

STANDARD OPERATING PROCEDURES MANUAL

Expulsion from Membership: District President or Officer

BYLAW SECTION 2.15



2023 Handbook

December 2023

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(Note: Throughout this document all quotations from the 2023 *Handbook* are printed in a distinct typeface.)

I. GENERAL PRINCIPLES FOR BYLAW SECTION 2.15

- A. The Synod has established 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 (see also Bylaw 1.2.1 [j]).
- B. Ecclesiastical supervisors, those bringing accusations, those accused, and members of panels are governed in all their actions by the Holy Scriptures; the Lutheran Confessions; the Constitution, Bylaws, and resolutions of the Synod (Bylaws 2.14.7.8 [a] and 2.15.7.8; Bylaw Sections 1.6–1.8); and the procedures provided in this *Standard Operating Procedures Manual* (Bylaw 2.15.10.3).
- 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. II¹) and the conditions of membership (Constitution Art. VI²). These resolutions help to determine whether an act is contrary to Articles II and VI (cf. Art. XIII).

¹ LCMS Constitution Article II:

The Synod, and every member of the Synod, accepts without reservation:

1. The Scriptures of the Old and the New Testament as the written Word of God and the only rule and norm of faith and of practice;
2. All the Symbolical Books of the Evangelical Lutheran Church as a true and unadulterated statement and exposition of the Word of God, to wit: the three Ecumenical Creeds (the Apostles' Creed, the Nicene Creed, the Athanasian Creed), the Unaltered Augsburg Confession, the Apology of the Augsburg Confession, the Smalcald Articles, the Large Catechism of Luther, the Small Catechism of Luther, and the Formula of Concord.

² LCMS Constitution Article VI :

Conditions for acquiring and holding membership in the Synod are the following:

1. Acceptance of the confessional basis of Article II.
2. Renunciation of unionism and syncretism of every description, such as:
 - a. Serving congregations of mixed confession, as such, by ministers of the church;
 - b. Taking part in the services and sacramental rites of heterodox congregations or of congregations of mixed confession;
 - c. Participating in heterodox tract and missionary activities.
3. Regular call of pastors and any commissioned ministers and regular election of lay delegates by the congregations, as also the blamelessness of the life of such.
4. Exclusive use of doctrinally pure agenda, hymnbooks, and catechisms in church and school.
5. A congregation shall be received into membership only after the Synod has convinced itself that the constitution of the congregation, which must be submitted for examination, contains nothing contrary to the Scriptures or the Confessions.
6. Ordained and commissioned ministers or candidates for these offices not coming from recognized orthodox church bodies must submit to a colloquium before being received.
7. Congregations and individuals shall be received into membership at such time and manner, and according to such procedures, as shall be set forth in the bylaws to this Constitution.

- D. The procedures of Bylaw section 2.15 (among other bylaws) and this *Standard Operating Procedures Manual* provide the means to carry out Article XIII³ of the Constitution as well as the Synod's objectives as set forth in Article III, especially paragraphs 1, 8, & 9.⁴ 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 forward 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 visitor 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, also describes a manner of conduct for all Christians in general, one that is to be honored throughout this process whenever applicable. The reputations of the accused and accuser and all others involved 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 ecclesiastical supervisor and must be established by evidence that is both convincing and clear (See *General Regulations, [L] Burden of Proof*). 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

³ LCMS Constitution Article XIII:

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.

⁴ LCMS Constitution Article III 1, 8–9:

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;

and restore the brother or sister, even if expulsion from the Synod results (Matt. 18:15–20; Gal. 6:1–5; cf. Bylaws 1.10.1–1.10.1.6). It (along with other bylaws) 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. See below, *IV. General Regulations, (E) Required Consultation* (p. 13).
- 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.⁵ 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 supervision⁶ (Bylaw 4.4.5) and 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 visitor shall assist the district president within his circuit (Bylaw 5.2.3). He shall serve under the direction of and be accountable to the district president, shall serve as his spokesman when so authorized and directed, and shall assist him in doctrinal and spiritual supervision (Bylaw 5.2.3 [a]). Vice-presidents, elected advisors of district presidents or the

⁵ LCMS Constitution Article XI B 1–3:

B. Duties of the President

- 1. The President has the supervision regarding the doctrine and the administration of
 - a. All officers of the Synod;
 - b. All such as are employed by the Synod;
 - c. The individual districts of the Synod;
 - d. All district presidents.
- 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.

⁶ LCMS Constitution Article XII 7–8:

- 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 visitors, 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.

President of the Synod, shall assist district presidents in discharging their responsibilities and represent them upon their request or as provided by the Synod (Bylaw 3.3.2).

- N. The ecclesiastical supervisor shall make every effort to resolve matters on a timely basis, protect the integrity of the process, be consistent and fair, and guard against improper publicity.
- O. All constitutional and bylaw functions of the ecclesiastical supervisor—including offering advice, admonition, and judgment—are to be circumscribed not by his private views, individual interpretation, or personal or public opinion but as guided and directed by the official resolutions and 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 opportunities for the ecclesiastical supervisors of the accuser and the accused to obtain advice and help in this servant role.
- Q. The Commission on Constitutional Matters interprets the Constitution, Bylaws, and resolutions of the Synod (Bylaws 3.9.2, 3.9.2.2) for the Synod, its agencies, and its members. As provided in the provisions and procedures set forth in Bylaw section 2.15 (cf. Constitution Art. XIII), a commission opinion regarding a matter at issue may be requested by the district president of the accuser or President of the Synod (whichever is consulted) during the consultation phase (Bylaw 2.15.3 [a]) or by a party to the matter through the Hearing Panel or Final Hearing Panel (Bylaws 2.14.7.8 [k] and 2.15.7.8), which panel shall determine the wording of the question(s) according to instructions provided in the bylaw. After receiving a decision of a Hearing Panel, the President of the Synod may also request that an opinion be obtained when questions of doctrine or practice are involved (Bylaw 2.15.7.9 [c]). While a member of the Synod is ordinarily eligible to submit questions to the Commission on Constitutional Matters at any time (Bylaw 3.9.2.2), when such member is a party to a matter under the Bylaw section 2.15 process and a panel is in place, all related questions must be submitted through the panel (Bylaws 2.14.7.8 [k] and 2.15.7.8). As much as possible, such questions submitted to the commission through the panel should be non-case-specific. Such opinions and those received upon request of the President of the Synod shall be followed.
- R. The Commission on Theology and Church Relations provides “guidance to the Synod in matters of theology and church relations” (Bylaw 3.9.5.2.1). In the provisions and processes set forth in Bylaw section 2.15 (cf. Constitution Art. XIII), an opinion may be requested in writing from the Commission on Theology and Church Relations to learn 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.

Such requests for opinions may be made by the district president of the accuser or President of the Synod (whichever is consulted) during the consultation phase (Bylaw 2.15.3 [a]) or by a party to the matter through the Hearing Panel or Final Hearing Panel (Bylaws 2.14.7.8 [k] and 2.15.7.8), which panel shall determine the wording of the question(s) according to instructions provided in the bylaw. After receiving a decision of the Hearing Panel, the President of the Synod may also request that an opinion be obtained when a question of doctrine or practice is involved (Bylaws 2.15.7.9 [c] and 2.15.8). While a member of the Synod ordinarily may request guidance from the commission at any time, when the member is a party to the matter under the Bylaw section 2.15 process and when a panel is in place, all related questions shall be submitted through the panel (Bylaws 2.14.7.8 [k] and 2.15.7.8). As much as possible, questions submitted through the panel should be non-case-specific. Such opinions and those received upon request of the President of the Synod shall be followed.

An individual panel member seeking understanding of doctrinal matters associated with a suspension may, “through the hearing facilitator, also request resource materials and personal assistance from the executive director of the CTCR or from a theologian recommended by the executive director” (Bylaws 2.14.7.8[k] and 2.15.7.8).

- S. These provisions and processes do not establish positions of the Synod. The doctrinal position of Synod is as established in Article II of the Constitution and elaborated upon, from time to time 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 (See CCM Op. 13-2694).
- T. In protecting the rights of its members (Constitution Art. III 9), the Synod has also made provision for challenging decisions of ecclesiastical supervisors that may result in suspension and loss of membership (Bylaw section 2.15). Such provisions serve 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 of a District President or Officer from Membership in the Synod) are not to take the place of or be confused with the brotherly acts of mutual encouragement and admonishment and with the “mutual conversation and consolation of the brethren” (Smalcald Articles, Part III Article IV) encouraged by Holy Scripture. 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 provision 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, and 5.3. 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 in the Synod) 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. Complaints involving a member of the faculty or administration of one of the Synod’s colleges, universities, or seminaries may fall under Bylaw Sections 2.14 or 2.17, as regarding expulsion from the Synod, or under Bylaws 3.10.5.7.5–3.10.5.7.9 or 3.10.6.9.4–6, as regarding removal from office in the case, respectively, of faculty at either seminaries or colleges and universities—or both. Certain matters, however, such as doctrinal or sexual misconduct concerns, must be taken to the district president of the member. (See *Flow Chart Detail* step 1.2 of this *Standard Operating Procedures Manual*, “District president helps determine which process to follow.”)

