption of the necessary amendments to the Constitution and/or Bylaws of the Synod.

Question 10: Could that process include the election by district conventions of voting delegates to the special session?

Opinion: Yes, such an election would be possible if a process were adopted by a convention of the Synod that would be consistent with the Constitution of the Synod, specifically Articles V, VIII, and IX, and with all applicable bylaws.

### **195. Status of “Visiting Faculty” (07-2491)**

In a February 2, 2007 E-mailed letter, a professor from one of the Synod’s educational institutions noted that some members of the faculty on which he serves are termed “visiting faculty” but have not received “initial level appointments” according to Bylaw 3.8.3.8.2. He asked a series of questions regarding the responsibilities of such faculty members.

After discussion, the Commission asked the Secretary of the Synod to consult with the executive director of the Board for University Education before it proceeds with providing a response to the questions.

### **196. Vote Needed for Excommunication (07-2492)**

A pastor of the Synod in a letter dated April 9, 2007, called into question a paragraph in the Commission on Constitutional Matters’ *Guidelines for a Constitution and Bylaws of a Lutheran*

*Congregation* regarding excommunications of church members. Because this question was received by the Commission only a short time before its meeting, it was agreed to address this request for an opinion at the Commission's next meeting.

**197. Adjournment**

Time for the meeting having elapsed, Chairman Marcis closed the meeting with words of benediction.

Raymond L. Hartwig, Secretary

**MINUTES**

**COMMISSION ON CONSTITUTIONAL MATTERS**

**May 18–20, 2007**

**St. Louis, Missouri**

**198. Call to Order and Opening Devotion**

Chairman Albert Marcis called the meeting to order with all members present except the Secretary of the Synod (morning session) due to responsibilities with the Board of Directors. Don Little provided an opening devotion. The meeting continued into the 2007 convention’s Floor Committee Weekend, the members of the Commission making themselves available to lend their counsel as proposed resolutions were formulated.

**199. Board for University Education *Standard Operating Procedures Manual* (06-2466B)**

The final draft of the *Standard Operating Procedures Manual* required by Bylaw 3.8.3.8.9 (j), prepared for final consideration by the secretary of the Commission in consultation with the administrative staff of the Board for University Education, was reviewed. The Commission noted that the Board for University Education office encouraged the Commission’s approval. After discussion, the Commission approved the operating procedures manual 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 an educational institution’s faculty or administration under Bylaw sections 3.8.3.8.5 and 3.8.3.8.9 (formerly Bylaw sections 6.43 and 6.47 of the 2001 *Handbook*, pp. 110-112).

Bylaw 3.8.3.8.9 (j) provides that the Board for University 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 colleges and universities be developed “that will set forth in detail a standard manner for carrying out the provisions of Bylaw 3.8.3.8.9 by any and all boards of regents of the Synod’s educational institutions, dealing with all cases of complaints arising out of Bylaw 3.8.3.8.5 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.”

## **B. Purpose**

Bylaw 3.8.3.8.9 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 colleges and universities, 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 3.8.3.8.5.

Questions regarding procedure may be directed to the president of the institution 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 institution’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 3.8.3.8.5 and 3.8.3.8.9. 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 3.8.3.8.9 and this *Standard Operating Procedures Manual* exists to address complaints brought against members of the faculty or administration of the Synod’s educational institutions. 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 institution (who may or may not also be faculty), with direct supervision of staff(s) to carry out the operational affairs of the institution. In most cases these persons have a direct reporting relationship with and responsibility to the president of the institution.

### **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 3.8.3.8.9 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 educational institution. The president of the institution 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 an educational institution under Bylaw 3.8.3.8.9 (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 3.8.3.8.5. The complaint should be concise, delivered to the president of the institution 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 3.8.3.8.9 [a]).

### **F. District President**

For the purposes of this complaint process, the president of the geographical district of the Synod in which the educational institution 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 3.8.3.8, “the president, the full-time faculty and the part-time faculty” of the college or university.

### **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 3.8.3.8.9 (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 institution is required to assist in this attempt (Bylaw 3.8.32.8.9 [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 3.8.3.8.9 [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 college or university (Bylaw 3.8.3.8.9 [e]) or parties involved. Contractual obligations of the institution 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 3.8.3.8.9 [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 3.8.3.8.9 (a).

**Q. Review Committee**

The committee of five persons selected according to Bylaw 3.8.3.8.9 (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 3.8.3.8.9 (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 3.8.3.8.9 to ensure consistency and uniformity when complaints brought against members of faculties and administrations of the colleges and universities of the Synod are resolved.

**A. Governing Authority**

The complainant and respondent, the president and board of regents of the involved college or university, 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 college or university 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 3.8.3.8.9 (a) allows for complaints "concerning any matter," only those complaints associated with Bylaw 3.8.3.8.5 may result in the dismissal of a faculty or administration member.

