

LCMS

Commission on Constitutional Matters Minutes – 2008

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MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS

Crowne Plaza Airport Hotel, St. Louis

April 4-5, 2008

27. Call to Order and Opening Prayer

Chairman Albert Marcis called the meeting to order with all members present. After Philip Esala provided an opening devotion, several additions were made to the agenda of the meeting.

28. Appointment of Res. 8-06 Task Force Member

Resolution 8-06 of the 2007 convention called for a special task force to study further the composition of the Hearing Panel under Bylaw sections 2.14, 2.15, 2.16, and 2.17. The resolution called on the commission to appoint two members to the task force, one of whom is to be a commissioned minister.

A member of the commission, Philip Esala of Centerville, Ohio, having already been appointed to the task force at an earlier meeting, the commission discussed the candidates submitted for the commissioned minister position. Dr. LuJuana Butts of Tuckahoe, New York, was elected. The Secretary will report these appointments to the President of the Synod.

29. Review of Policy Manuals

The commission reviewed program board policy manuals as time permitted. During the review process, it was agreed that the Secretary will complete work on a draft document to provide general guidelines to assist Synod agencies in articulating bylaws and policy statements in a more uniform manner across the Synod. An early list of topics to be included:

- Use of the same rules of grammar and capitalization as are evident in the Synod's *Handbook*
- Consistent use of the word "Synod" in place of the word "synodical"
- Accurate use of the words "agency" (defined in Bylaw 1.2.1) and "entity" (a broader term to include congregations, auxiliaries, etc., not included in the definition of Bylaw 1.2.1)
- Consistent use of term "civil law" when references to "law" are made
- Regular use of up-to-date bylaw references from the most recent Synod *Handbook* for easy cross-referencing
- Consistent use of terms such as "national office" and "policy"
- Compliance with LCMS doctrine

A. Reviews Pending

The commission reserved for its review at a later meeting the policy manuals of the Board for University Education (06-2472), the Board for Black Ministry Services (06-2473), and the Board for Human Care Ministries (06-2474).

B. Board for Mission Services (06-2475)

After a thorough review of the “Board for Mission Services Policy Manual,” the commission raises the following concerns and/or offers the following suggestions to the board for its consideration and response:

- Page 1, under Part I “Desired Outcome Policies”: no mention is made of Bylaw 3.8.8 as the primary source of the board’s responsibilities.
- Page 1, under Part I “Desired Outcome Policies” (*et al.*): Use of the terminology “owners” has no correlation in the Constitution and Bylaws of the Synod and therefore is unclear without also providing a definition.
- Page 2, paragraph 12: Keeping two sets of minutes does not resonate with 2007 convention Res. 7-05B and the Synod’s interest in transparency in governance. Bylaw 1.5.3.5 anticipates a single set of minutes to be made available upon request, with sensitive matters to be addressed in executive sessions.
- Page 2, paragraph 13: It may be more appropriate and helpful to include this paragraph under the duties of the secretary as listed on page 5.
- Page 3, paragraph c, “Policy Review”: It may be helpful to identify those “appropriate governing bodies” that may ask for a review of specific policies, namely the Board of Directors (Bylaws 3.3.5.3 and 3.3.5.5 [a] [2]) and the Commission on Constitutional Matters (Bylaw 3.9.2.2.4).
- Page 5, first bullet under section 7: Here an action delegated to the Executive Committee is “[c]alling and/or appointing missionaries.” On the following page 6, under “Board Decisions,” one of the decisions identified as requiring specific board action is “b. Call, appoint, assign, withdraw, and release missionaries.” In addition to this being an inconsistency, Bylaw 3.8.8.2 2 (a) reserves this responsibility for the entire board.
- Page 8, third full paragraph: The bylaw reference should be Bylaw 1.5.5.1 (a).
- Page 11, paragraph 3 under section G: The word “entity” is of such broad definition to include also auxiliaries and congregations. Care should be taken to make certain that the right word with the intended meaning is used, *i.e.*, whether the narrower word “agency” is intended (Bylaw 1.2.1 [a]) or the broader word “entity.” See also page 12, paragraph 1 under section J.
- Page 12, paragraph 5 under section I: The reference should be to current Bylaw 3.8.2.2 (a) (1). Wording should better reflect the wording of the current bylaw.

The Commission on Constitutional Matters requests that the Board for Mission Services consider these concerns and suggestions, make necessary changes, and report back to the commission as soon as possible (Bylaw 3.9.2.2.4[a]).

(Policy reviewed April 4–5, 2008)

C. Board for District and Congregational Services Policy Manual (06-2476)

After a thorough review of the “Board Policy Manual” of the Board for District and Congregational Services,” the commission raises the following concerns and/or offers the following suggestions to the board for its consideration and response. Note below that the commission holds in abeyance additional comment regarding one issue raised in the manual, *i.e.*, the removal of board members (page 19,

paragraph 3.3.4). This subject will be addressed by the commission at a later time after further research into the issue.

- Page 1, “Forward” paragraph: The board may wish to consider changing the word “entity” to “agency,” depending upon the board’s intentions (the word “agency” is defined in Bylaw 1.2.1. “Entity” is a broader term that includes congregations, auxiliaries, etc., those groups not included in the definition of Bylaw 1.2.1)
- Page 1, “Forward” paragraph: The paragraph lacks mention of the Constitution and Bylaws of the Synod and Board of Directors policies, which should serve as primary sources for the board’s work.
- Page 5, paragraph 1.6.2: A listing of the officers of the Synod should also include the vice-presidents and the Chief Administrative Officer.
- Page 10, paragraph 2.5.3.1: Reference to “law” should be clarified by using the term “civil law”; Board of Directors policy requirements should also be mentioned in this paragraph.
- Page 19, paragraph 3.3.4: Removal of board members is an issue regarding which the commission will provide further comment at a later time, as mentioned in the introductory paragraph above.
- Page 19, paragraph 3.3.5: The filling of vacancies on the board is governed by Bylaw 3.2.5 in the 2007 *Handbook*.
- Page 19, paragraph 3.3.6: Board’s actions regarding directors are governed by Bylaws 1.5.5.1ff. in the 2007 *Handbook*.
- Page 20, paragraphs 3.3.9–3.3.12: Mention should be made of Bylaws 1.5.5.1ff.
- Page 20, paragraph 3.3.13: Reference should be to Bylaw section 6.2 in the 2007 *Handbook*.
- Page 27, paragraphs 4.2.4ff.: The commission has serious concerns with these paragraphs. The report mentioned in paragraph 4.2.4 was not adopted by the Synod. The Synod has adopted statements that will better serve as guiding principles. The commission requests that the board give early attention to this section and return evidence of its removal, thereby to conform with the Constitution, Bylaws, and resolutions of the Synod (Bylaw 3.9.2.2.4 [a]).
- Page 28, paragraph 4.3.1: Should read “Is not inconsistent” or “Is consistent.”
- Page 29, paragraph 4.3.7: Should read “Is not inconsistent” or “Is consistent.”
- Page 31, paragraph 4.7.1: The “Administrators Forum” is now called the “Senior Leadership Forum.”
- Page 32, paragraph 4.8.2: The content of Bylaw 3.3.1.1.2, which names the President of the Synod as the chief ecumenical officer of the Synod with responsibility for official contacts with partner churches, should be honored and reflected in this paragraph.
- Page 33, paragraph 4.11: Because policies require board approval, this paragraph might better state that the executive director “shall not fail to propose management policies and procedures.” Mention should also be made that any board management policies and procedures which provide for organizational effectiveness must be consistent with the Bylaws of the Synod, the policies of the Board of Directors, and other policies of the Synod.
- Page 34, paragraph 4.11.3: Application and approval processes for RSO status are governed by common policies adopted by the Board of Directors (Bylaw 6.2.1 [b]), to which the board may add policies to assure that its unique needs are met (Bylaw 6.2.1 [c]).

The Commission on Constitutional Matters requests that the Board for District and Congregational Services consider these concerns and suggestions, make necessary changes, and report back to the commission as soon as possible (Bylaw 3.9.2.2.4 [a]).

(Policy reviewed April 4–5, 2008)

30. CCM Model Constitution re Excommunication Vote (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 2006 *Guidelines for Constitutions and Bylaws of Lutheran Congregations* pertaining to standards for excommunication, *i.e.*, whether a unanimous vote of the congregation is required for an excommunication. He judged that "the model constitution...provided by [the] Synod contradicts [the] Synod's position on excommunication under Article II of [the] Synod's Constitution" and suggests that "the model constitution" be revised and congregations be advised to revise their constitutions to reflect the "Synod's doctrinal position."

Question: [Does] the model constitution provided by the Synod contradict the Synod's position on excommunication under Article II of the Synod's Constitution?

Opinion: While the pastor did not formally request an opinion from the Commission on Constitutional Matters (Bylaw 3.9.2.2), the commission regards the communication with having the intention to ask the above question.

The Commission on Constitutional Matters regards the 2006 *Guidelines* to be consistent and in harmony with Article II of the Synod's Constitution, including the Synod's position on excommunication under Article II. The 2006 *Guidelines* state:

Communicant members who conduct themselves in an un-Christian manner shall be admonished according to Matthew 18:15–20 and the congregation's stated and adopted guidelines. If they remain impenitent after proper admonition, they shall be excommunicated. Each case of excommunication or self-exclusion shall be presented to the voters assembly for a decision. A two-thirds majority vote of the voters assembly shall be required.

The "two-thirds majority vote" reflects concern by the commission that excommunication not occur by a simple majority vote because of the gravity and great importance of the matter.

Historically, the 1956 and 1963 *Guidelines for Constitutions and Bylaws of Lutheran Congregations* do suggest a "unanimous vote" by the voters assembly for excommunication. However, the 1985 and 2000 *Guidelines* do not suggest what the vote should be, stating: "Each case shall be presented individually to the voters assembly for a decision."

It should be noted that the *Guidelines for Constitutions and Bylaws of Lutheran Congregations* are indeed "guidelines" only and should not be regarded as a "model constitution." Constitutional polity has traditionally been considered an adiaphoron by the Synod.