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II. PREAMBLES (BYLAWS 2.1.1–2, 2.14.1 / 2.15 1)

- 2.1.1 Included in the objectives of the Synod as stated in its Constitution are, under Scripture and the Lutheran Confessions, to “provide evangelical supervision, counsel, and care for pastors, teachers, and other professional church workers in the performance of their official duties” and to “provide protection for congregations, pastors, teachers, and other church workers in the performance of their official duties and the maintenance of their rights” (Constitution Art. III 8, 9). In view of this, it is clear that membership in The Lutheran Church—Missouri Synod, whether individual or congregational, is viewed as a valuable asset to be carefully monitored and managed. In order for this to occur, it is necessary for standards to be developed and maintained for the benefit of all members so that its value is not diminished or destroyed. Consequently, it is important for the Synod to establish the standards and qualifications it believes necessary for acquiring and maintaining the status of membership as well as procedures for protecting those who attain it.
- 2.1.2 In achieving these goals the Synod has identified certain standards which must be met before membership, whether individual or congregational, is granted and has identified those responsible for determining that such standards have been met before approving their inclusion on the official membership rosters of the Synod. 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. In protecting the rights of members, provision has also been made for challenging those decisions by ecclesiastical supervisors that result in suspension or loss of membership and for restoration of membership when necessary conditions are met.
- 2.14.1 Termination of membership in the Synod is a serious matter involving both the doctrine and life of those to whom it has been granted. Such action should only be taken as a final step when it is clear that those who are being terminated after previous futile admonition have acted contrary to the confession laid down in Constitution Art. II or the conditions of membership laid down in Constitution Art. VI or have persisted in offensive conduct (Constitution Art. XIII 1). 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. Furthermore, the procedures that may lead to termination of membership also provide for the protection of members by including provisions for challenging the decisions of ecclesiastical supervisors in these matters as well as provisions for restoration of membership that has been suspended or terminated.
- (a) Although the Constitution (see Art. VI 3 and Art. XII 7–8) deals with the “life” of ordained and commissioned ministers of the Synod and provides for dealing with “ungodly life” of ordained and commissioned ministers, this does not suggest that the Synod, including any district of the Synod, has the duty or even an opportunity to observe the activities in the life of an

individual member of the Synod or has the means or authority to regulate, restrict, or control those activities. 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.

(b) The action to commence expulsion of a congregation or individual from membership in the Synod is the responsibility of the district president who has the responsibility for ecclesiastical supervision of such member, under the supervision of the President of the Synod (Const. Art. XI B 1–3). This Bylaw section 2.14, among others, provides the procedures to carry out Article XIII of the Constitution, “Expulsion from the Synod.” However, it does not provide the procedure for the expulsion of the district presidents and the officers of the Synod (Bylaw section 2.15), the President of the Synod (Bylaw section 2.16), or individual members in cases involving sexual misconduct or criminal behavior (Bylaw section 2.17).

2.15.1 The action to commence expulsion of a district president or an officer of the Synod from membership in the Synod is the sole responsibility of the President of the Synod, who has the responsibility for ecclesiastical supervision of such member (Constitution Art. XI A and B 1). This Bylaw section 2.15, among others, provides the procedures to carry out Article XIII of the Constitution, “Expulsion from the Synod.” However, it does not provide the procedure for the expulsion of a congregation or individual member of the Synod (Bylaw section 2.14), the President of the Synod (Bylaw section 2.16), or individual members in cases involving sexual misconduct or criminal behavior (Bylaw section 2.17).

III. DEFINITIONS OF TERMS (BYLAW SECTION 2.15)

Definitions of key terms used in this *Standard Operating Procedures Manual* as well as throughout Bylaw section 2.15 (and Bylaw sections 2.14, 2.16, and 2.17) 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 Constitution Art. 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 Constitution Art. XIII through the process of Bylaw sections 2.14–2.17.

(c) **Appeal Panel:** Three district presidents selected according to these bylaws to determine whether the decision of a Hearing Panel should be reconsidered or reviewed.

(d) **Conflict of interest:** Representation of two opposing interests. Carrying out the responsibility of ecclesiastical supervision does not give rise to conflict of interest.

(e) **Ecclesiastical supervision:** See Bylaw 1.2.1 (j). [**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.]

(f) **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.)

(g) **Facts:** Substantiated information of an alleged accusation.

(h) **Final Hearing Panel:** Two district presidents, two lay reconcilers, and one ordained 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, two lay reconcilers, and one ordained 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 secondhand or hearsay information.
- (n) **Panel decisions:** The Hearing Panel and Final Hearing Panel shall issue decisions by majority vote of the panel. All panel members must be involved in all stages of the decision-making process, with the hearing facilitator serving as an advisor to the panel on the form but not the substance of the decision.
- (o) **Party to the matter:** A “party to the matter” is the accused and the suspending ecclesiastical supervisor.
- (p) **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.
- (q) **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.
- (r) **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.
- (s) **Shall:** Retains its compulsory meaning in this bylaw section. Its use, however, in connection with time frame expectations may require exceptions at times upon good cause shown, to be allowed by the administrator of the process.
- (t) **Standard Operating Procedures Manual:** A comprehensive procedures manual developed by the Commission on Constitutional Matters in consultation with the Secretary of the Synod and with the concurrence of the Council of Presidents to ensure uniformity and consistency in the implementation of this bylaw section.
- (u) **Statement of the matter:** A written concise statement containing factual assertions involved in an accusation with a request for expulsion from membership.
- (v) **Time frame:** Period of time allowed for carrying out a bylaw requirement, to be monitored by the administrator of the process, incidents of purposeful non-compliance to be reported to the President of the Synod.
- (w) **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.

IV. 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 also further define the guidelines and general regulations referenced or provided in Bylaw 2.15.7.8 and 2.15.10–2.15.10.3. If questions arise regarding proper procedure, they may be directed to the administrator of the process or his designee via telephone, fax, or email.
- B. **Process Administrator:** The administrator of this process shall be the Secretary of the Synod (Bylaw 3.3.3.2 [b]). 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 the matter, whether as the accuser or accused, or 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 (see CCM Opinion 10-2585).

- C. **Reconciler:** The primary role and responsibilities of a Synod reconciler are provided in Bylaw section 1.10, the Synod's dispute resolution process. As a Hearing Panel or Final Hearing Panel member in the Bylaw section 2.14, 2.15, and 2.17 expulsion processes, a reconciler serves in the role of decision-maker and is called upon to hear evidence and participate in a decision. A reconciler who is an attorney by profession shall serve only as an impartial reconciler and shall not represent or provide legal advice to any persons involved in the matter.
- D. **Filing an Accusation:** In all cases under Bylaw section 2.15, the right to file a signed and dated formal written accusation is limited to members of the Synod (*i.e.*, its member congregations and its rostered ordained and commissioned ministers). The ecclesiastical supervisor may also act based upon "his own personal knowledge" or upon knowledge gained from accusations made to him by persons other than members of the Synod.
- E. **Required Consultation:** To begin this Bylaw section 2.15 process, consultation with an ecclesiastical supervisor is required. The purpose of this consultation is to provide opportunity (1) for the accuser to receive assistance in determining the appropriate bylaw procedure, if any, under the circumstances; (2) for the accuser's district president (if he is not the accused) to consult with the President of the Synod; (3) for the President of the Synod to consult with his vice-presidents, the district president of the accused (if an officer of the Synod), or with the chairman of the Council of Presidents; (4) for the President of the Synod to obtain opinions from the CTCR and/or CCM; (5) for the district president of the accuser or the President of the Synod to make certain that a face-to-face meeting has taken place between the accuser and the accused (Matthew 18:15); (6) for the appropriate ecclesiastical supervisor(s) to provide, for the persons involved, evangelical supervision, counsel, and care; (7) for the district president of the accuser or the President of the Synod to appoint a small committee to assist in reconciliation efforts; and (8) to fulfill the Synod's requirement for previous admonition (Constitution Art. XIII).
- F. **Investigations:** A thorough investigation shall be conducted by the President of the Synod 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.

G. 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 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.

H. Evangelical Care: The ecclesiastical supervisors of the accused and 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 2.15.10).

I. Advisors: Either party to the matter may obtain the assistance of individuals familiar with the issues involved in the matter. Such advisors may actively participate in research and preparation of necessary documents. Expenses for such advisors are borne as indicated below under (M) *Expenses*.

While advisors may be present at hearings, they may not participate publicly. During hearings, they may communicate orally or in writing with their advisees so long as such communication is not disruptive. If either party to the matter intends to have an advisor present at the hearing, he/she shall provide to the panel chairman and to the other party to the matter the name and address of such advisor at least five (5) days in advance of the hearing.