## **IV. Flow Chart of Bylaw 3.8.3.8.9 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 3.8.3.8.9 Process**

### **1. Reception of Complaint**

- 1.1 Board of regents receives complaint

3.8.3.8.9 *The board of regents shall have authority to investigate, hear, and act on any complaint arising out of Bylaw 3.8.3.8.5.*

*(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 3.8.3.8.5,...*

- 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 3.8.3.8.2 (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 3.8.3.8.5).
- 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

3.8.3.8.9 *...(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 3.8.3.8.5, 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 fact-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

3.8.3.8.9... *(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

3.8.3.8.9 *...(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 3.8.3.8.5 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

3.8.3.8.9 *...(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

3.8.3.8.9 *...(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

3.8.3.8.9 *...(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

3.8.3.8.9 *...(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

3.8.3.8.9 ...*(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

3.8.3.8.9 ...*(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

3.8.3.8.9 ...*(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

3.8.3.8.9 ...*(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

3.8.3.8.9...*(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 3.8.3.8.5, 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

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

- (1) Regarding matters under Bylaw 3.8.3.8.5, 1-4, it may take whatever action it deems appropriate, including recommendation for termination of the employment contract.*
- (2) Regarding matters under Bylaw 3.8.3.8.5, 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 3.8.3.8.5, 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 3.8.3.8.5, the board of regents must distinguish between complaints under items (1-4) and (5-6) and follow the provisions of paragraph (g) of Bylaw 3.8.3.8.9.

5.3 Board of regents actions are final and binding

3.8.3.8.9 ...*(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 3.8.3.8.5, 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

- A. What are the facts of the matter and how were they substantiated by relevant evidence and testimony?
- B. 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

**200. Status of “Visiting Faculty” (07-2491)**

In a February 2, 2007 E-mailed letter, a professor of one of the Synod’s educational institutions noted that some members of the faculty on which he serves are termed “Visiting Faculty” and, because they have not received “initial level appointments” (Bylaw 3.8.3.8.2), do not enjoy some of the rights that are granted to faculty members with such appointments.

Question: For the purposes of Bylaw 3.8.3.8 (b), are these “Visiting Faculty” temporary faculty members, and therefore ineligible to vote in faculty matters during the time that they do not hold an initial level appointment? Or to put the question another way, is the university free to classify faculty members as non-temporary, even if they do not hold an initial level appointment, or do the bylaws require that they be classified as temporary faculty members until such time as they receive an initial level appointment? If these faculty members who do not hold initial level appointment are not considered temporary according to synodical bylaws, are they eligible to serve on faculty committees that certify church worker students for the roster of the Synod?

Opinion: Bylaw 3.8.3.8 provides two categories for the faculty of colleges and universities of the Synod, “the full-time faculty and the part-time faculty.” Paragraph (a) of the bylaw further defines the sub-categories to be included under “part time or temporary faculty members” including those who are distinguished by the prefix or suffix “visiting.” Paragraph (b) makes clear that all such part-time or temporary faculty members “hold nonvoting membership on the faculty.”

The Commission concludes that the “Visiting Faculty” referred to in the question are therefore referenced in Bylaw 3.8.3.8 (a) when it speaks of “visiting” with reference to “part-time or temporary faculty members.” They are therefore to be regarded as such and, according to Bylaw 3.8.3.8 (b), hold nonvoting

membership on the faculty until such time as they receive an initial level full-time appointment. In view of their nonvoting status, they are not eligible to serve on faculty committees that certify church worker students for the roster of the Synod under Bylaw section 2.7.

### **201. Article II of Model Constitution and Bylaws (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. The Commission agreed to request input from the Commission on Theology and Church Relations before responding. A letter to the CTCR will be drafted that will include citations from initial studies that suggest that a unanimous vote is not required.

### **202. Interpretation of Constitution Art. VI (07-2493)**

A pastor of the Synod in a March 6, 2007 E-mailed letter to the Secretary of the Synod, referenced a paragraph in the October, 2006 "Report and Recommendations to the President of The Lutheran Church—Missouri Synod Upon Completion of Formal Discussions with the American Association of Lutheran Churches" which provided a summary of a presentation by First Vice-President William Diekelman during fellowship discussions: "He called particular attention to Article VI 1 of the LCMS Constitution (renunciation of unionism and syncretism) as relative to a time when the Synod was small and community-located, and Article III 6 & 7 (varieties of resources and practices) as becoming ever more important as the landscape of the Synod changes." The pastor requested an opinion from the Commission regarding whether the points made in the paragraph reflect a correct understanding of the Constitution of the Synod.

Question: Is Article VI 2 to be understood "relative to a time when the Synod was small and community-located" and is Article III 6 & 7 "more important as the landscape of the Synod changes"? If Rev. Diekelman's interpretation of the Constitution is not a correct one, and the recommendation to the President of the LCMS is based on the AALC representatives' agreement with such false understanding, is at least some of the apparent agreement between the LCMS and the AALC undermined?

Opinion: The questioner has asked for an interpretation of a summary of an oral statement contained in a written report to the President of the Synod (2007 *Convention Workbook*, pp. 416–419). It is the responsibility of the Commission on Constitutional Matters to interpret the Constitution, Bylaws, and resolutions of the Synod. The Bylaws give responsibility for recommending approval of altar and pulpit fellowship to the Commission on Theology and Church Relations (Bylaw 3.9.6.2.2 [b]), as has occurred (CTCR Report, 2007 *Convention Workbook*, pp. 71–72; Ov. 3-01, *Workbook*, p. 147; Res. 3-01, *Today's Business*, pp. 69–70).

Without the benefit of being present at the multiple meetings between representatives of the Synod and the American Association of Lutheran Churches, the Commission cannot comment on the "understandings" reached between these church bodies. The Commission on Theology and Church Relations bears that responsibility and has submitted a recommendation for altar and pulpit fellowship as provided in Bylaw 3.9.6.2.2.

### **203. Calling a Special Convention of the Synod (07-2494)**

During floor committee meetings for the 2007 convention of the Synod, a member of the Synod serving on a floor committee submitted the following question regarding the calling of special conventions of the Synod.