In preparation for its response to the April 9, 2007 communication referenced above, the commission requested input from the Commission on Theology and Church Relations (CTCR). The response of the CTCR follows:

CTCR Response

The CTCR has previously provided “input” regarding this issue in its 1985 report *Church Discipline in the Christian Congregation*. In response to the question “Does excommunication have to be unanimous?” the CTCR says:

Our synodical fathers argued in the affirmative, pointing out that since such a verdict, reached on the basis of a clear Word of God and representing God’s own judgment on the sinner, must be accepted by every Christian and that any who might vote against such action be dealt with (if necessary, excommunicated themselves) before the matter in question is resolved. Although ideally all members will see the justice of what has been resolved (assuming that the congregation has acted on the basis of the Word of God, and the lack of repentance on the part of the one being dealt with is evident), we believe that excommunication may be carried out without unanimous vote. Shall the ignorance and/or weakness of any dissenting member invalidate either the verdict of the Lord through His church or their own eternal salvation? In all such instances, of course, those not in agreement should be dealt with evangelically in the hope of persuading them that the action of the congregation was truly Scriptural. And if it is evident that a congregation is not sufficiently instructed, with the result that a considerable number would at the time not be ready to favor excommunication in any case, the action should be postponed until such instruction can have its good effect. (p. 22)

The CTCR does not believe that the position taken in the response quoted above (“that excommunication may be carried out without unanimous vote”) contradicts the doctrinal position of the Synod. As Walther himself maintained in defending an unconditional (*quia*) subscription to the Lutheran Confessions, complete agreement with the *doctrinal content* of the Confessions does not imply or necessitate complete agreement with every line of argumentation or every exegetical interpretation employed in support of a specific doctrinal position.¹ This principle also applies to doctrinal statements and resolutions adopted by the Synod.

In *Church and Ministry* Walther sets forth the theological principle that “the minister must not tyrannize the church. He has no authority to introduce new laws or arbitrarily to establish adiaphora or ceremonies. He has no right to inflict and carry out excommunication without his having first informed the whole congregation.”² Walther goes on to share his view that, according to Matthew 18:15–18, a verdict of excommunication is to be pronounced by the pastor “only when the congregation has *unanimously* decided to excommunicate” the unrepentant sinner.³ However, Matthew 18:15–18 does not specifically address the issue of congregational “unanimity” in matters of excommunication. Despite Walther’s personal views regarding this matter,

A unanimous ballot does not appear to be a Biblical requirement, though it may check impetuous action...Unanimity does not seem to be a Biblical requirement. When evidence of sin and impenitence are indisputable, the congregation is not bound to that traditional rubric.⁴

In its report on *Church Discipline in the Christian Congregation*, the CTCR also responds to the question, “Is it proper for the congregation to delegate to the elders, to the church council, and/or to the pastor the authority to excommunicate?” Whether it is wise to do this may well depend on the circumstances, says the Commission, but “it is no doubt within the power of the congregation to ask the Board of Elders and/or pastor to act in its behalf.” (p. 25) The CTCR notes in this connection that “a kind of delegation has already taken place when the voters’ assembly, as is

generally the case, is authorized to act in the name of ‘the church.’” (p. 25) This principle seems relevant in view of the pastor’s claim that “Synod’s position under Article II states that...there must be unanimity not only of the voters but there must be unanimity of the congregation.” In other words, the position taken by the pastor (which he claims to be “the Synod’s position under Article II”) would not give the congregation itself the power to delegate to others—even to the voters’ assembly—the authority to carry out excommunication on its behalf.

The CTCR shares this input with the CCM in support of the view that one can affirm the doctrinal position set forth by Walther in Thesis IX of *Church and Ministry* regarding congregational consent in cases of excommunication without necessarily agreeing with the view that Matthew 18:15–18 implies or requires a “unanimous” decision on the part of the congregation.

¹ “Why Should Our Pastors, Teachers and Professors Subscribe Unconditionally to the Symbolical Writings of Our Church,” reprinted in the *Concordia Journal* (July, 1989: 274-284).

² Thesis IX “Concerning the Holy Ministry,” *Church and Ministry*, trans. J. T. Mueller (St. Louis: Concordia Publishing House, 1987): 303.

³ *Church and Ministry*, 322.

⁴ *Pastoral Theology*, ed. Norbert H. Mueller and George Kraus (St. Louis: Concordia Publishing House, 1990): 183.

(Adopted April 4-5, 2008)

31. Concordia, Ann Arbor Proposed Bylaws (07-2509)

After a thorough review of the Bylaws of Concordia University, Ann Arbor, the commission offers the following suggestions and recommendations, holding in abeyance, however, its comments regarding the issue of the removal of board members, this to allow time and opportunity for further research. The Secretary of the Synod was asked to contact the Board of Directors and the Board for University Education for additional input. The commission will get back to Concordia, Ann Arbor regarding this subject at a later time.

- Page 2, paragraph 4.02.2 (c): “legalist” would better read “legalistic.”
- Page 2, paragraph 4.02.3: While it be beneficial for all members of the board to speak favorably of decisions of the board after such decisions have been made, to consider all decisions “approved by a unanimous vote” would be less true to fact and would also deprive the board of making certain decisions “unanimous” when circumstances warrant such an action.
- Page 4, paragraph 4.03.4 (j): While it is helpful for members of the board to speak as one publicly, to deny opportunity for further debate or appeal for reversal short of routine periodic review or a motion for consideration may stifle the ability of elected regents to carry out fiduciary responsibilities.
- Page 4, paragraph 4.05: Mention of the fact that the number of regents is subject to LCMS bylaw is recommended.
- Page 4, paragraph 4.08: See introductory paragraph above. Further investigation and study by the commission will be required before a paragraph governing removal of regents can be approved.
- Page 6, paragraph 5.02: Mention of the minutes of the meetings of the board should now reflect the 2007 convention Res. 7-05B requirement that each board “develop policies and procedures for making available official minutes.”
- Page 6, paragraph 6.01: Bylaw reference 1.5.9 should now be Bylaw 1.5.3.1.

- Page 7, paragraph 7.01: Reference should also be made to the Synod’s bylaws as a source for the responsibilities of the president (Bylaws 3.8.3.7ff.).
- Page 12, paragraph 8.06: Mention should also be made of the *Standard Operating Procedures Manuals* that further govern the various dispute resolution processes.
- Page 12, paragraphs 8.06.1ff.: Including “employees” in the coverage of the Bylaw 3.8.3.8.9 dispute resolution process exceeds the bylaw’s intended coverage and may be problematic.
- Page 15, paragraph 8.07.2: Synod Bylaw 3.8.3.6.4 (g) reserves responsibility for the approval of faculty members to the board.
- Page 20, paragraph 10.01: Indemnification language is overly broad and includes matters unrelated to school business.
- Page 22, paragraph 12.0: Paragraph should include mention of the need for amendments to be consistent with the Constitution and Bylaws of the Synod and the requirement for prior approval by the Synod’s Commission on Constitutional Matters (Bylaw 3.9.2.2.4).

The Commission on Constitutional Matters requests that the Board of Regents of Concordia University, Ann Arbor consider these concerns and suggestions, make necessary changes, and report back to the commission as soon as possible (Bylaw 3.9.2.2.4 [a]).

(Bylaws reviewed April 4–5, 2008)

32. Wyoming District Bylaws (07-2510; 07-2510A)

At its November 2007 meeting, the commission asked the Secretary to request from the Wyoming District a complete copy of the Wyoming District Bylaws to facilitate its review of bylaw changes submitted earlier for review. The requested document having not yet been received, the commission will complete its review at its June 6–7 meeting.

33. Southern District Bylaws (08-2513)

With a letter dated January 7, 2008, the secretary of the Southern District submitted proposed changes to the district’s bylaws. Because the commission did not have opportunity to study final documentation received from the district, this matter will be placed on the agenda of the commission’s June 6–7 meeting.

34. Dispute Resolution Process (08-2514)

A member congregation of the Synod has asked a number of questions relating to the dismissal of a pastor and the application of the dispute resolution process (Bylaw section 1.10) relating to that dismissal.

It is the opinion of the commission that the questions as posed necessarily invoke dispute resolution. (For example, the first question asks, “Is the (congregation) Voters Team correct in contending that the (district) “reconciler” failed to obey and honor LCMS Bylaws, stated previously, that Matthew 18 face-to-face meetings be held between the dismissed pastor and (congregation) voters which dismissed him, and he also failed to follow these proper bylaw steps, so that the LCMS Secretary has no bylaw authority to force (congregation) voters to go to LCMS “dispute resolution” before the LCMS bylaw requirements of Matthew 18 face-to-face meetings have been achieved?”) The role of the Commission on Constitutional Matters is not dispute resolution. The role of the commission is to “interpret the Synod’s Constitution, Bylaws, and resolutions upon the written request of a member...official, board, commission, or agency of

the Synod” (Bylaw 3.9.2.2). Therefore, the commission does not believe it has responsibility to answer the questions as presented by the member congregation.

(Adopted April 4–5, 2008)

35. Dispute Resolution Process (08-2514A)

A series of questions related to Opinion 08-2514 was submitted by the Secretary of the Synod as follows:

Question 1: When a congregation removes a church worker and the worker requests the appointment of a reconciler, are the decision of the congregation and any related actions to be considered placed “on hold” until the Synod’s dispute resolution process has produced a final decision regarding the propriety of the congregation’s action, as suggested by CCM opinion 02-2308?

Opinion: The action of a congregation in removing a minister of religion—ordained or a minister of religion—commissioned is effective upon such date as determined by the action of the congregation. The initiation of a dispute resolution process under Bylaw section 1.10 does not change that action or its effective date. The position previously held by the worker is vacated, and the worker is eligible for candidate status and a further call. By requesting the dispute resolution process, the worker would be asking the Synod to review the appropriateness of the action of the congregation and asking that the Synod through the dispute resolution process recommend that the congregation review and revise its completed action.

This issue was dealt with, at least in part, in prior CCM Opinion 02-2308. The opinion in the matter was as follows:

Question: When the formal dispute resolution process of Chapter VIII of the Bylaws of the Synod has begun, are related matters placed on hold until reconciliation or a final decision is reached?”

Opinion: By accepting membership in the Synod, members have committed to be governed by the Constitution and Bylaws of the Synod, including the use of the dispute resolution process outlined in Chapter VIII of the Bylaws. Members have agreed that they will be bound by the process even to the extent that “no person or entity to whom or to which the provisions of this chapter are applicable because such person, entity or agency is a member of the Synod may render the provisions of this chapter inapplicable by terminating that membership” (Bylaw 8.01).

In cases in which a pastor has challenged the termination of his call and has initiated the dispute resolution process under Chapter VIII, the pastor and the congregation, both being members of the Synod, are committed to resolving that dispute according to the process provided for in the Bylaws. While Bylaw 8.11 recognizes the congregation’s right of self-government, which includes the discharge of a pastor, it also includes the expectation that the congregation will honor and act upon the decision of a Dispute Resolution Panel, which is final only after all opportunities for request for review have been exhausted.

Were a congregation to act upon a decision of a Dispute Resolution Panel prior to the completion of the appeal process, and were an Appeal Panel to grant reconsideration of that decision by a Review Panel, and were the Review Panel to arrive at a different final decision, confusion would result due to the congregation’s action on the basis of the earlier decision. Congregations therefore are advised to

place on hold matters related to the underlying dispute and to defer any actions that might prevent the effective implementation of the final decision from the dispute resolution process.