A person to be called upon by either party as a witness shall not serve as an advisor to either party. If the calling of a potential advisor as a witness is contested by either party, the panel shall decide on the basis of the value of testimony expected to be offered by the witness.

J. Attendance at Hearings: A party to the matter and advisor, 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 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 advisor or any others involved in the matter). Accusers may also be called as witnesses.

K. 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” (vs. 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. These documents must be clearly and individually identified as particular exhibits so that they can be handled efficiently by the panel. 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 (Bylaws 2.14.7.8 [c] and 2.15.7.8).

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

(a) In the interest of promoting the reconciliation process, any member of the Synod, officer of a congregation, or officer of any organization owned and controlled by the Synod shall, when called upon by the panel to do so, testify or produce records related to the matter before a panel (Cf. Bylaw 1.10.18.1 [a]).

(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. A panel may reject and not consider evidence or testimony from a witness that it deems unnecessary or unhelpful to its consideration of the matter.

(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. 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 used by panels shall be taken in the presence of all panel members and both parties to the matter, except where a party has waived the right or fails to be present.

- L. 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 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 convincing and clear evidence test required during a hearing.
- M. Expenses:** Accusers, the accused, and their witnesses shall assume their own expenses. Expenses of the President and Secretary of the Synod 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 Hearing Panels, Appeal Panels, and Final Hearing Panels shall be the responsibility of the Synod.
- N. Blind Draws:** Blind draws for the selection of panels are the responsibility of the Secretary 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 (2) 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 and included in the record of the case. Names shall be used in the order in which they were surfaced by the blind draw. More than the immediately necessary names may be taken in the first draw and kept in order, in case additional names should later be needed.
- O. Disqualification of Ecclesiastical Supervisors or Panel Members:** The standard for disqualification is actual partiality or the appearance thereof. When identified by blind draw, potential panel members shall be contacted personally by the Secretary of the Synod to discuss their availability to serve. The Secretary of the Synod shall provide general information regarding the matter and identify the persons involved in the matter in order to surface potential conflict of interest concerns. Any ecclesiastical supervisor or panel member may disqualify himself/herself from service. 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 Secretary of the Synod, as appropriate.

If a hearing facilitator or panel member concludes that he/she has personal knowledge of one or other of the parties to the matter, he/she shall, upon becoming aware of the same, disclose to the administrator the knowledge and nature thereof and his/her assessment that such will not adversely affect his/her service. The administrator shall share this information with the parties to the matter. Undue familiarity with a party to the matter must not be demonstrated in any manner during the panel hearing.

The accuser and the accused may each challenge the eligibility of the President of the Synod to serve. In the event that the President of the Synod's eligibility is challenged under Bylaw 2.15.4.2 and he does not agree with the challenge, the question shall be decided by a majority vote of the district presidents of the Council of Presidents, excluding the involved district presidents. If the challenge is successful, the chairman or next qualified officer of the Council of Presidents shall function in the place of the President of the Synod.

Either party to the matter 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.

While a specific process is not prescribed for the special panel of three district presidents, whatever process is followed to reach an informed decision must ensure fairness and impartiality to all parties to the matter so that its decision is just and equitable. Like any other phase of the Bylaw section 2.15 process, neither the panel's process nor its decision may contradict the Constitution and Bylaws of the Synod or this *Standard Operating Procedures Manual*.

P. 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 a 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 here following. This 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 initiation of the bylaw process and were otherwise open to discovery apart from this process are excepted.

(b) Those bringing accusations, those accused, and the suspending ecclesiastical supervisor 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. Should either party violate this provision, they may be subject to liability either to the other party or the panel.

(c) Appropriate and necessary information may be divulged under the following circumstances, for which accusers, accused, and the suspending ecclesiastical supervisor 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; or

(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 have no liability.

Q. *Communication with and Deportment of Panel Members:* Except as provided in this manual, no party to a matter or anyone on the party's behalf, nor an accuser or witness, shall communicate, either directly or indirectly, with the panel or a panel member without the full knowledge of both parties. 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. At the conclusion of the hearing, the panel communicates with the parties through its decision. The process does not provide for minority opinions. Panel members shall not communicate individually with parties, accusers or witnesses (or their advisors or other representatives) regarding the matter or process, *until after a final decision has ended the process.* Even then, the confidentiality requirements of part P above apply: "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 here following. This 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."

In the interest of the integrity, trustworthiness, and credibility of the 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, accusers, or witnesses to the matter until after a final decision has ended the process.

R. *Exclusion from Liability:* Parties are to understand that the Synod, its reconcilers, its ecclesiastical supervisors, its process administrators, its panels, and all panel members shall be immune from any liability for any acts or omissions that occur during the process described in Bylaw section 2.15 and in this manual.

S. *Involvement of Insurers:* If the matter 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 and equitable 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.

T. *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. Therefore, when a final decision is rendered that indicates that a party has failed to acknowledge and confess a serious sin and the party fails to demonstrate repentance, the ecclesiastical supervisor shall forward a copy of the decision to the party's congregation, urging the congregation to review the matter and take appropriate steps to fulfill its scriptural and Synod-related responsibilities. When the membership of a party called by a congregation is terminated, this has additional ramifications for the calling congregation (Bylaw section 2.5).

U. **Continuation of Support:** 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 2.15.10.1).

V. **Compliance with Provisions and 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, or discovered by the panel, shall be considered and resolved by the appropriate panel, in consultation with the process administrator, so that the panel may proceed with due process and in fairness and impartiality, in both fact and appearance. The hearing facilitator shall document the error and its correction in the official record of the case. Should either the hearing facilitator or the process administrator conclude, after consultation, that the issues raised irreparably harmed due process, fairness or impartiality, and that the panel therefore will not be able to reach a proper conclusion, "a new panel shall be formed immediately in accordance with the Bylaws and the matter reheard" (Bylaw 1.10.17 [c]).

W. **Consequences of Violations:** Any member of the Synod involved in this bylaw procedure who intentionally and materially violates any of its requirements, particularly violations of the prohibition against publicity, or persists 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 (Bylaws 2.14.7.8 [f] and 2.15.7.8) are specifically to be included as violations that are subject to the disciplinary measures set forth in the process (Bylaw 2.15.10.2). The process administrator is to report purposeful non-compliance with the time frame expectations of these bylaw procedures to the President of the Synod.

Violation of the requirements of this bylaw procedure on the part of a reconciler is cause for the reconciler's removal from the district roster of reconcilers by that district's board of directors (Bylaw 1.10.10.4).

X. **Retention of Records:** After a final decision has been rendered, all panel records shall be forwarded to the Office of the Secretary of the Synod to 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.

Y. **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 president of the accuser to see that the accuser receives the manual. It is the responsibility of the President of the Synod to see that the accused receives the manual when he is notified that a consultation is underway.

Z. **Interpretation and Application of Standard Operating Procedures 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.

AA. **Timeline and Exceptions:** The administrator of the process may require exceptions to the time frame requirements of these bylaw procedures, upon good cause shown; purposeful non-compliance with the time frame expectations of these bylaw procedures, however, is to be reported to the President of the Synod (Bylaw 2.14.2 [s], [v]). 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.

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

(s) Shall: Retains its compulsory meaning in this bylaw section. Its use, however, in connection with time frame expectations may require exceptions at times upon good cause shown, to be allowed by the administrator of the process. [...]

(v) Time Frame: Period of time allowed for carrying out a bylaw requirement, to be monitored by the administrator of the process, incidents of purposeful non-compliance to be reported to the President of the Synod.