Question: If the Synod in convention adopts an enabling resolution encouraging the President of the Synod and the Council of Presidents (Constitution Art. VIII B 2) to call a special convention of the Synod if all necessary preparations have been completed, can it do so by simple majority or does it require a two-thirds vote?

Opinion: Article VIII B regarding “Special Sessions of the Synod” reads as follows:

1. The Synod may under circumstances call a special session if two-thirds of the voting representatives present so decide.
2. In cases of urgent necessity a special session may be called by the President with the consent of two-thirds of the district presidents or by three-fourths of the district presidents without the consent of the President; however, all congregations and other members of the Synod must be notified 30 days in advance and told for what purpose this extra meeting is being convened.

This article provides methods for the calling of a special session of the Synod. Under the first, the Synod itself—that is to say, the Synod in convention—may call a special session if two-thirds of the delegates so decide. In doing so, the convention itself may decide the circumstances under which such a special session is to be convened. If the convention were to identify that a special session will be held at a particular time, subject to certain circumstances having been met in advance, it may do so by two-thirds vote. Circumstances may include, for example, the concurrence of the President, the Council of Presidents, the Board of Directors, the receipt by a certain deadline of a report from a particular group, or any other condition the convention itself deems prudent.

A second method described for the calling of a special session is for the President, under cases of urgent necessity, to call a special session with the concurrence of two-thirds of the district presidents. While the convention may by majority vote adopt a resolution encouraging the President to call a special session and suggest that he should find “urgent necessity” under circumstances the convention describes, Article VIII B 2 would nonetheless require the President himself to concur that such urgency exists, and the President could then call a special session only with the concurrence of two-thirds of the district presidents.

#### **204. Floor Committee Matters and Pending Overtures**

The Commission spent time reviewing and discussing matters pertaining to Floor Committee Weekend, reviewing the overtures to be considered and giving particular attention to those overtures impacting or proposing changes to the Constitution and Bylaws of the Synod.

#### **205. Adjournment**

As the activity of Floor Committee Weekend wound down, the Commission met briefly formally to close its meeting with words of benediction by Don Little.

Raymond L. Hartwig, Secretary

## 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 63<sup>rd</sup> 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

## MINUTES

### COMMISSION ON CONSTITUTIONAL MATTERS

#### Telephone Conference Meeting

August 22, 2007

#### **221. Call to Order and Prayer**

Chairman Albert Marcis called the meeting to order with all members of the commission participating in the conference call. He called on Don Little to provide an opening prayer.

#### **222. 2007 Res. 8-07S Requirement for Consultation by the President of Synod**

Chairman Marcis called attention to the purpose of the meeting, to continue consideration of an earlier conference call discussion with the President of the Synod (August 15, 2007) in response to 2007 convention Resolution 8-07S, which directed the President to consult with, among others, the Commission on Constitutional Matters regarding the calling of a special convention.

After discussion, the commission agreed to provide the following response to the President of the Synod:

- The Commission on Constitutional Matters (CCM) again affirms the constitutionality of special conventions, verifies that the requirement of Resolution 8-07S for consultation by the President with the commission has been met, and reaffirms its availability to respond to questions that may arise regarding such special conventions.
- While the commission recognizes that the current structure and governance of the Synod has developed over the past 150 years in a patchwork manner without the benefit of comprehensive study of the whole picture of the Synod's work, and while the commission further recognizes the role that CCM opinions have sometimes played in that process, it also recognizes that its responsibilities do not include advising regarding the "urgent necessity" (Constitution, Art. VIII B 2) of holding a special session of the Synod.
- While the commission does not view its role as to advocate any particular changes, it does, based on the commission's experiences in fulfilling its assigned responsibilities, recognize the following potential benefits:
  1. Restructuring in order to be better organized to work more effectively in support of and on behalf of congregations, to assist them in carrying out their ministries as they seek to serve our Lord Jesus Christ, the members of His body, and the world which stands in need of the Word and the impact of His redeeming love.
  2. Restructuring in order to simplify and clarify responsibility and accountability.
  3. Restructuring in order to empower and enable those given responsibility (officers, agencies, etc) for the benefit of the mission.
  4. Restructuring for the best use of all the resources available to the Synod.
- The decision whether the current "circumstances" (Constitution, Article VIII B 1) satisfy the urgent necessity requirement for calling a special session of the Synod (Constitution, Article VIII B 2) rightly belongs to the President and district presidents of the Synod.

**223. Adjournment**

Its sole purpose having been accomplished, the meeting was adjourned with a prayer by Don Little.

Raymond L. Hartwig, *Secretary*

## MINUTES

### COMMISSION ON CONSTITUTIONAL MATTERS Crowne Plaza Airport Hotel, St. Louis September 14–15, 2007

#### **1. Call to Order, Opening Prayer, and Agenda**

Chairman Albert Marcis called the meeting to order and welcomed Phil Esala as the newest member of the commission. Also present were newly reappointed members Daniel Lorenz and Wilbert Sohns, returning member Gordon Tresch, outgoing member Donald Little, and Secretary of the Synod Raymond Hartwig, who provided the devotions for the meeting.

Chairman Marcis called attention to the agenda for the meeting, to which were added additional items: (1) The appointment of the commission chairman for the triennium; (2) the appointment of a commission member to serve as an advisory member on the Commission on Structure for the triennium; and (3) a request from the executive director of the Board for District and Congregational Services for a review of his board's policy manual in light of changes made during the past triennium.

#### **2. Election of Chairman and Appointment of Member of Commission on Structure**

Opportunity was provided for nominations for the position of chairman of the commission. A motion was made and seconded to name Albert Marcis chairman for the 2007–2010 triennium. The motion was carried with a unanimous vote.