The purpose of advising that a congregation not replace the worker pending a dispute resolution process decision is not to suggest that the action of the congregation is incomplete or on hold. Rather, in our walking together, it is simply a recognition that replacing the worker before the dispute resolution process is complete may effectively limit or prevent the congregation from meaningfully reviewing and, if they choose to do so, revising the action disputed.

Question 2: When a reconciler prepares his written report in a dispute case, does the administrator of the dispute resolution process have the responsibility or authority to find fault with and override the reconciler's report other than to make certain that the report contains "the actions of the reconciler, the issues that were resolved, the issues that remain unresolved, and whether reconciliation was achieved" (Bylaw 1.10.6.5)?

Opinion: The role of the administrator of the dispute resolution process is described in Bylaw 1.10.4 (a) as one who "...manages the dispute resolution process but who does not take leadership, declare judgments, advise, or become involved in the matter in dispute." The administrator is not a fact-finder as to the underlying dispute, but rather is charged to review the report of the reconciler to determine that it complies with the procedural requirements of the bylaw. This includes the requirement to assure that the report contains the actions of the reconciler, the issues that were resolved, the issues that remain unresolved, and whether reconciliation was achieved. As Bylaw 1.10.6.5 further indicates, he is also to assure that the report contains as an attachment to the report (a) the statement of the complainant as to informal reconciliation efforts, (b) the statement of the matter in dispute, and (c) any reply by the respondent. The administrator is also charged with responsibility to see to it that "[t]he report and the attachments shall be forwarded to the parties to the dispute and the secretary of the Synod or district as appropriate."

Question 3: When a party to a dispute submits questions to the Commission on Constitutional Matters during the pre-panel stages of the dispute resolution process, do the time limitation provisions of Bylaw 1.10.18.1 (h) apply?

Opinion: The timelines dictated by the dispute resolution process, beginning with Bylaw 1.10.8, do not provide for or allow the process to be postponed by submission of a question to the Commission on Constitutional Matters or the Commission on Theology and Church Relations prior to the formation of a Dispute Resolution Panel. Rather, should such questions be submitted through the panel during the pendency of a Dispute Resolution Panel as provided by Bylaw 1.10.18.1 (h), the time limitations then existing at that stage of the proceedings do not apply until the requested opinion is rendered. The bylaw reads, "When an opinion has been requested, the time limitations will not apply until the opinion has been received by the parties."

Question 4: What is the status of the decision of the congregation when its decision or a decision of the dispute resolution process has been appealed?

The status of the decision of the congregation is within its authority to decide. Please see the answer to Question 1.

Question 5: What is the status of a minister of religion—ordained or a minister of religion—commissioned who has been removed from office when that decision and action of the congregation is submitted to the dispute resolution process pursuant to Bylaw section 1.10?

Opinion: As discussed above, the action of the congregation is complete once taken by the congregation. A worker may continue to hold membership in the Synod by application for candidate or non-candidate status under Bylaws 2.11.2.2 or 2.11.2.3, unless otherwise qualifying as an active member by reason of another call or other responsibilities as described in Bylaw 2.11.1.

Question 6: When must the face-to-face meeting required by Bylaw 1.10.5 take place in order to fulfill the requirements of the dispute resolution process, and who represents the congregation in that process?

Opinion: Since the purpose of the meeting is to resolve the dispute prior to submission to a formal dispute resolution process, the face-to-face meeting can happen only after the action which is the subject of the dispute has occurred. If the dispute is to a worker's dismissal, that meeting cannot occur until the dismissal has occurred. As described in Bylaw 1.10.5, it is the responsibility of the district president to see to it that this meeting occurs before allowing the matter to proceed to appointment of a reconciler. Upon appointment, the reconciler is further required under Bylaw 1.10.6.2 to assure that such a meeting has occurred, and further determine whether additional informal efforts should be made. Only when the reconciler is satisfied that informal efforts did not resolve the matter may the reconciler direct the respondent to submit to the reconciler and the complainant a written reply to the statement of the matter in dispute, and simultaneously move into a formal dispute resolution process as described in Bylaw 1.10.6.3.

Where it is an action of a congregation which is subject to a dispute resolution process, the congregation itself is the respondent. While it might be beneficial for face-to-face meetings with multiple parties or constituencies within a congregation in an attempt to resolve a conflict with the congregation, the process ultimately contemplates that a single representative of the congregation represent it in the dispute resolution process, including the face-to-face meeting required. As the *Standard Operating Procedures Manual* for the dispute resolution process indicates in Section V:

D. Parties to the Matter: If a party is a member of the Synod and not an individual, it shall be represented by its chairman or a designated member. If a party is a board or commission of the Synod or its districts, it shall be represented by its chairman or designated member.

The *Standard Operating Procedures Manual* was prepared by the Commission on Constitutional Matters in consultation with the Council of Presidents and the Secretary of the Synod as mandated by the Synod under Bylaw 1.10.18.1 (j). Thus, for the purposes of the dispute resolution process, the congregation is to be represented by the chairman of the congregation unless the congregation designates another member of the congregation.

Question 7: May the Dispute Resolution Panel in its proceedings consider issues raised by the parties pertaining to the total process of dispute resolution?

Opinion: The goal of the entire dispute resolution process is reconciliation. Any action which might assist in that process should be considered by the panel. It is the responsibility of each participant in the process to maintain and assure the integrity of the process. As the panel works toward a final decision, it should consider and resolve any issue raised pertaining to the process of dispute resolution.

(Adopted April 4–5, 2008)

36. Definition of Term: “Operating Board” (08-2515)

In a March 28, 2008 memorandum, the Commission on Structure requested an opinion from the Commission on Constitutional Matters regarding the use of the term “operating board” in Bylaw 6.2.1. After initial discussion, it was agreed that this question should be submitted to the Board of Directors and to legal counsel for their input (Bylaw 3.9.2.2 [b]) prior to rendering an opinion.

37. Other Business

The following subjects were also discussed and/or decided during the course of the meeting:

- The Secretary will obtain latest editions of existing policy manuals of LCMS commissions for review.
- The commission reviewed an internal procedures document to assist in providing order to its work.
- Albert Marcis provided a brief report from the recent Commission on Structure meeting which he attended as an advisory member appointed by the Commission on Constitutional Matters.
- Wilbert Sohns provided a progress report of the work and plans of the Blue Ribbon Task Force on Synod Structure and Governance.
- A review of consequences of 2007 convention bylaw changes to the dispute resolution *Standard Operating Procedures Manuals* will be given attention at the June 6–7 meeting of the commission.

Commission members also signed and returned to the chairman their annual Conflict of Interest Statements.

38. Next Meeting

The Commission on Constitutional Matters will next meet in St. Louis, June 6–7, 2008. The commission will also participate in the theological convocation in St. Louis, August 18–20.

39. Adjournment

The time allowed for the meeting having expired, the meeting was adjourned with prayer.

Raymond L. Hartwig, Secretary

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS Crowne Plaza Airport Hotel, St. Louis, MO June 6–7, 2008

40. Opening Prayer

Chairman Albert Marcis called the meeting to order. All commission members were present for the meeting as Gordon Tresch, who served as devotion leader for the meeting, provided the opening devotion. Chairman Marcis reviewed the agenda for the meeting.

41. Review of Policy Manuals

A. Board for Pastoral Education Policy Manuals (06-2471)

The commission reviewed the *Board Policy Manual* and the *Campus Policy Manual* of the Board for Pastoral Education in light of the Constitution, Bylaws, and resolutions of the Synod. The following concerns were noted. Other editorial and content suggestions and encouragements will be included in a letter from the commission that conveys this formal opinion.

Regarding the *Board Policy Manual*:

- Under 0.1, here and throughout the document constitution and bylaw references will need to be updated to refer to the *2007 LCMS Handbook*.
- Under 0.2, paragraph 1: If the “entity” referred to in this paragraph is listed under Bylaw 1.2.1 (a) (1), it should be replaced with the word “agency.”
- Under 0.3, the paragraph entitled “Concordia University System: Mission and Purpose” does not appear to be relevant and confuses the purpose of the Board for Pastoral Education with the Board for University Education.
- Under 2.1, paragraph 3: Synod Bylaw 3.3.5.3 makes it necessary for board members to also be familiar with the relationship of its policies to those policies of the Board of Directors of the Synod that apply to agencies of the Synod.
- Under 2.5, paragraph 5: The use of “colloquy committees” as an example of standing committees is not entirely accurate. The Colloquy Committee for the Pastoral Ministry is put in place by the Bylaws of the Synod (Bylaw 3.8.2.4). While this committee “functions as a standing committee,” Bylaw 1.5.3.4 indicates that standing committees are appointed by program boards, commissions, and governing boards to provide professional and technical assistance.
- Under 2.6, paragraph 16: The words “or commission” should be added after “governing board” to allow for review of policies by the Commission on Constitutional Matters as provided by Bylaw 3.9.2.2.4.
- Under 3.4, paragraph 10: Bylaw 3.8.2.3 (d) specifically makes all new programs and peer review the responsibility of the BPE. If delegated to the executive director, policy should make clear that the board retains final responsibility.
- Under 3.4, paragraph 11: Bylaw 1.5.5 requires that agencies operate under the human resources policies of the Board of Directors, not the International Center. (Also paragraph 4 under 4.4).

- The title for 4.9 would better read “Agencies” in place of “Entities,” given the definition of “agency” in Bylaw 1.2.1 (a) (1).

Regarding the *Campus Policy Manual*:

- Under 0.1, the paragraph entitled “Concordia University System: Mission and Purpose” appears not to be relevant and confuses the purpose of the Board for Pastoral Education with the Board for University Education.
- Under 0.4, the paragraph essentially allows veto power by another board, which is not allowed by the Bylaws. This paragraph would better read: “...neither board will change the following sections of this manual without consultation with the other board.”
- Under 1.1, this paragraph essentially creates policy for institutions of university education, for which the Board for Pastoral Education does not have authority. Reference to university education should be removed.
- Under 1.2, paragraph 1 is an appropriate policy for the Board for University Education since college and university boards of regents include the president of the geographical district in which the school is located. Where the Board for Pastoral Education is concerned, the president of the geographic district in which a seminary is located may not be a member of its board of regents.
- Under 6.3, paragraph 6, new church vocation programs that result in a new position on the Synod’s roster require adoption, not ratification, by a convention of the Synod. The Synod’s adoption should also be reflected in paragraph 9 under 6.3 and paragraph 2 under 6.4.
- Under 10.4, this policy section pertains to initial appointments of “other faculty and staff.” Delegation of authority to the local board of regents appears to conflict with Bylaw 3.8.2.7.3 when the policy includes “seminary faculty” in paragraph 2, since the bylaw requires prior Board for Pastoral Education approval for all initial appointments to seminary faculties.
- Under 11.4, Bylaw 1.5.2 (c) does not limit the requirement that annual statements be signed only by “exempt” staff. All staff are required by the bylaw to sign such statements.
- Under 11.6, paragraphs 1 and 2, new Synod Bylaw 3.8.2.5.5 (i) (2) allows each seminary’s board to receive and manage its own funds, though it may opt to do as this policy directs.

