

MINUTES

COMMISSION ON CONSTITUTIONAL MATTERS Airport Crowne Plaza Hotel, St. Louis September 3-4, 2011

47. Call to Order, Opening Devotion, and Review of Agenda

Chairman Wilbert Sohns called the meeting to order and called on Raymond Hartwig for an opening devotion. He then reviewed the sizeable agenda for the meeting, noting priority items requiring first attention.

48. Consultation with President of Synod

Chairman Sohns welcomed Synod President Matthew Harrison to the meeting, who was appearing at his own request to discuss 2010 Res. 8-07 "To Study Future District Function and Configuration," to carry out the consultation required by 2010 Res. 8-30B "To Study Article VI of Synod's Constitution," and to discuss the study called for by 2010 Res. 8-32B "To Study Article VII of Synod's Constitution."

49. Revision of Bylaw Section 2.15 *Standard Operating Procedures Manual*

In accordance with Bylaw 2.15.9.3, the commission reviewed a final draft revision of its *Standard Operating Procedures Manual* to accompany Bylaw section 2.15 and determined final changes. Secretary Hartwig reported that the draft version had already been reviewed by a committee of the Council of Presidents authorized to give the council's concurrence. Such concurrence having been received and the commission's final changes having been incorporated into the document, the revised version (attached to these minutes) now replaces the former version of the Bylaw section 2.15 *Standard Operating Procedures Manual* and will be made available and distributed for use by the Synod.

50. Review of Oklahoma District Bylaws (08-2536)

During its February 2009 meeting, the commission reviewed a draft copy of the *Handbook* of the Oklahoma District upon request of the district president. Upon review, the commission offered suggestions and recommendations for change but also recognized that the document was "a work in progress," to be submitted for further review upon its completion.

With a July 1, 2011 letter, the secretary of the Oklahoma District submitted for review the result of that work in progress in preparation for its submission to the district's 2012 convention. The commission again reviewed the documents (Articles of Incorporation and Bylaws) and offered the following suggestions and recommendations for additional changes prior to convention consideration.

Regarding the Bylaws submitted for review:

- Article II, paragraph 1: This paragraph would better be titled "Constitution and Bylaws:" and include a second sentence indicating that the Bylaws of the Synod shall also be the primary Bylaws of the district (Synod Bylaw 4.1.1.2).
- Article II, paragraph 3: The referenced bylaws describe the process for becoming a member of the Synod through the district. A description of who the members of the district are is provided in Synod Bylaws 4.1.2ff, which reference should also be added to this paragraph.

- Article II, paragraph 5: The commission recommends inserting the words “insofar as these may be applicable (Synod Bylaw 4.2.1 [a])” after the first phrase, “District conventions shall be governed by the Bylaws of the Synod...”
- Article II, paragraph 6: The wording in the first sentence, “responsible to the district in convention for equipping, enabling, and encouraging congregations to proclaim the Gospel” exceeds the business of the board of directors as described by Synod Bylaw 4.5.1. This subject matter has already been covered in the earlier Preamble section, and the commission advocates deleting it from this paragraph.
- Article II, paragraph 7: The second half of this paragraph, which changes to the subject of visitation and electoral circuits, appears to warrant a new paragraph “8. Circuits” with references to the content of Synod Bylaws 5.1.1 and 3.1.2 (a).
- Article III, paragraph 1: Each of the references to the Constitution and Bylaws of the Synod should also include mention of the Synod’s resolutions, to therefore read “Constitution, Bylaws, and resolutions of the Synod.” Similarly, the reference to the Bylaws of the district should also include mention of its resolutions.
- Article III, paragraph 1, subparagraph a: The second sentence will better read: “The district president shall carry out all responsibilities described in the Synod’s Constitution (Article XII) and Bylaws (Bylaw section 4.4). The following two sentences (“He shall represent...He shall be responsible...”) and the final sentence should be eliminated.
- Article III, paragraph 1, subparagraph b: Mention in the final sentence of the second vice-president’s duty to serve as “circuit counselors’ representative for the president” should be reconsidered or at last further defined to take into consideration the president’s responsibility to have a direct relationship with all circuit counselors (Bylaw 5.2.3).
- Article III, paragraph 1, subparagraph c: The final sentence with its reference to the duties of the district secretary associated with the district nominations committee must reflect the same caution expressed by the Bylaws of the Synod for the Synod Secretary, that he not be closely involved with the work of the committee. Where elective positions other than president and vice-president are concerned, his role should be limited to assisting the nominations committee by providing names and nominee information and convening the initial meeting of the committee.
- Article III, paragraph 1, subparagraph e: As of the 2010 Synod convention, circuit counselors may be nominated and elected from the ordained minister roster of the Synod—not only from the pastors and pastors emeriti of the circuit. Following election, however, a circuit counselor must serve as a called pastor of a congregation of the circuit or agree to hold membership in a congregation of that circuit as a pastor emeritus. Reference should be made to Synod Bylaw section 5.2 for a complete description of the election process and the duties of a circuit counselor.
- Article III, paragraph 2: Each reference to the Constitution and Bylaws of the Synod must also include mention of the resolutions of the Synod.
- Article III, paragraph 2, subparagraph c: The title and reference in this paragraph are unclear as to whether they refer to the Lutheran Church Extension Fund of the Synod or to a district Church Extension Fund.
- Article III, paragraph 3: To distinguish between how various appointments are made, this introductory paragraph, given the content of the sub-paragraphs that follow, would more accurately read: “Appointments to district positions may include but not be limited to the following and shall be made as follows. Appointments made by the district president shall be ratified by the district board of directors.”
- Article III, paragraph 3, subparagraph h: The reference here (and elsewhere) in parentheses would better read consistently “Synod Bylaw 1.10.10.” The final sentence of this paragraph should be deleted, as the Synod’s Bylaws do not support the statement that a reconciler’s first responsibility is to the district.

- Article III, paragraph 4, subparagraph a: This paragraph does not accurately reflect the Bylaws of the Synod regarding restricted and suspended status. The sentence in the middle of the paragraph which begins “In order to be elected...” should be changed to two sentences and read as follows: “In order to be elected to serve as an ordained or commissioned member of the board, he/she shall be called to or be a member of a congregation of the circuit of the region of the district from which elected. Called workers shall be on the roster of the Synod and not be on suspended status (Synod Bylaw 2.13.4.2). Called workers on restricted status may not be elected to a position but may continue to serve if holding an elected position at the inception of restricted status (Synod Bylaw 2.13.2.3).”
- Article III, paragraph 5, subparagraph a: The word “Synod” should replace “district” in the first line, so as to read: “Within three months after the Synod convention, the district board...”
- Article III, paragraph 6: Including “All officers” under accountability to the board of directors is problematic, as the president of the district is accountable to the President of the Synod for the discharge of his responsibilities. The commission advises staying with the language of Synod Bylaw 4.5.1. In addition, the *Handbook* references at the end of the final sentence would better read “(Synod Constitution Art. XI 8 1; Bylaw section 2.12).”
- Article III, paragraph 7: This paragraph should be divided into two sentences after the word “district.” The second sentence would more accurately read: “If the individual is on the roster of the Synod (ordained or commissioned), he/she cannot be nominated or elected to an elected or appointed office or position while on restricted status, or continue to serve if on suspended status.”
- Article III, paragraph 8: For more accurate wording, see Synod Bylaw 1.5.1.2.
- Article III, paragraph 10, subparagraph c: This sentence should end with the words “district president.” Ratification by the district board of directors is not required (Synod Bylaw 5.2.2.1).
- Article IV, paragraph 1: The second sentence of the paragraph should read: “These shall be elected at the prior regular district convention...”
- Article IV, paragraph 2: Mention of circuit counselors nominations should be deleted from the existing paragraph. A final sentence could then address the nominations and elections of circuit counselors: “Each congregation of a circuit shall be entitled to nominate from the roster of ordained ministers of the Synod candidates for the office of circuit counselor, from which names (and names suggested by the district president prior to and nominated at the meeting) circuit forums shall select circuit counselors as prescribed by Bylaw 5.2.2.”
- Article IV, paragraph 3: This paragraph raises the question whether the regional elections of board of directors members, these being district positions, should require ratification by the district convention (as is the case with circuit counselors). The Commission on Constitutional Matters intends to take this question to the Commission on Handbook for its attention. The district may be well advised to consider including ratification by the convention (to constitute election) in this section.
- Article V, paragraph 1, subparagraph a: The third sentence would better read: “Each congregation or parish (a parish being two or more congregations served by the same pastor) shall be represented by one (1) pastor and one (1) lay delegate duly elected by the congregation or parish...” The sentences that follow should more accurately read: “Advisory (non-voting) delegates shall also attend in accordance with current applicable bylaws of the Synod. Other advisory representatives from representative groups, such as youth, contract teachers, etc., may also be invited to attend.”
- Article V, paragraph 1, subparagraph b: Since the paragraph refers to “voting pastors,” the commission suggests that it also refer to “duly elected lay voting delegates...”

- Article V, paragraph 1, subparagraph c: The commission recommends clarifying the final sentence of the paragraph by stating: “Resolutions in response to reports and overtures for consideration by the convention....”
- Article VI: This paragraph should include mention of the requirement that amendments to the district Bylaws be submitted to the Commission on Constitutional Matters prior to consideration by the district convention or use by the district. The second sentence should therefore read: “They shall be presented to the Commission on Constitutional Matters of the Synod in advance of the convention for review and approval. Any subsequent changes by the convention shall become effective only after approval by the commission (Bylaw 4.1.1.2 [b]).”
- Appendix D: Although the title given is “District Conferences,” the last two paragraphs refer to “district conventions” and warrant a separate title.
- Appendix E, third and fourth paragraphs: Synod Bylaw 3.12.3.5 assigns the nominations committee organizational responsibilities to the secretary.
- Appendix E: A time slot would be helpful to remind of the need for circuit forums (in advance of the deadline for submission of convention business) to select circuit counselors, advocate mission and ministry emphases, and submit overtures to the district convention.
- Appendix E: The third paragraph under “8 Months Prior” should not include “circuit counselors” in connection with the nominating ballot, as circuit counselor nominations are to be submitted by congregations directly to their circuit counselors for consideration by the circuit forum.
- Appendix E: It would be well to include mention of the added responsibility of convention delegates to participate directly in the election of the President of the Synod prior to the next Synod convention.
- Appendix E: The eleventh paragraph under “2 Weeks Prior” may be deleted, since the new method of selecting circuit counselors will not require caucuses during the convention.
- Appendix E: The provision for providing an honorarium to the Synod President or his representative is unnecessary, as this is an official function of the President.
- Appendix E: The third paragraph under “1 Week Afterward” calling for a review by the Commission on Constitutional Matters is either too late (if referring to amendments proposed in advance of the convention, which are to be reviewed by the commission prior to the convention) or should refer to any additional amendments made from the floor of the convention not yet reviewed by the commission, which become effective only after approval by the commission (Synod Bylaw 4.1.1.2 [b]).
- Under Appendix F: The commission recommends referencing the Synod Bylaws as the primary source for job descriptions of the officers.
- Under Appendix F: The Lutheran Church Extension Fund paragraph should make clear whether this is the national or a district LCEF.
- Under Appendix G: The paragraph describing the responsibilities of the Constitution Review Committee should be corrected to reflect accurately Synod Bylaws 2.2.1 and 2.3.1.

The commission instructed its secretary to continue to provide copies of its “Frequently Noted Concerns and Aberrations Document” to assist districts in preparing their documents in a manner that mirrors grammatical usage in the *Handbook* and other publications of the Synod.

51. Review of North Dakota District Bylaws (09-2549)

With an e-mailed letter dated August 8, 2011, a member of the North Dakota District’s board of directors submitted the Bylaws of the district for review. The commission noted that it had already reviewed the district’s bylaws earlier, at its February 26–28, 2010 meeting, prior to the latest changes, and reminds that changes to district bylaws are not to be considered effective until finally approved by the commission.

Upon its latest review, the commission recommends that the following changes be given serious consideration prior to submission to the district's 2012 convention.

- Bylaw 1.02, paragraph a: The word “individuals” and subsequent parenthetical comment should be replaced with “ordained and commissioned ministers.” The paragraph should also have added to the references at the end of the sentence the words “and pertinent bylaws.”
- Bylaw 1.02, paragraph b: The commission recommends adding the final parenthetical comment “(See also Synod Bylaw 1.3.4).” The bylaw was strengthened by the Synod's 2010 convention.
- Bylaw 1.05: The paragraph should be expanded to include verbiage from Synod Bylaw 1.3.4, the content of which was amended by the 2010 Synod convention to articulate more specifically the expectations of membership in the Synod.
- Bylaw 1.07: The duties of advisory members are essentially the same as those of members already articulated in Bylaw 1.05. This paragraph, which speaks of convention attendance, would better be placed under convention-related matters, such as district Bylaw 1.28.
- Bylaw 1.09, paragraph a: The reference in the first line to “all other rules and regulations” should be changed to “the resolutions” of the Synod and district. In addition, the reference in brackets at the end of paragraph d is unclear and should make clear reference to “Constitution, Art. VII 2.”
- Bylaw 2.01: Mention should be made, perhaps under paragraph e, of the provision added by the 2010 Synod convention to Synod Bylaw 4.4.2, requiring the president of the district to encourage its congregations and schools “to embrace the mission and ministry emphases” adopted by national conventions for each triennium.
- Bylaw 2.02: This paragraph should also include circuit counselors in its listing of the officers of the district (see Synod Bylaw 4.3.1).
- Bylaw 2.11: The first sentence should specifically reference Synod Bylaw section 4.4. In paragraph a: The deletion of the words “elected and appointed” (unnecessary) would resolve the concern that the district apparently has no appointed officers at this time. In paragraph b: The references to “pastors and teachers” should be changed to “ordained and commissioned ministers” given the obvious intention that the paragraph pertain to more than active parish pastors and classroom teachers. In paragraph c: The reference to “District members” should read “the district and its members.” In paragraph i: The first sentence would better reflect the Synod's practice by reading, “Maintain the official roster of ordained and commissioned ministers for publication in *The Lutheran Annual*....”
- Bylaw 2.21, paragraph a: The references to “a pastor” are unclear as to whether they mean an “ordained minister” or a “parish pastor”—either could be intended without further clarification. In paragraph d: It is unclear whether or not this vice-president is an advisory or a voting member of the District Planning Council.
- Bylaw 2.25: The words in the first line “a vacancy should occur because” should be deleted, since if the vice-president continues to function, there will be no vacancy.
- Bylaw 2.39: This duty must also be in the context of the president's duty (Constitution, Art. XII 9 d).
- Bylaw 2.51: The reference to the Synod *Handbook* should be clarified to read “[Synod Bylaw section 5.2]”
- Bylaw 2.73, paragraph g: The use of the term “executive committee” does not correspond with the Synod's common usage of the term. “Salary Review Committee” or some such title would be more appropriate. In paragraph h: The list of positions requiring suggested salary schedules should use the terminology “ordained and commissioned ministers” to cover other kinds of commissioned ministers who may be utilized by congregations.
- Bylaw 2.81, paragraph e: The phrase “jointly and several liable for all expenditures not authorized” begs clarification.

- Bylaw 2.88, section F, paragraph d: While the executive director may choose to gather annual district and congregational statistics, this information is transmitted directly to the Synod by the congregations of the Synod.
- Bylaw 2.91: The reference in the first sentence to “two (2) pastors” is unclear as to whether parish pastors are intended or ordained ministers in general.
- Bylaw 2.93: The phrase at the end of the first sentence “except for the Office of President and Vice-President” should also include “circuit counselors,” as the latter are now to be selected by circuit forums and reported to the district secretary.
- Bylaw 2.97, paragraph a, subparagraph 1: This sentence is unclear regarding its intent. Is the intent that only parish pastors may be nominated? Is the intent that congregations may nominate an individual for only their own region or one for each region? It should also be noted that candidates are to be nominated from the clergy roster of the Synod (Synod Bylaw 4.3.1) and not only from the region in question.
- Bylaw 3.01, paragraph a: A better reference than Article III 3 of the Synod’s Constitution would be Bylaws 2.5.2 and 2.5.3.
- Bylaws 3.01, 3.07, 3.09, and title of section III: The use of the word “teachers” is unclear as to whether its intention is teachers only or “commissioned ministers.”
- Bylaw 5.05, subparagraph 4: This sentence is speaking of “members of member congregations of The Lutheran Church—Missouri Synod.” “Synod members” are its congregations and rostered church workers. In subparagraph 8: The reference to the Synod’s Board for Human Care should be changed to “the Synod’s Board for National Mission and Board for International Mission.”
- Bylaw 9.03: This paragraph as it stands is problematic regarding its timing, as there is no opportunity provided for taking the Synod’s triennial mission and ministry emphases into consideration in developing the district’s work plan. Districts will need sufficient meetings to accomplish this. The same concern (failure to take into consideration the Synod’s mission and ministry emphases) also exists under Bylaws 9.05 and 9.07.
- Bylaw 10.02.1: This paragraph is unclear regarding the role of the district secretary, *i.e.*, is he, as a voting member of this committee, to be numbered as one of the two pastor members of the committee stipulated in the first sentence or does he serve in addition to the two mentioned pastors.
- Bylaw 10.02.3, paragraph 1: Mention must be made in the first phrase of the sentence that it is the duty of the committee to review “new” as well as revised constitutions and bylaws of the congregations of the district. In paragraph 3, mention should also be made of Synod’s requirement that any suggested changes be submitted to the Synod’s Commission on Constitutional Matters for review.
- Bylaw 11.03, paragraphs 1 and 2: The Synod’s auxiliaries are voluntary arms of the Synod to aid the Synod in extending the mission and ministry of the Synod (Synod Bylaw 6.1.1). Use of language (as in paragraph 3) that encourages district entities to invite the participation of the auxiliaries will better reflect this relationship.
- Bylaw 12.01, paragraph 1: “Not in conflict with” rather than “not contrary to” in subparagraph A will better reflect the usage of the Synod (see Synod Bylaw 7.1.1 [c]). Subparagraph D must also include submission of proposed amendments to the Commission on Constitutional Matters prior to presentation to the district convention, clarifying also that any subsequent changes (floor amendments) made by the convention become effective only after approval by the commission (Bylaw 4.1.1.2 [b]). Paragraph 2 must also include the approval by the Commission on Constitutional Matters when it speaks of approval by the district board of directors.

The commission recommends that the district consistently use the words “Synod Bylaw” when Synod bylaws are being referenced, instead of “SHB” or other terminology. The commission will again provide

a copy of its “Frequently Noted Concerns and Aberrations Document” to assist the district in preparing documents that mirror grammatical usage in the *Handbook* and other publications of the Synod.

52. Ecclesiastical Supervision and Right to Dissent (11-2589)

In a letter dated April 4, 2011, a pastor of the Synod submitted background information and questions pertaining to organizations of members within the Synod as well as individual members and congregation members of the Synod; the ecclesiastical supervisory duties of the President, vice-presidents, and district presidents of the Synod; and several formal related opinions of the Commission on Constitutional Matters. After inviting and receiving input from involved officers and agencies of the Synod in accordance with Bylaw 3.9.2.2 (b), the commission responded to the questioner as follows.

Among the questions and concerns expressed by the questioner were issues and concerns outside the authority and responsibility of the commission to address, because they did not involve interpretation of the Synod’s Constitution, Bylaws, and resolutions. The questioner is urged to submit such concerns to his ecclesiastical supervisor and, as necessary, through the Synod’s processes of ecclesiastical supervision and dispute resolution.

The questioner provided background to the commission regarding an organization of pastors and lay people called the “Association of Confessing Evangelical Lutheran Churches” (ACELC), which has sent out the document “A Fraternal Admonition to Correct Errors of our Beloved Lutheran Church—Missouri Synod, July 15, 2010” and other documents. It was this organization’s published documents that resulted in the concerns of the questioner.