V. FLOW CHART FOR BYLAW SECTION 2.15

1. Consultation with District or Synod President (2.15.3)

- 1.1 Member consults with his/her/its district president or Synod President
- 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 accused
- 1.5 Committee may be appointed to assist in reconciliation efforts
- 1.6 Accuser brings matter to President of the Synod for action



2. Commencing Action (2.15.4—2.15.5)

- 2.1 President of the Synod becomes/is made aware of allegations
- 2.2 President of the Synod evaluates Bylaw 2.15.3 compliance
- 2.3 President of the Synod thoroughly investigates (may appoint a small committee to assist)
- 2.4 President of the Synod may appoint committee for reconciliation efforts
- 2.5 President of the Synod makes determination whether or not to proceed
- 2.6 Decision not to initiate formal proceedings terminates the matter
- 2.7 Decision to proceed commences suspension



3. Commencing Formal Proceedings (2.15.6)

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



4. Hearing and Appeal Panels (2.15.7–2.15.8)

- 4.1 President of the Synod provides statement and memorandum
- 4.2 Secretary of the Synod forms Hearing Panel and selects hearing facilitator (30 days)
- 4.3 Notification, statement, and memorandum provided to the panel
- 4.4 Hearing facilitator selects date and location for hearing (15 days *after panel formation*)
- 4.5 Hearing conducted according to guidelines (45 days *after panel formation*)
- 4.6 Panel issues written decision (30 days)
- 4.7 CCM/CTCR opinions may be requested by Synod President (30 days)
- 4.8 If not appealed, the decision of the panel is final
- 4.9 An Appeal Panel may be requested (15 days), formed (21 days), and conducted (30 days)



5. Final Hearing Panel (2.15.9)

- 5.1 If appeal is granted, Final Hearing Panel is selected
- 5.2 Secretary of the Synod forms panel and selects hearing facilitator (21 days)
- 5.3 Hearing facilitator provides materials to Final Hearing Panel
- 5.4 Final Hearing Panel follows same procedure as Hearing Panel (45 days)
- 5.5 Hearing conducted according to guidelines
- 5.6 Panel issues written decision (30 days)
- 5.7 Final decision is binding on all parties

VI. FLOW CHART DETAIL FOR BYLAW SECTION 2.15

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

1.1 Member consults with his/her/its district president or Synod President

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... (Bylaw 2.15.3)

- a. 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, congregations and commissioned and ordained ministers.
- b. When a member congregation brings forward a complaint or accusation, it shall be represented by its chairman or a designated member of the congregation.
- c. The representative of the congregation or the individual member bringing forward an accusation or complaint shall meet with its/his/her district president (the President of the Synod, if the accused is the member's district president) prior to presenting a formal complaint or accusation.
- d. 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 accuser/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.

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. In regard to this consultation: (Bylaw 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. (Bylaw 2.15.3 [b])

- a. It is the sole responsibility of the district president or the President of the Synod to evaluate the information that has been shared and to provide proper direction to the accuser. Much rests upon the good judgment of the district president or the President of the Synod, since his decision shall be followed.
- b. It is the responsibility of the district president or the President of the Synod also to provide counsel and care in an evangelical manner to the accuser and to other individuals or congregations who may become involved, doing everything possible to

prevent harm to the reputations of all concerned. He may request assistance from others as necessary.

- c. If the consulting ecclesiastical supervisor is other than the President of the Synod, he shall inform the President of the Synod that this consultation is underway. He shall share the information that has been provided to him and shall invite such response as will assist him in providing proper direction to the member who has come forward with the information.
- d. The President of the Synod shall provide all relevant information to the consulting ecclesiastical supervisor. To do so, he shall consult with the accused, providing a copy of this *Standard Operating Procedures Manual* at first contact.
- e. To protect the reputations of all who are involved, the conversation and exchange of information by all (including the ecclesiastical supervisors) shall be held in strict confidence.
- f. 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 an 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. (Bylaw 2.15.3 [a])

- a. Because ecclesiastical supervisors have sole responsibility for providing proper direction to the accuser, they may consult only with such others as the bylaw directs prior to providing the required direction.
- b. Further clarification may be obtained from the CCM and/or the CTCR. When requesting an opinion, the President of the Synod shall take care to represent the matter as carefully and objectively as possible and accept all counsel received as binding. Care should be taken to avoid phrasing questions in a case-specific manner and/or in such manner that may give cause for rumor or alarm in the Synod.
- c. 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 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. (Bylaw 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. (Bylaw 2.15.3 [e])

- a. 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. (See above, under III. Definitions, Bylaw 2.14.2 [f].)
- b. If applicable, the face-to-face meeting contributes toward satisfying the requirement for previous admonition called for in Article XIII of the Constitution.
- c. 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 supervisor(s). 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 the dismissal of any accusation if the fault lies with the accuser, or result in movement to the next stage of the process if the fault lies with the accused.

1.5 Committee may be appointed to 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). (Bylaw 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. (Bylaw 2.15.3 [e])

- a. 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.
- b. An expulsion from membership cannot take place without previous admonition (Constitution Art. XIII) when such previous admonition is possible. The activity of a reconciliation committee contributes to satisfying this requirement.
- c. Eighth Commandment protection of reputations is essential to this portion of the process as other persons become involved.

1.6 Accuser brings matter to President of the Synod for action

(f) Within 45 days after all the requirements of the consultation provided in this bylaw (Bylaw 2.15.3) have been followed the accuser may bring the matter to the President of the Synod for action under the correct bylaw provision determined by the accuser's ecclesiastical supervisor (paragraph [b] above). (Bylaw 2.15.3 [f])

- a. It is the responsibility of the district president of the accuser or, when appropriate, the President of the Synod, to make certain that all consultation requirements have been followed.
- b. 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. The accuser then has 45 days from the date of this notice to proceed under the appropriate bylaw process. Should the accuser fail to proceed within the 45 days, the accuser forfeits the right to proceed upon the facts as presented. A district president or the President of the Synod "having become aware of information or allegations" by these means may, however, proceed in his own right.

2. Commencing an Action (Bylaw paragraphs 2.15.4–2.15.5)

2.1 President of the 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)... (Bylaw 2.15.4)

- a. 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 ordained and commissioned ministers. The President of the Synod may proceed on his own personal knowledge of such information (See above, under III. Definitions, Bylaw 2.14.2 [m]). He also may become aware of, and act upon, facts, information, or credible allegations in his ordinary supervision of the doctrine, life, and official administration of officers of the Synod and district presidents (Const. Art. XI B 1–3; Bylaw 3.3.1.1.1).
- b. Use of this bylaw section is reserved solely for addressing information or allegations that could lead to expulsion of a district president or officer of the Synod (other than the President of the Synod) from the Synod.
- c. Information or allegations of lesser consequence; or that accuse some other church worker, the President of the Synod, or a congregation; or that involve sexual misconduct or criminal behavior are to be addressed by processes provided by other

bylaw sections. Those involving a member of the faculty or administration of one of the Synod's colleges, universities, or seminaries may fall under Bylaw Sections 2.14 or 2.17, as regarding expulsion from the Synod, or under Bylaws 3.10.5.7.5–3.10.5.7.9 or 3.10.6.9.6, as regarding removal from office in the case, respectively, of faculty at either seminaries or colleges and universities—or both.

- d. 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 the required formal complaint.
- e. 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 President of the Synod.

2.2 President of the Synod evaluates Bylaw 2.15.3 compliance

...In commencing such action, the President of the Synod:

(a) Shall determine whether Bylaw 2.15.3 provisions have been carried out....
(Bylaw 2.15.4 [a])

- a. 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 of its parts. If the consultation has not taken place, the President of the Synod shall redirect the accuser to his/her/its ecclesiastical supervisor to carry out the provisions of Bylaw 2.15.3.

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. (Bylaw 2.15.4.2)

- b. In cases in which a conflict of interest exists or the President of the Synod is otherwise 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 president(s) and the President of the Synod.
- c. All communications shall be included in the official record of the matter.

2.3 President of the Synod thoroughly investigates (may appoint a small committee to assist)

...and [the President of the Synod] 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.... (Bylaw 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. (Bylaw 2.15.4 [b])

- a. If the accused is an officer of the Synod, the investigation shall include consultation with the officer’s district president. If the accused is a district president, the consultation shall include consultation with that president’s district board of officers, vice-presidents, and circuit visitors.
- b. The purpose of the thorough investigation will 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 Article XIII of the Constitution.
- c. Care shall be taken during the investigation to offer spiritual support and guidance to the involved parties.
- d. 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.
- e. 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 provide opportunity for a response. A written record of this meeting shall be 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.
- f. The accused will be expected to refrain from initiating any personal or private contact with the accuser(s) while the investigation is underway, except in the presence of two (2) or three (3) witnesses.
- g. The investigation shall 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.
- h. 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 otherwise established by evidence that is both convincing and clear.

...He [the President of the Synod] may appoint a small investigation committee (cf. Bylaw 4.4.6). (Bylaw 2.15.4 [a])

- i. The district president may authorize other persons to assist him in reviewing the allegations and in conducting the investigation.
- j. 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 materials surfaced by the investigation.

2.4 President of the Synod may appoint committee for reconciliation efforts

...In commencing such action, the President of the Synod...

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

- a. 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.
- b. Throughout the entire process, it shall be borne in mind that the primary purpose of the process 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.
- c. 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 the Synod makes determination whether or not to proceed

The President of the Synod shall make his determination whether or not to suspend the member within 120 days after receipt of a formal written complaint or accusation, unless the majority of the uninvolved vice-presidents of the Synod concur that there is a need for more time to conclude an active investigation. (Bylaw 2.15.4.1)

2.6 Decision not to initiate formal proceedings terminates the matter

If the President of the Synod determines not to initiate formal proceedings, he shall in writing so inform the accuser, any other district president involved, and the involved member, which shall terminate the matter. (Bylaw 2.15.5)

- a. 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 shall close the inquiry and inform the accuser(s) and the accused of his decision.
- b. The President of the Synod shall offer to issue a public statement as necessary to aid in restoring the accused member's reputation.