B. Board for University Education Policy Manuals (06-2472)

The commission reviewed the *Board Policy Manual* and the *Campus Policy Manual* of the Board for University Education in light of the Constitution, Bylaws, and resolutions of the Synod, noting the following concerns. Other editorial and content suggestions and encouragements will be included in the letter to the board that will convey this formal opinion.

Regarding the *Board Policy Manual*:

- Under 0.1 and throughout the document, references will need to be updated to refer to the 2007 *LCMS Handbook*.
- Under 0.2, paragraph 1: If the “entity” referred to in this paragraph is listed under Bylaw 1.2.1 (a) (1), “entity” should be replaced with the word “agency” as the appropriate term.
- Under 0.3, the paragraph entitled “Pastoral Education: Statement of Purpose” appears not to be relevant and confuses the purpose of the Board for Pastoral Education with the Board for University Education.

- Under 2.1, paragraph 3: Synod Bylaw 3.3.5.3 makes it necessary for board members to be familiar also with the Board of Directors' policies for agencies of the Synod.
- Under 2.5, paragraph 5: The use of "colloquy committees" as an example of standing committees is not entirely accurate. The Colloquy Committee for the Commissioned Ministry is put in place by the Bylaws of the Synod (Bylaw 3.8.3.5.1). While this committee may function as a standing committee, Bylaw 1.5.3.4 indicates that standing committees are appointed by program boards, commissions, and governing boards to provide professional and technical assistance.
- Under 2.6, paragraph 16: The words "or commission" should be added after "governing board" to allow for review of policies by the Commission on Constitutional Matters as required by Synod Bylaw 3.9.2.2.4.
- Under 3.3, the words "is delegated to" in paragraph 13 should be changed to read "is the responsibility of" according to Bylaw 3.8.3.8.3, since such approval is not the responsibility of the Board for University Education.
- Under 3.4, paragraph 12: Bylaw 3.8.3.4 (c) specifically makes new programs and peer review the responsibility of the BUE. If delegated to the executive director, policy should make clear that the board retains final responsibility. Policy should also make clear that new church vocations require not just recognition but the approval of the Synod in convention.
- Under 3.4, paragraph 13: Bylaw 1.5.5 requires operation according to the human resources policies of the Board of Directors, not the International Center. (Also paragraph 4 under 4.6)
- The title for 4.11 would better read "Agencies" in place of "Entities," given the definition of "agency" by Bylaw 1.2.1 (a) (1).

Regarding the *Campus Policy Manual*:

- Under 0.1, the paragraph entitled "Pastoral Education: Statement of Purpose" appears not to be relevant and confuses the purpose of the Board for Pastoral Education with the Board for University Education.
- Under 0.4, the Bylaws do not allow veto power by another board. This paragraph would better read: "...neither board will change the following sections of this manual without consultation with the other board."
- Under 2.1, the Board for University Education does not have authority to create policy for all LCMS institutions of higher education.
- Under 6.3, paragraph 6, new church vocation programs that result in a new position on the Synod's roster require adoption, not ratification, by a convention of the Synod. The Synod's interest and final approval should also be reflected in paragraph 9 under 6.3 and paragraph 2 under 6.4.
- Under 11.4, paragraph 1, it is not necessary for the Board for University Education to delegate authority to boards of regents, since Bylaw 3.8.3.8.3 already grants them that authority.
- Under 12.5, Bylaw 1.5.2 (c) does not limit the requirement that annual statements be signed by "exempt" staff only. All staff are required by the bylaw to sign these statements.
- Under 12.7, paragraphs 1 and 2, new Synod Bylaw 3.8.3.6.4 (i) (2) allows each institution's board to receive and manage its own funds. The BUE no longer has the responsibility to receive and manage surplus college and university funds. See also 12.8.

C. Board for Black Ministry Services *Board Policy Manual* (06-2473)

The commission reviewed the *Board Policy Manual* of the Board for Black Ministry Services in light of the Constitution, Bylaws, and resolutions of the Synod, noting the following concerns. Other editorial and content suggestions and encouragements will be included in a letter to the board conveying this section of these minutes.

- Under 2.1.1, the responsibilities of the board are first and foremost stated in the Bylaws of the Synod, specifically Bylaws 3.8.4ff.
- Under 2.1.3.3, mention should be made of the Bylaw 3.9.2.2.4 requirement that all governing instruments (policy manuals) are to be examined in advance by the Commission on Constitutional Matters.
- Under 2.3.9, reference should not be to the “Board of Directors” since the Board for Black Ministry Services is a program board.
- Under 2.4.14, reconsideration should be given to types of board sessions and reporting in light of the Synod’s interest in transparency of board meetings (2007 Res. 7-05B) and the provisions of Bylaw 1.5.3.5 regarding making available the minutes of meetings.
- Under 2.4.16.3.1, the records that the secretary should have custody of are the records of the “board,” not “corporation.”
- Under 2.4.16.6, the membership of the executive committee of the board does not appear to be defined in the manual.
- Under 2.4.16.9ff., conflict of interest policy should agree with and reference should be made to the Synod’s conflict of interest requirements under Bylaw subsection 1.5.2, where it is the board that determines whether an inappropriate interest exists (paragraph (a) (4)).

D. Board for Human Care Ministries *Board Policy Manual* (06-2474)

The commission reviewed the *Board Policy Manual* of the Board for Human Care Ministries in light of the Constitution, Bylaws, and resolutions of the Synod, noting the following concerns. Other editorial and content suggestions and encouragements will be included in a letter to the board conveying this opinion.

- Mention should be made under section 2.3.4 of the Bylaw 3.9.2.2.4 requirement that policies (governing instruments) are to be examined by the Commission on Constitutional Matters.
- Mention should be made under policy 2.3.6.12 to Synod Bylaw 1.5.2 and its requirement that board members sign a conflict of interest statement annually.
- Policy 2.4.4.1.10 should be made to agree with Synod Bylaw 1.5.5.1 (a) (1) and its requirement for consultation with and mutual concurrence with the President of the Synod when selecting a chief executive or executive director. See also paragraph 3.1.1.

E. *Handbook for Doctrinal Reviewers* (08-2517)

Materials submitted by the Commission on Doctrinal Review were reviewed briefly. To facilitate a review by the Commission on Constitutional Matters, a letter will be written by the Secretary asking the Commission on Doctrinal Review to organize and bring the materials up to date, also suggesting that the President’s Office be involved given its ultimate responsibility for doctrinal review.

F. Policies of the Commission on Ministerial Growth and Support (08-2518)

Upon review of the policy manual submitted by the Commission on Ministerial Growth and Support in light of the Synod's Constitution, Bylaws, and resolutions, the commission noted the following concerns to be brought to the commission's attention:

- Under policy 2.4.7, the policy to meet only three times each year contradicts Bylaw 1.5.3 which requires agencies of the Synod to meet at least quarterly unless otherwise stipulated in the Bylaws. If the commission intends to meet only three times in a year, the need for the granting of an exception by the President of the Synod on an annual basis should also be noted.
- Under policy 3.5.1, mention should also be made of human resources policies of the Synod as provided by the Board of Directors (Bylaw 1.5.5).
- Under policy 4.3.1.2, it is assumed that what is intended are “defined and accurate position descriptions for each staff member.”

42. Concordia, Ann Arbor Bylaws (07-2509)

At its April 2008 meeting, the commission asked the Secretary of the Synod to contact the Board of Directors and the executive director of the Board for University Education regarding plans to address the issue of the removal of board members. At that time, Concordia, Ann Arbor was informed, as part of the review process of its proposed Bylaws, that the commission would be holding in abeyance its comments regarding its proposed bylaws addressing this subject.

Secretary Raymond Hartwig reported to the commission regarding his contacts with the Board of Directors and the executive director of the Board for University Education. After discussion, the Secretary was asked to write to Concordia, Ann Arbor directing that the provision in its proposed bylaws regarding the removal of board members exceeds current provisions in the Synod's Bylaws and therefore should be deleted until such time as the Synod has opportunity to address the subject on behalf of the entire Synod. He was also asked to forward this matter to the Commission on Structure for its attention and to send letters to any other agencies that have board removal measures in their policies or bylaws, asking that they also delete such provisions until such time as the Synod has had opportunity to address the subject on behalf of the entire Synod.

43. Wyoming District Bylaws (07-2510)

At its November 2007 meeting, the commission asked the Secretary to request from the Wyoming District a complete copy of the district's Bylaws to facilitate its review of proposed changes. The requested document having been received, the commission reviewed the Wyoming District Bylaws as well as proposed changes to the Bylaws in light of the Constitution, Bylaws, and resolutions of the Synod, and calls the following to the district's attention:

- Under 3.21 (also 3.27, 3.31), the use of the term “circuit visitor” is foreign to the *Handbook* of the Synod. The commission advises the use of the term “circuit counselor,” perhaps adding the term “circuit visitor” parenthetically after each use since this is an important practice in the Wyoming District.
- Under 3.27, it would be helpful if commission names in paragraphs b and c corresponded to the names given under 3.40.

- Under 4.03, the requirement (paragraph c) that circuits “shall” hold circuit pastors’ conferences on a regular basis exceeds the expectations of Synod Bylaw 4.9.1 where “may” language is used.
- Under 5.03, amendments to district bylaws are said to be subject to review by the Commission on Constitutional Matters “for final approval.” Synod Bylaw 3.9.2.2.4 instead requires that all such proposed amendments be “examine[d] in advance.”