The member asked questions surrounding four primary issues associated with the Constitution, Bylaws, and resolutions of the Synod, as follows:

- Issue 1: Under the Constitution, Bylaws, and resolutions of the Synod, must individual members or congregational members of the Synod follow the dissent procedures of the Synod if they disagree with or dissent from any of the Synod’s stated doctrinal resolutions or statements?
- Issue 2: Under the Constitution, Bylaws, and resolutions of the Synod, must individual members or congregational members of the Synod follow the dispute resolution processes of the Synod if they have a dispute with another member of the Synod involving theological, doctrinal, or ecclesiastical issues?
- Issue 3: Under the Constitution, Bylaws, and resolutions of the Synod, what authority does an individual or congregational member of the Synod have in regard to ecclesiastical supervision in the LCMS?
- Issue 4: Under the Constitution, Bylaws, and resolutions of the Synod, what consequences are there if an individual member or a congregational member of the Synod disagrees with or dissents from any of the Synod’s doctrinal resolutions or statements and does not follow the dissent processes of the Synod; and what consequences are there if an individual member or a congregational member of the Synod publicizes that another member of the Synod is not upholding the Synod’s Constitution, Bylaws, and resolutions, doing so in a manner that does not honor the dispute resolution process of the Synod; and what consequences are there if an individual or a congregational member of the Synod attempt themselves or become a part of an organization which attempts to usurp the ecclesiastical supervision given to those persons authorized by the Synod to exercise ecclesiastical supervision?

The commission responded to each of these issues as follows.

Issue 1: Under the Constitution, Bylaws, and resolutions of the Synod, must individual members or congregational members of the Synod follow the dissent procedures of the Synod if they disagree with or dissent from any of the Synod’s stated doctrinal resolutions or statements?

Opinion: A member of the Synod, individual or congregation, and any organization of members of the Synod must follow the dissent procedures of the Synod. All members of the Synod commit to act in accordance with the Constitution and Bylaws of the Synod. Article XIV of the Constitution states:

The Synod in convention may adopt bylaws that are consistent with and do not contradict the Constitution of the Synod, which controls and supersedes such bylaws and all other rules and regulations of the Synod. Bylaws, which may be adopted, revised, or eliminated by a simple majority vote of a national convention, are binding regulations for the Synod and its conduct and governance.

Bylaw 1.3.4.1 states:

Members agree to uphold the confessional position of the Synod (Art. II) and to assist in carrying out the objectives of the Synod (Art. III), which are the objectives of the members themselves. Thus, while congregations of the Synod are self-governing (Art. VII), they, and also individual members, commit themselves as members of the Synod to act in accordance with the Constitution and Bylaws of the Synod under which they have agreed to live and work together and which the congregations alone have the authority to adopt or amend through conventions.

Bylaw section 1.8 indicates how brotherly dissent from doctrinal resolutions and statements by members of the Synod must be carried out. Bylaw 1.8.1 states:

While retaining the right of brotherly dissent, members of the Synod are expected as part of the life together within the fellowship of the Synod to honor and uphold the resolutions of the Synod.

Bylaw 1.8.2 states:

Dissent from doctrinal resolutions and statements is to be expressed first within the fellowship of peers and then brought to the attention of the Commission on Theology and Church Relations before finding expression as an overture to the convention calling for revision or rescission. While the conscience of the dissenter shall be respected, the consciences of others, as well as the collective will of the Synod, shall also be respected.

The 1973 report of the Commission on Theology and Church Relations, “Guiding Principles for the Use of ‘A Statement of Scriptural and Confessional Principles, with Special Reference to the Expression of Dissent,’” was developed to support this procedure.ⁱ

The Commission on Constitutional Matters has opined on “Proper Dissent and Dispute by Members of the Synod” (05-2444) and refers the questioner and the Synod to that opinion.ⁱⁱ The Synod has given the responsibility for determining under which bylaw to proceed to be that of the ecclesiastical supervision of the district president and Synod President. The responsibility to determine whether or not members of the Synod or any organization of members have indeed done what the questioner indicates in his question is that of ecclesiastical supervision.

The questioner and the Synod are referred also to Question 3 of Opinion 05-2443:

Question 3: Is it in harmony with the Constitution and above bylaws of the Synod for any member of the Synod or any groups within the Synod to teach publicly, publicly advocate, or promote any position contrary to the position of the Synod?

Opinion: Again, the above-referenced 1969 opinion (dated October 16, 1969, entitled “Dissenting Groups and Activities Within the Synod”) speaks to this issue:

In this opinion the Commission is not attempting to limit the right of individuals to speak their own minds. Before and after the passage or rejection of synodical resolutions individuals must be free to express their concerns, especially to their peers. Frank and open discussion, carried on in a spirit of Christian love and forbearance, must be part of our life together in the Synod. It can be proper and salutary. However, in this opinion the Commission is addressing itself to the organizing of groups, to the calling of meetings, secret or open, to attempted manipulation of existing groups, to circularizing activities, and to a wide scale of joint actions, all of which by their very nature tend to polarize or fragment the constituency of the Synod, and thus have the effect of disrupting the synodical unity.

All members of the Synod and its congregations are to beware of the danger of groups and activities which divide and splinter the Synod. Synodical and district officers and board and commission members have a special responsibility to identify divisive and subversive movements and to avoid them. By their example and advice they are to conserve and promote the unity of the true faith and the oneness of the Synod.

Accordingly, it is not in harmony with the Constitution and Bylaws of the Synod for any member of the Synod or any groups within the Synod to teach publicly, publicly advocate, or promote any position contrary to the position of the Synod. Dissent activities are to be governed by section 1.8 of the Bylaws of the Synod to which members have “commit[ted] themselves to act in accordance with” and “under which they have agreed to live and work together” (Bylaw 1.3.4).

Issue 2: Under the Constitution, Bylaws, and resolutions of the Synod, must individual members or congregational members of the Synod follow the dispute resolution processes of the Synod if they have a dispute with another member of the Synod involving theological, doctrinal, or ecclesiastical issues?

Opinion: Yes. Any Synod member, whether acting individually or as a member of an organization of members, must follow the dispute resolution processes of the Synod, just as he or she must follow the dissent processes of the Synod (Issue 1 above).

The dispute resolution processes of the Synod are under the following: Bylaw section 1.10 (procedures for disputes between members of the Synod), Bylaw sections 2.14–2.17 (procedures which could lead to expulsion from membership), Bylaw 3.10.4.7.9 (procedures for addressing complaints regarding faculty members of seminaries), and Bylaw 3.10.5.6.9 (procedures for addressing complaints regarding faculty members of colleges and universities).

All members of the Synod commit to act in accordance with the Constitution and Bylaws of the Synod (see Issue 1 above and its citation of Constitution Article XIV and Bylaw 1.3.4.1). That of course includes the bylaws governing the various dispute resolution processes of the Synod.

Issue 3: Under the Constitution, Bylaws, and resolutions of the Synod, what authority does an individual or congregational member of the Synod have in regard to ecclesiastical supervision in the LCMS?

Opinion: No individual or congregational member or organization of members of the Synod has any authority to provide ecclesiastical supervision in the Synod. The Synod has “identified those responsible for ecclesiastical supervision of its members, including such matters as advice and counsel, as well as suspension of membership and forfeiture of it for failure to continue to meet membership requirements” (Bylaw 2.1.2).

Bylaw 1.2.1 (g) defines ecclesiastical supervision in the Synod:

(g) *Ecclesiastical supervision:* The responsibility, primarily of the President of the Synod and district presidents, 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. Thus, ecclesiastical supervision is also the presenting, interpreting, and applying of the collective will of the Synod’s congregations. Ecclesiastical supervision does not include the responsibility to observe, monitor, control, or direct the day-to-day activities of individual members of the Synod, whether in the conduct of their work or in their private lives (cf. Bylaw 2.14.1 [a]). Further, those constitutional articles and bylaws pertaining to ecclesiastical supervision shall determine the full definition of ecclesiastical supervision.

The permissibility under the Constitution and Bylaws of the Synod of establishing organizations whose purpose might usurp responsibilities which the Synod has reserved to itself has been previously raised on numerous occasions. A similar question was raised and answered in Opinion 05-2443, “Activity of Small Groups Within the Synod”:

On October 16, 1969, the Commission on Constitutional Matters issued a landmark opinion on the subject of “Dissenting Groups and Activities Within the Synod.” A portion of that opinion speaks directly to the question above:

The very nature and purpose of a synodical fellowship need to be restated once again. A synod is a "walking together." The choice of the word "synod," derived from the Greek, is significant because it emphasizes the idea of unity. For good reason our church body has chosen for itself the name: "The Lutheran Church—Missouri Synod." We are congregations, pastors, and teachers who have decided to join hands and to walk together.

The Preamble of the Constitution has the sub-heading: "Reason for the Forming of a Synodical Union." Union was the major concern in effecting the organization of the Synod. The concepts of fellowship, togetherness, brotherhood, and "walking together" express the basic purpose of the Synod's existence.

The reasons given in the Preamble for forming the union are "1. The example of the apostolic church, Acts:15:1–31," and "2. Our Lord's will that the diversities of gifts should be for the common profit, 1 Cor. 12:4–31." Once again the emphasis falls upon the idea of unity.

In Article III, Objects, the fundamental thrust of the Synod is not only clearly stated but is given preeminence. The first purpose of the Synod is listed as: "The conservation and promotion of the unity of the true faith (Eph. 4:3–6; 1 Cor. 1:10) and a united defense against schism and sectarianism (Rom.

16:17)." The Scripture references include the admonitions to preserve the unity of the Spirit in the bond of peace, to avoid all divisions, and to beware of division makers.

Objects 2, 3, 4, 5, and 6 continue with this theme. All of these imply the quest for oneness, its preservation and extension.

Objects 7 and 8 need special emphasis in view of the questions which have been raised regarding the formation and continuation of groups which attempt to carry out the purposes which the Synod reserves for itself:

7. The supervision of the ministers and teachers of Synod with regard to the performance of their official duties;
8. The protection of pastors, teachers, and congregations in the performance of their duties and the maintenance of their rights.

The Synod was organized and is maintained to carry out these objects. The congregations, pastors, and teachers who by their own free decision have joined the Synod have done so with the determination that the important functions described in Article III (and we would stress especially Objects 1, 7, and 8 in view of the questions which have been raised) should be carried out by the Synod. Any assumption of these responsibilities by secret or open, voluntary or auxiliary, new or established groups is disruptive of the synodical purpose and cannot be tolerated.

Christians as well as non-Christians expect differences of opinion and judgment to arise when people walk together. The Synod has provided for forums in which such differences can be discussed and evaluated beyond the confines of the local congregation. The pastors and teachers conferences; the circuit meetings; the synodical and District board, commission, and committee meetings; the doctrinal supervision and appeals procedures; and above all the conventions of the Districts and of the Synod provide the proper channels through which the issues of opinion and judgment are to be discussed and decided. In the absence of a clear word of God issues must be decided by the majority principle, applied in Christian love and with Christian restraint (Article VIII C). When the majority will has been determined, it must be respected. Otherwise life together (synod) becomes all but impossible. Discussion may indeed continue; but it needs to be carried on with full respect for the majority will and within the forums established by the Synod for the preservation of the synodical unity. If additional channels for discussion are needed the Synod can provide for the same in its Bylaws through appropriate convention action.

It is incongruous for separate groups to organize for the purpose of policing the members of the Synod; it is equally incongruous for groups to organize for the purpose of either shaping or nullifying a decision in an area of concern in which the Synod has reserved to itself the right of making decisions. Where the Synod has not reserved this right to itself (e.g., the decision to establish orphanages, high schools, old folks homes, hospitals), congregations and individuals have the right to effect an organization so long as its objectives and operations do not interfere with the purposes and functions of the Synod. However, where the Synod has reserved this right to itself (e.g., the administration of its colleges and seminaries; the supervision of doctrine; the declaration of fellowship with other church bodies), congregations and individuals have no right under the Constitution of the Synod without the express approval of the Synod to effect organizations to achieve purposes for which the Synod itself exists or to carry on activities which rightfully belong to the duly elected or appointed officials of the Synod. Under these circumstances such organizations become divisive and schismatic and therefore subversive of the very purposes of the Synod.

Accordingly, and in response to the question submitted to the Commission, it is not in harmony with the Constitution and Bylaws of the Synod for a member of the Synod or an unofficial group within

the Synod to assume such responsibilities as the Synod has reserved for itself in its stated objectives, “which are the objectives of the members themselves” (Bylaw 1.3.4).

The Synod, an “association of self-governing Lutheran congregations” (Bylaw 1.2.1 [v]), established its church polity under the Scripture and Lutheran Confessions in order to subscribe (accept without reservation) collectively to and apply the Scripture and Lutheran Confessions together in unity. Although *de jure humano*, the Constitution, Bylaws, and other rules and regulations of the Synod are not to be regarded as opposed to Holy Scripture and the Lutheran Confessions. The Constitution and Bylaws of the Synod are not an antithesis to Holy Scripture and the Lutheran Confessions. These are agreements under Holy Scripture by Christian brothers and sisters to carry out the Synod’s very scriptural purposes. Even though polity falls under adiaphora, the Synod’s polity has a definite biblical character to it. The Synod’s policy is based on various theological principles.ⁱⁱⁱ One such principle is ecclesiastical supervision. The Synod’s polity is also a covenant of love based on another principle, the law of Christian love.

As a covenant of love under the Holy Scriptures and the Lutheran Confessions, and with a subscription without reservation to the common confessional position (Constitution, Articles II and VI), the association of self-governing congregations (Bylaw 1.2.1 [v]), which expresses its interpretation and understanding of Holy Scripture and the Lutheran Confessions through its collective will in the adopted resolutions in convention assembled (Bylaws 1.8.1 and 1.8.2), which establishes and evaluates all of the Synod positions, policies, programs, directions, and priorities (Bylaw 3.1.1), and which determines whether or not any action or decision of officers, boards, and commissions are in conformity with the Synod’s Constitution, Bylaws, and resolutions (cf. Bylaw 1.4.1), established ecclesiastical supervision as an integral part of the “business of the Synod,”^{iv} “the execution of synodical business”^v and for the benefit of its members “to promote and maintain unity of doctrine and practice” (Articles III, XI, and XII; Bylaws 3.3, 4.4.1–4.4.6, emphases added), and which supervision inherently is to be exercised on the basis of that same collective will and understanding.

Ecclesiastical supervision and to promote and maintain unity of doctrine and practice are therefore responsibilities that the Synod has reserved for itself. Attempts by a member or a group of members to exercise ecclesiastical supervision when it has not been given to them by the Synod through the Synod’s agreed-upon procedures and/or to promote and maintain unity of doctrine and practice in a manner not within the covenants of the procedures established in the Synod’s Constitution and Bylaws are violations of members’ covenants together.

See also the reference to CCM Opinion 05-2443 in the response to Issue 1 above.

Issue 4: Under the Constitution, Bylaws, and resolutions of the Synod, what consequences are there if an individual member or a congregational member of the Synod disagrees with or dissents from any of the Synod’s doctrinal resolutions or statements and does not follow the dissent processes of the Synod; and what consequences are there if an individual member or a congregational member of the Synod publicizes that another member of the Synod is not upholding the Synod’s Constitution, Bylaws, and resolutions, doing so in a manner that does not honor the dispute resolution process of the Synod; and what consequences are there if an individual or a congregational member of the Synod attempt themselves or become a part of an organization which attempts to usurp the ecclesiastical supervision given to those persons authorized by the Synod to exercise ecclesiastical supervision?

Opinion: The Synod has reserved for its members processes for dissent (Bylaw section 1.8), resolving disputes (Bylaw sections 1.10, 2.14–2.17; Bylaws 3.10.4.7.9 and 3.10.5.6.9), and ecclesiastical

supervision (Bylaws 1.2.1 [g]; 2.1.2).^{vi} For any member or organization of members to advocate disagreement with and unwillingness to use the Synod's Bylaws without following the approved dissent procedures or dispute resolution procedures invites the member's/members' ecclesiastical supervisor(s) to use those same Synod-established procedures to discipline them.

The permissibility under the Constitution and Bylaws of the Synod for a member or any association or organization of members to advocate not following a bylaw of the Synod has been previously raised. During a time when the Synod was dealing with a controversy within the Synod with regard to the certifying, placing, calling, ordaining, and installing graduates of Seminex, the Commission on Constitutional Matters issued its October 11, 1974 landmark opinion, "An Analysis of Assertions in Present Controversy."^{vii} A portion of that opinion, in answer to a common objection raised at that time, namely, "Christians are ruled not by laws but by the Gospel," speaks to this issue:

There are several ways in which this theme has been stated in denigrating the Constitution and Bylaws of the Synod and thus finally making them of no effect...

So much can be said for the law of God. It has a place in the life of the Christian. But is there room for human, man-made laws in the life of Christians together? We submit that there is. Whenever two individuals, even Christian people, enter into a relationship with each other—whether it be in marriage or in a business partnership or in whatever relationship it may be—certain agreements, rules, contracts, covenants—"laws," if you will—become necessary. The same is true when Christians join together as a worshiping and serving community of God in the world. It is customary for Lutheran congregations to use not only the Bible and the Lutheran Confessions but also unwritten traditions and especially written Constitutions and Bylaws as instruments under which they agree to govern themselves. This is true also of larger federations of Christians, such as agencies, councils, and synods.

In our Synod we make certain commitments to one another. We agree what we shall do and how we shall do it and why we shall do it. These agreements are spelled out in a Constitution, in Bylaws, and in resolutions. We promise to walk together according to the agreements that we have made. We pledge one another our word.

Since Christians recognize the law of Christian love as the highest law of human conduct, it governs also our life together within the Synod. In Christ we love those with whom we have joined hands and to whom we have given our pledge, and so we keep our word to them. We carry out our solemn covenants and agreements. To set aside any article of the Constitution, a bylaw, or even a resolution of the Synod, simply because in our personal estimation it is not acceptable, means to exalt our own will above the will of the Synod stated especially in its Constitution and Bylaws. That would be self-seeking, self-righteousness, judgmental, and loveless. This is not the way of Christians with one another.

To be sure, there are genuine instances when conscience is involved. It may be a conscience instructed by the Word of God or it may be an erring one. Lutherans are sensitive to the plea of conscience. Lutherans sometimes forget, however, that Martin Luther placed his great emphasis on the conscience which is informed and instructed by the Word of God. We need to guard against using conscience as a misnomer for person desire and opinion. The Synod has always made provision to respect the genuine demands of conscience. However, the individual who is troubled in his conscience must also respect the conscience of those who do not agree with him and be prepared to support his position from the Word of God. As our teachers have so long pointed out, one must distinguish carefully between the giving of offense and the taking of offense. If the Synod were to halt its operations whenever someone takes offense at its action, the Synod would be paralyzed. To be sure, the Synod must be on its guard never to give offense. But the individual, over against the Synod, must also exercise great care that he is truly governed by love and not by self-interest or self-will.

To bring all this down to the issue with which we are dealing: It is a breach of Christian love to place self-will above the mutually agreed upon will of the Synod as it has stated it in its Constitution and Bylaws.

That 1974 opinion of the commission, while in regard to certifying, placing, calling, ordaining, and installing graduates of Seminex, applies to any other area of our life together which the Synod has reserved to itself alone.

On August 29–30, 2009, in answer to a question in reference to the commission’s earlier Opinion 08-2524 regarding 2004 convention Resolution 3-05A, “Binding Force Resolutions” (whether other Synod resolutions were equally binding with similar attending disciplinary action), the commission opined:

Opinion 08-2524 is not only applicable to the matter of 2004 convention Resolution 3-05A but to all resolutions, as already stated in the bylaw quotations included in the opinion:

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 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). 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.”

Opinion 08-2524 also referenced 1971 Res. 2-21 which confirmed the binding nature of such resolutions. In addition to the pertinent quotes from the 1971 resolution in the above opinion, the convention resolution also stated, “Meanwhile every member of the Synod is held to abide by, act, and teach in accordance with the Synod’s resolutions....the Synod has repeatedly declared that all members should ‘honor and uphold’ its resolutions (cf.: 1962, 3-17; 1965, 2-08; 1967, 2-04; 1969, 2-27)....To ‘honor and uphold’ means not merely to examine and study them, but to support, act, and teach in accordance with them until they have been shown to be contrary to God’s Word” (1971 *Convention Proceedings*, p. 119).

In summary, all Synod members, including organizations of Synod members, must follow the Synod’s bylaws regarding dissent, dispute resolution, and ecclesiastical supervision. To do otherwise invites the member’s/members’ ecclesiastical supervisor(s) to use those same Synod-established procedures to discipline them.

53. Election of the President of the Synod (11-2592)

During the commission’s May 7–8, 2011 meeting, the Secretary of the Synod submitted in writing a series of questions regarding the voting process for the election of the President of the Synod as a result of 2010 convention Res. 8-17. The commission completed its discussion of the questions during its September 3–4 meeting and responded as follows.

Question 1: In the case of delegates to district conventions that have been duly elected and pre-registered by their congregations or parishes, can such delegates be included on the voting list for President of the Synod if prevented from attending their district conventions because of illness or other emergency?