- c. Sensitivity shall be shown to the accusers and their concerns, and referral to professional resources shall also be provided according to perceived need for restoration and healing.
- d. As necessary, attention shall be given to enabling 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.
- e. Accurate information shall be provided to the peers of the accused as judged necessary and helpful by the President of the Synod.
- f. District and Synod legal counsel shall be informed if the accuser threatens legal action or retains 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 concludes that the facts form a basis for expulsion of the member under Article XIII of the Constitution... (Bylaw 2.15.6)

- a. When the validity of accusation(s) received has been established by evidence that is both convincing and clear, the President of the Synod shall proceed to carry out his 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 Article XIII of the Synod's Constitution.
- b. 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.
- c. 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.
- d. 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.
- e. The President of the Synod shall provide accurate information on a need-to-know basis and as he judges necessary and helpful to others affected by the investigation and the decision to suspend.
- f. 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.
- g. 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.

3. Commencing Formal Proceedings (Bylaw 2.15.6)

3.1 President of the Synod provides notification of suspended status

If the President of the Synod 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 (Bylaw 2.15.6)

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

- a. When possible, notification (including *all* the material indicated in *Flow Chart Detail* steps 3.1–3.3) 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. See above, *IV. General Regulations, (G) Provision of Notices* (p. 14).
- b. The notification of suspended status shall include reference to Bylaws 2.13.4–2.13.4.3 and their provisions for such status, *and the President of the Synod shall see that he carries them out:*

2.13.4 When formal proceedings have been commenced against a member of the Synod (individual or congregation) under the procedures set forth in Bylaw sections 2.14–2.17 which may lead to expulsion from the Synod under Article XIII of the Constitution, the member shall have suspended status. If such member was on restricted status at the commencement of formal proceedings, the restricted status shall become suspended status.

2.13.4.1 Suspended status shall continue until the formal proceedings are completed favorably to the member or until membership is duly terminated.

2.13.4.2 While on suspended status, the member shall continue to hold all rights under the Constitution and Bylaws except that the member shall

(a) be relieved of duties as a member of the Synod (e.g., as a delegate to a district or Synod convention or as a member of any district or Synod board or commission);

(b) be relieved of the duties and responsibilities which the member holds with the Synod, district, or other agency of the Synod; and

(c) be ineligible to accept a call to any other position of service in the Synod.

2.13.4.3 The member on suspended status shall continue to be eligible to perform those duties and responsibilities of any other position which such member held at the time when placed on suspended status, including a position with a member congregation.

(a) When a member is placed on suspended status, the district president who has ecclesiastical supervision of the member shall

(1) reflect the suspended status in the records maintained by him;

(2) notify in writing the President of the Synod and all other district presidents of the affected member's suspended status; and

(3) advise the congregation or other calling body being served by the individual member of the suspended status to take appropriate action so that the rights of both the member and congregation or other calling body are preserved.

(b) While a member is on suspended status, the district president shall minister to that member either directly or through others, concern himself with the spiritual well-being of such member, and continue efforts to resolve those matters which led to imposition of the suspended status.

(c) If the member on suspended status is a district president, the duties assigned to the district president under paragraphs (a) and (b) hereof shall be performed by the next proper successor district officer.

- c. The President of the Synod shall encourage the calling entity to continue to provide to the worker financial and other support at current levels until a final decision is reached.

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

...the President of the Synod in commencing the formal proceedings shall

(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; and... (Bylaw 2.15.6 [b])

a. This *written statement of the matter* (Bylaw 2.14. 2 [u]) 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 Article 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.

b. A *memorandum* describing how the accuser met face-to-face with the accused in the manner described in Matthew 18:15 (Bylaw 2.15.3 [c]) and how the President of the Synod proceeded 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

...the President of the Synod in commencing the formal proceedings shall

(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 his district president that there is a desire to have the matter heard and resolved. (Bylaw 2.14.6 [c])

- a. 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 must be directed back to him as the ecclesiastical supervisor.

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. (Bylaw 2.15.6.1)

- a. 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.
- b. After sufficient time has passed to ascertain that a written request for a hearing will not be filed by the suspended member, the President of the Synod shall inform the member of his expulsion from the Synod.
- c. The President of the Synod shall inform the Synod's Department of Rosters, Statistics, and Research Services 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.
- d. The President of the Synod shall also inform other members and entities of the Synod of the expulsion on a need-to-know basis.
- e. 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.
- f. 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 are 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 is forwarded by President of the Synod to Secretary of Synod

If the request for hearing as granted in Bylaw 2.15.6 (c) is made, the suspending ecclesiastical supervisor shall inform the Secretary of the Synod... (Bylaw 2.15.7)

- a. 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.
- b. 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 or electronic notification should precede the delivery of the written request.
- c. 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, the entire record now to be forwarded to the Secretary of the Synod.

- d. When the Secretary is involved personally as a witness or has a direct interest in the outcome of the matter, an alternate process 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 and Appeal Panel (Bylaw 2.15.7–2.15.8)

4.1 President of the Synod provides statement and memorandum

At the time that the request for hearing is made, the suspending ecclesiastical supervisor 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, “previous futile admonition” (Constitution Art. XIII), as well as all of the provisions of Bylaws 2.15.3–2.15.6.1. (Bylaw 2.15.7.1)

- a. The *statement of the matter* that is to be provided to the Secretary of the Synod is a copy of the statement that was provided to the accused member at the time of notification of the member’s suspended status. The Secretary will 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 of the Synod shall be included in the official record of the matter, which now remains with the Secretary of the Synod for the duration of the process.
- b. The additional *written memorandum* requires careful preparation by the President of the Synod, as copies will be forwarded to the Hearing Panel via the Secretary of the Synod to demonstrate to the panel that all constitution and bylaw requirements were met. This document, too, is to be included in the official record of the matter which remains with the Secretary of the Synod for the duration of the process.

4.2 Secretary of Synod forms Hearing 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. (Bylaw 2.15.7)

A Hearing Panel consisting of two district presidents (excluding the involved district president[s]), two lay reconcilers, and one ordained reconciler, selected as follows, 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 suspending ecclesiastical supervisor.

(c) Two lay reconcilers and one ordained reconciler 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) No two members of the panel nor the hearing facilitator shall be from the same district.

(f) The hearing facilitator shall chair the proceedings and may draw upon persons and resources as he/she deems necessary for conducting a hearing in a fair and equitable manner.

(g) The hearing facilitator shall serve as an advisor to the panel on the form but not the substance of the decision. (Bylaw 2.14.7.2)

Upon receipt of a request for hearing, the Secretary of the Synod shall promptly notify the accused and the suspending ecclesiastical supervisor 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. (Bylaw 2.15.7.3)

The Secretary of the Synod shall also promptly select two lay reconcilers and one ordained reconciler to serve as the remaining three members of the Hearing Panel and a hearing facilitator to assist the panel. (Bylaw 2.15.7.4)

- a. 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. Each blind draw shall be conducted as described under *General Regulations* above, (N) *Blind Draws* (p. 15).
- b. The panel formation process includes a variety of communications which must be verifiably received but also expeditiously conducted. The following rules apply to all such communications:
 - 1) When possible, notifications to the accused and the President of the Synod should 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.
 - 2) Responses to the notifications must be postmarked within the required time limits. After sufficient time has passed to make clear that any required responses will not be received, the Secretary of the Synod shall proceed to move the panel selection process forward.
 - 3) 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.
- c. The two district president panel members shall be selected in the following manner:
 - 1) The Secretary of the Synod shall provide each party with a list of those district presidents trained for service on Hearing, Appeal, and Final Hearing Panels, excluding any known to be ineligible for service, from which each party may choose one or more (a district president may not choose himself). If a party selects more than one, the party shall rank them in order of preference.

- 2) The Secretary of the Synod shall contact the district presidents so selected by each party, in order of preference, providing sufficient information regarding the parties and matter to determine whether a potential conflict of interest exists. If a potential district president member disqualifies himself, the next preferred shall be contacted.
 - 3) If either party declines or fails to make a selection, if a party's selections are all exhausted by disqualification, or if both select the same district president, the Secretary of the Synod shall make the necessary selection by blind draw from among the remaining district presidents, again providing opportunity for district presidents to disqualify themselves.
- d. At the same time, the two lay and one ordained reconciler panel members and the hearing facilitator, who is to assist the panel as a nonvoting member, shall be selected in the manner of Bylaw 1.10.13.1–2, as follows:
- 1) The names of six laypersons and three ordained shall be selected by blind draw from Synod's roster of trained reconcilers, and three names, likewise, from Synod's hearing facilitator roster, none of whom may be from the district(s) in which the accuser and/or accused hold membership.
 - 2) These lists shall be mailed simultaneously to each party, who shall be entitled to strike two lay names and one ordained name from the reconciler lists and one name from the facilitator list, if they choose to do so, and return the lists to the Secretary of the Synod within one week.
 - 3) The Secretary then shall contact as many of the remaining reconcilers and hearing facilitators as necessary in the order in which their names surfaced in the blind draw, taking care to honor the requirement that no two members of the panel shall be from the same district, this to broaden district representation and avoid any appearance of unfairness or the potential for undue influence. The Secretary shall provide sufficient information regarding the parties and matter to enable the reconcilers and facilitators to determine whether a potential conflict of interest exists.
 - 4) The Secretary of the Synod shall correct any problem with the panel from the remaining names by blind draw. In the event that an additional name is needed, three names that will satisfy the problem shall be selected from the appropriate pool in the manner set forth above, which names shall be submitted to each party, who shall have the right to strike one. In the event that there is more than one remaining, the Secretary shall determine the remaining panel member by a blind draw from the remainder.
- e. The Secretary of the Synod shall also serve as timekeeper to assure that the parties and panel observe the time requirements provided in the bylaws, a service that his office will continue to provide throughout the remainder of the panel process. He is authorized to require exceptions to time line expectations for good cause shown (Bylaws 2.14.2 [s] and 2.15.2) and is required to report to the President of the Synod "incidents of purposeful non-compliance" (Bylaws 2.14.2 [v] and 2.15.2).