44. Southern District Bylaws (08-2513)

With a letter dated January 7, 2008, the secretary of the Southern District submitted proposed changes to the district’s bylaws. The commission reviewed the documents received from the district, calling attention to the following in light of the Synod’s Constitution, Bylaws, and resolutions:

- In Article III of the Articles of Incorporation, it would be more accurate to list as the members of the corporation “the congregations, ordained ministers, and commissioned ministers,” since commissioned ministers include categories in addition to “teachers.”
- In Article V of the Articles of Incorporation, the definition of parishes as two or more congregations “united under one pastor” is not entirely accurate since the congregations remain separate entities. It would be more correct to speak of two or more congregations “served by one pastor.”
- In Article VI of the Articles of Incorporation, the last sentence does not read well as it stands.
- In Article X of the Articles of Incorporation, mention should be made of the requirement of Synod Bylaw 3.9.2.2.4 that all proposed amendments are to be examined in advance by the Synod’s Commission on Constitutional Matters.
- In the Preamble to the Bylaws, the stated definition of the Southern District in the first sentence is not a proper definition as it stands, since the district is the Synod in that place and the Synod is made up of its member congregations and church workers.
- Under Article II of the Bylaws, paragraph H d regarding required attendance at official conferences would better read that absentees are to submit requests to be excused in writing to the Excuse Committee.
- Under Article III of the Bylaws, paragraph B 1 (also IV B 1), having the Board of Directors “be responsible for the implementation and coordination of the total mission and ministry” contradicts the ecclesiastical supervisory responsibilities of the president of a district.
- Under Article III of the Bylaws, paragraph B 4, mention of vacancies on the board of directors as a result of “removal” begs the question of how board members may be removed. This is an issue yet to be resolved by the Synod in convention. The CCM recommends that such mentions be deleted until a convention of the Synod has opportunity to take an appropriate action on behalf of the entire Synod.
- Under Article IV of the Bylaws, paragraph A 4, specific mention of “appointive staff personnel” being “engaged on a contract basis” should be examined in light of Synod Bylaw section 3.11 and its requirements for a call under specific circumstances.
- Under Article V of the Bylaws, paragraph C 3, consistent use of Synod bylaw language would suggest changing the verbiage “member of the clergy” to “ordained minister.”
- Under proposed bylaw revisions, Article III, paragraph B 2 a, it would be more appropriate to speak of a “member-at-large” in place of a “delegate-at-large.”

- Under proposed bylaw revisions, paragraph 4 on page 5 with its proposed deletions is not clear in terms of sentence construction or the process being described.
- Under proposed bylaw revisions, paragraph 1 on page 5, is the use of the word “pastor” what is intended (*i.e.*, parish pastor, according to the Synod’s usage) or is it intended to include all “ordained ministers”?
- Under proposed bylaw revisions, paragraph 3 b on page 7, mention of a commission on adjudication is out of sync with the Bylaws of the Synod, which has replaced the adjudication process with the dispute resolution process.
- Under Board of Directors Elections Timeline and Protocol, it is unclear how this timeline fits into the process spelled out by proposed Article V of the Bylaws. The district secretary is therefore asked to provide a text of the complete Bylaws of the district incorporating the proposed changes.

45. Definition of Term: “Operating Board” (08-2515)

In a March 28, 2008 memorandum, the Commission on Structure requested an opinion from the Commission on Constitutional Matters regarding the use of the term “operating board” in Bylaw 6.2.1. At the commission’s April 2008 meeting, it was agreed that this question should be submitted to the Board of Directors and to legal counsel for their input (Bylaw 3.9.2.2 [b]) prior to a response from the commission.

The Secretary reported on research that he provided to the Board of Directors, including a history of the board’s involvement in the recognition of service organizations over the past 30 years and a history of terminology associated with the recognition process, a report adopted by the board as its own statement of record. He also reported that legal counsel responded positively to the results of the research.

After discussion of the results of the research, the commission determined its response to the question submitted by the Commission on Structure.

Question: How is the use of the term “operating board” in Bylaw 6.2.1 to be understood and to whom does it apply?

Opinion: The term “operating board” occurred for the first time in the 1995 *Handbook* of the Synod in place of the term “program board” in the 1992 *Handbook*. The 1995 *Handbook*, after listing the Synod’s Board of Directors and the boards of the synodwide corporate entities, listed as “Other Operating Boards” those boards that essentially are today the program boards of the Synod. The 1995 *Handbook* for the first time also used the term “operating board” in Bylaw 14.03 d, what is today Bylaw 6.2.1.

The 1998 *Handbook* reverted back to the use of the term “Program Boards” as the title for these boards, but it also retained the term “operating board” in Bylaw 14.03 d (2007 Bylaw 6.2.1). It is the opinion of the commission that the term “operating board” as it appears today in Bylaw 6.2.1 is therefore to be applied accordingly. The term “operating board” is to be understood to apply to the Board of Directors and the boards of the synodwide corporate entities (including Concordia Plan Services) and to the program boards. Today’s synodwide corporate entities and program boards are listed in current Bylaw 1.2.1, paragraphs (o) and (u).

46. District Constitution Committee Responsibilities (08-2516)

In a letter dated April 8, 2008, a pastor member of the Synod serving as a member of a district’s constitution committee asked whether a committee has the right to mandate that a congregation include a clause in its constitution requiring it to submit revisions to the district committee.

Question: Can a [district board of directors] and its [constitution committee] mandate that the congregation include a clause in its constitution that requires the [congregation] to submit its revisions to the [constitution committee]?

Opinion: The judgment and responsibility to determine what is acceptable in a congregation's constitution and bylaws has been given by the Synod only to a district board of directors, upon recommendation of the district president and upon the advice of the district constitution committee. With respect to retaining membership in The Lutheran Church—Missouri Synod, Bylaw 2.4.1 (c) states:

(c) Upon advice of the constitution committee and recommendation by the district president, the district board of directors shall determine if the changes are acceptable to the Synod.

The Constitution and Bylaws of the Synod do not mandate a clause in a congregation's constitution and/or bylaws that requires the congregation to submit its revisions to the constitution committee. However, the document, "Guidelines for Constitutions and Bylaws of Lutheran Congregations" (which is just that: "guidelines"), does suggest wording for the congregation's constitution and bylaws for the sake of unity and harmony, for benefiting the congregation in its responsibilities and in its relationship to the Synod, and for the sake of avoiding any potential future conflict or potential legal difficulties.

When determining what changes are acceptable concerning the provisions in a congregation's constitution, a district board of directors must follow no more than the criteria set forth in the Bylaws of the Synod, which state:

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 (Bylaw 2.4.1 [b]).

It should be noted that even if the clause in question is not in the congregation's constitution, a member congregation is required to submit a revised or new constitution and/or bylaws for continued membership in The Lutheran Church—Missouri Synod. The Bylaws of the Synod clearly state in Bylaw 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.

47. Congregations' Right to Suspend Bylaws (08-2519)

As a result of the proposed congregation transformation process that is currently underway in some districts and is being considered by several more, a number of district presidents, in an e-mailed June 2, 2008 letter following their participation in a training session, raised a series of questions regarding some of the recommendations proposed as part of the revitalization process. Included with the questions was the following paragraph providing background regarding said process:

The revitalization process recommends that congregations suspend those portions of their bylaws that address election, officers, and governance structures. All other bylaws and, of course, the Constitution and/or Articles of Incorporation remain intact. The intent is to

put the pastor, not a committee, in a position of responsibility and authority for the congregation to pursue a new vision for mission and ministry.

Also included with the questions were the following comments from the questioners:

Since part of the Synod's *Ablaze!* initiative includes the revitalization of 2,000 congregations, the Transforming Congregations Network was put together. It stems from a process begun by Dwight Marable, President of Missions International. It comes primarily from a Baptist background and has a different polity behind it, enabling it to perhaps do things the LCMS is not able to do, or at least may not be able to do as easily. The intent of the above paragraph is to enable a congregation to implement an "accountable leadership model" of governance for an interim period. If it proves successful, then a congregation may choose to adopt that model as a more permanent structure for mission and ministry. Please note that it calls for the suspension of only certain bylaws, not the entire set of bylaws.

Question 1: May a congregation of the Synod suspend or hold in abeyance some of their bylaws, specifically those dealing with elections, officers, and governance structure, in order to pursue a new vision for mission and ministry?

Opinion: The Commission on Constitutional Matters is allowed to give opinions only regarding issues arising under the Constitution, Bylaws, and resolutions of the Synod. The conditions for membership in the Synod are contained in Article VI of the Constitution and Bylaws 2.2 through 2.4. Assuming the constitution and bylaws of an individual congregation allow the suspension or holding in abeyance of some of its bylaws, then so long as a congregation does not seek to suspend or hold in abeyance those bylaws necessary for membership in the Synod, the Constitution and Bylaws of the Synod do not prohibit such holding in abeyance or a temporary suspension. Should the congregation determine to amend its bylaws or constitution, however, the proposed constitution and/or bylaw changes would need to be submitted for approval as required by Bylaw 2.4.1 (a).

In the more likely situation where there is no provision in the existing governing documents allowing for such suspension or holding in abeyance, no matter how well intended and no matter how "short term" the suspension is intended to last, such action would result effectively in an amendment of those governing documents. Bylaw 2.4.1 (a) requires such amendments to be submitted to the district president, who in turn is required to refer the proposed amendments to the district's constitution committee for review and to provide a recommendation to the district's board of directors for final action under Bylaw 2.4.1 (c).

This is not to say, should it determine that the proposed experimentation is to be encouraged, that the district could not adopt an expedited procedure to facilitate a speedy review of such proposed governance changes.

Question 2: If a congregation were to suspend or hold in abeyance select bylaws, would this have a negative impact on its 501 (c) (3) status?

Opinion: The answer to this question is not dependent upon the Constitution, Bylaws, and resolutions of the Synod. Questions regarding this issue should be addressed to local legal counsel or the Internal Revenue Service.

Question 3: If a congregation were to suspend or hold in abeyance select bylaws, would this have a negative impact on its membership in the Synod?

Opinion: As described above, so long as the congregation honors the conditions of membership as set forth in Article VI of the Constitution of the Synod and the eligibility requirements of Bylaws 2.2 through 2.4, a congregation's action to suspend or hold in abeyance select bylaws would not have a negative impact on a congregation's membership in the Synod.

Question 4: Is it legal in the eyes of the state, which has granted nonprofit corporation status, for a congregation to suspend or hold in abeyance select bylaws?

Opinion: This question is again a matter of state law and not an issue under the Constitution, Bylaws, and resolutions of the Synod. Questions should be submitted to local legal counsel or the state corporation governing body.

48. Other Matters

A. Revised Commission on Constitutional Matters Procedures Document

The commission reviewed the latest version of its own procedures document, clarifying its membership, responsibilities, and how it attends to its business. The document was accepted and will be regarded by the commission as an internal document.

B. Conflict of Interest Statements

Chairman Marcis reported that he has provided copies of commission members' conflict of interest statements to the Synod's Department of Human Resources and has retained the original statements in his files. The commission discussed the case of a member of one of the Synod's boards who has been reluctant to sign the statement.

C. Former Bylaw References in CCM Opinions

The commission discussed how it could be more helpful when quoting a prior opinion that contains a bylaw reference from a former *Handbook* of the Synod, since in many cases bylaw numbers have been changed. After discussion, it was agreed that the commission will try to remain sensitive to this issue when writing its opinions.