Opinion: The answer to this question is “no.” Bylaw 3.12.2.3 and the resolution adopted by the 2010 convention (Res. 8-17) clearly require delegate attendance at the previous district convention in order to participate in the election of the President the following year. To prevent the situation described in the question, congregations are advised to elect alternate delegates to the district convention.

Question 2: If a congregation experiences a pastoral vacancy at the time of its district convention, the congregation sends its lay delegate to the convention, and the vacancy is filled after the district convention but prior to the election of the President of the Synod, can the congregation be given opportunity to have also a pastoral vote in the presidential election?

Opinion: The answer to this question is “no.” The bylaw requirement that the individuals, pastor and lay, who cast ballots in the election of the President of the Synod must have been in attendance at the previous district convention allows no exceptions. Congregations whose pastoral offices are vacant at the time of their district conventions will not have opportunity to participate in the election of the President of the Synod.

Question 3: If a congregation becomes a member of the Synod after its district convention but prior to the presidential election, thereby not having had opportunity to send delegates to the district convention, can it be allowed to participate in the presidential election, which is to provide opportunity to “every congregation” (Res. 8-17)?

Opinion: The answer to this question is “no” also. Because the congregation was not able to send delegates to the district convention, it therefore is not able to satisfy the attendance requirement of Bylaw 3.12.2.3.

54. University Lutheran Student Center—Minneapolis (11-2597)

In a letter dated July 13, 2011, the president of University Lutheran Chapel of Minneapolis, Minnesota, submitted a set of questions along with background information for consideration by the commission. The questions, pertaining to a 1963 resolution adopted by the former Minnesota District of the Synod which created the Minnesota North and Minnesota South Districts, were submitted as follows:

1. Does an adopted resolution by a district in convention pertaining to its division into two or more districts that includes an agreement as to how a piece of property is to be used for the benefit of the newly formed districts constitute an agreement between the newly formed districts?
2. If the aforementioned constitutes an agreement between districts, is that agreement binding?
3. Is it legitimate for a district to unilaterally change, either explicitly or effectively, an agreement it has with one or more other districts if the agreement does not explicitly grant the right to do so?
4. May a district that holds title to a [real property that by agreement between it and one or more other districts is to be used to serve each of the districts in question dispose of the property without first obtaining either (a) the permission/approval of the other district(s) to the sale or (b) the approval of the other district(s) to a change in the agreement?
5. If an agreement exists specifically and only due to the ownership of a specific piece of [real] property, would selling the property effectively change/terminate the agreement?
6. If an agreement exists between two or more districts by district convention action, may that agreement be changed, either explicitly or effectively, without first obtaining the approval of a convention of each of the districts in question?

Opinion: The questions presented to the Commission on Constitutional Matters assume the existence of an agreement in the resolution in question. There is no such agreement within that resolution. The commission finds nothing further in the resolution that it can interpret in response to the questions asked.

55. Review of LCMS Foundation Governing Documents (11-2599; 10-2586)

With an e-mailed July 18, 2011 letter, the LCMS Foundation resubmitted its governing documents in response to the commission's earlier review and recommendations for change (10-2586). Upon its review, the commission found the modifications made to the documents to be consistent with its prior review and comments, with the following exceptions warranting further attention by the LCMS Foundation:

- In the Articles of Incorporation, part EIGHTH, in the third sentence which begins "The proposed amendment(s) shall be adopted..." the portion of the sentence that speaks of the role of the LCMS delegates when such amendments are made should instead read: "...except that a two-thirds (2/3) majority vote of the total number of all delegates representing The Lutheran Church—Missouri Synod, whether present or not at such meeting, and..." [emphasis added].
- The same change must be made in Article VI of the Bylaws where, again, the same portion of the same third sentence should again read: "...except that a two-thirds (2/3) majority vote of the total number of all delegates of The Lutheran Church—Missouri Synod, whether present or not at such meeting, and..." [emphasis added].
- At the end of the same Article VI of the Bylaws, the final newly added sentence should include the words "prior to final approval by the members," so as to read in its entirety: "In accordance with the Synod's Bylaws, such amendments shall be reviewed and approved by the Synod's Board of Directors and Commission on Constitutional Matters prior to final approval by the Members" [emphasis added].

The commission noted its interest in receipt of the governing documents with these final changes in place to provide opportunity for a final review prior to submission to and final approval by the LCMS Foundation Members.

56. Review of LCEF—Missouri Synod Proposed Amendments to Articles and Bylaws (11-2603)

Upon review of changes submitted to the commission by the LCEF in response to an earlier review, the commission authorized one of its attorney members to write a response to LCEF's response to the second-last of the commission's recommendations for additional change in its earlier review: "Article II, Section 3 will require change to reflect the provisions for removal of board members adopted by the Synod's 2010 convention (new Synod Bylaw 1.5.7)." The commission also directed that copies of the letter be provided to LCMS legal counsel and the Synod's Board of Directors and Chief Administrative Officer. The content of the letter follows:

During its meeting over the weekend of September 3-4 in St. Louis, the Commission on Constitutional Matters considered the responses of LCEF to the commission's earlier suggestions for change to the proposed amendments to the Articles and Bylaws of LCEF. The commission has approved all of the changes made by LCEF but would like to have further conversation regarding LCEF's failure to incorporate those particular changes to its Bylaws that are based on Synod Bylaws 1.5.7–1.5.7.2 regarding the removal of individual members from board membership.

The commission would appreciate a more detailed explanation of the concerns and reluctance to incorporate those changes expressed in your letter of July 27, 2011. It understands that those concerns may be either philosophical or based on specific regulatory requirements imposed by state or federal regulation. Before determining how it will respond to your letter of July 27, the commission will appreciate a more detailed explanation of your perspective on this issue.

With respect to possible solutions, the commission would suggest at least indicating that, to the extent not otherwise prohibited by state or federal regulations, the processes of Bylaws 1.5.7ff would apply to removal of a member of your board, which would at least seem to honor Bylaw 1.5.7.2.

The commission would also appreciate further explanation regarding your expressed concern about ascending liability. After it receives your further response, the commission will seek further input from the Synod's legal counsel before determining its final course of action regarding your proposed changes.

You are reminded that, pursuant to the provisions of Bylaw 3.9.2.2.3 (a), amendments to Articles of Incorporation and Bylaws of an agency of the Synod, which includes LCEF, must receive approval from the Commission on Constitutional matters in advance of their becoming effective.

Because of the issues involved, our Synod's legal counsel, the chairman of its Board of Directors and its Chief Administrative Officer are receiving copies of this letter.

Thank you for your attention to the commission's concerns. God bless you in your continued service to the church.

57. Review of Southern Illinois District Articles of Incorporation and Bylaws (11-2604)

With an e-mailed letter dated July 27, 2011, the secretary of the Southern Illinois District submitted the Articles of Incorporation and Bylaws of his district incorporating the changes to the documents approved by the district's board of directors. Upon its review, the commission offered the following recommendations for additional change before submission to the district convention.

Regarding the district's Articles of Incorporation:

- Article III: The commission recommends redrafting the wording of this "Membership" paragraph to mirror Article III of the Synod's Articles of Incorporation.
- Article IX: Wording will need to be added requiring review of proposed changes by the Synod's Commission on Constitutional Matters prior to submission to the district convention. Wording should also be added to make clear that any floor amendments adopted at the convention are not effective until approved by the Synod's commission following the convention.
- Regarding the Purpose Statement immediately following the Articles of Incorporation: It should be made more clear that this section is not part of the Articles of Incorporation (if such is the case). This section would better serve as an introductory section to the Bylaws of the district.
- Also regarding the Purpose Statement: The delineation of the objectives of the Synod includes language (statements 4 & 5) not found in the Synod's objectives (Constitution, Art. III), while not mentioning other of the Synod's objectives. While certain objectives may seem to "especially apply," all are the objectives of the district.

Regarding the Bylaws of the district:

- Bylaw 1.09, paragraph c, subparagraph 2: In addition to mention of the Holy Scriptures and Lutheran Confessions, mention should also be made of the requirement of Bylaws 2.2.1 (b) and

2.4.1 (b) that congregations' constitutions and bylaws are to be in harmony with "the teachings and practices of the Synod."

- Bylaw 1.3.1, paragraph c, subparagraph 2: It will be more accurate to replace the words "hold a forum" with the word "meet" (as in Synod Bylaws 3.1.2.1 [a], *et al.*).
- Bylaw 1.33, paragraph a: This paragraph should be clarified to state that a circuit forum consists of "one pastor of each congregation and one lay member of each congregation."
- Bylaw 1.33, paragraph b: Synod Bylaws 5.3.2 (c) and 5.4.2 (b) require the circuit counselor to serve as the chairman of the circuit forum, to be reflected also under district Bylaw 1.37, paragraph a.
- Bylaw 1.37, paragraph f: Mention should also be made of two other purposes for the circuit forum, *i.e.*, to elect circuit counselors (Synod Bylaw 5.2.2) and to suggest mission and ministry emphases for the next triennium to the district convention (Bylaws 5.3.1 [b] [5] and 4.2.1 [b]).
- Bylaw 2.19, paragraph a: The standard understanding of the term *ex officio* is that such person is a member by reason of office and a voting member unless otherwise indicated. If this is not the intention of the district regarding the duties of the district president, additional clarification will be needed.
- Bylaw 2.19 in general: The terminology "pastors and teachers" occurs several times throughout this bylaw, which would limit the president's supervision to parish pastors and rostered teachers. This terminology needs to be changed to "ordained and commissioned ministers."
- Bylaw 2.75, paragraph b: The reference to "pastor" may need to be clarified ("ordained minister?") to reflect the intention of the bylaw, since "pastor" is used in the bylaws to refer to a pastor actively serving a congregation or parish.
- Bylaw 2.75, paragraph c: The candidates for the office of circuit counselor in each circuit are selected by circuit forums and reported to the secretary of the district in preparation for ratification by the district convention (Synod Bylaw 5.2.2 [e]). The same should be reflected in paragraph d.
- Bylaw 2.93, paragraph d: An additional sentence such as the following should be added regarding changes made to the bylaws as a result of amendments made from the floor of the convention: "Floor amendments adopted during a district convention are not effective until approved by the Commission on Constitutional Matters following the convention." The same statement should be added in Bylaw 11.01, perhaps as a new paragraph g.
- Bylaw 8.01: Clarification may be in order, depending upon the district's intent. As it stands, membership on this committee is limited to one parish pastor and one teacher. If the district's intention is broader, the wording should be changed to "one ordained minister, one commissioned minister, and..."
- Bylaws 10.01 and 10.03: The Synod's auxiliaries are voluntary arms of the Synod to aid the Synod in extending the mission and ministry of the Synod (Synod Bylaw 6.1.1). Language (as in 10.03 b) that encourages district entities to "invite" the participation of the auxiliaries better serves to reflect this relationship than the "are to be involved" language. These two bylaws might well be revised and renamed to speak of auxiliary organizations on the one hand and other organizations such as Lutheran Youth Fellowship on the other.
- Bylaw 11.01: An additional sentence such as the following should be added regarding changes made to the bylaws as a result of amendments made from the floor of the convention, perhaps as a new paragraph g: "Floor amendments adopted during a district convention are not effective until approved by the Commission on Constitutional Matters following the convention."

The commission continues to provide copies of its "Frequently Noted Concerns and Aberrations Document" with its review of agency documents to assist in preparing documents that mirror grammatical usage in the *Handbook* and other publications of the Synod.

58. Review of Amended and Restated Articles of Incorporation and Bylaws of LCMS National Housing Support Corporation (11-2612)

The LCMS National Housing Support Corporation, which prior to the 2010 LCMS convention related to the Board for Human Care Ministries, has been caused to amend and restate its Articles of Incorporation and Bylaws as a result of 2010 Res. 8-08A, which eliminated all existing program boards. The revised documents, already reviewed by the Board of Directors of the Synod, were submitted to the Commission on Constitutional Matters for approval (Bylaw 3.9.2.2.3). Upon review, the commission brings the following matters to the attention of the LCMS National Housing Support Corporation for consideration and, as necessary, amendment prior to final approval.

In the Articles of Incorporation:

- Under Article VII, Section 1: The commission calls attention to the generous terms for indemnification of persons who are made a party to a legal action, suit, proceeding, or claim—such indemnification to continue until such time as such persons are “finally adjudged to have been knowingly fraudulent or deliberately dishonest or to have constituted willful misconduct.” The commission suggests adding a provision indicating that removal for cause will constitute the cut-off date of indemnification.
- Under Article VIII, the commission questions whether the references in the final paragraph to the “Bylaws of the Corporation” are intended instead to be references to its Articles of Incorporation.
- The commission suggests dating the document to provide a record to indicate when last amended and/or restated.

In the Bylaws:

- Under Article II, paragraph B, the commission calls attention to Synod Bylaw 1.5.3.2 which limits the use of the term “executive committee” for committees for “times of emergency between plenary meetings and to act on delegated assignments.” Bylaw 1.5.3.3 raises its own concerns by allowing the delegation of “a specific assignment” to a committee [other than an executive committee] composed of its own members” since such a committee is to serve “for a limited time.” The commission suggests consideration of Bylaw 1.5.3.4 which allows the appointment of “standing committees” to which the board “may delegate certain responsibilities” while retaining supervision. The commission recommends replacing “executive committee” with “standing committee” in this paragraph, such standing committees already provided for in the LCMS Board of Directors Policy Manual.
- Under Article III, paragraph E, the commission points out that the requirement that “at least one-third, but less than one-half” of the members of the housing corporation board are to be elected by the Board of Directors of the Synod leaves uncertain the number of board members to be elected by the Synod board should the housing corporation board membership grow (potentially up to 15 as stated in Art. III, paragraph B). As the span between one-third and one-half increases, there is no provision for how the number between one-third and one-half will be decided. A single fraction (such as the lowest number equal to at least one-third) or a specific number will provide necessary clarification.
- Under Article III, the final sentence of paragraph F needs to reflect Synod Bylaw 3.2.4.2 (a), which states that persons serving on boards only become eligible for service to the same board after an interval of three or more years.

- Under Article III, paragraph H (which addresses the removal of board members) must incorporate reference to the provisions of Synod Bylaws 1.5.7ff.
- Under Article III, paragraphs E and I, the issue of “concurrence” with the President is raised in connection with the choosing of directors and their replacements. The commission notes the potential for a stalemate in the future, an issue that has been handled in other areas in a somewhat different way, requiring consultation but not concurrence. This, however, remains the choice of the housing corporation.
- Under Article IV, paragraph A, the reference to “one or more Vice Chairs of the Board of Directors” leaves the statement in Article V, paragraph E, unclear when it states that “[t]he Vice Chair of the Board shall preside....” The corporation will need to clarify whether it wants more than one vice chair and, if so, have a mechanism to specify which of the multiple vice chairs would run a meeting in the absence of the Chair.
- Under Article IV, paragraph A (also paragraph H), the commission suggests that, given the description and use of the term “chief executive” in Synod Bylaw 1.2.1 (b), this term be used in place of “Executive Director.” The fifth sentence of the paragraph would better read: “The Board of Directors may hire a Chief Executive and may hire or appoint such other officers....”
- Under Article IV, the commission has noted that there is no mention of the office of Treasurer and a description of the duties of that office.
- Under Article V, paragraph A, equating the Executive Committee to “a standing committee of the Board of Directors” conflicts with the definitions for such committees provided in Synod Bylaws 1.5.3.2–1.5.3.5. The first sentence of the paragraph would better read: “There is hereby established an Executive Committee which shall consist of....”
- Under Article XII, paragraph A, Synod Bylaw 3.9.2.2.3 requires that the Commission on Constitutional Matters approve all amendments to articles of incorporation and bylaws of the agencies of the Synod. Paragraph A would better read “...approved by the Commission on Constitutional Matters and by duly adopted resolution of the Board of Directors of the Member;...”

The commission asked the housing corporation to use a clean copy of its proposed documents to highlight latest changes made in response to the commission’s concerns and recommendations. It was understood that, if necessary, these changes would be shown to the Board of Directors for its approval before their return to the commission for its final approval.

[Note: This portion of the minutes was prepared immediately following the commission meeting and delivered to the housing corporation. All recommendations for change were incorporated into its Articles and Bylaws by the corporation. Upon the determination that the changes were not such as would require submission to the Synod Board of Directors for approval, the housing corporation was informed that it could now proceed with the use of the documents as amended.]

59. Other Matters

With available time for the meeting having nearly elapsed and the most pressing items having been addressed during the meeting, the commission reviewed its agenda and noted the following.

Due to the volume of submissions of bylaw documents by districts as district conventions approach, the commission attended to those from districts whose conventions are early in 2012. District bylaw reviews to be attended to during the commission’s November 11–13 meeting will include those from the following districts:

- Montana (11-2593)
- Michigan (11-2594)
- Southern (11-2595); also Church Extension Fund Articles and Bylaws (11-2605)
- Southeastern (11-2601)
- Kansas (11-2606)
- Missouri (11-2608)
- Rocky Mountain (11-2609)
- Wyoming (11-2611)
- English (11-2613)

A number of agenda items were noted/discussed during the meeting but final consideration and formal decision-making were postponed pending further study and research:

- District Church Extension Funds and Dispute Resolution (11-2591)
- Women's Service in Congregations (11-2596)
- Ecclesiastical Supervision under Constitution Article VI (11-2598; 11-2610; 09-2544)
- Synod Restructuring Implementation (11-2600)
- Concordia University System Bylaw Review (11-2602)
- Question of Church Fellowship Within the Synod (11-2610)

Additional agenda items on the commission's agenda for attention at future meetings:

- Review of *Standard Operating Procedures Manual* for Bylaw section 3.10.5.6.9
- Review of *Standard Operating Procedures Manual* for Bylaw section 3.10.4.7.9
- Revision of *Standard Operating Procedures Manual* for Bylaw section 2.16
- District Missionaries Serving Outside of District (11-2607)
- Remaining issues with LCEF Bylaws (11-2614)

Pending items remaining on the commission's agenda for future response:

- Review of Concordia Historical Institute Policy Manual (08-2523)
- Article VI and Heterodox Congregations (09-2544)

The commission removed several items from its ongoing agenda:

- A May 6, 2011 letter from a pastor of the Synod regarding the commission's "Guidelines for Constitutions and Bylaws of Lutheran Congregations" and other matters will be acknowledged as received, the commission stating that it believes that it has already responded to the concerns expressed.
- Concordia Ann Arbor Bylaws Review (09-2552) will be set aside for the present time as the university undergoes changes that may affect its Articles and Bylaws.
- The review of the Commission on Theology and Church Relations Policy Manual and its latest changes require no further attention (10-2588).

A number of discussion items also will be continued on the commission's agendas for future meetings.

60. Future Meetings

The commission discussed future meeting dates in addition to its November 11–13, 2011 meeting:

- February 10 – 12, 2012
- May 11 – 13, 2012 (tentative)

61. Adjournment

The meeting was closed with words of benediction by the commission's secretary.