4.3 Notification, statement, and memorandum provided to the panel

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

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. (Bylaw 2.15.7.7)

- a. 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, 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.
- b. Copies of the statement and memorandum documents previously forwarded by the President of the Synod to the Secretary of the Synod (Bylaw 2.14.7.1) shall be provided to the members of the Hearing Panel at the time that they are notified of the membership of the panel. These documents are the basis on which the panel begins its work.
- c. The hearing facilitator shall serve as chairman of the panel (Bylaw 2.14.7.2[f]). He shall also prepare a report for the record of the case indicating whether there were any procedural errors in the handling of the case and how they were addressed to ensure due process, fairness, and impartiality. The hearing facilitator is to advise the panel on the form but not on the substance of the opinion.
- d. The Hearing Panel shall issue decisions by majority vote of the panel. All panel members must be involved at all stages of the decision-making process, with the hearing facilitator serving as an advisor to the panel on the form but not the substance of the decision. (Bylaws 2.14.2[n] and 2.15.2.) 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 the vacancy having been filled. The panel decision shall continue to require a majority vote of those members remaining.

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 suspending ecclesiastical supervisor, select a date and location within 45 days after the Hearing Panel was constituted for the panel to hear and consider the matter, unless there is unanimous consent by the panel members for a short delay beyond such 45 days for reasons the panel deems appropriate. (Bylaw 2.15.7.6)

- a. 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 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.
- b. 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 such documents shall be delivered through the office of the Secretary of the Synod by such method and dates as are determined by the panel.

The panel may decide at any time during the process, however, not to accept any communication outside of hearings.

- c. The formal hearing before the Hearing Panel shall take place within 45 days of the date that the Secretary of the Synod notified the members of the panel of their selection, unless the panel unanimously consents to a short delay for reasons the panel deems appropriate. In such a case, the Secretary of the Synod, as timekeeper of the process, shall be notified of the delay and the panel's reasoning as to its necessity.
- d. 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.
- e. 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.
- f. 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.
- g. No party to the matter, including the President of the Synod, nor the accuser, nor any person acting on a party's behalf shall 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 Hearing conducted according to guidelines

The following guidelines are applicable to the Hearing Panel and all involved persons:

- (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) No party to the matter, nor the accuser, nor anyone on the party's or accuser'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.
- (f) 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). (For Bylaw section 2.15 proceedings, paragraph (f) is specified in Bylaw 2.15.7.8.)

(g) Any party and/or parties to a matter shall have the right to request disqualification of a panel member or hearing facilitator. The standard for disqualification shall be actual partiality or the appearance thereof. If that individual does not agree to the disqualification, the decision shall be made by a separate three-member panel of district presidents not involved in the case, selected as follows.

(1) Nine names shall be selected by blind draw by the Secretary of the Synod or his representative, to be mailed to each party with the opportunity to strike up to three of the names from the list, to be returned to the Secretary of the Synod within one (1) week after receipt.

(2) No member of the panel shall be from the district in which the matter arose or any district of a party to the matter.

(3) In the event that additional names are needed, three names shall again be selected in the manner set forth above, which names shall be submitted to each party with the right to strike one name before returning the list to the Secretary of the Synod within one week after receipt.

(4) In the event that a panel or hearing facilitator is disqualified, another individual shall be selected in the same manner as the disqualified member was selected.

(5) The Secretary of the Synod shall correct any problem with the list, using the blind draw process as necessary.

(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 advisor present but must represent itself, with no public participation by the advisor.

(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 parties to the matter to do so.

(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 matter involves a specific question of doctrine or doctrinal application, each party to the matter 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 to the matter 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. The CCM and the CTCR shall have in place procedures for responding within this 30-day time frame to such requests for opinions.

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

(5) An individual member of the panel may, through the hearing facilitator, also request resource materials and personal assistance from the executive director of the CTCR or from a theologian recommended by the executive director, this to provide an opportunity to read about, discuss with a knowledgeable person, and better comprehend doctrinal matters associated with the suspension. The suspension case itself shall not be discussed. (Bylaws 2.14.7.8 and 2.15.7.8)

- a. 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, that is, 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.
- b. 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 a consultation was underway (see *Flow Chart Detail* step 1.2 above).
- c. At its first meeting, the panel shall designate one of its members to serve as the secretary of the panel. The secretary 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 it receives, and its findings. He shall also be responsible for assembling and signing the opinion, though another member or members may draft it.
- d. 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 advisor, 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 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 advisor or any others involved in the matter).
- e. The panel shall establish the procedure to be followed to receive evidence and testimony and to determine their relevancy and materiality to the decisions to be made by the panel, so that each party in the matter is provided opportunity fully to present

its case. Materiality is determined by whether particular evidence will (or will not) support the suspension of the member. Relevance depends upon whether the evidence relates to the issue at hand.

- f. 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 witnesses they plan to call and copies of documents they plan to produce. A person to be called as a witness by either party may not serve as the advisor to either party. 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.
- g. 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.
- h. The hearing facilitator serves as the chairman and moderator of the formal hearing. He shall document for the record any deviation from these standard operating procedures that arises in the course of formal proceedings and the corrective steps taken to protect due process (the question of compliance with Bylaw 2.15.3 prior to commencement of formal proceedings is treated by the panel in its decision and is not treated separately by the hearing facilitator in this report). His report shall not be distributed with the panel decision, but shall be sent to the administrator of the process and included in the record of the case, to be sent to an Appeal Panel, if such is formed.
- i. Subject to other specific provisions in this manual, all evidence shall be received in the presence of all panel members, the accused, and the President of the Synod 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.
- j. 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 still 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.
- k. Any party to the matter may request disqualification of a panel member or hearing facilitator, the standard being “actual partiality or the appearance thereof.” The Commission on Constitutional Matters has opined regarding the meaning of this phrase, concluding that actual partiality “may result from a personal relationship, prior substantive contact with any of the persons involved regarding the substance of the matter, or personal involvement in the matter itself. Such personal relationship or prior involvement in the matter might cause a panel member to disqualify himself/herself from service, or result in disqualification....Beyond ‘actual partiality,’ the standard for disqualification includes ‘the appearance thereof.’ The phrase ‘the appearance thereof’ modifies ‘actual partiality’ and so requires the appearance of some ‘act’ or ‘action’ to create and evidence partiality such as described above. Even where no actual partiality exists as a result of non-substantive contacts with one or more of the involved persons or non-substantive involvement in the issues to be considered, where such relationship or involvement would lead a reasonable person to believe that partiality likely exists,

disqualification should occur.” (See CCM Opinion 12-2651 for the entire text of the opinion.)

- l.** As the panel carries out its responsibilities, it shall continue efforts to reconcile the parties on the basis of Christian love, forgiveness, and justice.
- m.** A panel may reopen a case for good cause and conduct additional hearings at any time before it renders its final decision.
- n.** 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. (Bylaw 2.15.7.9)

- (a)** Copies of the decision shall be mailed to the accused, the accuser and the accuser’s district president, the Secretary of the Synod, the President of the Synod, and the suspending ecclesiastical supervisor, if other than the President of the Synod.
 - (b)** The decision of the Hearing Panel shall be subject to appeal by the accused or the President of the Synod (as provided in Bylaw 2.15.8). (Bylaw 2.15.7.9 [a–b])
- a.** The written decision of the panel shall be issued within 30 days of the date of the completion of the hearing.
 - b.** A panel decision of any matter shall be decided by majority vote of the panel. In the event that a decision cannot be reached, a new panel shall be formed immediately and the matter reheard.
 - c.** The decision shall:
 - be rendered in writing.
 - be adopted by majority vote of the panel in a meeting in which all members, including the hearing facilitator, participate. The meeting may be by telephone or other electronic means appropriate to a deliberative proceeding.
 - be signed by the secretary of the panel and by the hearing facilitator, whose signature indicates that the process resulting in the decision was conducted in accordance with controlling bylaws and this SOPM.
 - state the facts determined by the panel and the basis for the panel’s decision (see *Appendix A* of this manual).
 - d.** 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.
 - e.** The hearing facilitator shall convey the original, signed decision of the panel, with his report, to the process administrator (with an advance copy sent by electronic means, if

possible), who shall review the decision to determine that the process has been properly followed and documented. Upon such determination, the process administrator shall provide copies of the signed decision of the panel by mail to the accused and to the President of the Synod 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. (This notification shall make clear how the 15-day period for appeal is determined [see step 4.8 below] and to whom a request for a final hearing may be directed.) The process administrator shall also provide copies to the accuser and his district president, but it may be provided in these cases without return receipt signature requirements.