D. Shared Responsibilities for Policy Manual Reviews

Secretary Hartwig reported on conversations with the Board of Directors Policy Review Committee, outlining a process whereby manuals reviewed by the Commission on Constitutional Matters in light of the Constitution, Bylaws, and resolutions of the Synod would next be forwarded to the board committee for its own review in light of Board of Directors policy review responsibilities.

E. "Frequently Noted Aberrations" Document

During its review of agency articles of incorporation and bylaws documents and policy manuals, the commission has become aware of a number of grammatical and other issues that adversely affect the uniformity of formal documentation in the Synod. The Secretary was asked to prepare a document calling attention to some of these details in the interest of greater uniformity. The following document was prepared by the Secretary and accepted by the commission for inclusion in letters to agencies after review of their documents:

FREQUENTLY NOTED ABERRATIONS

In its review of bylaw and policy documents, the Commission on Constitutional Matters has noted that certain minor departures from the norm of how our Synod prepares documents occur frequently. Rather than repeatedly calling attention to these details, the commission has prepared this checklist of frequently noted aberrations to alert document preparers and editors and thereby to encourage and facilitate uniformity of usage in bylaw and policy documents throughout the Synod.

- Care should be taken to distinguish between the proper use of hyphens, en-dashes, and em-dashes. The proper name of our Synod is “The Lutheran Church—Missouri Synod” with an em-dash.
- Capitalization should be used sparingly, following the usage of the Synod’s *Handbook*. Only proper and one-of-a-kind nouns, such as “Synod,” “President,” “Secretary,” “Appeal Panel,” *etc.*, should be capitalized. Common nouns or nouns of which there are more than one, such as “district,” “district president,” “circuit,” “board,” “commission,” “seminary,” “officer,” “corporation,” *etc.*, unless referring to one such in particular, such as “Wyoming District,” “Concordia Seminary,” “Commission on Structure,” *etc.*, should not be capitalized.
- Bylaw language and terminology should be incorporated whenever possible, especially when reiterating subject matters of which the *Handbook* directly speaks, e.g., powers and duties, purpose statements, board membership, *etc.* Agency bylaws and policies may at times go beyond the Synod’s Constitution, Bylaws, resolutions, *etc.*, but they may not contradict them.
- Refer to and reference Synod bylaws accurately and in a uniform manner according to common usage. Because the Synod’s *Handbook* changes every three years, bylaw references in other documents need to be verified and updated triennially. Reference the decimal and parenthetical numbering system of the *Handbook* accurately, referring to major sections of the Constitution as “articles” and the seven major sections of the Bylaws as “chapters,” the subsections numbered with a single decimal as “sections,” and all other subsections as “paragraphs.”
- Be aware of the following frequently observed errors or less than desirable terminology:
 - Take care to distinguish between “agencies” as enumerated in Bylaw 1.2.1 (a) and “entities,” a broader term that includes more than agencies, such as congregations, RSOs, auxiliaries, and the Synod itself.
 - Avoid using the word “synodical” in favor of such words as “synodwide,” “Synod,” or “of the Synod.”
 - When three or more items are listed in a series and the last item is preceded by a conjunction (e.g., “and,” “or,” or “nor”), place a comma after the last item before the conjunction to help with clarity and accuracy.
 - When referring to the *Handbook* of the Synod or other documents, *Handbook* and other manual-type documents should be italicized.
 - Be as precise as possible with terminology and spelling. “Civil law” is more clear than “law.” “Staff” is unclear unless made more specific, e.g., “called staff,” “clerical staff,” *etc.* “Bylaws” and “LCMS” do not have a hyphen, while “vice-president” does.

- Include a preparation date for all documents, as well as dates when revised.
- Remember that all proposed amendments to governing documents are to be examined in advance by the Commission on Constitutional Matters, to ascertain that they are in harmony with the Constitution, Bylaws, and resolutions of the Synod.

F. Review of Standard Operating Procedures Manuals

After discussing a number of issues that have surfaced with regard to the dispute resolution and expulsion processes of the Synod and in light of the need for the commission to update these processes to incorporate changes from the 2007 convention, the Secretary and another commission member were asked to prepare proposals for discussion at the commission's next meeting.

49. Future Meeting Dates

The commission will next meet to attend the August 18-20 theological convocation in St. Louis. The members of the commission were encouraged to reserve the open evening of the convocation for a possible meeting.

The commission will also meet at the time of the Lutheran Church Extension Fund November gathering in Palm Springs, California, meeting Thursday evening and Friday, November 20 and 21. A joint lunch opportunity with the Board of Directors on Friday noon will be sought, as will participation in any joint Council of Presidents and Board of Directors discussion of Blue Ribbon Task Force on Synod Structure and Governance proposals.

50. Adjournment

All current business to come before the commission having been addressed, the meeting was closed with prayer.

Raymond L. Hartwig, Secretary

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS August 18, 2008

(This meeting was held in conjunction with the Synod's Theological Convocation, "Carrying Out God's Mission in the 21st Century: The Relationship Between Theology and Polity." The commission limited its agenda to matters requiring immediate attention.)

51. Call to Order and Review of Agenda

Chairman Albert Marcis called the meeting to order with all members present, opened the meeting with prayer, and reviewed its agenda. President Gerald Kieschnick was also in attendance for a portion of the meeting.

52. 2004 Res. 3-05A "To Affirm Marriage as Union of One Man and One Woman" (08-2524)

In a letter dated June 10, 2008, a district president asked the commission to interpret 2004 convention Res. 3-05A ("To Affirm Marriage as the Union of One Man and One Woman) as it relates to the California Supreme Court decision overturning the California ban on same sex unions and as it relates to the implications for ecclesiastical supervision as required by the Constitution and Bylaws of the Synod.

- Questions:
1. Please share with me your interpretation of Resolution 3-05A, "To Affirm Marriage as Union of One Man and One Woman" (2004 *Proceedings*, p. 130). What is the authority of this resolution and its implications for ecclesiastical supervision?
 2. Given your definition and interpretation of Res. 3-05A, what do the Constitution and Bylaws of the Synod describe as the remedies on the part of a district president if a pastor in the district should perform a "marriage" for a same sex couple?

Opinion: With respect to the society demanding legal recognition of same-sex unions as "marriages" (cf. the Supreme Court of the State of Massachusetts Feb. 4, 2004 decision and the California Supreme Court 2008 decision), 2004 LCMS convention Res. 3-05A declares "homophile behavior as intrinsically sinful" and that "homosexual behavior is prohibited in the Old and New Testaments (Lev. 18:22, 24; 20:13; 1 Cor. 6:9-20; 1 Tim. 1:10) as contrary to the Creator's design (Rom. 1:26-27)." The resolution urged the Synod's members "to give a public witness from Scripture against the social acceptance and legal recognition of homosexual 'marriage'" and resolved "[t]hat the LCMS, in convention, affirm, on the basis of Scripture, marriage as the lifelong union of one man and one woman (Gen. 2:2 - 24; Matt. 19:5 - 6)."

Under the assumption that 2004 Res. 3-05A is in accordance with the Word of God, the Synod expects every member congregation of the Synod to respect the resolution and consider it of binding force (Cf. Bylaw 1.7.2). Bylaw 1.6.2 (a) states, "Such resolutions come into being in the same manner as any other resolutions of a convention of the Synod and are to be honored and upheld until such time as the Synod amends or repeals them" (emphasis added; cf. also Bylaw 1.8.1). And Bylaw 1.7.1 further states, "The Constitution, Bylaws, and all other rules and regulations of the Synod apply to all congregational and individual members of the Synod."

1971 convention Res. 2-21 confirmed the binding nature of such resolutions: "[P]rovided a doctrinal resolution is in fact in harmony with the Word of God, which is 'the *only* rule and norm of doctrine,' the content of such a resolution is *intrinsic* to the Synod's confessional basis....It is fully in accord with

Article II of the Constitution to insist that such a resolution has binding force for all members, and in accord with Article XIII to deal with those who refuse to honor such a resolution as ‘members who act contrary to the Confessions laid down in Article II...’” (1971 *Proceedings*, p. 118).

With respect to the congregation’s right of self-government and the matter of expediency as far as the condition of the congregation is concerned (Constitution Art. VII), 1971 Res. 2-21 also declared “[t]hat the Synod does not intend the exceptions to apply to doctrinal resolutions is evident from the fact that doctrine does not properly belong to the area of self-government, and from the fact that doctrine may not be accepted or rejected upon the basis of considerations of expediency. The provision that allows a member to reject a doctrinal resolution of the Synod is that such a resolution is ‘not in accordance with the Word of God’ (Article VII of the Constitution).” See also the CCM Opinion 05-2444, “Proper Dissent and Dispute by Members of the Synod.”

Resolution 3-05A, together with all of the resolutions of the Synod, has implications for ecclesiastical supervision. This responsibility, primarily of the President of the Synod and district presidents, is to supervise on behalf of the Synod the doctrine, life, and administration of its members, officers, and agencies. Such supervision, subject to the provisions of the Synod’s Constitution, Bylaws, and resolutions, includes visitation, evangelical encouragement and support, care, protection, counsel, advice, admonition, and, when necessary, appropriate disciplinary measures to assure that the Constitution, Bylaws, and resolutions of the Synod are followed and implemented (Bylaw 1.2.1 [g]).

In ministering to the pastor (and/or congregation) that performs or sanctions a “marriage” for a same sex couple, the district president will want to carry out the guidance and spirit of Res. 3-05A, which encouraged the church’s proper evangelical work to proclaim the reconciliation of the sinner to God in the death of Jesus Christ (2 Cor. 5:18-19) and to minister to homosexuals and their families in a spirit of compassion and humility, recognizing that all have sinned and fall short of the glory of God, and are justified freely by His grace, through the redemption that came by Christ Jesus (Rom. 3:23-24), and which encouraged that the members of the Synod deal with sexual sins with the same love and concern as all other sins, calling for repentance and offering forgiveness in the Good News of Jesus Christ when there is repentance.

If a pastor or congregation should, after appropriate admonition, fail to honor and uphold a doctrinal resolution of the Synod, the district president shall act under Constitution Art. XIII 1, which states, “Members who act contrary to the confession laid down in Article II and to the conditions of membership laid down in Article VI or persist in an offensive conduct, shall, after previous futile admonition, be expelled from the Synod.” Article XII empowers district presidents “to suspend from membership ordained and commissioned ministers for persistently adhering to false doctrine or for having given offense by an ungodly life, in accordance with such procedure as shall be set forth in the Bylaws of the Synod.” Bylaws 2.13.2–2.13.2.4 (restricted status), 2.13.4–2.13.4.3 (suspended status), and 2.14 (expulsion of congregations or individuals from membership in the Synod) provide the “remedies” or provisions with respect to a district president’s ecclesiastical supervision.