Raymond L. Hartwig, Secretary

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- ⁱ 8. The Synod's established procedures for registering dissent with its doctrinal statements include the following:
- a. "That we call upon those who teach publicly in the church (pastors, teachers, and professors) to test their findings and opinions with their peer groups before presenting them to the church at large and to refrain in brotherly love from disseminating doctrinal opinions in such manner and in such situations as will cause confusion and offense in the church" (1965 Resolution 2-08, *Proceedings*, p. 96).
It is expected that pastors and teachers will discuss their objections and concerns with their conferences, that professors will discuss such matters with their teaching and administrative colleagues, and that staff members will discuss their objections with their boards and other staff persons.
 - b. With reference to statements of belief, the Synod has requested "that those who disagree with these formulations in part or in whole be held to present their objections to them formally to those officials whom the Synod has given the immediate supervision of their doctrine (1971 Resolution 5-24, *Proceedings*, p. 165). This means that pastors and teachers are to present their objections to their District president; professors at synodical institutions, to the president and board of control of their institution, as well as to the District president of the geographical District in which the institution is located (cf. Bylaw 1.09 d, adopted in 1973 Resolution 3-02, *Proceedings*, p. 128); and staff members to their boards or commissions and any appropriate supervisory staff members.
 - c. The Synod has further provided that dissent is to be brought to the attention of the Commission on Theology and Church Relations (cf. Bylaw 1.09 e; 1962 Resolution 3-17, *Proceedings*, p. 106; 1965 Resolution 2-08, *Proceedings*, p. 96; Council of Presidents Statement incorporated in 1971 Resolution 2-21, *Proceedings*, p. 119). The Commission on Theology and Church Relations should make every effort to express its opinion on the matter in question in ample time to permit further appeal on the part of the dissenter.
The commission's biennial report to the Synod should also indicate the opinions it has rendered on all such expressions of dissent, and should include any recommendation deemed advisable to clarify or correct possible inadequacies in the document under question.
 - d. Members of the Synod may submit overtures to the synodical convention in an effort to have the Synod change its position or recognized the viability of the dissenting opinion. Bylaw 1.09 e asks that dissent "be expressed first within the fellowship of peers, then brought to the attention of the Commission on Theology and Church Relations before finding expression as an overture to the convention calling for revision or rescision" (adopted in 1973 Resolution 3-02, *Proceedings*, p. 128).
9. From the fact that the Synod has established the aforementioned procedures for expressing and dealing with dissent, it is clear that the Synod does not intend to impede the fraternal discussion of doctrinal issues, and that the Synod recognizes that such discussion may even lead to the revision or correction of its official doctrinal statements. But it is equally clear that the Synod, in the interest of doing things decently and in order, has established the aforementioned procedures for expressing and dealing with dissent so that the church is not disturbed by its members engaging in loveless public criticism or disparagement of its official position.
10. In evaluating and dealing with dissent or disagreement which has been expressed in accordance with the aforementioned procedures, all supervisory officials and boards, as well as the Commission on Theology and Church Relations and any peer groups that may be involved, should always endeavor to distinguish carefully between formal and substantive dissent, and to deal with the latter in terms of the Synod's confessional base, namely Holy Scripture and the Lutheran Confessions (cf. Constitution, Article II)....
12. It must be recognized that the process of expressing and dealing with dissent may reveal that the dissenter actually disagrees with the confessional position of the Synod, and not merely with a formation in a synodical statement of belief. It is

imperative that all members of the Synod be dealt with fraternally, evangelically, pastorally, and in keeping with the provisions of the Constitution and Bylaws of the Synod for the exercise of doctrinal discipline.

13. While it must be recognized that a separation may regretfully be called for when neither the dissenter nor the Synod is persuaded to alter their position, all members of the Synod should earnestly and frequently invoke the blessing of the Holy Spirit “that as a result of joint study of the Word of God, the Holy Spirit will lead the Synod into all truth” and “that the Synod can speak with a voice that is Scriptural, Gospel oriented, truly Lutheran, and that will continue to ‘walk together’ as a true Synod” (1971 Resolution 5-24, *Proceedings*, p. 165).

ii **Proper Dissent and Dispute by Members of the Synod (05-2444)**

In a letter dated September 9, 2005, a series of questions were addressed to the Commission by five district presidents and two vice-presidents of the Synod regarding whether or not the Synod’s Constitution and Bylaws provide actions available to persons who have conflict with various actions taken by the Synod in convention or by duly elected officers of the Synod other than by filing a lawsuit against the Synod and/or by the use of other avenues that are in violation of the Constitution and Bylaws of the Synod.

Question 1: Is it in harmony with the Constitution and Bylaws (1.3, 1.4.1, 1.7, 1.8, 1.10, 3.1.1, and 3.1.6.2) of the Synod for any member of the Synod or any group within the Synod as an avenue or form of dissent or dispute to engage in promoting non-compliance with the resolutions of the Synod and making charges against the Synod, the President, and others of the Synod by use of lawsuits, publications, letters, or meetings and conferences that are not in keeping with the polity of the Synod as set forth in the Constitution and Bylaws?

Opinion: No, every member of the Synod (individual and congregation) joins the Synod voluntarily and in doing so agrees to relate to, live, and serve together with one another (“walk together”) in harmony with the Constitution and Bylaws:

In joining the Synod, congregations and other members obligate themselves to fulfill such requirements and to diligently and earnestly promote the purposes of the Synod by word and deed. Members agree to uphold the confessional position of the Synod (Art. II) and to assist in carrying out the objectives of the Synod (Art. III), which are objectives of the members themselves. Thus, while congregations of the Synod are self-governing (Art. VII), they, and also individual members, commit themselves as members of the Synod to act in accordance with the Constitution and Bylaws of the Synod under which they have agreed to live and work together and which the congregations alone have the authority to adopt or amend through conventions. (Bylaw 1.3.4) (Emphasis added)

DISSENT

I. “While retaining the right of brotherly dissent, members of the Synod are expected as part of the life together within the fellowship of the Synod to honor and uphold the resolutions of the Synod” (Bylaw 1.8.1).

In their agreement to live and work together in harmony (in harmony with the Constitution and Bylaws) the members of the Synod, when and where dissent exists, have agreed to and encourage the right of brotherly dissent. Dissent that is “brotherly” will always regard another as a brother or being in a “brotherhood” (Cf. reference to “brotherhood” in Bylaw 1.10.1.1) and will treat and relate to others in the “fellowship” as brothers.

1971 convention Resolution 2-21 explains: “To honor and uphold (emphasis added) means not merely to examine and study them, but to support, act, and teach in accordance with them until they have been shown to be contrary to God’s Word.” Honoring and upholding the resolutions of the Synod means that the dissenter is not to preach, teach, disseminate, or promote any position contrary to the position of the Synod nor engage in loveless public criticism nor to degrade, belittle, or depreciate the position of the Synod while dissenting.” In regard to violation of then-Bylaw 2.39 c (current Bylaw 1.8.1), a 1993 Commission on Constitutional Matters opinion (Ag. 1956) regarding doctrinal dissent stated: “Doctrinal discipline must be exercised in the case of the pastor who teaches contrary to the position of the Synod....” And in a Commission opinion of October 23, 1996 (Ag. 2048):

...the dissenter is not free to teach the dissenting view...to so teach publicly that the position of the Synod is contrary to the Scriptures would be to elevate a matter of human opinion to the level of Scriptural doctrine—which from the viewpoint of the Synod would be contrary to the Scriptures...If permitted to do so, every member of the Synod would have the right to determine which of the positions of the Synod in similar matters it wished to accept and which to reject.

II. “Dissent from doctrinal resolutions and statements is to be expressed first within the fellowship of peers and then brought to the attention of the Commission on Theology and Church Relations before finding expression as an overture to the convention calling for revision or rescision. While the conscience of the dissenter shall be respected, the consciences of others, as well as the collective will of the Synod, shall also be respected” (Bylaw 1.8.2).

The “dissent from doctrinal resolutions and statements” is first of all expressed within the “fellowship of peers.” A 1969 commission opinion on “dissenting groups” is helpful in understanding a partial background of the current bylaw:

The Synod has provided for forums in which such differences can be discussed and evaluated beyond the confines of the local congregation. The pastors and teachers conferences; the circuit meetings; the synodical and district board, commission, and committee meetings; the doctrinal supervision and appeals procedures; and above all the conventions of the districts and of the Synod provide the proper channels through which the issues of opinion and judgment are to be discussed and decided...If additional channels for discussion are needed the Synod can provide for the same in its Bylaws through appropriate convention action.

In a report of the Commission on Theology and Church Relations, November, 1973, “Guiding Principles for the Use of ‘A Statement of Scriptural and Confessional Principles’ with Special Reference to the Expression of Dissent,” the “fellowship of peers” is explained this way:

The Synod’s established procedures for registering dissent with its doctrinal statements include the following: a. “That we call upon those who teach publicly in the church (pastors, teachers, and professors) to test their findings and opinions with their peer groups before presenting them to the church at large and to refrain in brotherly love from disseminating doctrinal positions in such manner and in such situations as will cause confusion and offense in the church” (1965 Resolution 2-08, *Proceedings*, p. 96). It is expected that pastors and teachers will discuss their objections and concerns in their conferences, that professors will discuss such matters with their teaching and administrative colleagues, and that staff members will discuss their objections with their boards and other staff persons.

Then the dissent is brought to the attention of “the Commission on Theology and Church Relations” before finding expression as “an overture to the convention.” This, together with the expression of dissent within the fellowship of peers, gives the dissenter the privilege and responsibility to advise and persuade or convince the “fellowship of the Synod” on the basis of the power of the Word of God and in an orderly harmonious way.

Brotherly and formal dissent should not be confused with the wholesome need to discuss differing viewpoints, to have frank and open discussions, and to always examine and review all positions and resolutions of the Synod. A 1969 Commission opinion (“Dissenting Groups”) stated:

In this opinion the Commission is not attempting to limit the right of individuals to speak their own minds. Before and after the passage or rejection of synodical resolutions individuals must be free to express their concerns, especially for their peers. Frank and open discussion, carried on in a spirit of Christian love and forbearance, must be part of our life together in the Synod. It can be proper and salutary...It is within the context of the Synod—the forums, channels, and procedures which the Synod itself establishes—that differing viewpoints need to be discussed and an issue finally decided. Continuing dialogue beyond the point of decision must also be carried on within the same synodically agreed upon framework and in deference to the majority will. (Emphasis added)

More recently, the Commission’s Opinion 03-2328 also addressed the subject:

As a part of life together in the Synod, members have the responsibility to continually examine and reexamine their confession (symbols, doctrinal statements, and resolutions) to determine if they are faithful to the Holy Scriptures. Members have a never-ending task of testing everything that the Synod believes, teaches, and practices to see if they are in accordance with the Word of God. If there are issues that need to be readdressed or issues that are considered by the members of the Synod that have not yet been addressed, any action is to be governed by the procedures set forth in the Bylaws, particularly Bylaws 1.09 and 2.39 [now Bylaws 1.6, 1.7, and 1.8].

“The collective will of the Synod” (Bylaw 1.8.2) is established and expressed through the Synod in convention and not by individuals or groups within or outside of the Synod, nor through the courts or unofficial publications, letters, meetings, and conferences:

The delegate convention of the Synod is the legislative assembly that ultimately legislates policy, program, and financial direction to carry on the Synod's work on behalf of and in support of the member congregations. (Bylaw 1.4.1)

[The convention] is the principal legislative assembly, which amends the Constitution and Bylaws, considers and takes action on reports and overtures, and handles appropriate appeals. It establishes general positions and policies of the Synod, provides overall program direction and priorities, and evaluates all such positions, programs, policies, directions, and priorities in order to provide responsible service for and on behalf of its members. (Bylaw 3.1.1)

Bylaw 3.1.6.2 sets forth how overtures may be submitted to the convention so that the collective will of the Synod can be established and expressed.

DISPUTE

In their agreement to live and work together in harmony (in harmony with the Constitution and Bylaws) the members of the Synod, when and where disputes exist, are required, subject to limited exceptions, to use the avenue provided by the Synod to settle disputes, as set forth in Bylaw section 1.10, "Dispute Resolution of the Synod," which in part states:

The Holy Scriptures (1 Cor. 6:1-7) urge Christians to settle their differences by laying them before the "members of the brotherhood." Therefore, the Synod in the spirit of 1 Corinthians 6 calls upon all parties to a disagreement, accusation, controversy, or disciplinary action to rely exclusively and fully on the Synod's system of reconciliation and conflict resolution. The use of the Synod's conflict resolution procedures shall be the exclusive and final remedy for those who are in dispute. Fitness for ministry and other theological matters must be determined within the church. Parties are urged, in matters of a doctrinal nature, to follow the procedures as outlined in Bylaw section 1.8. (Bylaw 1.10.1.1) (Emphasis added)

The procedure set forth in the Synod's dispute resolution process can involve or include as parties any member of the Synod, the Synod itself, a district or an organization owned and controlled by the Synod, persons involved in excommunication or lay members of congregations of the Synod holding positions with the Synod itself or with districts or other organizations owned and controlled by the Synod (Bylaw 1.10.2). Procedures for expulsion of membership under Article XIII of the Constitution are set forth in Bylaws 2.14–2.17.

Therefore, all members of the Synod are required to resolve all matters of dissent or all disputes by the avenues and structures available to them as set forth in the Constitution and Bylaws of the Synod without resorting to secular courts and without resorting to avenues, means, structures, or communications that are foreign or contrary to the synodical agreements and which are not in harmony with the polity of the Synod. "We appeal once again to all members of the Synod to use the channels which the Constitution, Bylaws, and resolutions of the Synod provide for resolving our differences without resorting to the organization and continuation of separate groups" (Opinion Ag. 484, 484A; November, 1973).

Question 2: Does the dissent process set forth in Bylaw 1.8 (Cf. Bylaw 1.6.2) and/or the dispute resolution process set forth in Bylaw 1.10 allow dissent or disputes regarding "syncretism and unionism," "the role and authority of women in the church," synodical governance issues (such as the use of Matthew 18:15 in Bylaws 1.10 and 2.14, the selection of floor committee members, the dispute process set forth in Bylaw 1.10, "close communion issues and practices," and the "lay minister issue"?)

Opinion: Members of the Synod in all those issues identified and in all areas of disagreement and dissent are bound by the provisions of Bylaw section 1.8. Similarly, members of the Synod in disputing such issues are bound by the provisions of Bylaw section 1.10.

The dispute resolution procedure as set forth in Bylaw section 1.10 may precisely be used in such disputes:

This procedure is established to resolve, in a God-pleasing manner, disputes that involve as parties, (1) members of the Synod, (2) the Synod itself, (3) a district or an organization owned and controlled by the Synod, (4) persons involved in excommunication, or (5) lay members of congregations of the Synod holding positions with the Synod itself or with districts or other organizations owned and controlled by the Synod. It shall be the exclusive remedy to resolve such disputes that involve theological, doctrinal, or ecclesiastical issues except those covered under Bylaw sections 2.14–2.17 and except as provided in Bylaw 1.10.3. It is applicable whether the dispute involves only a difference of opinion without personal animosity or is one that involves ill will and sin that requires repentance and forgiveness. (Bylaw 1.10.2)

Bylaw 1.10.3 does set forth some exceptions, none of which are applicable to the question asked, as follows:

This chapter provides evangelical procedures to remedy disputes only and does not set forth procedures for expulsion from membership (Constitution Art. XIII and Bylaw sections 2.14–2.17) nor does it set forth procedures for board of regents' supervision of faculty and administration as specified in Bylaws 3.8.2.7.5–3.8.2.7.9 and 3.8.3.8.5–3.8.3.8.9...this chapter does not provide an exclusive remedy for the following matters, unless such matters involve theological, doctrinal, or ecclesiastical issues, including those arising under the divine call of a member of the Synod:

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

It must be noted in regard to dissent and disputes in the Synod that the procedures set forth for brotherly dissent (Bylaw section 1.8) and dispute (Bylaw section 1.10) are for the purpose of carrying out the objectives of the Synod (Constitution Art. III), especially objectives 1 and 6:

- 1. Conserve and promote the unity of the true faith (Eph. 4:3 – 6; 1 Cor. 1.10), work through its official structure toward fellowship with other Christian church bodies, and provide a united defense against schism, sectarianism (Rom. 16:17) and heresy;
- 6. Aid congregations by providing a variety of resources and opportunities for recognizing, promoting, expressing, conserving, and defending their confessional unity in the true faith.

Question 3: Does the dispute resolution process set forth in Bylaw 1.10 allow disputes regarding any alleged wrongdoings by any officer, board, or commission of the Synod or allow disputes regarding an[y] alleged violations of the Synod's Constitution and Bylaws by any officer, board, or commission?

Opinion: Bylaw 1.10 not only allows but requires all members to use the avenue provided by the Synod to settle disputes as set forth in Bylaw section 1.10, with the exceptions as set forth in Bylaw 1.10.3. See the answers to both questions one and two above.

Question 4: Do the provisions set forth in Bylaw 3.1 (National Conventions) allow for correction of any alleged irregularities or violations of the Synod's Constitution and Bylaws by the Synod in convention itself, the convention floor committees, or by any officer, board, or commission?

Opinion: Any and all alleged irregularities or violations of the Synod's Constitution and Bylaws committed by the Synod in convention itself, the convention floor committees, or by any officer, board, or commission can be addressed for correction by the Synod in convention. Bylaw 3.1.1 states:

The national convention of the Synod shall afford an opportunity for worship, nurture, inspiration, fellowship, and the communication of vital information. It is the principal legislative assembly, which amends the Constitution and Bylaws, considers and takes action on reports and overtures, and handles appropriate appeals. It establishes general positions and policies of the Synod, provides overall program direction and priorities, and evaluates all such positions, programs, policies, directions, and priorities in order to provide responsible service for and on behalf of its members...

The broader context of the Constitution and Bylaws also provides the foundation for the answer to the question asked. Example:

- 1. The officers of the Synod must assume only such rights as have been expressly conferred upon them by the Synod, and in everything pertaining to their rights and the performance of their duties they are responsible to the Synod.
 - 2. The Synod at all times has the right to call its officers to account and, if circumstances require it, to remove them from office in accordance with Christian procedure.
 - 3. The Synod reserves the right to abolish any office it has established. (Art. XI A) (Emphasis added)
2. It is the President's duty to see to it that all the aforementioned act in accordance with the Synod's Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod. (Art. XI B) (Emphasis added)

The delegate convention of the Synod is the legislative assembly that ultimately legislates policy, program, and financial direction to carry on the Synod's work on behalf of and in support of the member congregations. It reserves to itself the right to give direction to all officers and agencies of the Synod. Consequently, all officers and agencies, unless otherwise specified in the Bylaws, shall be accountable to the Synod for all their actions, and any concerns regarding the decisions of such officers or agencies may be brought to the attention of the Synod in convention for appropriate action. (Bylaw 1.4.1) (Emphasis added)

Dissent from doctrinal resolutions and statements is to be expressed first within the fellowship of peers and then brought to the attention of the Commission on Theology and Church Relations before finding expression as an overture to the convention calling for revision or rescission.... (Bylaw 1.8.2) (Emphasis added)

(c) He shall call up for review any action by an individual officer, executive, or agency that, in his view, may be in violation of the Constitution, Bylaws, and resolutions of the Synod.

(1) If he deems appropriate, he shall request that such action be altered or reversed.

(2) If the matter cannot be resolved, he shall refer it to the Board of Directors, the Commission on Constitutional Matters, and/or the Synod in convention as he deems appropriate for the issues and party/parties involved.

(3) This provision in no way alters the President's constitutional duty to report to the Synod those who do not act in accordance with the Constitution and do not heed his admonition, as prescribed in Art. XI B 2 of the Constitution. (paragraph (c) of Bylaw 3.3.1.2) (Emphasis added)

Question 5: Is it in harmony with the Constitution and above Bylaws of the Synod for any member of the Synod to engage in dissenting (or promoting non-compliance) against the Synod by use of a lawsuit, when such members have not used the avenues of dissent as set forth in Bylaw 1.8 of the Synod?

Opinion: No. A lawsuit is not a legitimate avenue of dissent. In the agreement to live and work together, a member of the Synod is required to follow the avenue of dissent as set forth in Bylaw section 1.8, including honoring and upholding the resolutions of the Synod. While a lawsuit may be an appropriate process in which to resolve a dispute in the secular world, members of the Synod are governed by Bylaw section 1.8 as the required, exclusive, and agreed-to avenue of dissent and Bylaw section 1.10 as the required, exclusive, and agreed-to method of dispute resolution. See the answers to questions 1 and 2 above.

Question 6: Is it in harmony with the Constitution and above Bylaws of the Synod for any member of the Synod to engage in dispute against the President of the Synod or the Synod itself by use of a lawsuit, when such members have not used the avenue of dispute as set forth in Bylaw 1.10 of the Synod?

Opinion: No. In the agreement to live and work together, a member of the Synod is required to rely exclusively and fully on the Synod's system of reconciliation and conflict resolution. Unless the dispute is one concerning property rights or contract arrangements under Bylaw 1.10.3 (a) or (b), such suit would be a gross violation of the process of Bylaw section 1.10 and the covenants which bind members together in the Synod. The use of the Synod's conflict resolution procedures is the exclusive and final remedy for those who are in dispute (Bylaw section 1.10). See the answers to questions 1, 2, and 5 above.

Question 7: If any of the above is not in harmony with the Constitution and Bylaws of the Synod, what remedy does the Constitution and Bylaws of the Synod provide?

Opinion: The Constitution and Bylaws of the Synod provide disciplinary measures against any member who violates the Constitution and Bylaws of the Synod. Such provisions include Bylaw section 1.10, "Dispute Resolution of the Synod": "The use of the Synod's conflict resolution procedures shall be the exclusive and final remedy for those who are in dispute" (Bylaw 1.10.1) and Article XIII of the Constitution, "Expulsion from the Synod," and its procedures as set forth in Bylaw sections 2.13-2.16:

The only remedy available to the Synod in response to improper activities in the life of such a member of the Synod is, as is true with respect to violations of other conditions of membership or is otherwise appropriate under the Constitution or these Bylaws, and following the procedures set forth in these Bylaws, to take such action as may lead to termination of that membership and the attendant rights and privileges. (Bylaw 2.13.2)

The ecclesiastical supervisors (the President of the Synod and the district presidents) have disciplinary responsibilities such as stated in Articles XI B and XII of the Constitution:

2. It is the President's duty to see to it that all the aforementioned act in accordance with the Synod's Constitution, to admonish all who in any way depart from it, and, if such admonition is not heeded, to report such cases to the Synod.