Chairman Marcis introduced the matter of the appointment of a member of the commission to serve as a non-voting member of the Commission on Structure for the triennium. Wilbert Sohns, who served for the 2004–2007 triennium, requested that he not be asked to serve. A motion was made and seconded to appoint the chairman of the commission to serve. The motion was carried with a unanimous vote.

#### **3. Meeting with the Board of Directors**

When the commission last met with the Board of Directors earlier in the year, it was agreed that another such meeting should be planned later in the year, possibly in conjunction with the board's November meeting. Discussion followed regarding the arrangements for the meeting and issues to be discussed. It was agreed that Chairman Marcis would discuss meeting details with the Synod's Chief Administrative Officer and the chairman of the Board of Directors. Input will also be requested from others, including the President of the Synod.

#### **4. Review of 2007 Handbook (07-2507)**

After a review of 2007 convention changes to be incorporated into the *Handbook* of the Synod and a page-by-page examination of a proposed draft of the 2007 *Handbook* prepared by the Secretary of the Synod, a motion was introduced and carried "to approve the 2007 *Handbook* for publication."

During the course of the review, the Secretary was instructed to prepare a memorandum to the Commission on Structure (with other parties copied as appropriate) calling attention to the need to incorporate into the *Handbook* the duty of the Board for Pastoral Education to supervise the activity of the Specific Ministry Pastor Committee as provided by 2007 Resolution 5-01B. The Commission on Structure's attention will also be called to the possible need for further clarification of *Handbook*

terminology that distinguishes between “policy manuals” and accompanying responsibilities of the Board of Directors and Commission on Constitutional Matters (2007 Res. 7-06A) and “governing instruments” as legal constituting documents in Bylaw 3.3.3.2 (f).

## **5. Review of Agency Policy Manuals**

The commission discussed at length its responsibility for review of agency policy manuals in light of the changes made to Bylaw 3.9.2.2.4 by 2007 Resolution 7-06A, also taking into consideration the review and coordination of agency policies by the Board of Directors required by newly amended Bylaw 3.3.5.3. It was agreed that this should be a topic of discussion with the Board of Directors at the joint meeting that is being planned for November 16, 2007. The Secretary was asked to obtain latest editions of the policy manuals already received and to begin to lay out a plan for a coordinated effort that can be discussed at the joint meeting. Work will also continue on the development of a definition of “policy” that will be helpful to the review process.

As the commission discussed at length the purpose and nature of its own review of the policy manuals already in hand (Board for Communication Services—06-2457; Board for Pastoral Education—06-2471; Board for University Education—06-2472; Board for Black Ministry Services—06-2473; Board for Human Care Ministries—06-2474; Board for Mission Services—06-2475; and Board for District and Congregational Services—06-2476), the commission agreed that its review should be limited to ascertaining whether the content of the manuals is in harmony with the Constitution, Bylaws, and resolutions of the Synod. The commission will also develop general guidelines to assist Synod agencies in articulating policy in a more uniform manner across the Synod.

After the general discussion, the commission used available meeting time to review the policy manual of the Board for Communication Services (06-2457), noting the following concerns for further attention by the board:

- Under “2.1 Purpose and Program” (p. 3), the paragraph could more adequately reflect the objectives/responsibilities given to the board in the *Handbook* of the Synod, especially Bylaw 3.8.5ff.
- Under “2.8 Providing Resources” (p. 5), congregations should not be listed as agencies or entities of the Synod.
- Under “3.1 Standards” (p. 5), paragraph 3.1.1 includes an unnecessary reference to “Synod” in its first line.
- Under “3.5 Board Activities” (p. 8), the words “by law” at the end of paragraph 3.5.1 could be clarified.
- Under “6.6 Ineligibility for Other Synodical Offices” (p. 17), the allowance for “approval from the board” at the end of the paragraph is not in harmony with 2007 Bylaw 1.5.1.1 which prohibits staff from serving as members of a board of any other agency of the Synod.
- Under “4. Principal Responsibilities” of the Executive Director of the Board for Communication Services, mention under paragraph “r” of service on the Council of Administrators (p. 21) should be deleted because this council no longer exists.
- Under “4. Principal Responsibilities” of the Director of News and Information Services, mention under paragraph 3 (p. 24) of service as the chief spokesman for the Synod and/or its ministries exceeds constitutional authority. See also paragraph “G” on p. 31.

- Under “4. Principal Responsibilities” of the Director of Broadcast, the reference to “limits prescribed by the Board of Directors” (p. 29) should be clarified to refer specifically to the board’s human resource and general agency policies. See also paragraph “J” on p. 31.

The commission also offers the following general observations and encouragements:

- The Synod will be better served if policy manuals reflect the same grammatical and editorial principles that are established by the *Handbook* of the Synod (e.g., limited capitalization, avoidance of the use of “synodical,” etc.).
- Consistent provision of references to pertinent bylaws for easy cross-referencing with the *Handbook* of the Synod will be helpful to the users of the manual.

## **6. Article II of Model Constitution and Bylaws (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. The commission agreed to request input from the Commission on Theology and Church Relations before responding. The letter to the CTCR included citations from initial studies suggesting that a unanimous vote is not required.

## **7. 2007 Resolution 8-05A and CCM Opinion 06-2484 (07-2506)**

In a July 23, 2007 letter to the commission, a pastor of the Synod asked a series of questions regarding the consequences for CCM Opinion 06-2484 (and its quotation from the *Standard Operating Procedures Manual*) as a result of the adoption of 2007 convention Resolution 8-05A. The resolution addressed Matthew 18 and its application in cases of public sin.