53. Interpretation of “Position of Service” in Bylaw 2.13.2.2 (a) (08-2528)

In an August 18, 2008 letter, a district president asked for an interpretation of the words “position of service” in Bylaw 2.13.2.2 (a) as it pertains to pastors serving congregations with pastoral vacancies.

Question 1: Under Bylaw 2.13.2.2 (a), does “position of service” regularly reference a called position filled by a member on the “active” roster of the Synod?

Opinion: Bylaws 2.13.2.2 (b) and 2.13.4.2 (c) associate the term “position of service” with a call by speaking of eligibility to “accept a call.” In addition, Bylaw 2.11.1, which governs the “active” roster of church workers of our Synod, uses “serving” and “call” terminology interchangeably, indicating that “active” members of the Synod, including ordained ministers “serving a congregation of the Synod” (paragraph [a]), must also be “regularly performing duties” of service, thereby assuming the existence of a regular call. Further, only ordained ministers “who have been duly called to a position of full-time service shall be installed upon authorization by the appropriate district president” (Bylaw 4.4.3 [e]) and rostered accordingly (Bylaw 4.4.7). Therefore, yes, “position of service” in Bylaw 2.13.2.2 (a) references a regularly called full-time position filled by a member on the “active” roster of the Synod.

Question 2: Does “position of service” also reference a congregation’s pastoral vacancy being filled by a member on the “inactive” roster of the Synod—emeritus, candidate, or non-candidate?

No, a pastoral vacancy is not a “position of service” referenced in Bylaw 2.13.2.2 (a). If a pastor filling a pastoral vacancy does not qualify for “active” membership under Bylaw 2.11.1 due to the lack of a regular call to regularly perform the duties of one of the bylaw’s listed categories, he may make application to be placed on one of the “inactive” rosters of the Synod (Bylaws 2.11.2ff). While the service that a pastor provides during a pastoral vacancy is valuable service, it is not a “position of service” that qualifies a pastor for “active” roster status.

Question 3: Can a pastor on candidate status serving a vacancy, if he is placed on restricted status by his district president, not be granted approval for such service and thus not be eligible to continue as vacancy pastor?

Opinion: Because a pastor on candidate status who serves a vacancy does not thereby hold one of the positions of service listed under Bylaw 2.11.1, such vacancy service, should he be placed on restricted status by his district president, is not to be included under the general exception granted for “position[s] of service” by Bylaw 2.13.2.2 (a). His district president may approve his continued performance of such “functions of ministry,” but without such approval he is ineligible to continue to serve as a vacancy pastor.

54. Review of Standard Operating Procedures Manual for Bylaw Section 1.10

The commission briefly discussed a draft of a revision of Bylaw section 1.10 *Standard Operating Procedures Manual* to incorporate 2007 convention changes and to address issues that have surfaced. Commission members were asked to forward further suggestions for changes to Secretary Raymond Hartwig, who will take the proposed revisions to the Council of Presidents for the required consultation (Bylaw 1.10.18.1 [j]) prior to final consideration by the commission.

55. Adjournment

All intended business of the meeting having been addressed, the meeting was adjourned with words of benediction.

Raymond L. Hartwig, Secretary

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS

Indian Wells, CA
November 20–21, 2008

(The regular meeting of the Commission on Constitutional Matters was preceded by a joint executive session meeting with the Board of Directors and the Council of Presidents to receive a progress report from the Blue Ribbon Task Force on Synod Structure and Governance. The executive session was followed by an informal meeting over lunch with the Board of Directors to discuss the policy manual review process.)

56. Call to Order and Opening Devotion

Chairman Albert Marcis called the commission meeting to order and called upon Philip Esala, devotion leader for the meeting, to provide an opening devotion. Secretary Raymond Hartwig was unable to be present due to a meeting of the Board of Directors. Chairman Marcis reviewed the agenda for the meeting.

57. BPE and BUE Policy and Campus Policy Manual Review Responses (06-2471; 06-2472)

The commission noted that it has not received responses to a number of required changes to governing documents previously reviewed, including the Board for Pastoral Education and Board for University Education Policy Manuals and their Campus Policy Manuals. The Secretary was directed to maintain an ongoing agenda item for unresolved correspondence. He was also asked specifically to follow up on previous decisions to assure compliance with Bylaw 3.9.2.2.4 (a) and to provide to commission members copies of correspondence sent and received on behalf of the commission.

58. CCM Model Constitution re Excommunication Vote (08-2492A)

In a letter dated July 16, 2008, a pastor of the Synod requested that the Commission on Constitutional Matters (CCM) “correct the 2006 *Guidelines for Constitutions and Bylaws of Lutheran Congregations*” and withdraw commission Opinion 07-2492 supporting the content of the guidelines relating to excommunications by congregations.

Response: The commission’s guidelines document falls outside of its official responsibilities as detailed in Bylaw 3.9.2.2. The guidelines are offered as a public service to the congregations of the Synod recognizing that “a degree of uniformity in the constitution and bylaws of member congregations of the Synod is desirable” (Preface to the *Guidelines* document). At times, the guidelines necessarily touch upon doctrinal matters.

Questions related to doctrinal matters, such as are at issue in this case, are properly directed to the Commission on Theology and Church Relations (CTCR) of the Synod. The CTCR is charged with the responsibility to “provide guidance to the Synod in matters of theology and church relations” (Bylaw 3.9.6.2.1). The CCM rightly consulted with the CTCR before responding to the questioner’s earlier request for an opinion regarding the vote required for an excommunication. The CCM believes that it faithfully reflected the response of the CTCR in Opinion 07-2492. Questions that remain, if any, should be submitted directly to the CTCR for resolution.

59. District President Authority During Appeal Process (08-2520)

In a letter dated June 11, 2008, a pastor member of the Synod asked for an opinion from the commission regarding the authority of a district president to restrict the activities of a pastor of a congregation during Bylaw section 2.14 or 2.17 expulsion processes.

Question: When a district president suspends a pastor for allegations of sexual misconduct (or otherwise), after a proper investigation of the situation(s), does the district president have the authority to restrict the activity of a parish pastor in the congregation prior to completion of the full appeal process?

Opinion: According to paragraph 8 of Article XII of the Constitution of the Synod, district presidents are empowered to suspend ordained and commissioned ministers from membership in the Synod “for persistently adhering to false doctrine or for having given offense by an ungodly life.” The suspension must be in accordance with procedures set forth in the Bylaws of the Synod.

When formal proceedings are commenced under the procedures set forth in Bylaw sections 2.14–2.17, the accused member has suspended status (Bylaws 2.13.4; 2.14.6 [a]; *et al.*), which continues until the formal proceedings are completed or until membership is duly terminated. A suspended member continues to hold all rights under the Constitution and Bylaws of the Synod except, according to the provisions of Bylaw 2.13.4.2 (a–c): (a) the member is relieved of duties as a member of the Synod; (b) the member is relieved of any duties and responsibilities with the Synod, the district, or another agency of the Synod; and (c) the member is ineligible to accept a call to another position of service in the Synod.

Under the suspended status provision of the Bylaws, a district president does not have the authority, either under Article XII or Bylaw 2.13.4.1, to limit the activities of the pastor of a congregation in that member congregation. Bylaw 2.13.4.3 states: “The member on suspended status shall continue to be eligible to perform those duties and responsibilities of any other position which such member held at the time when placed on suspended status, including a position with a member congregation.”

Under the provision, a district president must also advise the congregation being served by the suspended member to take appropriate action so that the rights of both the member and the congregation are preserved (Bylaw 2.13.4.3 [a] [3]).

60. Face-to-Face Meeting Requirement (08-2527; 08-2529; 08-2529A)

In letters dated July 31, August 20, and September 9, 2008, a pastor of the Synod asked a series of questions related to the initiation and processing of an action which could result in the expulsion of a member from the Synod. Pursuant to the provision of Bylaw 3.9.2.2 (b), the commission advised the questioner’s ecclesiastical supervisor of the submission of the questions and provided opportunity to submit information believed to be important for the commission to know in providing its response. This input clarified that the questions were purely hypothetical, that no action under Bylaw section 2.14 had been initiated, and that the ecclesiastical supervisor, in an attempt to avoid the need to initiate such action, had requested that the member come to his office to discuss an issue of concern regarding information that was being published by the member concerning the ecclesiastical supervisor. The commission responded to the questions that were submitted as follows.

Question 1: Does a privately or publicly stated personal opinion concerning the actions of a district president constitute a basis for the initiation of an action which may result in the expulsion of a member from the Synod?

Opinion: The grounds for expulsion from the Synod under Article XIII of the Constitution are provided by paragraph 1 of the article:

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

A personal opinion concerning the actions of a district president, whether privately or publicly stated, may only form the basis of the initiation of an action for a removal from membership if it meets one of the grounds as stated in Article XIII, paragraph 1.

Question 2: In accord with Bylaw 2.14.2 (e), does a failure on the part of a district president (the accuser) to hold a face-to-face meeting with an accused member of the Synod within the specified 30 day limit result in the dismissal of the complaint if the accused has repeatedly affirmed his desire to meet with the district president regarding a matter in a manner described in Matthew 18:15?

Opinion: Bylaw 2.14.2 (e) defines a face-to-face meeting as follows:

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

As indicated in the bylaw, failure to conduct a face-to-face meeting within 30 days, if the accuser is responsible for the failure, results in dismissal unless the 30-day period has been extended by the involved ecclesiastical supervisor(s). Since no Bylaw section 2.14 action has been initiated in the questioner's case, this question is, of course, hypothetical at present.

Question 3: If a district president is the accuser in a matter which may result in the expulsion of a member of the Synod, and if the district president is requesting a face-to-face meeting in a manner not described in Matthew 18:15, but demands that the brother whom he believes has wronged him appear in the district president's office without any assurance the district president will meet just between the two of them as brothers, and if the accused desires to challenge this arrangement as an abridgement of the manner described in Matthew 18:15 in order to fulfill Bylaw 2.14.2 (e) and Bylaw 2.14.3 (c), and also referenced in Bylaws 2.14.7.1 and 2.14.7.6, in what way can the accused challenge the accusing district president and ask for clarification that Matthew 18:15 be carried out in the manner actually described in that passage (that is, that the brother who believes himself to be wronged goes to the brother whom he believes has wronged him and that such a meeting would only be between the two of them)?