3. The President has and always shall have the power to advise, admonish, and reprove. He shall conscientiously use all means at his command to promote and maintain unity of doctrine and practice in all the districts of the Synod. (Art. XI B)

7. The district presidents shall, moreover, especially exercise supervision over the doctrine, life, and administration of office of the ordained and commissioned ministers of their district and acquaint themselves with the religious conditions of the congregations of their district. To this end they shall visit and, according as they deem it necessary, hold investigations in the congregations. Their assistants in this work are the circuit counselors, who therefore shall regularly make their reports to the district president.

8. District presidents are empowered 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. (Art. XII)

The ecclesiastical and administrative powers and duties of the President of the Synod provide remedy for the matter as set forth in Bylaws 3.3.1.1, 3.3.1.2, and 3.3.1.3, as do the duties of the district president as set forth especially in Bylaws 4.4.4–4.4.6.

ⁱⁱⁱ Such principles include (but are not limited to):

The priesthood of believers

The proper understanding of and distinction between the Holy Christian Church, "church," and Synod

The unity and fellowship with Christ and with one another

Congregational self-governance ("supremacy," "sovereignty," "autonomy")

The proper understanding and distinction between church and ministry

The theology of the divine call and the dignity of the holy ministry

The joint extension of the kingdom of God (extending the Gospel witness in the world)

Unity and purity of doctrine

Doctrinal and ecclesiastical supervision

^{iv} After stating the reasons for forming a Synod, listing the conditions for membership, and outlining its external organization, the 1847 Constitution of the Synod in Article IV set forth the "Business of Synod." This included "To stand guard over (*Ueberwachung*—"watch over") the purity and unity of doctrine within the synodical circle" (Article IV 1), "Supervision (*Aufsicht*) over the performance of the official duties on the part of the pastors and teachers of Synod" (Article IV 2), and "To give theological opinions, also settle disputes between single persons or between parties in the congregations. But the latter is to take place only in cases where all persons involved have applied for arbitration" (Article IV 9).

^v Under Article V of the 1847 Constitution, "Execution of Synodical Business," the Synod required the President to report on the visitations he had made by the instruction of the Synod in the foregoing year, and to supervise (*beaufsichtigen*—"oversee, direct, superintend") the pastors and teachers in respect to their doctrine, life, and performance of their duties. In this same article "supervision language is used such as "visit," "investigate," "supervise," and "examine." Under the same article it was recognized that the Synod as a whole was to supervise how each individual pastor cares for the souls under his care and that the Synod has the right of inquiry and judgment (Article V 15). Among the various duties of the President in Article VI a, it was expected of him in his supervisory capacity to follow strictly the written instructions that he had received from the Synod (Article VI A 13).

^{vi} "...For this reason, the Synod establishes procedures for such action, including the identification of those who are responsible for ecclesiastical supervision of its members. Such supervision includes not only suspension or termination of membership but also advice, counsel, encouragement, and, when necessary, admonition regarding teaching and/or practice...." (Bylaw 2.14.1);

“...Furthermore, it has identified those responsible for ecclesiastical supervision of its members, including such matters as advice and counsel, as well as suspension of membership and forfeiture of it for failure to continue to meet membership requirements...” (Bylaw 2.1.2).

vii Landmark October 11, 1974 Opinion by the CCM:

An analysis of Assertions in Present Controversy

In dealing with the many requests that have been placed before the Commission on Constitutional Matters during this time of controversy within the Synod, the Commission has heard recurring expressions of certain propositions. It feels constrained to comment on some of these assertions which in the estimation of the Commission are either invalid or are at least misleading and in that way tend to becloud the issues before the Synod and to vitiate the Constitution and Bylaws of the Synod.

I. "Christians are ruled not by laws but by the Gospel."

There are several ways in which this theme has been stated in denigrating the Constitution and Bylaws of the Synod and thus finally making them of no effect.

Among Missouri Synod Lutherans there should be no need to state once again that we believe and confess that we are saved not by the works of the law but by God's grace for Christ's sake through faith. We exult in our freedom from the demands of the law as children of a gracious heavenly Father. We remember with gratitude that Christ our Savior has fulfilled these demands for us and that through His blood we have forgiveness for all our sins. And so we can rejoice in the promise of life everlasting already here and now. This is the wellspring of our life and we will permit no legalism in whatever form to deprive us of the joy which is ours thru the unmerited grace of our God.

Do we then renounce, repudiate, set aside the law of God? By no means. As Lutherans learn in their Catechism instruction, the law of God has three great purposes:

1. To hold in check the coarse outbursts of sin on the part of unbelievers and also on the part of the old Adam of the Christian;
2. To show us our sins so that we may truly find our joy and salvation in Christ, the Savior from sin;
3. To serve the child of God as a guide for his doxological life of service to the God of all love as that life is lived out among other men. There are some who deny the third use of the law but the Commission affirms what the Scriptures and our Lutheran Confessions teach regarding it.

So much can be said for the law of God. It has a place in the life of the Christian. But is there room for human, man-made laws in the life of Christians together? We submit that there is. Whenever two individuals, even Christian people, enter into a relationship with each other - whether it be in marriage or in a business partnership or in whatever relationship it may be - certain agreements, rules, contracts, covenants - "laws," if you will - become necessary. The same is true when Christians join together as a worshiping and serving community of God in the world. It is customary for Lutheran congregations to use not only the Bible and the Lutheran Confessions but also unwritten traditions and especially written Constitutions and Bylaws as instruments under which they agree to govern themselves.

This is true also of larger federations of Christians, such as agencies, councils, and synods. In our Synod we make certain commitments to one another. We agree what we shall do and how we shall do it and why we shall do it. These agreements are spelled out in a Constitution, in Bylaws, and in resolutions. We promise to walk together according to the agreements that we have made. We pledge one another our word.

Since Christians recognize the law of Christian love as the highest law of human conduct, it governs also our life together within the Synod. In Christ, we love those with whom we have joined hands and to whom we have given our pledge, and so we keep our word to them.

We carry out our solemn covenants and agreements. To set aside any article of the Constitution, a bylaw, or even a resolution of the Synod, simply because in our personal estimation it is not acceptable, means to exalt our own will above the will of the Synod stated especially in its Constitution and Bylaws. That would be self-seeking, self-righteous, judgmental, and loveless. This is not the way of Christians with one another.

To be sure, there are genuine instances when conscience is involved. It may be a conscience instructed by the Word of God or it may be an erring one. Lutherans are sensitive to the plea of conscience. Lutherans sometimes forget, however, that Martin Luther placed his great emphasis on the conscience which is informed and instructed by the Word of God. We need to guard against using conscience as a misnomer for personal desire and opinion.

The Synod has always made provision to respect the genuine demands of conscience. However, the individual who is troubled in his conscience must also respect the conscience of those who do not agree with him and be prepared to support his position from the Word of God.

As our teachers have so long pointed out, one must distinguish carefully between the giving of offense and the taking of offense. If the Synod were to halt its operations whenever someone takes offense at its action, the Synod would be paralyzed. To be sure, the Synod must be on its guard never to give offense. But the individual, over against the Synod, must also exercise great care that he is truly governed by love and not by self-interest or self-will.

To bring all this down to the issue with which we are dealing: It is a breach of Christian love to place self-will above the mutually agreed upon will of the Synod as it has stated it in its Constitution and Bylaws.

II. "People are more important than rules."

Of course. Our Lord's death on the cross has made that clear for all time. And yet, we need to guard against wrong conclusions. Even in the matter of our redemption God, in spite of His love for sinners, did not simply set His Law aside. The Law needed to be fulfilled and the penalty for its transgression needed to be paid. God's grace did not come cheap. It cost Him the best that He had. It cost Him the lifeblood of His Son. All too often "people are more important than rules" becomes a rationalistic slogan.

Rules seem to be fine as long as they operate in our favor; but when we find ourselves in disagreement with the rules we easily resort to the role of "justifying ourselves." Furthermore, the slogan is fallacious if it is meant to imply that any person is exempt from or above commonly agreed upon rules or laws. In our own nation we have established once again that not even the highest officials are above the law.

We have already indicated above the place of law, rule, covenant, contract in our life together in the Synod. These rules which we have adopted are not in opposition to the welfare of people; on the contrary, they are designed to protect and to foster the welfare of people. When a few rebel against the "rules" and resort to arguments such as "people are more important than rules" to justify their action, one needs to ask which is the more important: the self-will of the few or the welfare of the many? If certain "rules" are really injurious to the many, then the many - not just the few - have the right and the means to change the rules. But until the many have reached that decision, the few are obligated to respect the "rules" as well as are the "many" who, too, are "people." The "rules" which the Synod has adopted for its self-government are primarily its Constitution and its Bylaws.

III. "But the Bylaws are not applicable to our present situation."

This assertion is made especially with reference to the establishment of Seminex and to the certification, placement, calling, ordination, and installation of Seminex graduates. The Commission holds that the argument is invalid. To say that "no one ever anticipated such a situation" does not mean that the Constitution and Bylaws do not apply. On the contrary, the bylaws do indeed speak directly and clearly to the issue confronting us today.

The question is not: "How may Seminex students be qualified for the ministry in The Lutheran Church - Missouri Synod?" The question rather is: "How has the Synod decided that it wishes to have pastors trained, qualified, called, ordained, and installed in its congregations?"

In answer to that question the Synod has spoken again and again. Perhaps no other subject receives as much attention in the bylaws. The Synod has stated in great detail that it will train its own pastors, set its own requirements, do its own certifying, etc. In short, the Synod has made it plain that it will not permit a small group within the Synod to usurp these functions which the Synod has reserved to itself.

Furthermore, it is not correct to say that bylaws apply only to ordinary but not to extraordinary situations. Such an assertion forgets that one of the principal reasons that an organization drafts a Constitution and Bylaws is to set forth already in advance the guidelines for its conduct in the future, so that it will not find it necessary to make basic decisions in an ad hoc and emotionally charged situation.

IV. "Under Article VII congregations are completely autonomous."

Especially the Apology to the Augsburg Confession is quoted in this connection. A few familiar quotations from Walther are also usually ushered in support of this thesis. (It may be noted in passing that Dr. Walther also had some pointed things to say about the responsibilities of congregations toward the other members of the Synod). The difficulty lies in the word "completely," whether it is stated or, as more often, merely implied.

The Lutheran Church - Missouri Synod does place great stress on the autonomy of the local congregation. Let that be emphasized. At the same time, however, it should be stated that autonomy must be regarded in relative terms. There is no absolute freedom this side of heaven. Every freedom that men claim for themselves is only relative and is circumscribed by one or more considerations. In various church polities some forms of church government grant congregations more autonomy than do others. Among the Baptists, for example, there is a high degree of congregational autonomy.

Also among us, however, it is more exact to speak of Missouri Synod polity as synodical polity rather than congregational polity. We are primarily a federation or association of self-governing congregations. But the very word "federation" or "association" indicates that the "self-governing" aspect has some modifications. When a congregation joins the Synod it does give up certain rights and privileges. For example, it may no longer call in a completely unrestricted way whomever it wishes as its pastor; it may no longer live only for itself and its own local concerns; it may no longer use textbooks which are doctrinally unsound for the instruction of its children; it may no longer enter unilaterally into fellowship with other church bodies; etc. As a congregation surrenders such "rights" it gains in reality great benefits.

One of these benefits is the assurance that it will have assistance in finding a pastor who will preach and teach the Word of God in all its purity and administer the Sacraments according to Christ's institution. Indeed, this was one of the major concerns when the Synod was organized, a concern which was felt very keenly on the congregational level among the lay people of that day. Consequently, even though there were Lutheran colleges and seminaries available for the training of its pastors, the Synod from the very beginning decided that it would train its own pastors. In fact, even before the Synod was organized some of the forefathers established a log cabin in Perry County, Missouri, for this purpose.

Those rights which a congregation still retains are zealously guarded. The Commission on Constitutional Matters has ruled more than once in favor of the maintenance of the rights of a self-governing congregation. It has held, for instance, that even though the Synod may suspend a pastor from membership in the Synod, only the congregation can decide whether it will depose its pastor and retain its membership in the Synod or whether it will retain its pastor and give up its synodical membership. This is a right which continues to belong to the congregation. It must be admitted that sometimes the line of distinction between the rights of a congregation and the rights of the Synod is somewhat blurred. Consequently, it is wholesome for the Synod to be constantly concerned about respecting and preserving whatever autonomy is guaranteed to its member congregations. In the process, however, the case in behalf of the autonomy of a local congregation must not be overstated. That congregation, too, has made a solemn covenant with its fellow member congregations of the Synod. Christians have the right to expect that fellow Christians are persons of honor and integrity who keep their word.

The Commission on Constitutional Matters submits these comments in the hope that they will help to clarify some of the issues confronting our church, to the end that we may walk together in love as children of God who have assumed common commitments in the service of our gracious Lord and Savior.

STANDARD OPERATING PROCEDURES MANUAL

Expulsion from Membership: District President or Officer

BYLAW SECTION 2.15

**2010 *Handbook*
The Lutheran Church—Missouri Synod**

(Revised September 2011)

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

I. General Principles for Bylaw Section 2.15

- A. The Synod has identified certain standards that must be met for continued membership. Furthermore, it has identified those responsible for the ecclesiastical supervision of its members, including such matters as provision of advice and counsel as well as suspension from membership for failure to continue to meet membership requirements (cf. Bylaws 1.2.1 [g] and 2.1.1–2.1.2).
- B. Ecclesiastical supervisors, parties to the matter, and members of panels shall be governed in all their actions by the Holy Scriptures; the Lutheran Confessions; the Constitution, Bylaws, and resolutions of the Synod; and the procedures provided in this *Standard Operating Procedures Manual* (Bylaw 2.15.9.3).
- C. According to provisions and procedures set forth in Article VIII of the Constitution and Chapter 1 of the Bylaws, the self-governing congregations of the Synod state in convention resolutions their collective understanding and application of the Holy Scriptures and the Lutheran Confessions (Constitution, Art. II) and the conditions of membership (Art. VI). These resolutions help to determine whether an act is contrary to Articles II and VI (cf. Art. XIII).
- D. The procedures of Bylaw section 2.15 (among other bylaws) and this *Standard Operating Procedures Manual* provide the means to carry out Article XIII¹ of the Constitution as well as the Synod's objectives as set forth in Article III, especially paragraphs 1, 8, and 9². Bylaw section 2.15 and this manual must be understood within the entire context of and subordinate to the Synod's Constitution and Bylaws.
- E. With the exception of Bylaw Section 2.17, only a member of the Synod can bring a formal complaint or accusation that could lead to expulsion of a member from the Synod. In the case of Bylaw section 2.15, a concerned lay member of a member congregation can make use of the constitutional provisions of his/her congregation or visit/consult with the circuit counselor and/or district president.
- F. Matthew 18 and the Eighth Commandment provide the foundation for this Bylaw section 2.15 process governing expulsion of members from the Synod. While Matthew 18 provides the procedure for church discipline in a local congregation, it, along with the Eighth Commandment

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

2. Expulsion shall be executed only after following such procedure as shall be set forth in the Bylaws of the Synod.

3. If the member expelled is a pastor or teacher in a congregation of the Synod, such congregation, unless it has already done so, is held to depose him from office and to deal with him in accordance with the Word of God, notwithstanding an appeal. If it persistently refuses to do so, the respective District is to deal with it. If all negotiations and admonitions fail of their purpose, such congregation forfeits its membership in the Synod.

4. Because of their expulsion those so expelled forfeit their membership and all share in the property of the Synod. The latter holds good also with respect to those who for any reason themselves sever their connection with the Synod.” (Article XIII)

² “The Synod, under Scripture and the Lutheran Confessions, shall—

1. Conserve and promote the unity of the true faith (Eph. 4:3–6; 1 Cor. 1:10), work through its official structure toward fellowship with other Christian church bodies, and provide a united defense against schism, sectarianism (Rom. 16:17) and heresy;...

8. Provide evangelical supervision, counsel, and care for pastors, teachers, and other professional church workers of the Synod in the performance of their official duties;

9. Provide protection for congregations, pastors, teachers, and other church workers in the performance of their official duties and the maintenance of their rights;” (Article III 1, 8–9)

also describes a manner of conduct for all Christians in general, one that is to be observed in this procedure as applicable. The reputations of the accused and accuser are to be protected.

- G. This process for dealing with accusations that could lead to the expulsion of a member from the Synod is intended to reflect a presumption of innocence. The burden of proof is on the accuser and must be established by clear and convincing evidence. In addition, a member can be expelled from the Synod only after previous futile admonition whenever such admonition is possible (Constitution, Art. XIII).
- H. The primary purpose of Bylaw section 2.15 and the procedure further provided in this manual is not to expel a member from the Synod but to foster repentance and reconciliation, to win and restore the brother or sister (Matt. 18:15–20; Gal. 6:1–5; cf. Bylaws 1.10.1–1.10.1.6). It (along with other bylaws) also provides opportunities for the ministry of law and gospel to the accuser and the accused, opportunities for teaching moments, and opportunities for the practice of Christian love.
- I. To begin this process (Bylaw section 2.15), consultation with an ecclesiastical supervisor is required. The purpose of this consultation is to provide opportunity (1) for the accuser to receive advice, direction, and spiritual ministry from an ecclesiastical supervisor; (2) for the ecclesiastical supervisor to inform the ecclesiastical supervisor of the accused (or other appropriate official) that a consultation is underway; (3) for the ecclesiastical supervisor to consult with others; (4) for the ecclesiastical supervisor of the accuser to obtain opinions from the Commission on Theology and Church Relations and/or the Commission on Constitutional Matters; (5) for the ecclesiastical supervisor of the accuser to make certain that a face-to-face meeting has taken place between the accuser and the accused (Matthew 18:15); (6) for the persons involved to receive evangelical supervision, counsel, and care; (7) for the ecclesiastical supervisor, in consultation with the ecclesiastical supervisor of the accused, to appoint a small committee to assist in reconciliation efforts; and to fulfill the Synod’s requirement for previous admonition (Constitution, Art. XIII).
- J. Elected ecclesiastical supervisors alone shall assume the historic (LCMS) responsibility for ecclesiastical supervision as defined and described by the Constitution and Bylaws of the Synod. (Those not elected to supervise are not to supervise.) Ecclesiastical supervisors shall conduct themselves and their offices in an evangelical manner.
- K. As its chief ecclesiastical officer, the President of the Synod shall supervise the doctrine taught and practiced in the Synod. Such supervision includes all synodwide corporate entities (Bylaw 3.3.1.1) as enumerated in Bylaw section 3.6; all officers of the Synod and its agencies (see Bylaw 1.2.1 [a]; the individual districts of the Synod; and all district presidents (Bylaw 3.3.1.1.1).
- L. Each district president, in accordance with the Constitution of the Synod, shall supervise the doctrine, life, and official administration of the ordained or commissioned ministers who are members of his district or are subject to his ecclesiastical supervision (Constitution, Art. XII 7; Bylaw 4.4.5), and he shall inquire into the prevailing spiritual conditions of the congregations of his district (Bylaw 4.4.4). He shall also be responsible for maintaining the official rosters of his district (Bylaw 4.4.7).
- M. Each circuit counselor shall assist the district president within his circuit. He shall serve under the direction of and be accountable to the district president and shall serve as his spokesman when so authorized and directed and shall assist him in doctrinal and spiritual supervision (Bylaw 5.2.3[a]). District vice-presidents shall also assist district presidents in discharging their responsibilities or represent them upon their request.