After discussion, the chair agreed to assign this question to a member of the commission for the preparation of a draft response based upon changes incorporated by the commission into the 2007 *Handbook*. Final action on the response will await the November meeting of the commission.

## **8. Review of Convention Arrangements and Participation**

The commission discussed its responsibilities and participation in the 2007 convention of the Synod and noted areas of particular interest or concern:

- Bylaw 7.1.1 requirements for presentation of proposed bylaw amendments in writing for consideration by floor committees and examination by the commission prior to presentation to the convention resulted in confusion on several occasions during the 2007 convention. A motion was introduced and carried “to direct the Secretary to write a letter to the President suggesting that a rule be added to the Standing Rules for future conventions requiring that proposed bylaw amendments be printed in *Today’s Business* prior to presentation to the convention.” It was also suggested that a procedure be developed to inform the commission of all such proposals at each day’s deadline for submission of business to *Today’s Business*.
- The confusion resulting from comments regarding Missouri law provided by the Synod’s legal counsel was not helpful to the convention.
- The seating reserved for the commission at the convention was not conducive to the commission’s required role and participation. A suggestion will be made to the President of the

Synod that seating be provided closer to the podium to facilitate the commission's involvement when required or requested. Convention badges identifying the members of the commission will also be requested.

## **9. Other Matters**

During the course of the meeting, other matters were reported upon and/or discussed by the commission:

- Wilbert Sohns reported on the activity of the Blue Ribbon Task Force on Synod Structure and Governance and responded to questions.
- The Secretary distributed a listing of convention actions assigned to the various agencies of the Synod, noting in particular the assignments given to the commission.

## **10. Adjournment**

The allotted time for the meeting having expired, the meeting was adjourned with words of benediction.

Raymond L. Hartwig, Secretary

## MINUTES

### COMMISSION ON CONSTITUTIONAL MATTERS

November 15–16, 2007

Dallas, Texas

#### **11. Call to Order and Prayer**

Chairman Albert Marcis called the meeting to order. All members of the commission were present except Secretary Raymond Hartwig, who was attending a meeting of the Board of Directors. Wilbert Sohns provided an opening devotion on “the peace of God which surpasses all understanding” based on Philippians 4:4-7.

#### **12. Meeting with Legal Counsel of the Synod**

Sherri Strand, legal counsel of the Synod, met briefly with the commission in executive session by request of the commission.

#### **13. 2007 Res. 8-06 Appointments**

With the adoption of Res. 8-06, the 2007 convention of the Synod called for a special task force “to study further the composition of the Hearing Panel under Bylaws 2.14, 2.15, and 2.17,” the composition of the task force to include “two members appointed by the Commission on Constitutional Matters, one of whom shall be a commissioned minister.”

After appointing Philip Esala as one of its two appointees, members of the commission were asked to exchange names of potential candidates for the remaining commissioned minister position. The chairman was directed to make contact with potential candidates prior to action by the commission at its next meeting.

#### **14. Article II of Guidelines for Constitutions and Bylaws of Lutheran Congregations (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. The commission has requested input from the Commission on Theology and Church Relations (CTCR) before responding. Upon being advised that the CTCR will not be able to consider the commission’s request until its December meeting, this issue remains for future consideration.

#### **15. 2007 Res. 8-05A and CCM Opinion 06-2484 (07-2506)**

In a July 23, 2007 letter to the commission, a pastor of the Synod asked a series of questions regarding the consequences for CCM Opinion 06-2484 (and its quotation from the *Standard Operating Procedures Manual*) resulting from the adoption of 2007 convention Res. 8-05A. The resolution affirms that Matthew 18 does not apply directly in cases of public sin.

Question 1: Now that the 2007 convention mandated a change in the Bylaws, does the CCM modify the answer it gave to Question 8 in its Opinion 06-2484? If so, how? If not, why not?

Opinion: Pursuant to Bylaw 3.9.2.2.3, the Commission on Constitutional Matters has incorporated into the 2007 *Handbook* changes adopted or called for by the 2007 convention, including those which result from 2007 Res. 8-05A. Bylaw 1.10.1.2 now reads:

The words of Jesus in Matthew 18:15–20 provide the basis for church discipline for the local congregation. The same passage also grants Christ’s guidance to all Christians in seeking to settle other disputes, many of which fall outside the purview of church discipline involving the congregation. In either case, the steps of Matthew 18 should be applied lovingly in both formal and informal settings. Matthew 18 does not apply directly in cases of public sin, but face-to-face meetings are required nonetheless, even in the case of public sin, toward the goal of reconciliation and winning the brother or sister. The parties and others attempting to effect resolution of a dispute must always remain mindful that the church has been given the “ministry of reconciliation” (2 Cor. 5:18). Hence, conflict resolution in the church is to lead to reconciliation, restoring the erring member in a spirit of gentleness (Gal. 6:1). Its aim is to avoid the adversarial system practiced in society.

Opinion 06-2484 addressed the question of expulsion from the Synod pursuant to Constitution Art. XIII and the provisions of Bylaw section 2.14. Opinion 06-2484 recognized in response to the fourth question therein that “the provisions and processes of the bylaw (expulsion from membership) do not prohibit any Christian from following the biblical and confessional principles in rebuking a Christian brother or sister so long as the constitutional responsibilities for ecclesiastical supervision are not being assumed and so long as the member will also abide by the bylaw when and if it is determined that Bylaw section 2.14 applies.” The opinion further recognized, even before the adoption by the convention of Res. 8-05A, that publicly rebuking another member for a public sin has not been in conflict with the Bylaws.