- f. At the same time, the secretary of the hearing panel shall send all official records of the panel, including hearing minutes and documentary evidence received, to the process administrator, to be distributed as necessary to Appeal and Final Hearing Panels, and ultimately to be archived.
- g. Once the process administrator is satisfied that the record of the case has been fully assembled in his office and the case is *finally* decided, he shall instruct Hearing Panel members to destroy all physical and electronic records and communications related to the case, which they shall do in order to meet their responsibility for maintaining confidentiality. The official record of the case shall be the only record of the proceedings.

4.7 CCM/CTCR opinions may be requested by Synod President

(c) The President of the Synod may request an opinion from the Commission on Constitutional Matters (CCM) or the Commission on Theology and Church Relations (CTCR).

(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, time limitations will not apply until the parties to the matter have received the opinion.

(3) CCM and CTCR opinions must be followed if the matter is appealed.
(Bylaw 2.15.7.9 [c])

- a. To assist him, should he have any constitutional or theological concern regarding the decision provided by the hearing panel, or should he conclude that an opinion would be helpful to a Final Hearing Panel, the President of the Synod may request an opinion from one or both commissions.
- b. Care should be taken that such questions are not phrased in a case-specific manner.
- c. The parties already had their opportunity to request opinions from the commissions prior to the panel's completion of its work and decision and therefore may not request opinions at this time in the process.

4.8 *If not appealed, the decision of the panel is final*

(d) If not appealed, the decision of the Hearing Panel shall be regarded as final and shall

- (1) be binding upon the parties to the matter and not be subject to further appeal;
 - (2) have no precedential value;
 - (3) be carried out by the district president or the President of the Synod;
 - (4) and be publicized as deemed appropriate under the circumstances by the district president or President of the Synod. (Bylaw 2.15.7.9 [b])
- a. 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. See above, *IV. General Regulations, (G) Provision of Notices* (p. 14).
 - b. Publicity regarding the panel decision shall not be provided by the district president or the President of the Synod until it is clear that time has elapsed for the request for a final hearing.
 - c. 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 after permission has been granted by the 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]).

4.9 *An Appeal Panel may be requested*

The decision of the Hearing Panel may be appealed by the accused (if an active participant in the hearing before the Hearing Panel), or by the President of the Synod if a question of doctrine or practice is involved (Constitution Art. XI B 1–3) within 15 days after receiving the decision. Such request for an appeal shall be submitted to the Secretary of the Synod with copies provided to the district president(s) of the accuser and 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.

- (a) Within 21 days after receipt of an appeal from the accused or the President of the Synod, an Appeal Panel shall be selected by the Secretary of the Synod. The Appeal Panel shall be made up of three district presidents who shall be trained for such service.
 - (1) One district president shall be selected by the accused, one by the suspending ecclesiastical supervisor, and the third by the two Appeal Panel members so selected.
 - (2) If the two Appeal Panel members cannot agree on a third panel member, the Secretary of the Synod shall select the third member by blind draw from the remaining eligible district presidents.

(b) The members of the Appeal Panel shall be provided with copies of the official record of the case, including the Hearing Panel minutes, the written decision and all documentary evidence considered by the Hearing Panel, and the written memorandum stating the basis for the appeal. The panel shall make its decision solely on the basis of the materials received.

(c) The only decision to be made by the Appeal Panel shall be whether to approve reconsideration of the Hearing Panel decision. The panel shall not approve a request for a new hearing on the basis of newly discovered evidence unless such evidence was clearly not available to the Hearing Panel and was not the fault of the party requesting the reopening of the case, and unless it is clear that the absence of such evidence resulted in a gross miscarriage of justice.

(d) The standards of review that shall define the Appeal Panel's considerations shall be limited to three basic areas:

(1) Factual findings: The Appeal Panel shall review factual findings of the Hearing Panel only to determine if they are supported by evidence. The Appeal Panel shall not ordinarily sit in judgment of the Hearing Panel's conclusions regarding evidence, since the Hearing Panel was in the best position to judge factual issues. The Appeal Panel must be convinced that a mistake has been committed, that is, that the evidence is such that reasonable minds could not agree with the Hearing Panel's decision.

(2) Conclusions on authority: The Appeal Panel may approve an appeal if the Hearing Panel was clearly outside its authority, e.g., a decision was made that the panel had no authority to make under the Constitution and Bylaws of the Synod, or a decision was made on an issue not related to the sole issue to be decided, or a decision was made on a theological question that the panel had no authority to make.

(3) Discretionary acts: The Appeal Panel may approve an appeal if there was a clear abuse of discretion impacting the decision of the Hearing Panel, resulting in a gross miscarriage of justice, or that involves an obvious and inappropriate bias or prejudice.

(e) Within 30 days after its formation, the Appeal Panel shall issue its written decision in response to the request for reconsideration. If the Appeal Panel denies the request for reconsideration of the decision of the Hearing Panel, the decision of the Hearing Panel shall be regarded as final and shall

(1) be binding upon the parties to the matter and not be subject to further appeal;

(2) have no precedential value;

(3) be carried out by the district president or the President of the Synod; and

(4) shall be publicized as deemed appropriate under the circumstances by the district president or the President of the Synod.

(f) If the Appeal Panel grants the request for reconsideration of the decision of the Hearing Panel, a Final Hearing Panel shall be selected by the Secretary of the Synod. (Bylaw 2.15.8)

a. The written request for reconsideration by an Appeal Panel must be accompanied by a memorandum stating the basis for the request and 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.

- b. The request for reconsideration may be made by the accused or the suspending ecclesiastical for any reason related to the conduct of the hearing or the decision of the Hearing Panel or by the President of the Synod due to theological or constitutional concerns.
- c. The accompanying memorandum stating the basis for the request should therefore be specific to assist the Appeal Panel, identifying areas of concern or disagreement.
- d. To allow maximum time for the formation of the Appeal Panel, verbal or electronic notification, when possible, should precede the formal submission of the request for reconsideration and its accompanying memorandum. The receipt of the written request determines the beginning date of the 21-day allowance for selection of Appeal Panel members.
- e. The hearing facilitator, upon receipt of the request for a Final Hearing Panel and accompanying memorandum, shall prepare “a written statement of the matter” (Bylaw 2.14.9[c]) responding to the issues raised in the request and memorandum, to be forwarded to the Secretary of the Synod for inclusion in materials sent to the Appeal and (if applicable) Final Hearing Panels.
- f. The Secretary of the Synod shall provide the communications necessary to accomplish the selection of the panel in the prescribed manner. If either party fails to make a selection, the Secretary of the Synod shall make the necessary selection by blind draw. Each blind draw shall be conducted as described under *General Regulations* above, (N) *Blind Draws* (p. 15).
- g. After the selection of the Appeal Panel, the Secretary shall name one member to serve as convener of the panel, which shall select a chairman during its initial meeting, usually via conference call.
- h. 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.
- i. The Secretary of the Synod shall forward to the Appeal Panel members a copy of the official record of the case, including the documents received and generated by the Hearing Panel, the hearing facilitator’s original report, the written request for rehearing and its accompanying memorandum, and the statement of the hearing facilitator in response thereto.
- j. Within 30 days after its formation, after studying the materials and meeting to discuss the matter, usually via conference call, the Appeal Panel makes no other decision than whether or not to grant the appeal request that the Hearing Panel decision be reconsidered by a Final Hearing Panel. (See *Appendix B* of this manual.) The signed decision of the Appeal Panel shall be sent to the Secretary of the Synod (an advance copy by electronic means, if possible). The Secretary of the Synod will forward it to the accused, the President of the Synod, the accuser, and the accuser’s district president. The decision becomes part of the official record of the case.
- k. Once the process administrator is satisfied that the record of the case has been fully assembled in his office and the case is *finally* decided, he shall instruct Appeal Panel members to destroy all physical and electronic records and communications related to the case, which they shall do in order to meet their responsibility for maintaining confidentiality. The official record of the case shall be the only record of the proceedings.
- l. The appeal request shall be granted only under limited circumstances, thereby to prevent a miscarriage of justice due to a significant and obvious error by the Hearing Panel.