- N. The ecclesiastical supervisor shall make every effort to resolve disputed matters on a timely basis, make every effort to protect the integrity of the process, and make every effort to be consistent and fair and to guard against improper publicity.
- O. All the constitutional and bylaw functions of the ecclesiastical supervisor, including offering any advice, admonition, and judgment, shall be circumscribed not by his private views, individual interpretation, or personal or public opinion but by the official resolutions and corporate confessional position of the Synod.
- P. The ecclesiastical supervisor shall assume a servant role as he leads fraternal discussions and gives counsel, care, and protection (Constitution, Art. III 8–9) on behalf of the congregations of the Synod, to whom he is accountable. The provisions and procedures of Bylaw section 2.15 allow ample opportunity for the ecclesiastical supervisors to obtain advice and help in this servant role.
- Q. In the provisions and procedures set forth in Bylaw section 2.15 (cf. Constitution, Art. XIII), the purpose of a requested CCM opinion is to “interpret the Synod’s Constitution, Bylaws, and resolutions upon the written request of a member (congregation, ordained or commissioned minister), official, board, commission, or agency of the Synod” (Bylaw 3.9.2.2).
- R. In the provisions and processes set forth in Bylaw section 2.15 (cf. Constitution Art. XIII), the purpose of a requested CTCR opinion is to present what the Scriptures and the Lutheran Confessions teach on the doctrinal point(s) at issue in a matter, in conformity with the collective understanding of the Synod as expressed in its officially adopted doctrinal statements and resolutions (Bylaw 3.9.5.2.1).
- S. These provisions and processes do not establish positions of the Synod. Such positions are established according to the provisions set forth in Article VIII of the Constitution and in Bylaw sections 1.3, 1.4, 1.6, 1.7, and 3.1.
- T. In protecting the rights of its members, the Synod has also made provision for challenging the decisions of ecclesiastical supervisors that may result in suspension and loss of membership. Such provision in Bylaw section 2.15 serves to protect the rights of both the accuser and the accused.
- U. The official and formal provisions and processes of Bylaw section 2.15 (expulsion from membership) are not to take the place of or be confused with the brotherly acts of encouraging and admonishing one another and with the “mutual conversation and consolation of brethren” (Smalcald Articles, Part III, Article IV [Tappert translation, p. 310]). These provisions and processes do not prohibit any Christian from following biblical and confessional principles in rebuking a Christian brother or sister so long as the constitutional responsibility for ecclesiastical supervision required of district presidents and the President of the Synod is not being assumed.
- V. Provisions and procedures for doctrinal dissent (not a basis for expulsion from membership in the Synod) are set forth in Bylaw section 1.8. Provisions for doctrinal discussions are set forth in Bylaw 3.9.5.2.1 and Bylaw sections 4.8, 4.9, 5.3 and 5.4. Provisions and procedures for doctrinal review are set forth in Bylaw section 1.9. Provisions and procedures for dispute resolution (not a provision for expulsion from membership) are set forth in Bylaw section 1.10. Other procedures for expulsion from membership are provided in Bylaw sections 2.14 and 2.16–2.17. Provisions and procedures for complaints against a member of the faculty or administration of one of the

Synod's educational institutions (whether or not a basis for expulsion from membership in the Synod) are set forth in Bylaws 3.10.4.7.5–3.10.4.7.9 and 3.10.5.6.5–3.10.5.6.9.

II. General Regulations for Bylaw Section 2.15

- A. **Purpose of General Regulations:** These general regulations shall serve as guidelines for the implementation of Bylaw section 2.15 to ensure consistency and uniformity in the process. They shall also further define the guidelines referenced in Bylaws 2.15.7.8 and provided in Bylaws 2.15.9–2.15.9.3. If questions arise regarding proper procedure, they may be directed to the Secretary of the Synod or his designee via telephone, fax, or e-mail.
- B. **Process Administrator:** The administrator of this process shall be the Secretary of the Synod. Challenges to his impartiality shall be made to the President of the Synod, who shall, if appropriate, appoint another administrator for the case.

When the Secretary is involved personally in a dispute, whether as a party, a witness, or someone who has a direct interest in the outcome, an alternate administrator shall be appointed. If a party intends to present testimony or evidence which would suggest the potential need for the Secretary to become a witness, such intention shall be raised in a timely manner so that the Secretary will have opportunity to recuse himself and a replacement administrator can be appointed.

- C. **Definitions of Terms:** Definitions of key terms used in this *Standard Operating Procedures Manual* as well as throughout Bylaw section 2.15 are provided by Bylaw 2.14.2, as follows:

2.14.2 The definitions of terms used in this bylaw are as follows:

- (a) **Accused:** The party named by the accuser as being in violation of Article XIII and under the procedural ecclesiastical supervision of Bylaw sections 2.14–2.17.
- (b) **Accuser:** The party who accuses a member under the provisions of Article XIII through the process of Bylaw sections 2.14–2.17.
- (c) **Conflict of interest:** Representation of two opposing interests. Carrying out the responsibility of ecclesiastical supervision does not give rise to conflict of interest.
- (d) **Ecclesiastical supervision:** See Bylaw 1.2.1 (g).
- (e) **Face-to-face:** A face-to-face meeting in person between the accuser and the accused in the manner described in Matthew 18:15. E-mail, regular mail, fax, or telephone call (or any combination thereof) does not satisfy this requirement. (Note: Failure to conduct a face-to-face meeting within 30 days or within such extension as may be established by the involved ecclesiastical supervisors shall result in dismissal if the fault lies with the accuser or movement to the next stage if the fault lies with the accused.)
- (f) **Facts:** Substantiated information of an alleged accusation.
- (g) **Fails to act:** No measures initiated within the required period of time to ascertain the truth or falsity of the accusations, or the stifling of a complaint by the refusal to act.
- (h) **Final Hearing Panel:** Two district presidents and a lay reconciler, assisted by a hearing facilitator, who when the decision of the Hearing Panel is appealed shall be selected according to these bylaws to give a final hearing.
- (i) **Formal Proceedings:** The proceedings that begin with the suspension of a member.
- (j) **Hearing Facilitator:** One selected by blind draw by the Secretary of the Synod as described in Bylaw 1.10.13.2, trained to serve as a facilitator for hearings before panels.
- (k) **Hearing Panel:** Two district presidents and a lay reconciler, assisted by a hearing facilitator, selected according to these bylaws to hear the matter and render a final decision unless appealed.
- (l) **Investigation Committee:** Any number of persons appointed by the ecclesiastical supervisor to investigate thoroughly to determine the facts in the matter prior to the determination whether or not to proceed.
- (m) **Own personal knowledge:** A personal witness to the alleged violation—not second-hand or hearsay information.

(n) **Party to the matter:** A “party to the matter” is the accuser and the accused. Carrying out the responsibility of ecclesiastical supervision does not make the ecclesiastical supervisor a party to the matter, even if the accuser is the ecclesiastical supervisor.

(o) **Persons involved:** “Persons involved” includes the accuser or whoever brings the matter to the attention of the ecclesiastical supervisor; also any parties to whom the matter is presented and who are required to thoroughly investigate whether the allegations can be substantiated, i.e., any ecclesiastical supervisor involved in the case, the accused, the Hearing Panel, the Final Hearing Panel, a witness or advisor, or any others involved in the matter.

(p) **Publicity:** Any information or action, whether written, oral, or visual, that brings a person, cause, or an alleged accusation to public notice, including information that results in public notice, whether or not the person or persons delivering it gave approval to the bringing of the information to public notice.

(q) **Reconciliation Committee:** A small committee appointed by the ecclesiastical supervisor (prior to the determination whether or not to proceed to assist in reconciliation efforts) if the matter warrants it.

(r) **Referral Panel:** A panel that may be formed of three circuit counselors or district presidents, who shall be selected according to these bylaws to determine, according to the facts learned from the investigation, whether or not to proceed.

(s) **Statement of the matter:** A written concise statement containing factual assertions involved in an accusation with a request for expulsion from membership.

(t) **Witness:** A person called to give testimony regarding facts to a matter before a Hearing Panel or Final Hearing Panel. A member of any reconciliation committee appointed by a district president or the President of the Synod shall not testify as a witness before a Hearing Panel or a Final Hearing Panel in the same matter or case.

- D. **Parties to the Matter:** The parties to a matter in the Bylaw section 2.15 process are the accuser and the accused. An ecclesiastical supervisor is not a party to the matter, even if he is the accuser. A member congregation bringing forward information or allegations shall be represented by its chairman or a designated member of the congregation. The congregation shall have identified and authorized its representative prior to his/her signing of a formal complaint.
- E. **Filing a Complaint:** In all cases under Bylaw section 2.15, the right to file a signed and dated formal written complaint is limited to members of the Synod. The ecclesiastical supervisor may also act based upon “his own personal knowledge.”
- F. **Required Consultation:** Prior to any formal written complaint or accusation, when any person is aware of information or facts that could lead to the expulsion of an individual member from the Synod under Article XIII of the Constitution, the person shall consult with the appropriate ecclesiastical supervisor to seek advice, direction, and spiritual ministry as the needs and circumstances dictate. The purpose of the consultation will be to provide opportunity (1) for the accuser to receive advice, direction, and spiritual ministry from an ecclesiastical supervisor; (2) for the ecclesiastical supervisor to inform the ecclesiastical supervisor of the accused (or other appropriate official) that a consultation is underway; (3) for the ecclesiastical supervisor to consult with others; (4) for the ecclesiastical supervisor of the accuser to obtain opinions from the Commission on Theology and Church Relations and/or the Commission on Constitutional Matters; (5) for the ecclesiastical supervisor of the accuser to make certain that a face-to-face meeting has taken place between the accuser and the accused (Matthew 18:15); (6) for the persons involved to receive evangelical supervision, counsel, and care; (7) for the ecclesiastical supervisor, in consultation with the ecclesiastical supervisor of the accused, to appoint a small committee to assist in reconciliation efforts; and (8) for the ecclesiastical supervisor to fulfill the Synod’s requirement for previous admonition (Constitution, Art. XIII).

- G. **Investigations:** A thorough investigation shall be conducted by the Synod president or an investigation committee in every case (Bylaw 2.15.4 [a]). During the investigation, every effort shall be made to protect the anonymity of the accuser and the reputation of the accused. The investigation shall be conducted to determine the truth of the accusation(s), to assess the full extent and consequences of any misconduct, and/or to determine whether the facts learned form a basis for expulsion of the accused member from the Synod under Article XIII of the Constitution.
- H. **Provision of Notices:** In the Bylaw section 2.15 process, notices are often required to be sent by certified mail or such other means as will result in a signed receipt to provide evidence of the delivery of the notice and to determine the date of inception of time frames incorporated in the bylaws. In the event that a party cannot be located or seeks to avoid the process by refusing to sign a delivery receipt, ordinary first class mail sent to the last known address and allowance for sufficient time for delivery shall, after two failed delivery attempts by certified or other signature-requiring mail, suffice to provide notice.
- I. **Evangelical Care:** The ecclesiastical supervisors of the accused and, when applicable, of the accuser(s) shall take those steps necessary to attend to the spiritual needs of all those affected, continuing efforts to resolve matters even when formal action is the outcome (Bylaw 2.15.9).
- J. **Advisors:** The accused may obtain at personal expense the assistance of individuals familiar with the issues involved in the matter. The ecclesiastical supervisor may also obtain the assistance of such advisors. Advisors may actively participate in research and preparation of necessary documents.

During hearings, however, while the accused and the ecclesiastical supervisor may have a single advisor present, they must represent themselves without public participation by their advisors. These advisors may communicate orally or in writing with their advisees so long as such communication is not disruptive. If the accused or the ecclesiastical supervisor does intend to have an advisor present during a hearing, the panel chairman, the accused, and/or the ecclesiastical supervisor shall be provided the name and address of the advisor at least five (5) days in advance of the hearing.

- K. **Attendance at Hearings:** The accused, the ecclesiastical supervisor, and their advisors, if any, may be present at all phases of the hearing except deliberations. Subject to the discretion of the panel as to the helpfulness of the presence of others at various times during the hearing process, attendance at hearings shall be limited to the members of the panel, the accused, the ecclesiastical supervisor, an advisor to the accused (if desired), an advisor to the ecclesiastical supervisor (if desired), and witnesses (for such period of time as they provide testimony) who can substantiate relevant facts to the matter.
- L. **Witnesses and Evidence:** Accusers may be called as witnesses. All persons involved in hearings shall cooperate with ecclesiastical supervisors, hearing facilitators, panels, and each other in providing documents, names of witnesses, and other information that will contribute to an understanding of the matter. They may offer any evidence that they consider fair, relevant, and pertinent and shall produce any additional evidence that the ecclesiastical supervisors and panels deem necessary. All documentation shall be adequately authenticated.

Although oaths are not administered, every witness shall be reminded prior to his or her testimony of the importance of speaking the truth and speaking the truth in love. Witnesses intended to provide “expert testimony” (v. factual testimony) shall be identified as such when

their names are provided to the panel. The panel shall judge whether such testimony will be necessary and helpful to reach a decision.

Prior to the final selection of a panel, parties may send copies of written documents or other communications intended for distribution to the panel members and other party to the Secretary of the Synod for distribution when a panel is in place. It is the responsibility of the hearing facilitator and panel to establish the procedure to be followed to receive testimony and evidence and to determine its relevancy and materiality to the issues of the suspension.

The accused and the ecclesiastical supervisor shall be provided ample opportunity to present their positions.

- (a) Any member of the Synod, officer of a congregation, or officer of any organization owned and controlled by the Synod shall, when called upon to do so, testify or produce records related to a dispute.
 - (b) Panels shall be the judge of the relevance and materiality of evidence offered. Relevance of testimony will be determined by whether such evidence will support (or not) an issue in contention.
 - (c) Conformity to legal rules of evidence shall not be necessary.
 - (d) Panels shall determine the number of witnesses necessary for a full and complete understanding of the facts involved in a matter. A panel may reject and not consider evidence or testimony from a witness that it deems unnecessary or unhelpful to its consideration of the issues in dispute. Testimony of witnesses via the Internet or other electronic means may be received at the discretion of the panel.
 - (e) Except as specifically provided elsewhere in this manual, all evidence shall be taken in the presence of all panel members, the accused party, and the ecclesiastical supervisor, except when a party has waived the right or fails to be present.
- M. **Burden of Proof:** Recognizing that commencement of formal proceedings for expulsion will require the strongest proof available (both to be effective in confronting the accused to take responsibility for wrongful behavior and to satisfy the burden of proof should a contested hearing ensue), an ecclesiastical supervisor or panel should commence formal proceedings only when satisfied that the quality, nature, and extent of the evidence available will likely prevail in a contested hearing. Victims of improper conduct are entitled to be made aware that the failure to make oneself available to testify, to provide written evidence, or to cooperate in the action will be considered in the evaluation of the quality, nature, and extent of available evidence, and may prevent the presentation of a case meeting the clear and convincing test required during a hearing.
- N. **Expenses:** Accusers, the accused, and their witnesses shall assume their own expenses. Expenses of ecclesiastical supervisors shall be borne by their districts, with the exception of the President of the Synod and Secretary of the Synod, whose expenses shall be covered by the Synod. Expenses of witnesses or evidence produced upon request of ecclesiastical supervisors or panels shall be borne by their districts or the Synod, depending upon the origin of the request. The expenses of Referral Panels, Hearing Panels, and Final Hearing Panels under Bylaw section 2.15 shall be the responsibility of the Synod.
- O. **Blind Draws:** Blind draws for the selection of panels are the responsibility of the Secretary of the Synod with the exception of the Referral Panel which is formed by the President of the Synod. The pool from which names are drawn shall include all eligible names, excluding the persons named in the pertinent bylaws. To accomplish a blind draw, such method shall be used as will accomplish a truly “blind” draw, to be carried out in the presence of at least two office staff or other neutral persons. A statement attesting to the proper conduct of the blind draw shall be

prepared, signed, and dated by the witnesses to the blind draw. Names shall be used in the order in which they were surfaced by the blind draw.

- P. ***Disqualification of Ecclesiastical Supervisors or Panel Members:*** The standard for disqualification shall be actual partiality or the appearance thereof. When identified by blind draw, potential panel members shall be contacted personally to discuss their availability to serve. The Secretary or President of the Synod shall provide general information regarding the matter and identify the persons involved in the matter in order to uncover potential conflict of interest concerns. Circumstances that are thought to or are likely to affect performance of duties and the outcome of a formal process shall be disclosed to the President of the Synod or the Secretary of the Synod as appropriate.

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

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

Any party may challenge the eligibility of a panel member or hearing facilitator to serve. In the event that the service of a panel member or hearing facilitator is challenged and the panel member or hearing facilitator disagrees with the challenge, the question shall be decided by a panel of three (3) district presidents not involved in the case, selected by blind draw by the Secretary of the Synod for this purpose. In the event of disqualification of a panel member, another panel member shall be selected in the same manner as the disqualified member was selected.

- Q. ***Confidentiality:*** It is anticipated that all parties will openly and candidly admit their offenses, which requires an environment in which parties may speak freely, without fear that their words may be used against them in some subsequent legal proceeding. Therefore, all parties and other participants acknowledge and agree, by their participation in the Bylaw section 2.15 process, that they will keep confidential all communications that take place during the process, except as provided in this confidentiality provision. This confidentiality agreement extends to all oral and written communications of all ecclesiastical supervisors, parties, and panels, and includes all records, reports, letters, notes, and other documents received or produced as part of the Bylaw section 2.15 process.

(a) Those documents that existed prior to the bylaw process and were otherwise open to discovery apart from this process are excepted.

(b) Parties agree not to attempt to compel panel members to divulge any documents or to testify regarding the process in any judicial or adversarial proceeding, whether by personal testimony, deposition, written interrogatory, or sworn affidavit.

(c) Appropriate and necessary information may be divulged under the following circumstances, for which the parties will hold panel members harmless, as when:

(1) As part of normal office operations, the Synod and its representatives consult with staff members or outside experts regarding particular issues or problems related to a matter;

(2) Information is divulged when compelled by statute or court of law;

- (3) An agreement or decision has been contested or appealed outside the Synod's process;
- (4) An action has been brought against the Synod or its representatives as a result of a related matter;
- (5) The Synod or its representatives deem it appropriate to discuss a case with the church leaders of parties;
- (6) The Synod or its representatives deem it necessary to contact appropriate civil authorities to prevent personal harm.

(d) In spite of these confidentiality protections, some of the information discussed during panel proceedings may become discoverable outside the process and used in other legal proceedings, for which the Synod and its representatives shall have no liability.

- R. ***Communication with and Deportment of Panel Members:*** Except as provided in this manual, neither the accuser nor the accused or anyone on their behalf shall communicate, either directly or indirectly, with the panel or a panel member without the full knowledge of the other. All other communication shall take place at joint meetings. A panel may decide at any time during the process not to accept any communication outside of joint meetings or hearings.

In the interest of the integrity, trustworthiness, and credibility of the Bylaw section 2.15 process in the eyes of all parties, the hearing facilitator and panel members shall take care consistently to conduct themselves in a professional manner, maintaining objectivity and impartiality and avoiding all appearance otherwise, treating all parties equally and fairly, and pursuing no relationship with any of the parties to the dispute until after a final decision has ended the process.

- S. ***Exclusion from Liability:*** All parties agree not to hold the Synod, its ecclesiastical supervisors, its panels, and all panel members liable for any acts or omissions that occur during the process described in Bylaw section 2.15 and in this manual.
- T. ***Involvement of Insurers:*** If a dispute involves an alleged injury or damage that may be covered by a party's insurance, the insurer shall be notified and may be invited to participate in the Bylaw section 2.15 process in order to facilitate a prompt solution. In the event that an insurer decides to participate in the process, the insurer must also agree to be bound by its final decision.
- U. ***Involvement of a Party's Congregation:*** Sinful words and actions of a party are a concern of that party's congregation (Matt. 18:15–20; 1 Cor. 5:1–13; Gal. 6:1–2), as when a party fails to acknowledge and confess a serious sin or fails to demonstrate repentance, or especially when a party has his/her membership in the Synod terminated. When the membership of a party called by a congregation is terminated, this has serious ramifications for the calling congregation (Bylaw section 2.5). The ecclesiastical supervisor shall forward a copy of the decision to terminate to the party's congregation, urging the congregation to review the matter and take appropriate steps to fulfill its scriptural and Synod-related responsibilities.
- V. ***Continuation of Support:*** When a matter involves an individual's membership, the calling or contracting body shall be encouraged to continue the member's financial support and existing housing and insurance benefits until a final decision is rendered (Bylaw 2.15.9.1).
- W. ***Right to Object:*** If any party learns that any provision of this *Standard Operating Procedures Manual* has not been complied with and fails to object in writing within three (3) days after learning that the provision has not been complied with, the party shall be deemed to have waived the right to object. Issues raised in a timely manner shall be considered and resolved by the appropriate panel (Bylaw 2.15.9.2).