In the second resolve of Res. 8-05A, the Synod reaffirmed “the bylaw requirement of face-to-face meetings, even in the case of public sin, toward the goal of reconciliation and winning the brother or sister.” Since the question raised in Opinion 06-2484 dealt with those same mutual covenants and agreements under which a member may be expelled, including the goal of reconciliation, the answer to Question 8 in Opinion 06-2484 is unaffected by this 2007 Res. 8-05A. That portion of the opinion reads as follows:

Question 8: Do the words in the bylaw, “this provision of Matthew 18:15 shall be followed,” make the following of this provision incumbent upon members of the Synod by reason of the fact that the provision is in Matthew 18:15? If so, why? If not, why not?

Opinion: The *Standard Operating Procedures Manual* that serves as a comprehensive procedures manual for the provisions set forth in Bylaw section 2.14, states, “Matthew 18 and the Eighth Commandment undergird the bylaws that set forth this Bylaw 2.14 process for expulsion of membership from the Synod. While Matthew 18 provides the basis for church discipline in a local congregation, it also provides guidance and a pattern for all Christians and, along with the Eighth Commandment, is to be observed in this procedure as applicable. The reputations of the accused and accuser are to be protected.” And further it states, “The primary purpose of Bylaw section 2.14 and the procedure in this manual is not for the expulsion of a member from the Synod but for repentance and reconciliation, to win and restore the brother or sister or sister congregation (Matt. 18:15–20; Gal. 6:1–5; Cf. Bylaws 1.10.1–1.10.1.6).”

Finally, the Commission encourages the questioner to review the May 2006 Report of the Commission on Theology and Church Relations (CTCR) entitled, *Public Rebuke of Public Sin*, which is applicable and helpful.

Question 2: Are the words quoted from the *Standard Operating Procedures Manual* in accord with the post-2007 convention Bylaws of the Synod? If so, why?

Opinion: Since the *Standard Operating Procedures Manual* provides the procedures for implementing the mutual covenants and agreements under which a member may be expelled from the Synod, and for the reasons discussed above, the cited portion of the manual is unaffected by 2007 Res. 8-05A.

#### **16. “Close(d) Communion” as a Constitutional Requirement (07-2508)**

In a letter received September 14, 2007, a pastor of the Synod, after introductory comments, asked whether it is a constitutional requirement to practice close(d) communion in order to maintain status in the Synod. The letter was accompanied by an essay authored by the questioner, “A R[e]xamination of Admission to the Lord’s Supper[:]. Another Look at Some of the Biblical and Confessional Texts.”

Question: Does a pastor or congregation on the roster of the Synod have to practice close(d) Communion as a constitutional requirement for maintaining proper status in the Synod, or is this not set in cement and the members are asked merely to honor the position?

Opinion: The Constitution of the Synod does not address “close(d) Communion.” However, the Synod affirmed in 1986 convention Res. 3-08 and reaffirmed in 1995 convention Res. 3-08 “that the pastors and congregations of The Lutheran Church—Missouri Synod continue to abide by the practice of close Communion, which includes the necessity of exercising responsible pastoral care in extraordinary situations and circumstances” (1998 Res. 3-05—emphasis added). In the same resolution, the Synod resolved that it “pleads with its members by the mercies of God to abide by the historic practice of the church and The Lutheran Church—Missouri Synod concerning admission to the Lord’s Supper” (emphasis added).

Among the conditions for acquiring and holding membership in the Synod is “1. Acceptance of the confessional basis of Article II” (Constitution Art. VI). While doctrinal resolutions of the Synod are not the basis for acquiring and holding membership in the Synod, under Article II the Synod, in seeking to clarify its witness or to settle doctrinal controversy, understands that it has the right to adopt doctrinal resolutions and statements which are in harmony with Scripture and the Lutheran Confessions (Cf. Bylaw 1.6.2 and 1973 convention Res. 2-12). 1973 Res. 2-12 also resolved that the Synod “reaffirm its position (Milwaukee *Proceedings*, Res. 2-21 and 5-24) that such [doctrinal] statements, insofar as they are in accord with the Scriptures and the pattern of doctrine set forth in the Lutheran Symbols, are, pursuant to Article II of the Synod’s Constitution, binding upon all its members (Cf. also Article VII)” (emphasis added). On April 18-19, 1974, the Commission on Constitutional Matters addressed positively the constitutionality of 1973 Res. 2-12.

According to Bylaw 1.7.2, “The Synod expects every member congregation of the Synod to respect its resolutions and to consider them of binding force if they are in accordance with the Word of God and if they appear applicable as far as the condition of the congregation is concerned. The Synod, being an advisory body, recognizes the right of a congregation to be the judge of the applicability of the resolution to its local condition. However, in exercising such judgment, a congregation must not act arbitrarily, but in accordance with the principles of Christian love and charity.” In joining the Synod, the members voluntarily agree that “[t]he Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod” (Bylaw 1.7.1).

The Synod does provide for brotherly dissent, which does not put one's membership or status in jeopardy. However, those who join the Synod agree that "[w]hile retaining the right of brotherly dissent, members of the Synod are expected as part of the life together within the fellowship of the Synod to honor and uphold the resolutions of the Synod" (Bylaw 1.8.1). Referring to 1971 convention Res. 2-21, Bylaw 1.6.2 (b) (7) defines "honor and upheld" as "to abide by, act, and teach in accordance with" (emphasis added). It is also agreed that "[w]hile the conscience of the dissenter shall be respected, the conscience of others, as well as the collective will of the Synod, shall also be respected" (Bylaw 1.8.2—emphasis added).