- m. The standards of review, which define the parameters for the panel's consideration of an appeal, limit the panel's review to the three basic areas outlined in the bylaw.
- n. The Appeal Panel may deny a request for reconsideration if it determines that the decision of the Hearing Panel is correct, even though there may have been points of error that did not affect the outcome of the case.

5. Final Hearing Panel (Bylaw 2.15.9)

5.1 If appeal is granted, Final Hearing Panel is selected

Within 21 days after the receipt of the decision of the Appeal Panel granting the request for reconsideration of the decision of the Hearing Panel, a Final Hearing Panel shall be selected. (Bylaw 2.15.9)

- a. The earlier request for reconsideration of the decision of the Hearing Panel constitutes a request for a Final Hearing Panel when the appeal has been granted.
- b. The 21-day time period for the Secretary of the Synod to select the panel begins on the date that the Secretary receives the original signed copy of the Appeal Panel decision.

5.2 Secretary of Synod forms Final Hearing Panel and selects hearing facilitator

(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 two district presidents, the three reconcilers on the panel, the hearing facilitator that provided assistance to the Hearing Panel, and the involved district presidents are omitted from consideration for the Final Hearing Panel. (Bylaw 2.15.9 [a])

- a. The Secretary of the Synod shall facilitate the formation of the requested Final Hearing Panel in the manner described in the bylaws mentioned and as elaborated for the Hearing Panel in *Flow Chart Detail* step 4.2. The two (2) district presidents, the three reconcilers on the panel, and the hearing facilitator who provided assistance to the Hearing Panel, and any other involved district presidents, are not to be considered.
- b. The Secretary of the Synod shall continue to serve as timekeeper, as also described in *Flow Chart Detail* step 4.2.
- c. 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.
- d. The hearing facilitator shall serve as chairman of the panel (Bylaw 2.15.7.2[f]). He shall also prepare a report for the record of the case indicating whether there were any procedural errors in the handling of the case and how they were addressed to ensure due process, fairness, and impartiality. The hearing facilitator is to advise the panel on the form but not on the substance of the opinion.

- e. The Final Hearing Panel shall issue decisions by majority vote of the panel. All panel members must be involved at all stages of the decision-making process, with the hearing facilitator serving as an advisor to the panel on the form but not the substance of the decision. (Bylaws 2.14.2[n] and 2.15.2.) 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 the vacancy having been filled. The panel decision shall continue to require a majority vote of those members remaining.

5.3 Hearing facilitator provides materials to Final Hearing Panel

(c) The hearing facilitator 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. (Bylaw 2.15.9 [c])

- a. The Secretary of the Synod, acting on behalf of the hearing facilitator, shall duplicate and forward to the Final Hearing Panel members, when they are notified of selection to the panel, a copy of the official record of the case, including all materials sent to the Appeal Panel, as well as the Appeal Panel's decision (*Flow Chart Detail* step 5.1).

5.4 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. (Bylaw 2.15.9 [b])

See *Flow Chart Detail* step 4.4 of this *Standard Operating Procedures Manual* for details on the selection of the date and location for the Final Hearing Panel, which are the same as for the Hearing Panel.

5.5 Hearing is conducted 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. (Bylaw 2.15.9 [b])

See *Flow Chart Detail* step 4.5 of this *Standard Operating Procedures Manual* for detailed procedures to be followed for the Final Hearing Panel, as for the Hearing Panel.

5.6 Panel issues written decision

Upon completion of the hearing by 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... (Bylaw 2.15.9.1)

See *Flow Chart Detail* step 4.6 of this *Standard Operating Procedures Manual* for details on the decision of the Final Hearing Panel, which are as for the Hearing Panel, with the following change:

- e. Same as for Hearing Panel, except that the decision may be provided without return receipt signature requirements and indicates no further opportunity for appeal.

5.7 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. (Bylaw 2.15.9.1)

- a. 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 after permission has been granted by the 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]).
- b. Once the process administrator is satisfied that the record of the case has been fully assembled in his office and the case is *finally* decided, he shall instruct Final Hearing Panel members to destroy all physical and electronic records and communications related to the case, which they shall do in order to meet their responsibility for maintaining confidentiality. The official record of the case shall be the only record of the proceedings.

DECISION OF HEARING PANEL

Names of Persons Involved

Suspended Member: _____

President of the Synod: _____

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 2.15.3–2.15.10.3)?
- Was evidence that was both convincing and clear 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 evidence that was both convincing and clear *[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 evidence that was both convincing and clear *(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.

Request for Reconsideration

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 before a Final Hearing Panel. 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, to be submitted to and decided by an Appeal Panel selected by the Secretary of the Synod. A detailed description of this process is provided in the *Standard Operating Procedures Manual* under “4.9 An Appeal Panel may be requested.”

Signature of Panel Secretary and Names of Panel Members

This concludes the decision of this panel.

Respectfully submitted, _____ *[Signature of Panel Secretary]* _____ Date: _____

Names of Hearing Panel Members: _____, Secretary

Name of Hearing Facilitator: _____, Chairman

The hearing resulting in the above decision was conducted in accordance with the process set forth by the Constitution and Bylaws of The Lutheran Church—Missouri Synod, including that all panel members were involved in all stages of the decision-making process. Any procedural errors that may have occurred or been alleged, along with any corrective measures taken to ensure due process have been documented in a report (not attached) conveyed to the Secretary of the Synod and included in the record of the case.

Signed: _____ *[Signature of Hearing Facilitator]* _____ Date: _____

Hearing Facilitator: Send (by overnight carrier) the original signed decision to the Secretary of the Synod (an advance, faxed or e-mailed signed copy is helpful if possible), with the facilitator’s report. The Secretary of the Synod will forward copies of the decision only to (1) Accused; and (2) President of the Synod (the foregoing, in a manner requiring a signature verifying date of receipt); and also to (3) Accuser; (4) Accuser’s district president; and (5) Accused’s district president.

Panel Secretary: Send (by overnight carrier) the complete record of the case, including panel minutes and documentary evidence received, to the Secretary of the Synod.

DECISION OF APPEAL PANEL

Names of Persons Involved

Suspended Member: _____

President of the Synod: _____

Meeting Information

[Provide date, time, and manner in which the panel conferred.]

Issue to be Decided

[The only decision to be made by the Appeal Panel will be whether to approve reconsideration of the Hearing Panel decision.]

Standards of Review

[The standards of review of the Hearing Panel decision are limited to three areas (Bylaw 2.15.8 [d]). Indicate that / how the three were considered.]

[If a final hearing is granted, the panel may choose (but is not required) to support its decision by identifying the area(s) and cause(s) that prompted the decision.]

Decision of the Panel

[State clearly the decision of the panel, whether it

__approves

__does not approve

reconsideration of the Hearing Panel decision by a Final Hearing Panel.]

Signature of Appeal Panel Secretary and Names of Appeal Panel Members

Respectfully submitted, _____ *[Signature of Panel Secretary]* _____ Date: _____

Names of Appeal Panel Members: _____, Chairman

_____, Secretary

Send (by overnight carrier) original signed decision to: Secretary of the Synod. An advance, faxed or e-mailed signed copy is helpful, as the Secretary of the Synod will forward copies to: (1) Accused; (2) President of the Synod; (3) Accuser; (4) Accuser's district president; and (5) Accused's district president.

DECISION OF FINAL HEARING PANEL

Names of Persons Involved

Suspended Member: _____

President of the Synod: _____

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 2.15.3–2.15.10.3)?
- Was evidence that was both convincing and clear 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 evidence that was both convincing and clear *[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 evidence that was both convincing and clear *(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 Panel Secretary and Names of Panel Members

This concludes the decision of this panel.

Respectfully submitted, _____ *[Signature of Panel Secretary]* _____ Date: _____

Names of Final Hearing Panel Members: _____, Secretary

Name of Hearing Facilitator: _____, Chairman

The hearing resulting in the above decision was conducted in accordance with the process set forth by the Constitution and Bylaws of The Lutheran Church—Missouri Synod, including that all panel members were involved in all stages of the decision-making process. Any procedural errors that may have occurred or been alleged, along with any corrective measures taken to ensure due process, have been documented in a report (not attached) conveyed to the Secretary of the Synod and included in the record of the case.

Signed: _____ *[Signature of Hearing Facilitator]* _____ Date: _____

Hearing Facilitator: Send (by overnight carrier) the original signed decision to the Secretary of the Synod (an advance, faxed or e-mailed signed copy is helpful if possible), with the facilitator’s report. The Secretary of the Synod will forward copies of the decision only to (1) Accused; (2) President of the Synod; (3) Accuser; (4) Accuser’s district president; and (5) Accused’s district president.

Panel Secretary: Send (by overnight carrier) the complete record of the case, including panel minutes and documentary evidence received, to the Secretary of the Synod.