Opinion: Under Bylaw 2.14.4, the district president may commence an action which could lead to the expulsion of a member, either by becoming aware of such information by his own personal knowledge or when a complaint has been initiated by a member congregation or individual member of the Synod pursuant to Bylaw 2.14.3. In the latter circumstance, where the complaint is brought by a member congregation or individual member of the Synod, the district president is required to assure that the complaining member follows the requirements of Bylaw 2.14.3, including assuring, under Bylaw 2.14.3 (c), that the accuser has met face-to-face with the accused in the manner described in Matthew 18:15. Where the district president initiates the action based on his own personal knowledge and is both accuser

and district president, he must as district president assure that he as accuser has complied with Bylaw 2.14.2 (e) and that a face-to-face meeting has occurred.

The face-to-face meeting required by Bylaw 2.14.2 (e) is to occur within 30 days or within such extension as may be established by the involved ecclesiastical supervisors. Failure to conduct the face-to-face meeting within that 30-day period, or such period as may be extended by the involved ecclesiastical supervisor(s), would result in dismissal of the complaint.

If the matter is not yet a formal Bylaw section 2.14 action, the ecclesiastical supervisor is, in his judgment, free to request such face-to-face or other meetings as he deems appropriate within the scope of his ecclesiastical supervision.

Question 4: If such a matter which may result in the expulsion of a member of the Synod must comply with the bylaw requirement that first a face-to-face meeting in person between the accuser and the accused must take place in the manner described in Matthew 18:15 (Bylaw 2.14.2 [e]), and that "...the district president shall ensure that the accuser has met face-to-face with the accused in the manner described in Matthew 18:15" (Bylaw 2.14.3 [c]), and it is also necessary that the chairman of the Council of Presidents agree that there "...was compliance with the guidelines provided in Matthew 18:15–16..." (Bylaw 2.14.7.1), then the manner described in Matthew 18:15 must be clearly defined and understood in order for an accusation to go forward. I am seeking the assurance provided by our Constitution and Bylaws which ensure that such an action actually is completed in a manner described in Matthew 18:15.

Opinion: See the answer to question 3.

61. Nebraska District Bylaw Change Proposal (08-2531)

With a letter dated September 9, 2008, the president of the Nebraska District, in accordance with Bylaw 3.9.2.2.4, submitted proposed 2009 district convention bylaw changes to the commission for review. The commission found the proposed amendments to be in harmony with the Constitution, Bylaws, and resolutions of the Synod.

62. Ohio District Bylaw Change Proposals (08-2532)

With a letter dated September 25, 2008, the secretary of the Ohio District, in accordance with Bylaw 3.9.2.2.4, submitted bylaw changes to be proposed to the district's June 18–20, 2009 convention for review by the commission. The commission found the proposed amendments to be in harmony with the Constitution, Bylaws, and resolutions of the Synod.

63. Minnesota North District Bylaw Change Proposals (08-2533)

With a letter dated October 2, 2008, the secretary of the Minnesota North District, in accordance with Bylaw 3.9.2.2.4, submitted five overtures proposing changes to the district's Bylaws for review by the commission prior to their submission to the district's 2009 convention. The commission found all proposed amendments to be in harmony with the Constitution, Bylaws, and resolutions of the Synod.

64. Final Hearing Panel Procedure (08-2534)

The secretary of a Final Hearing Panel, in accordance with Bylaw 2.14.7.7 (k) ["If any part of the dispute involves ...questions of constitution or bylaw interpretation, each party shall have a right to an

interpretation from the Commission on Constitutional Matters (CCM)”, submitted two questions in an October 8, 2008 letter to the commission.

Question 1: Is a Final Hearing Panel required to conduct a *de novo* hearing in which the matter is heard anew as if it had not been previously heard and as if no decision had previously been made by the initial Hearing Panel?

Opinion: The answer to this question is “no.” While the bylaws assume that the Final Hearing Panel will conduct a hearing (e.g., Bylaw 2.14.8.2), Bylaw 2.14.8.1 (b) provides: “The procedures for the final hearing shall be the same as prescribed in Bylaws 2.14.7.5–2.14.7.7.” There is no provision for any *de novo* hearing in these bylaws. Rather, Bylaw 2.14.7.7 (i) provides: “The panel shall determine the number of witnesses necessary for a full and complete understanding of the facts involved in the matter.” Also, Bylaw 2.14.8.1 (c) states: “The chairman of the Hearing Panel shall provide the Final Hearing Panel with a written statement of the matter and the Hearing Panel’s report, minutes, records, and proceedings.” This is the material to be reviewed by the Final Hearing Panel unless it feels the need to hear from additional witnesses. The Final Hearing Panel therefore is to determine for itself what further information, if any, it needs to acquire in order to have a complete understanding of the facts at issue. It is up to the panel to determine if it needs to hear from any additional witnesses in order to fulfill its bylaw responsibilities.

Question 2: May the parties call hostile/adverse witnesses during a hearing before a Final Hearing Panel?

Opinion: The answer to this question is founded upon the understanding of the bylaws reviewed in the answer to the previous question. It is up to the judgment of the panel whether it needs to hear from any witnesses. While the bylaws provide that “each party involved shall be given an opportunity fully to present its respective position” (Bylaw 2.14.7.7 [c]), the parties may not automatically call any witness, hostile/adverse or otherwise, during a hearing before a Final Hearing Panel unless the panel has indicated that it wants to hear from said witness.

65. Time Requirements for Dispute Resolution Process (08-2535)

In an e-mailed letter dated October 30, 2008, a congregation of the Synod involved in dispute resolution submitted the following question regarding the right of the Secretary of the Synod as administrator of the dispute resolution process to allow a Dispute Resolution Panel to exceed the 60-day time limit for providing its decision.

Question: In view of the fact that the Dispute Resolution Panel failed to make a decision for 60 days as required by the LCMS bylaw, what LCMS bylaw allows the LCMS Secretary or any LCMS official to suspend Bylaw 1.10.7.4 (b) and give an extension for that decision without any agreement from the respondent? As stated another way, do the LCMS Bylaws allow any official or even the CCM without bylaw authority to accept a Dispute Resolution Panel decision after the panel has failed to make a decision within 60 days, and if so, what bylaw can be interpreted to allow that exception?

Opinion: Bylaw 1.10.7.4 (b) requires: “Within 60 days after the final hearing, the panel shall issue a written decision that shall state the facts determined by the panel and the reasons for its decision.” There is no provision in the Bylaws for a suspension or extension of the 60-day obligation to issue a decision, and no provision for any official of the Synod to grant such suspension or extension. Should the panel fail to render its decision within that time frame, it would be appropriate to bring that issue to the attention of the administrator of the proceeding.

Bylaw 1.10.4 (a) identifies the administrator to be:

(a) **Administrator:** The secretary of a district or of the Synod or an appointee (Bylaw 1.10.6) who manages the dispute resolution process but who does not take leadership, declare judgments, advise, or become involved in the matter in dispute.

The administrator would be expected to make inquiry as to the reason for the failure, and to encourage the panel to fulfill its responsibility. Should the administrator believe that the panel is neglecting its duties, and the panel continues to fail to issue its decision, the administrator should bring the matter to the attention of the President of the Synod.

It should be noted that a failure of the panel to issue its decision within the time prescribed does not terminate the proceedings or prohibit the reception of a decision not timely rendered. Unlike the process set forth in Bylaw 2.14.2 (e), for example, which can result in dismissal of a proceeding should the accuser fail to meet the accused face-to-face within 30 days, the Synod has imposed no such requirement for the delayed issuance of a decision as described in the question submitted.

66. Continuation of Candidate Status (08-2537)

The Secretary of the Synod, in a memorandum dated November 21, 2008, requested clarification of Bylaw 2.11.2.2 (a) regarding candidate status for church workers.

Question: Bylaw 2.11.2.2 (a) authorizes a district president to continue a candidate on the roster for a period not to exceed four years. Does the bylaw allow the district president to extend that status of such candidate member beyond four years?

Opinion: No. Bylaw 2.11.2.2 describes who is eligible for placement on “candidate” status, *i.e.*, a rostered member of the Synod who is eligible to perform the duties of an active member of the Synod in one of the offices of ministry specified in Bylaw 2.11.1 but who is not currently an active member or an emeritus member. Paragraph (b) provides that such a candidate member is required to file an annual report by January 31 of each year. Based on that report and the district president’s evaluation of the criteria identified under paragraph (c), the district president may, under paragraph (a), continue the candidate status for a period not to exceed four years.

If no longer qualifying for candidate status, a member may, if eligible, be continued on the roster as a non-candidate member pursuant to Bylaw 2.11.2.3.

67. Bylaw Section 1.10 Standard Operating Procedures Manual

The Secretary of the Synod reported to the commission on a meeting with the committee charged by the Council of Presidents with the responsibility for reviewing proposed operating procedures manual revisions. The committee proposed an additional paragraph change found in two places in the Bylaw 1.10 manual, *i.e.*, the second-last bullet under section 3.4 on page 23 and the fourth bullet under section 5.3 on page 27:

The written decision must be signed by all members of the panel who participated in the hearing and decision. In the interest of meeting time requirements, the decision should be circulated via overnight mail. When properly signed, it will be forwarded to the required recipients by the hearing facilitator.

As the commission gave its final attention to the manual, the second bullet under section 3.5 on page 23 and the second-last bullet under section 5.3 on page 28 were changed to read:

If a party to a dispute or an ecclesiastical supervisor desires clarification of the panel decision, such request must be made in writing by the ecclesiastical supervisor to the chairman of the panel through the Office of the Secretary, with copies also provided to the other members of the panel. To the extent that a panel finds it necessary or appropriate to issue a clarification, such clarification, signed by the chairman of the panel, will then be returned to the district president through the Office of the Secretary, with copies provided to the parties to the dispute. Such request for clarification does not affect the 30-day deadline for an appeal.

With these final changes in place, the commission approved the revision of the Bylaws section 1.10 *Standard Operating Procedures Manual*.

68. Bylaw Section 2.14 Standard Operating Procedures Manual

The commission began its review of a revised version of the Bylaw section 2.14 *Standard Operating Procedures Manual* but was unable to complete the review. Three members of the commission were assigned the task of further review, to be continued when the commission next meets again.

69. Unfinished Business

The following agenda items will be carried over to the commission's next meeting:

- 08-2517 Handbook for Doctrinal Reviewers Review
- 08-2521 Board of Directors Policy Manual Review
- 08-2522 LCMS Foundation Policy Manual Review
- 08-2523 Concordia Historical Institute Policy Manual Review
- 08-2525 CTCR Policy Guidelines Review
- 08-2526 Concordia Plans Services Articles of Incorporation and Bylaws Review
- 08-2530 LCEF Policy Manual Review
- 08-2536 Oklahoma District Bylaws

70. Adjournment

Allotted time having expired, the meeting was adjourned with prayer. The commission will next meet February 7 and 8, 2009, in St. Louis.

Daniel Lorenz, Acting Secretary