1995 convention Res. 3-08 concludes, "*Resolved*, That because we are 'eager to maintain the unity of the Spirit in the bond of peace' (Eph. 4:3), any members of the Synod who advocate a different practice of Holy Communion be fraternally reminded of the commitment all members of the Synod make to one another by subscribing to the Constitution of the Synod to honor and uphold its doctrine and practice and, where there is disagreement, to follow the proper channels of dissent as outlined in synodical Bylaw 2.39 c [2007 Bylaw 1.8]" (emphasis added). The Bylaws of the Synod call upon us to "honor and uphold" the resolutions of the Synod and not, in the words of the questioner, "merely honor."

Therefore, in response to the question asked, yes, members of the Synod are expected to honor and uphold the resolutions of the Synod, including those regarding Communion practice. The Synod has resolved that its members abide by the practice of close(d) Communion, exercising responsible pastoral care in extraordinary situations and circumstances.

#### **17. Wyoming District Bylaw Amendments (07-2510; 07-2510A)**

With a letter dated October 3, 2007, the second vice-president of the Wyoming District, who also serves as the chairman of the district's constitutions committee, submitted bylaw revisions from the district's May 4–6, 2006 convention for review by the commission. With an October 24, 2007 letter, the vice-president also provided proposed changes developed by the district's board of directors in response to a 2006 resolution to move from two vice-presidents to three regional vice-presidents.

The Secretary of the Synod was asked to reply to the district that it is necessary to provide its entire Bylaws for review to determine whether the recent bylaw changes suit the remainder of the bylaws. As a preliminary response, however, pending receipt and review of the balance of the Bylaws, the commission noted the following:

- The bylaw changes submitted via the October 3, 2007 letter appear to be in good order.
- The proposed bylaw changes submitted via the October 24, 2007 letter include the following concerns:
  - The use of the term "Circuit Visitor" in proposed Bylaws 3.21 and 3.27 (a) and (b) does not correspond with the terminology used in the Synod's *Handbook*: "Circuit Counselor."
  - It is assumed that the first three paragraphs of Bylaw 3.603 remain unchanged although they are not shown in the proposed bylaws column.
  - Under Bylaw 3.603, new paragraph (d) would read more clearly if the pronoun "them" were replaced by "it."

The commission will complete its review of these proposed changes upon receipt of the Bylaws of the district in their entirety.

## **18. Congregational Polity (07-2511)**

In a letter dated October 10, 2007, the chairman of a district's constitution committee asked whether a district is required to examine a congregation's documents if they are policy-based governance documents rather than the usual constitutions and bylaws.

Question: Since the Constitution and Bylaws of the Synod only reference constitutions and bylaws of member congregations, does their new policy-based governance document fall under the same review process as their former Bylaws? Also, when a member congregation places items that could be included in bylaws into a policy manual, does the policy manual fall under the same review process as a constitution and/or bylaws?

Opinion: Bylaw 2.2.1 states as follows:

2.2.1 To apply for membership in the Synod a congregation shall have an approved constitution and bylaws.

(a) The congregation shall submit its constitution and bylaws to the appropriate district president, who shall refer such to the standing constitution committee of the district....

(b) The Constitution Committee shall examine the constitution and bylaws 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....

Furthermore, Bylaw 2.4.1 states:

2.4.1 A congregation desiring to retain membership in The Lutheran Church—Missouri Synod shall continue to have a constitution and bylaws approved by the Synod.

(a) A member congregation which revises its constitution or bylaws or adopts a new constitution or bylaws shall, as a condition to continued eligibility as a member of the Synod, submit such revised or new constitution and/or bylaws to the district president.

(b) The district president shall refer such to the district's constitution committee for review to ascertain that the provisions are in harmony with Holy Scripture, the Confessions, and the teachings and practices of the Synod....

Nowhere in the Constitution or Bylaws of the Synod is the term "bylaws" defined. The *Merriam Webster Collegiate Dictionary—10<sup>th</sup> Edition* (2000) defines "bylaw" as follows: "a rule adopted by an organization chiefly for the government of its members and the regulation of its affairs." Likewise, the *American Heritage Dictionary—3<sup>rd</sup> Edition* (1994) defines "bylaw" as "a law or rule governing the internal affairs of an organization."

If in the opinion of a district constitution committee a specific policy manual or policy-based governance document performs the function of bylaws as commonly defined, the district constitution committee has the same responsibility to review these documents as it does those specifically denominated "constitution" or "bylaws." It is the function of the document, not its specific title, which determines whether it shall be reviewed by the district constitution committee.

The Secretary of the Synod was asked to incorporate into his orientation materials for district constitution committees a discussion of the responsibilities of the committees as discussed in this opinion.

## **19. Application of “Guidelines for Constitutions and Bylaws of Lutheran Congregations” (07-2512)**

In a letter received October 18, 2007, a member of the Synod asked a series of questions regarding application of the commission’s “Guidelines for Constitutions and Bylaws of Lutheran Congregations,” specifically paragraphs 4.0 and 12.3:

### 4.0 Synod Membership

Although not essential since membership in the Synod is not determined by a statement in a congregation’s constitution, congregations are advised to designate their membership in the Synod.

#### *Example:*

This congregation shall be a member of The Lutheran Church—Missouri Synod as long as the Synod conforms to the congregation’s confessional standards as set forth in this constitution.