- X. ***Consequences of Violations:*** Any member involved in this bylaw procedure who intentionally and materially violates any of its requirements or is persistent in false accusations is subject to disciplinary measures. Violations of the prohibition against publicity while a matter is still undecided or while an appeal is contemplated or pending (Bylaw 2.15.7.8) are specifically to be included as violations that are subject to the disciplinary measures set forth in the process (Bylaw 2.15.9.2).
- Y. ***Retention of Records:*** After a final decision has been rendered, all panel records shall be sealed and placed in the custody of Concordia Historical Institute. They can be opened only for good cause shown and after permission has been granted by a panel of three (3) district presidents selected by blind draw by the Secretary of the Synod.
- Z. ***Distribution of Manual:*** The accuser and the accused shall receive copies of this *Standard Operating Procedures Manual* when specified in this manual. It is the responsibility of the district or Synod president who serves as consultant to see that the accuser receives the manual. It is the responsibility of the Synod President to see that the accused receives the manual when he/she is notified that a consultation is underway.
- AA. ***Interpretation and Application of Standard Operating Procedure Manual Provisions:*** Panels and ecclesiastical supervisors are responsible for interpreting and applying the principles, regulations, and other provisions provided in this manual. General questions regarding the process may be discussed with the Secretary of the Synod. Specific questions may be directed to the Commission on Constitutional Matters, whose responsibility it is to maintain this manual in consultation with the Secretary of the Synod and with the concurrence of the Council of Presidents. Should the provisions of this manual vary from the Constitution or Bylaws of the Synod, the Constitution and Bylaws shall control and supersede.
- BB. ***Exceptions to Time Limits:*** Pending criminal or civil court proceedings permit exceptions to the time limits specified, at the discretion of the administrator of the process in consultation with the ecclesiastical supervisor.

III. Flow Chart for Bylaw Section 2.15

1. Consultation with District or Synod President (2.15.3)

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



2. Commencing Action (2.15.4 – 2.15.5)

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



3. Commencing Formal Proceedings (2.15.6)

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



4. Hearing Panel (2.15.7)

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



5. Final Hearing Panel (2.15.8)

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

IV. Flow Chart Detail for Bylaw Section 2.15

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1.5 *Committee may assist in reconciliation efforts*

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

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

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

1.6 Accuser brings matter to Synod President; receives manual

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

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

2. Commencing an Action (Bylaw 2.15.4–2.15.5)

2.1 President of Synod becomes/is made aware of allegations

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

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

2.2 President of Synod investigates

In commencing such action, the President of the Synod:

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

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

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

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

2.3 President of Synod may appoint a small investigative committee

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

- If the accused is an officer of the Synod, the investigation shall include consultation with the officer’s district president. If a district president, the consultation shall include consultation with that president’s district board of officers, vice-presidents, and circuit counselors.
- The purpose of the thorough investigation shall be (1) to determine the truth regarding the accusations that have been raised, (2) to assess the full extent and consequences of any misconduct that may have taken place, and/or (3) to determine whether sufficient reason exists to warrant the member’s expulsion from the Synod under Constitution Art. XIII.
- Care shall be taken during the investigation to offer spiritual support and guidance to the involved parties.
- The President of the Synod may authorize other persons to assist him in reviewing the allegations and in conducting the investigation.
- The President of the Synod or his representative(s) shall attempt to meet and/or speak with the accuser(s). A written record of all such meetings and conversations shall be maintained and shared with the accuser(s) prior to its inclusion in the official record of the case. If additional accusations surface, signed detailed written statements shall be obtained. Accusers shall be informed that in the interest of fairness to the accused, their names may be revealed in the course of the Bylaw section 2.15 process.
- The President of the Synod or his representative(s) shall also arrange to meet with and inform the accused of the allegations that have been received and to provide opportunity for a response. A written record of this meeting shall be maintained and shared with the accused prior to its inclusion in the official record of the case. Opportunity shall be provided for additional written comment by the accused.
- The accused shall refrain from initiating any personal or private contact with the accuser(s) while the investigation is underway, except in the presence of two or three witnesses.
- The investigation shall also include interviews with persons suggested by the accuser(s) or the accused as well as with other witnesses as necessary for a full and thorough investigation. A written summary of these

interviews shall be prepared for inclusion in the official record of the case. Other documents that surface during the investigation shall also be requested and retained for inclusion in the official record.

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

2.4 President of Synod may appoint committee for reconciliation

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

(c) May, apart from the investigation, also appoint a small committee to assist in reconciliation efforts (see Bylaw 2.15.3 [d] above). [2.15.4 (c)]

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

2.5 President of Synod may form Referral Panel

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

(a) This panel shall be formed by blind draw and shall not include the district president that is a party to the matter or the district president of an accused officer or the district president of the accuser.

(b) The blind draw shall be administered by the chairman of the Council of Presidents audited by witnesses. [2.15.5]

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

If the President of the Synod fails to act within 60 days after receipt of the formal written complaint or accusation, the accuser may present a formal written request to the President of the Synod for the forming of the Referral Panel, which request the President of the Synod must grant. If the provisions set forth in Bylaw 2.15.4 have not been carried out, the Referral Panel shall carry out these provisions in the process of making its determination whether or not to initiate formal proceedings. [2.15.5.3]

- It is the responsibility of the President of the Synod (or his representative) to act within 60 days of receipt of the formal written complaint. He may choose to form a Referral Panel to assist him by reviewing the accusation and the results of the investigation, and make a determination whether or not to proceed with formal proceedings.
- A Referral Panel shall be formed if the President of the Synod or his representative fails to act within 60 days of the receipt of a formal written complaint.
- “Fails to act” is to be regarded as “no measures initiated within the required period of time [in this case, 60 days from the date of receipt of the formal written complaint] to ascertain the truth or falsity of the accusations, or the stifling of a complaint by the refusal to act” (paragraph [g] of Bylaw 2.14.2). A request for a Referral Panel by an accuser shall be granted in all cases in which the President of the Synod has failed to act within the required 60-day time period.

- The Referral Panel shall be selected by blind draw by the chairman of the Council of Presidents. All district presidents not involved in the matter shall be included in the blind draw. To accomplish a blind draw, such method shall be used that will accomplish a truly “blind” draw and shall be carried out in the presence of at least two other neutral persons. Written verification signed and dated by the witnesses to the blind draw shall attest to the proper conduct of the draw.
- Upon its selection and notification by the chairman of the Council of Presidents (who shall also identify a convener), the panel shall meet initially in person or by telephone conference to select a chairman and a secretary. The chairman shall provide leadership to the panel, arranging its meetings and representing the panel as necessary. The secretary shall maintain a record of the panel’s activity and findings.
- The President of the Synod shall provide to the Referral Panel all documents and information regarding the matter that are at his disposal. The panel shall also retain a written record of its own activities and findings leading up to its decision. This written documentation shall be included in the official record of the case.
- The Referral Panel is responsible for determining that the provisions of sections 2.2 and 2.3 (above) have been carried out. If not, it shall carry out those provisions as part of its responsibilities under the leadership of its chairman.
- A majority of the members of the Referral Panel shall constitute the required quorum. A decision of the panel shall require a minimum of two affirmative votes from the panel. In the event that a decision cannot be reached, a new panel shall be formed immediately.
- Decisions shall be rendered in writing and signed by the chairman of the panel. A decision shall state the facts determined by the panel and the facts supporting its decision. If agreement is reached between parties during the course of the panel’s work and prior to its rendering a decision, the panel shall nonetheless arrive at a final decision, setting forth the terms of any such agreements to the extent that they were relied upon in reaching the decision.
- Any pending criminal or civil court proceedings permit exceptions to any of the time limits specified, at the discretion of the ecclesiastical supervisor.

2.6 Decision not to proceed terminates the matter

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

- If the validity of accusation(s) received has not been established or if the investigation fails to uncover sufficient cause for suspension, the President of the Synod or his representative shall close the inquiry and inform the accuser(s) and the accused of the decision.
- The President of the Synod shall offer to issue a public statement as necessary to aid in restoring the accused member’s reputation.
- Sensitivity shall be shown to accusers and their concerns, and referral to professional resources shall be provided according to perceived need for restoration and healing.
- As necessary, attention shall be given to enable the accused to take responsibility for any behavior and consequences associated with any concerns uncovered by the investigation that, while valid, did not warrant suspension of membership.
- Accurate information shall be provided to the peers of the accused as judged necessary and helpful by the President of the Synod.
- District and Synod legal counsel shall be informed if the accuser(s) threaten(s) legal action or retain(s) representation by counsel upon receipt of the decision not to initiate formal proceedings.

2.7 Decision to proceed commences suspension

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

- When the validity of accusation(s) received has been established by clear and convincing evidence, the President of the Synod or his representative shall proceed to carry out supervisory responsibility, including consulting with other resource persons as appropriate to assess professional and personal consequences,

and initiating formal proceedings for expulsion of the member from the Synod when warranted under Art. XIII of the Constitution.

- Sensitivity shall continue to be shown to all victims of the actions of the accused, to include referral to professional resources as necessary for assistance in assessing needs and obtaining resources for restoration and healing.
- Diligent attention shall continue to be given to enabling the accused to take full responsibility for wrongful behavior and its consequences and to make use of the services of qualified professionals to assist with moral and spiritual rehabilitation.
- In the case of a suspension, the President of the Synod shall inform and spend time with the family of the worker to assess needs, provide reasonable support, and offer referral to competent professional care as appropriate.
- Accurate information on a need-to-know basis and as judged necessary and helpful by the President of the Synod shall also be provided by the President of the Synod to others affected by the investigation and the decision to suspend.
- Leaders of affected congregation(s) and the church-at-large shall be consulted to evaluate needs for information and assistance, especially when misconduct has been established and/or a resignation has been tendered.
- District and Synod legal counsel shall be consulted if the accused threatens legal action or is represented by counsel to determine the need to inform insurers and as otherwise deemed appropriate by the President of the Synod or his representative.

3. Commencing Formal Proceedings (Bylaw 2.15.6)

3.1 *President of Synod provides notification of suspended status*

If the President of the Synod or the Referral Panel concludes that the facts form a basis for expulsion of the member under Article XIII of the Constitution, the President of the Synod, in commencing the formal proceedings, shall:

(a) provide to the member a written notification of the member's suspended status under Bylaw 2.13.4; [2.15.6 (a)]

- When possible, notification shall be made in a manner that results in a signed receipt to verify delivery, thereby to provide evidence that the notification was received by the accused member and to establish the date of its receipt.
- In the event that a party cannot be located or appears to be avoiding the process by refusing to sign a delivery receipt, ordinary first class mail sent to the last known address with allowance for sufficient time for delivery shall, after two failed delivery attempts by certified or other signature-requiring mail, suffice to provide notice.
- The notification of suspended status shall include reference to Bylaws 2.13.4–2.13.4.3 and their provisions for such status.

3.2 *President of Synod provides statement with facts to the accused*

(b) provide to the member a written statement of the matter which sets forth the facts and states that he is requesting expulsion of the member from the Synod in accord with Article XIII of the Constitution;... [2.15.6 (b)]

- The written statement of the matter requires careful preparation, since it will serve as the basis for the proceedings that follow. It will also serve as the subject of the defense by the accused. The statement should be concise, contain factual assertions regarding the issues of the case, and demonstrate their relevance to Art. XIII of the Constitution and its stated causes for expulsion from membership in the Synod. This statement becomes a part of the official record of the matter maintained by the President of the Synod.

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

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

(c) provide to the member a written notification that the member has 15 days from the date of receipt of the statement of the matter to advise the President of the Synod that there is a desire to have the matter heard and resolved. [2.15.6 (c)]

- When possible, notification shall be made in a manner that results in a signed receipt to verify delivery, thereby to provide evidence that the notification was received and to establish the date of its receipt.
- In the event that a party cannot be located or appears to be avoiding the process by refusing to sign a delivery receipt, ordinary first class mail sent to the last known address with allowance for sufficient time for delivery shall, after two failed delivery attempts by certified or other signature-requiring mail, suffice to provide notice.
- This written notification by the President of the Synod which accompanies the notification of suspended status and the written statement of the matter shall make clear to the accused how the end date of the 15-day period will be calculated, also making clear that a request for a hearing is to be directed back to him as the ecclesiastical supervisor.
- When a member is placed on suspended status, the President of the Synod shall encourage his congregation or other calling entity to continue to provide to the worker financial and other support at current levels until a final decision is reached.

3.4 Failure of the accused to request a hearing results in expulsion

Failure by the member to file such written request for hearing and resolution within the 15-day period shall be deemed to be consent to expulsion from membership in the Synod. [2.15.6.1]

- A written request for a hearing and resolution of the matter must include means of verification that it was sent within the required 15-day period of time.
- After sufficient time has passed to ascertain that a written request for a hearing will not be filed by a suspended member, the President of the Synod shall inform the member of his expulsion from the Synod.
- The President of the Synod shall inform the Department of Rosters and Statistics and the members of the Council of Presidents of the termination of membership. The date of termination to be reported is the date on which the member was notified of expulsion from the Synod.
- The President of the Synod shall also inform other members and entities of the Synod of the expulsion on a need-to-know basis.
- The President of the Synod shall take such steps as are possible and necessary to assure that the spiritual needs of the expelled member are met.
- If a written request for hearing and resolution is not filed within the prescribed time, the member's membership ceases and all records of the matter shall be delivered to and retained in the office of the president of the district through which the member held roster status in the Synod for future reference.

3.5 Request for hearing commences panel process

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

- After the President of the Synod receives a request for hearing from the accused, it is solely his responsibility to inform the Secretary of the Synod that a Hearing Panel will be needed.
- The written request for a hearing and resolution of the matter shall be forwarded immediately to the Secretary of the Synod to allow maximum time for the formation of the Hearing Panel. When possible, verbal notification should precede the delivery of the written request.

- The original signed copy of the written request shall become a part of the official record of the matter along with all previous documentation heretofore retained by the President of the Synod and shall be forwarded to the Secretary of the Synod along with previous documentation.
- When the Secretary is involved personally as a witness or has a direct interest in the outcome of the matter, an alternate administrator shall be appointed by the President of the Synod. If a party intends to present testimony or evidence which would suggest the potential need for the Secretary to become a witness, such intention must be raised in a timely manner so that the administrator has opportunity to recuse himself and a replacement administrator can be appointed.

4. Hearing Panel (Bylaw 2.15.7)

4.1 President of the Synod provides statement and memorandum

At the time that the request for hearing is made, the President of the Synod shall forward to the Secretary of the Synod the statement of the matter and a written memorandum describing the manner in which there was compliance with the guidelines provided in Matthew 18:15–16 and “previous futile admonition” (Constitution, Art. XIII), as well as all of the provisions of Bylaws 2.15.3–2.15.6.1. [2.15.7.1]

- The “statement of the matter” that is to be provided to the Secretary of the Synod is a copy of that statement that was provided to the accused officer or district president at the time of notification of suspended status. The Secretary of the Synod shall forward copies of the statement to the members of the Hearing Panel when it is formed. The copy of the statement of the matter received by the Secretary shall be included in the official record of the matter, which now remains with the Secretary for the duration of the process.
- The additional “written memorandum” requires careful preparation by the President of the Synod, as copies of it will be forwarded to the Hearing Panel by the Secretary of the Synod to demonstrate to the panel that all constitutional and bylaw requirements were met. This document also shall be included in the official record of the matter that remains with the Secretary of the Synod for the duration of the process.

4.2 Secretary of Synod forms panel and selects hearing facilitator

...who [the Secretary of the Synod] shall initiate the formation of a Hearing Panel, such formation to be accomplished within 30 days of the request in accordance with the provisions in this bylaw. [2.15.7]

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

- (a) One district president shall be selected by the accused (a district president, if he is the accused, may not choose himself);**
- (b) One district president shall be selected by the President of the Synod;**
- (c) One reconciler who is a layperson shall be chosen by blind draw from the Synod’s roster of reconcilers, with the blind draw administered by the Secretary of the Synod and audited by witnesses.**
- (d) Each Hearing Panel shall be assisted by a nonvoting hearing facilitator selected according to Bylaw 2.14.2 (j).**
- (e) The hearing facilitator shall administrate the hearing and may draw upon persons and resources that he/she deems necessary for conducting a hearing in a fair and equitable manner.**
- (f) The hearing facilitator shall serve as an advisor to the panel on the form but not the substance of the decision.**
- (g) If a Referral Panel was formed, the three district presidents that served in that capacity are not eligible to serve on a Hearing Panel. [2.15.7.2]**

Upon receipt of a request for hearing, the Secretary of the Synod shall promptly notify the accused and the President of the Synod of their respective right to choose one Hearing Panel member and direct that the identity of their selection be transmitted to the Secretary of the Synod within 15 days from the date of

such notice. If either party declines to make a selection within 15 days, the Secretary of the Synod shall then make such selection within five days. [2.15.7.3]

The Secretary of the Synod shall also promptly select a lay reconciler to serve as a third member of the Hearing Panel and a hearing facilitator to assist the panel. [2.15.7.4]

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

- When a request for a hearing has been made, the Secretary of the Synod shall facilitate the formation of the requested panel in the manner described in the bylaw. He shall also serve as timekeeper to assure that the panel functions according to the time requirements provided in the bylaws, a service that he will continue to provide throughout the remainder of the panel process.
- When possible, notifications to the accused and the President of the Synod shall be made in a manner that results in a signed receipt to verify delivery, thereby to provide evidence that notifications were received and to verify the date of their receipt.
- Responses to the notification shall be postmarked within the required time limits. After sufficient time has passed to make certain that any required responses will not be received, the Secretary of the Synod shall proceed to move the panel selection process forward.
- If either party fails to make a selection, the Secretary of the Synod shall make the necessary selection by blind draw. To accomplish a blind draw, such method shall be used as will accomplish a truly “blind” draw, to be carried out in the presence of at least two (2) other neutral persons. Written verification signed and dated by the witnesses to the blind draw shall be required to attest to the proper conduct of the draw.
- To facilitate the honoring of limited time requirements imposed by the bylaws, telephone, e-mail, or fax messages may precede original copies of signed responses, thereby allowing the Secretary of the Synod to proceed with his responsibilities prior to his reception of the official responses.
- Upon completion of the formation of the Hearing Panel, information regarding the membership of the panel shall be provided by the Secretary of the Synod to the accused, the President of the Synod, and the panel members.
- All documentation associated with panel selection shall be included in the official record of the matter maintained by the Secretary of the Synod.
- When the members of the Hearing Panel have been notified, the hearing facilitator shall arrange for an initial meeting of the panel, in person or by telephone conference.
- At its first meeting, the panel shall select one of its members to serve as chairman of the panel, to provide leadership to the panel and to serve as its spokesman.
- The panel shall also designate one of its members to serve as its secretary to prepare and maintain a record of the panel’s meetings and proceedings, and to acquire and retain for the official record original copies of all documents provided to the panel prior to and during the hearing(s).
- A majority of the members of the panel shall constitute the quorum required in all stages of the panel process. If a panel member withdraws or is unable to perform required duties after a panel has begun its work, the remaining panel members shall continue without filling the vacancy. Decisions by the panel shall continue to require two (2) “yes” votes.

4.3 Statement and memorandum provided to the panel

The Secretary of the Synod shall forward to the Hearing Panel the statement of the matter together with the written memorandum describing the manner in which there was compliance with the guidelines provided in Matthew 18:15–16 and “previous futile admonition” (Constitution, Art. XIII), as well as all of the provisions of Bylaws 2.15.3–2.15.6.1. [2.15.7.7]

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

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

4.4 Hearing facilitator selects date and location for hearing

Within 15 days after the Hearing Panel is constituted, the hearing facilitator shall, after conferring with the panel, the accused, and the President of the Synod, select a date and location within 45 days after the panel was constituted for the panel to hear and consider the matter. [2.15.7.6]

- A preliminary conference of the hearing facilitator, the accused, and the President of the Synod may be scheduled to arrange for the exchange of information and the stipulation of uncontested facts to expedite the panel proceedings. Such conferences may also arrange for the production of relevant evidence, identify potential witnesses, schedule a hearing, and consider other matters that will expedite the panel proceedings.
- Panels may require that the accused and the President of the Synod deliver to the panel and to each other copies of the documents that they plan to introduce and a list of the witnesses they plan to call. All documents shall be delivered through the office of the Secretary of the Synod by such method and dates as are determined by the panels. The panel may decide at any time during the process, however, not to accept any communication outside of hearings.
- The formal hearing before the Hearing Panel shall take place within 45 days after the date that the Secretary of the Synod notified the members of the panel of their selection.
- Meeting arrangements shall be the responsibility of the hearing facilitator after conferring with the accused, the members of the panel and the President of the Synod to identify a suitable time and place for the hearing(s). He may call upon the travel and meeting department of the Synod for assistance with meeting, lodging and travel arrangements.
- The preference of the accused shall be taken into consideration when determining the time, place, and other requirements of a hearing. Ordinarily the hearing shall be located in the vicinity of the residence of the accused member on a date and at a time that will be convenient for the witnesses asked to testify.
- The hearing facilitator shall provide at least ten (10) days' written notice of the time and place of a hearing unless both parties waive such notice requirement. Each party and the panel are responsible for notifying their witnesses.
- No party to the matter or the President of the Synod nor any person acting on either's behalf shall either directly or indirectly communicate regarding the matter with a panel or a member of a panel outside of hearings, except as otherwise specifically provided in this manual.