12.3 The revised constitution shall, as a condition of continued membership in The Lutheran Church—Missouri Synod, be submitted to the president of the district for review by the district’s constitution committee and favorable action by the district’s board of directors before being implemented by the congregation.

Question 1: If a congregation included the above two sections in its constitution, could it terminate its membership in The Lutheran Church—Missouri Synod without the consent of the district’s constitution committee and the district’s board of directors?

Opinion: The answer to this question is “yes.” The congregation’s decision to terminate its membership in the Synod, which would necessarily include the changing of its bylaws to remove the two paragraphs in question, would render moot the Synod’s requirements for membership, including its requirement that constitution and bylaw changes first be submitted for review and approval.

Question 2: If the answer to question 1 is “no,” does this change the voluntary nature of the Synod and can a congregation be required to include it in their constitution by the district?

Opinion: The answer to question 1 was “yes.”

Question 3: My district committee that reviews constitutions has made the following request before approving our congregation’s Constitution and Bylaws:

Constitution, Article XII  
(Please add.) C. Review

Any amendments to the constitution must be submitted to the NID Polity Commission for review, and then to the NID Board of Directors for approval. Amendments are not to be placed into practice in the congregation until they are reviewed and approved by the district.

Bylaws, Article XII

(Please add.) Any amendments to the bylaws must be submitted to the NID Polity Commission for review, and then to the NID Board of Directors for approval. Amendments are not to be placed into practice until they are reviewed and approved by the district.

Does the wording above from the district in any way change the answers to questions 1 and 2?

Opinion: These paragraphs requested by the district committee do not change the answers to questions 1 and 2. The language suggested by the district's committee assumes continued membership in the Synod and correctly points out that a congregation has covenanted with the Synod not to implement changes to its governing documents until approved by the district, as provided in paragraph (d) of Bylaw 2.4.1:

(d) Upon favorable action by the district board of directors, the congregation shall be notified that the changes are acceptable to the Synod and that the congregation is entitled to continue to function as a member of the Synod in good standing under the new or changed constitution or bylaws.

The suggested language could be construed to require district approval before withdrawal of membership, and the specific language could have binding effect under state law to that effect. A congregation is not required by the Synod to do so. Should the members of a congregation desire to include such a provision voluntarily, limiting the possibilities of withdrawal by future members, it may certainly do so.

## **20. Orientation of New Commission Member and Refresher for Continuing Members**

The commission spent time during the meeting providing orientation for its new member, which also provided opportunity for its continuing members to review its specific duties and responsibilities under the Constitution, Bylaws, and resolutions of the Synod. The commission also resolved to prepare a policy manual for its own use, and the preparation of a draft was assigned to a member of the commission.

## **21. Standard Operating Procedures Manual Reviews**

In view of the pending publication of the 2007 *Handbook*, the commission reviewed its responsibility to review *Standard Operating Procedures Manual[s]* pursuant to Bylaws 1.10.18.1 (j), 2.14.9.3, 2.15.9.3, 2.16.10.4, and 2.17.9.3. A commission member was assigned the review of the manuals prior to the next meeting of the commission. The Secretary of the Synod was directed to remind the Board for Pastoral Education and the Board for University Education of their responsibility to update their manuals (in consultation with the commission) in light of changes in the 2007 *Handbook*.

## **22. Review of Program Board Policy Manuals (06-2457; 06-2471 through 06-2476)**

Due to the absence of the Secretary of the Synod and the commission's scheduled meeting with the Board of Directors of the Synod, during which consideration will be given to the relative authority, duties, and responsibilities of the two groups with respect to policy manuals of agencies of the Synod, these agenda items will remain deferred until the commission's next meeting.

## **23. Proposed Bylaws for Concordia University, Ann Arbor (07-2509)**

Due to the absence of the Secretary of the Synod and meeting time reserved for the commission's scheduled meeting with the Board of Directors of the Synod, this agenda item was continued to the commission's next meeting. In addition, the Secretary was asked to be in contact with the executive director of the Board for University Education with respect to any role that his board may be taking in the process for the review of the proposed Bylaws of Concordia University, Ann Arbor as well as attempts it may be making to maintain uniformity in the governing documents of the colleges and universities of the Synod. An assignment was also given to a member of the commission to draft an opinion regarding proposed CUAA Bylaw 4.08.

#### **24. Joint Meeting with Board of Directors**

Upon mutual request, the commission and the Board of Directors met together while both were meeting concurrently at the Intercontinental Hotel in Dallas, the meeting jointly chaired by the groups' chairmen. The meeting included discussions of respective duties and responsibilities, ways to cooperate with and serve each other and the Synod as a whole, and a review of 2007 convention resolutions of mutual interest (Res. 7-06A and 8-01A). Recognizing the value of face-to-face contact, both groups committed to arranging joint sessions on an annual basis.

#### **25. Triennial Conflict of Interest Certifications**

The chairman received signed conflict of interest disclosures from each member of the commission present. It was noted that the form available from the Synod has not yet been updated to reflect the changes incorporated into Bylaw 1.5.12 of the 2007 *Handbook* by the 2007 convention. Recognizing that all boards and commissions of the Synod will be executing these forms in the near future, if not having already done so, the Secretary was asked to facilitate the updating of this form by the Synod's Department of Human Resources for immediate use in the Synod.

#### **26. Adjournment**

With no further business to come before the commission, the meeting was adjourned. The Secretary was directed to arrange for the publication of the commission's future scheduled meeting dates on the Synod's calendar Web site, including the next date of April 4-5, 2008, as a means to fulfill the requirements of 2007 Res. 7-05B.

Daniel C. Lorenz, Acting Secretary