4.5 Panel conducts hearing according to guidelines

The Hearing Panel and all parties shall follow the guidelines as set forth in Bylaw 2.14.7.8 with the exception of paragraph (g) and instead shall follow this guideline in its place:... [2.15.7.8]

- (a) Holy Scripture, the Lutheran Confessions, and the Constitution and Bylaws of the Synod shall govern the panel in all its actions.**
- (b) The hearing before the panel shall be private, attended only by the persons involved and the witnesses who can substantiate the facts relevant to the matter. The only exception is stated under paragraph (h) below.**
- (c) The panel shall establish the procedure to be followed in the hearing and the relevancy of the evidence so that each party involved shall be given an opportunity fully to present its respective position.**
- (d) Any member of the Synod, officer of a congregation, or officer of any organization owned or controlled by the Synod shall, when called upon by the panel to do so, testify or produce records related to the matter.**
- (e) Each party to the matter shall assume its own expenses. The expenses of the panel shall be borne by the district or the Synod.**
- (f) No party to the matter nor anyone on the party's behalf shall communicate either directly or indirectly with the panel or any member of the panel without the full knowledge of the other party to the matter.**

(g) While the matter is still undecided or while an appeal is contemplated or pending, publicity shall not be given to the issues in the matter by any of the persons involved during any part of the procedures outlined in this bylaw, with one exception. Due to the fact that this bylaw procedure deals with a district president or an officer of the Synod, which necessarily means that the case will most likely have a high public exposure, as the ecclesiastical supervisor, the President of the Synod, at his discretion, may carry out his duties to properly advise the Synod as the needs dictate in order to “promote and maintain unity of doctrine and practice” (Constitution, Art. XI B 3) and in order to provide counsel, care, and protection for all of the members of the Synod (Constitution, Art. III 8, 9). [2.15.7.8]

(h) Any party to the matter may seek, at its own personal expense, the assistance of individuals familiar with the issues involved in the matter. They may actively participate in research and the preparation of necessary documents. At the hearing, however, each party involved may have an adviser present but must represent itself, with no public participation by the adviser.

(i) The panel shall determine the number of witnesses necessary for a full and complete understanding of the facts involved in the matter. It shall question persons involved and witnesses directly and may also permit the persons involved to do so (cf. paragraph (h) above).

(j) All panel records in which the panel has rendered a final decision shall be placed in the custody of Concordia Historical Institute. All such records shall be sealed and shall be opened only for good cause shown and only after a panel of three district presidents, selected by blind draw for that purpose by the Secretary of the Synod and audited by witnesses, has granted permission.

(k) If any part of the dispute involves a specific question of doctrine or doctrinal application, each party shall have the right to an opinion from the Commission on Theology and Church Relations (CTCR). If it involves questions of constitution or bylaw interpretation, each party shall have a right to an interpretation from the Commission on Constitutional Matters (CCM).

(1) The request for an opinion must be made through the panel, which shall determine the wording of the question(s).

(2) The request for an opinion must be made within 30 days of the final formation of the panel. If a party does not request such an opinion within the designated time, such a request may still be made to the panel, which shall, at its discretion, determine whether the request shall be forwarded. The panel shall also have the right, at any time, to request an opinion from the CCM or the CTCR.

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

(4) When an opinion has been requested, the time limitations will not apply until the parties have received the opinion. The panel must follow any opinion received from either the CCM or the CTCR. [2.14.7.8]

- The issue to be decided by a Hearing Panel shall be whether the suspension of the accused district president or officer of the Synod will be upheld, including whether the President of the Synod followed prescribed procedures and whether the burden of proof for expulsion has been met under Bylaw section 2.15 and Article XIII of the Constitution.
- The proceedings of the hearing shall be conducted according to the guidelines provided in this *Standard Operating Procedures Manual*, a copy of which shall have been provided to the accused member at the time that such member was informed that an accusation had been made (see 1.2 above).
- Hearings shall be private, attended only by the panel members, the accused, the President of the Synod, and one advisor each if desired. The advisor shall not address the panel or directly participate in the discussions during the hearing. A party to the matter and his advisor may be present at all phases of the hearing except deliberations. Subject to the discretion of the panel as to the helpfulness of the presence of others at various points in the hearing process, attendance at hearings shall be limited to witnesses who can substantiate relevant facts to the matter and other “persons involved” (including a witness or adviser or any others involved in the matter).
- The panel shall establish the procedure to be followed to receive evidence and testimony and to determine their relevancy to the decisions to be made by the panel, so that each party in the matter is provided opportunity fully to present its case. Relevance is determined by whether particular evidence will (or will not) support the suspension of the member.

- Witnesses who are able to substantiate the facts relevant to the matter may be called before and address the panel at the request of the accused, the President of the Synod, or the panel. The panel may require the President of the Synod and the accused to deliver to the panel and to each other a list of the witnesses they plan to call and copies of documents they plan to produce. Expert witnesses should be designated as such in the witness list provided. When expert witnesses are listed, it is the responsibility of the panel to determine whether such testimony will be helpful or necessary for reaching a decision.
- Unless otherwise determined by the panel, witnesses shall attend hearings only during the time that they are giving their own testimony. The panel shall question witnesses directly and may also permit the accused and the President of the Synod to do so. The panel will establish the process by which witnesses will testify and be available for questioning.
- The hearing facilitator serves as the moderator of the formal hearing.
- Subject to other specific provisions in this manual, all evidence shall be received in the presence of all panel members, the accused, and the Synod President except when a party has waived the right to be present or when a hearing proceeds in the absence of a party who fails to be present.
- When a panel proceeds with its hearing in the absence of a party, a decision shall not be made solely on the basis of the default of a party. The panel shall allow the party to submit such evidence as the panel may find beneficial for reaching its decision. The panel also may, but need not, allow the absent party an opportunity to appear at a subsequent hearing attended by all parties.
- As the panel carries out its responsibilities, it shall continue efforts to reconcile the parties on the basis of Christian love, forgiveness, and justice.
- A panel may reopen a case for good cause and conduct additional hearings at any time before a final decision is rendered.
- At its discretion, the panel may make audio recordings of the proceedings solely for its own use. Such recordings are not to be regarded as part of the record of the matter. No other recording of the proceedings of a hearing, aside from the participants' personal notes, may be made in any manner.

4.6 *Panel issues written decision*

Upon completion of the hearing, the Hearing Panel shall deliberate and then issue its written decision within 30 days, a copy of which shall be mailed to the accused district president or officer, the President of the Synod, the accuser and his district president, and the Secretary of the Synod.

(a) The decision of the Hearing Panel shall have no precedential value and shall be final and binding subject to appeal by the accused or the President of the Synod. [2.15.7.9]

- The written decision of the panel shall be issued within 30 days of the date of the completion of the hearing.
- A panel decision of any matter shall be decided by two (2) votes of the panel. In the event that a decision cannot be reached, a new panel shall be formed immediately and the matter reheard.
- Decisions shall be rendered in writing and signed by the chairman of the panel. The decision of the panel shall state the facts determined by the panel and the basis for the panel's decision (see *Appendix A* of this manual).
- If agreement is reached by reconciliation or resignation during the course of a hearing prior to a decision being rendered, the panel shall nonetheless arrive at a final decision. The final decision in such case shall set forth the terms of the agreement(s) to the extent relied upon in reaching the decision. A written copy of the agreement shall include the basis for the resolution of the matter, signed by the accused and the President of the Synod and approved by the panel.
- The decision shall be provided to the accused district president or officer of the Synod by mail in a manner that requires a signature upon receipt, thereby to furnish evidence that the document has been received and to verify the date of the receipt of the notification, which triggers the 15-day prescribed time period for an appeal. The decision shall be provided to the accuser and his or her district president and the President and Secretary of the Synod without return receipt signature requirements.
- Notification shall make clear to the accused how the 15-day period for appeal is determined and to whom a request for a final hearing may be directed.

- All earlier documentation of the matter and all records of the panel, including an original signed copy of the panel's decision and post office receipts indicating the date of reception of the decision by the parties, shall accompany the notification sent to the Secretary of the Synod.

4.7 If not appealed, the decision of the panel is final

(b) The decision shall be carried out by the President of the Synod and be publicized as deemed appropriate under the circumstances by the President of the Synod if not appealed by the accused or by the President of the Synod. [2.15.7.9 (b)]

- Reception of signed receipts from the post office or other carrier indicates reception of the written decision and establishes the date for the beginning of the 15-day time allowance for a response.
- Publicity regarding the panel decision shall not be provided by the President of the Synod until it is clear that time has elapsed for the request for a final hearing.
- All records of the panel, including an original signed copy of the panel's decision and post office receipts indicating the date of reception of the decision by the parties, shall accompany the notification sent to the Secretary of the Synod.
- The Secretary of the Synod shall be responsible for the transmission of the complete record of the case to Concordia Historical Institute after a final decision has been rendered. Such records shall remain sealed, to be opened only for good cause shown and only after permission has been granted by a panel of three (3) district presidents selected by blind draw for this purpose by the Secretary of the Synod (cf. Bylaw 2.14.7.8 [j]).

4.8 Accused or President of Synod may request a final hearing

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

- A written request for a final hearing with its accompanying memorandum stating the basis for the request may be submitted to the Secretary of the Synod no later than the 15th day after the decision of the Hearing Panel was received. If sent by mail, it shall be postmarked no later than the 15th day. If sent by fax or electronic mail, it shall be dated and transmitted no later than the 15th day.
- The request for a final hearing may be made by the accused for any reason related to the conduct of the hearing or the decision of the Hearing Panel. The accompanying memorandum stating the basis for the request should be specific to assist the Final Hearing Panel, identifying areas of concern or disagreement with the Hearing Panel's decision.
- To allow maximum time for the formation of the Final Hearing Panel, verbal notification, when possible, should precede the formal submission of the request for a final hearing and its accompanying memorandum. The receipt of the written request determines the beginning date of the 30-day allowance for selection of Final Hearing Panel members.
- The original copies of the written request and memorandum, retained by the Secretary of the Synod, become a part of the official record of the matter.

5. Final Hearing Panel (Bylaw 2.15.8)

5.1 Request for a final hearing

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

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

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

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

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

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

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

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

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

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

(a) The panel shall be constituted in the same prescribed manner as described in Bylaws 2.15.7.2–2.15.7.6, except that the district presidents, reconciler, and facilitator associated with the Hearing Panel and the three district presidents that constituted a Referral Panel and any other involved district presidents are omitted from consideration for the Final Hearing Panel. [2.15.8.1 (a)]

- The Secretary of the Synod shall facilitate the formation of the requested panel in the manner described in the bylaws mentioned. He shall also serve as timekeeper to assure that the panel observes the time requirements, a service that he shall continue to provide throughout the remainder of the panel process.
- The Final Hearing Panel shall be selected in the same manner as the earlier Hearing Panel, except that the two (2) district presidents, the reconciler, the hearing facilitator who provided assistance to the Hearing Panel, and any other involved district presidents are not eligible to be considered.
- When possible, notifications to the accused and to the President of the Synod shall be made in a manner that results in a signed receipt to verify delivery, thereby to provide evidence that the notifications were received and to verify the date of their receipt, which establishes the beginning date for the 15-day time requirement.
- Responses to the notifications shall be postmarked within the required time limits. After sufficient time has passed to make clear that the required responses will not be received, the Secretary of the Synod shall proceed to move the panel selection process forward.
- If either party fails to make a selection, the Secretary of the Synod shall make the necessary selection by blind draw. To accomplish a blind draw, such method shall be used as will accomplish a truly “blind” draw, to be carried out in the presence of at least two (2) other neutral persons. Written verification signed and dated by the witnesses to the blind draw shall be required to attest to the proper conduct of the draw.
- To facilitate complying with the limited time requirements imposed by the bylaws, telephone, e-mail, or fax messages may precede original copies of signed responses, thereby to allow the Secretary of the Synod to proceed with his responsibilities prior to his reception of the formal responses.

- Upon completion of the formation of the Final Hearing Panel, information regarding the membership of the panel shall be provided by the Secretary of the Synod to the accused, the President of the Synod, the hearing facilitator, and the panel members. All documentation associated with panel selection shall be included in the official record of the matter maintained by the Secretary of the Synod.
- When the members of the Hearing Panel have been notified, the hearing facilitator shall arrange for an initial meeting of the panel, in person or by telephone conference.
- At its first meeting, the panel shall select one of its members to serve as chairman of the panel, to provide leadership to the panel and to serve as its spokesman.
- The panel shall also designate one of its members to serve as its secretary to prepare and maintain a record of the panel's meetings and proceedings, and to acquire and retain for the official record original copies of all documents provided to the panel prior to and during the hearing(s).
- A majority of the members of the panel shall constitute the quorum required in all stages of the panel process. If a panel member withdraws or is unable to perform required duties after a panel has begun its work, the remaining panel members shall continue without filling the vacancy. Decisions by the panel shall continue to require two (2) "yes" votes.

5.4 Hearing Panel chairman provides materials to Final Hearing Panel

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

- Copies of the documents previously forwarded by the President of the Synod to the Secretary of the Synod and copies of all other records of the matter, including the record of the Hearing Panel's activity, hearings, evidence received, and findings, and including also the request for a final hearing and its accompanying memorandum, shall be forwarded by the Secretary of the Synod to the members of the Final Hearing Panel at the time that they are notified of their selection to the panel.
- When informed that a final hearing has been requested, the chairman of the Hearing Panel shall provide "a written statement of the matter" in response to the written memorandum by the accused member supporting his request for a rehearing of the matter by a Final Hearing Panel. These documents are the basis upon which the Final Hearing Panel begins its work. This document is provided to the Secretary of the Synod and also becomes a part of the official record, with copies provided to the members of the panel.
- The secretary of the Final Hearing Panel now becomes responsible for maintaining a record of the panel's activity, its hearings(s), the evidence received, and its findings.

5.5 Final Hearing Panel follows same procedure as Hearing Panel

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

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

5.6 Panel conducts hearing according to guidelines

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

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

5.7 Panel issues written decision

Upon completion of the hearing of the Final Hearing Panel, the panel shall deliberate and then issue its written decision within 30 days, a copy of which shall be mailed to the accused, any involved district president, the accuser, the Secretary of the Synod, and the President of the Synod.... [2.15.8.2]

- The written decision of the Final Hearing Panel shall be issued within 30 days of the date of the completion of the hearing.
- A panel decision of any matter shall be decided by two (2) votes of the panel. In the event that a decision cannot be reached, a new panel shall be formed immediately and the matter reheard.
- Decisions shall be rendered in writing and signed by the chairman of the panel. The decision of the panel shall state the facts determined by the panel and the basis for its decision (see *Appendix B* of this manual).
- If agreement is reached by reconciliation or resignation during the course of a hearing prior to ~~rendering~~ a decision being rendered, the panel shall nonetheless arrive at a final decision. The final decision in such case shall set forth the terms of the agreement(s) to the extent relied upon in reaching a decision. A written copy of the agreement shall include the basis for the resolution of the matter, signed by the accused and the President of the Synod and approved by the panel.
- The decision may be provided without return receipt signature requirements since there is no further opportunity for appeal.

5.8 Final decision is binding on all parties

...The final decision of the Final Hearing Panel shall

- (a) be binding upon the parties and not be subject to further appeal;**
 - (b) have no precedential value;**
 - (c) be carried out by the President of the Synod; and**
 - (d) be publicized as deemed appropriate under the circumstances by the President of the Synod.**
- [2.15.8.2]

- All records of the panel shall accompany the original signed copy of the decision sent to the Secretary of the Synod.
- The Secretary of the Synod shall be responsible for transmitting all records of the case to Concordia Historical Institute. Such records shall be sealed and shall be opened only for good cause and only after permission has been granted by a panel of three district presidents selected by blind draw by the Secretary of the Synod.

Decision of Hearing Panel

Names of Persons Involved:

Suspended Member: _____

Synod President: _____

Hearing Information:

- *[Provide date, place, and time of hearing(s), persons present, names of witnesses if any, general outline of hearing(s).]*

Issues to Be Decided:

The main issue to be decided by the panel:

- Should the suspension of _____ *[name]* _____ be upheld, or should the suspension not be upheld and the full membership of the accused in the Synod be restored?

In order to answer the main issue, the following sub-issues were decided:

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

Summary of Decisions on the Issues:

- The panel determined that proper procedure *[was/was not]* followed by the President of the Synod in suspending the member of the Synod.
- The panel determined that clear and convincing evidence *[was/was not]* provided to support the accusations that led to suspension.
- The panel determined that the burden of proof for expulsion under Bylaw section 2.15 and Article XIII of the Constitution *[was/was not]* met.
- Therefore, the panel has determined that the decision to suspend *[should/should not]* be upheld.

Basis for Panel Decisions

- The panel determined that proper procedure *[was/was not]* followed by the President of the Synod in suspending the member of the Synod.

[Provide facts to support decision]

[Summarize reason(s) for conclusion reached]

- The panel determined that clear and convincing evidence *(was/was not)* provided to support the accusations that led to suspension for the following reasons(s):

[Provide facts to support decision]

[Summarize reasons(s) for conclusion reached]

- The panel determined that the burden of proof for expulsion under Bylaw section 2.15 and Article XIII of the Constitution *(was/was not)* met for the following reason(s):

[Provide facts to support decision]

[Summarize reasons(s) for conclusion reached]

- Therefore, the panel has determined that the decision to suspend *[should/should not]* be upheld.

Appeal to a Final Hearing Panel

As provided by Bylaw 2.15.8, within 15 days after receiving a Hearing Panel decision, “the accused or the President of the Synod if a question of doctrine or practice is involved (Constitution, Art. XI B 1-3) may request a final hearing.” Such request for a second (and final) hearing, submitted to the Secretary of the Synod, must include a written memorandum stating the basis for the request and must be submitted within 15 days after receiving the decision of the panel. A more detailed description of this process is provided in the *Standard Operating Procedures Manual*.

Signature of Panel Chairman

This concludes the decision of this panel.

Respectfully submitted,

Signed: _____ *[Signature of Panel Chairman]* **Date:** _____

Decision of Final Hearing Panel

Names of Persons Involved:

Suspended Member: _____

Synod President: _____

Hearing Information:

- *[Provide date, place, and time of hearing(s); persons present; names of witnesses, if any; general outline of hearing(s).]*

Issues to Be Decided:

The main issue to be decided by the panel:

- Should the suspension of _____ *[name]* _____ be upheld, or should the suspension not be upheld and the full membership of the accused in the Synod be restored?

In order to answer the main issue, the following sub-issues were decided:

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

Summary of Decisions on the Issues:

- The panel determined that proper procedure *[was/was not]* followed by the President of the Synod in suspending the member of the Synod.
- The panel determined that clear and convincing evidence *[was/was not]* provided to support the accusations that led to suspension.
- The panel determined that the burden of proof for expulsion under Bylaw section 2.15 and Article XIII of the Constitution *[was/was not]* met.
- Therefore, the panel has determined that the decision to suspend *[should/should not]* be upheld.

Basis for Panel Decisions:

- The panel determined that proper procedure *[was/was not]* followed in suspending the member for the following reason(s):

[Provide facts to support decision]

[Summarize reason(s) for conclusion reached]

- The panel determined that sufficient evidence *[was/was not]* provided to support the accusations that led to suspension for the following reasons(s):

[Provide facts to support decision]

[Summarize reasons(s) for conclusion reached]

- The panel determined that the burden of proof for expulsion under Bylaw section 2.15 and Article XIII of the Constitution *[was/was not]* met for the following reason(s):

[Provide facts to support decision]

[Summarize reasons(s) for conclusion reached]

- Therefore, the panel has determined that the decision to suspend *[should/should not]* be upheld.

Signature of Final Hearing Panel Chairman

This concludes the decision of this panel.

Respectfully submitted,

Signed: *[Final Hearing Panel chairman]* Date: _____