

**MINUTES**  
**COMMISSION ON CONSTITUTIONAL MATTERS**  
**Hilton St. Louis Airport**  
**December 3–4, 2021**

**100. Call to Order and Opening Devotions**

Commission Chairman Dr. George Gude called the meeting to order with all members present except for the Rev. Gerhard Bode, who was kept from attendance by a funeral. The commission welcomed a new member, Mr. Scott A. Killian, who was appointed on September 9 to fill the remainder of the 2016–2023 attorney term (less than half remaining) of the Rev. R. Neely Owen, who resigned April 20. Dr. Gude invited Rev. Peters to offer an opening devotion, which he did on the basis of 1 Tim 2 and Luke 12 and, on Saturday, Mark 13 and Daniel 12. Dr. Gude then introduced the agenda for the present meeting and the commission provided a brief orientation for its new member.

**101. Texas District Bylaws, Bylaw 1.5.3.6, and 2016 Res. 9-02A (20-2943B)**

The commission noted its receipt of notice of Synod Board of Directors action, taken as authorized under Bylaw 1.5.3.6 and on August 26, 2021, to “grant the Texas District’s request for permission to satisfy the relationship and asset disposition language requirements of Bylaw 1.5.3.6 by incorporating in its Bylaws the compliant language approved in CCM Op. 20-2943B.” With this grant of permission by the Synod Board of Directors and the incorporation of required language in the Texas District Bylaws, the commission is able to conclude that the governing documents of the Texas District, adopted by the district convention as approved in advance by the commission in Op. 20-2943B, are compliant with the requirements of Bylaw 1.5.3.6 and 2016 Res. 9-02A.

The Secretary reported briefly on the status of other districts’ governing documents, relative to Bylaw 1.5.3.6 and 2016 Res. 9-02A, as presented to the Council of Presidents at its November meeting:

- Nebraska, Rocky Mountain, Southern Illinois, South Dakota, Southeastern, and Southern Districts have proposed article revisions or restatements that have yet to be adopted by conventions and filed with their respective states.
- Atlantic, California-Nevada-Hawaii, English, New England, and Northwest Districts are believed to have articles still requiring revision to bring them into compliance with respect to Bylaw 1.5.3.6 relationship and/or asset disposition language requirements.
- Florida-Georgia, Kansas, Minnesota North, Montana, New Jersey, Pacific-Southwest, and South Wisconsin Districts may have adopted compliant articles but may not yet have filed them with their respective states.
- Central Illinois and Eastern District documents are of uncertain status.
- SELC District articles have not yet been submitted for review.

With regard to district bylaws, in addition to further responses expected from Minnesota North (Op. 21-2964), Minnesota South (Op. 20-2959), and Northwest (Op. 20-2954AB) Districts, the commission is informed that the following districts probably need to update bylaws to reflect changes made by the 2019 convention but have not yet submitted proposals to do so: Atlantic, Central Illinois, Eastern, Florida-Georgia, Iowa West, Michigan, Missouri, Montana, New England, Pacific Southwest, Rocky Mountain, Southeastern, and South Wisconsin.

**102. Oklahoma District Bylaw Proposal Resubmission (20-2947A)**

By an email of May 18, 2021, the Secretary of the Oklahoma District forwarded a resubmission of the district’s bylaw change proposal. The commission found the resubmission, which also included additions at Articles III 3, III 4 h, III 5, and V 1 a, to have addressed the issues raised in Op. 20-2947. The additional changes require some comment; the commission also noted a few other minor items for the district’s attention:

- At Article III 5 (as renumbered), dealing with election of directors, the following is added (note also related language in Appendix E):

The election for members to the district board of directors will take place at the regional caucus prior to the district convention. See Appendix B (Election Cycle for Each Region) for individuals to be elected. The nominations for board of directors members must be received by the regional vice president the day before the meeting.

While the commission notes the language, earlier in the paragraph, that the board includes “nine (9) members selected at regional caucuses and ratified by the district in convention, which ratification constitutes election,” the newly-added language may introduce confusion about the process, by which regional caucuses can *select* but not *elect* district office-holders. The slate of selections must be presented to the convention—with possibility for amendment—for ratification, as is the case with circuit visitors (See Bylaw 4.7.1 and compare Bylaw 5.2.2). The new language would be consistent with the Bylaws of the Synod if proposed as follows (with suitable changes also to Appendix E):

Selection of candidates for the district board of directors will take place at the regional caucus prior to the district convention. The slate of candidates so selected shall be ratified by the district convention, which ratification shall constitute election as directors; the convention shall have the right to alter the slate by amendment. See Appendix B (Election Cycle for Each Region) for individuals to be elected. The nominations for board of directors members must be received by the regional vice president the day before the meeting.

The language earlier in the paragraph should then be modified as follows: “nine (9) members selected at regional caucuses and ratified by the district in convention, ~~which ratification constitutes election~~ as detailed below.”

Later in the same passage, the requirement for action without a meeting needs to be clarified as follows: “LCMS Board of Directors Policy 2.4.6 also requires that action to be taken outside a meeting by ~~electronic~~ ballot must have the participation of all board members and all must vote in favor.”

- At Article III 7 c, an individual member of the Synod who is a district reconciler must be a member of the district as well as of the Synod.
- At Article V 1 a, the advisory delegate of a congregation in a multi-congregation parish that is not supplying the lay voting delegate must be a *lay* advisory delegate.
- The commission questions the addition, in Article V 1 a, as follows: “Each congregation or parish (a parish being two or more congregations served by the same pastor) shall be represented by one (1) pastor and one (1) lay delegate duly elected by the congregation at least one hundred and fifty (150) days prior to the day before the convention begins.” In the existing language, election of the delegates one hundred fifty days prior seems excessively in advance of the convention, and the addition of one day is curious. Was the intention here a different change, perhaps, to eliminate the 150-day requirement (which exists without apparent provisions for replacement) and replace it with a one-day-prior requirement? At a minimum there seems to need to be an allowance for substitutions to be made during the period between this initial election and the opening of the convention, as is the case with delegates to the Synod convention.
- At Article V 1 b, the following change is proposed:

Voting at all district conventions shall be restricted to voting to\* duly elected pastors and lay delegates of the congregations. The congregation’s delegates for all meetings of the district (circuit forums, regional caucuses, district conventions, etc.) will be elected prior

to the circuit forum at which the circuit visitor election is held. The delegates will then serve until prior to the next circuit forum where a circuit visitor will be elected.

There is no requirement in the bylaws of the Synod that the congregation send the same individuals to each meeting, and this cannot be imposed upon the congregations by the district. The district may suggest that congregations conduct their business in this way but may not dictate it as here proposed.

*\* Incidentally, it seems that the words “voting to” are here superfluous and should be removed.*

With the above alterations made, the proposal is approved for presentation to the convention. The district and its secretary are thanked for their facilitating this review and reminded to submit, for the commission’s files, a clean copy of the district’s bylaws as finally adopted by the convention.

### **103. North Dakota District Bylaw Proposal, Revised and Resubmitted (20-2948A)**

By an email of November 29, the North Dakota (ND) District Secretary forwarded a revised draft of the district’s bylaw change proposal, reflecting further modifications. The commission notes that the citation of Const. XII 7–9 belongs in ND Bylaw 2.2.1, not ND Bylaw 2.1.2. Otherwise, the commission finds the proposal to be consistent with the Constitution and Bylaws of the Synod and approves it for presentation to the convention. The district is thanked for its attention to its governing documents and to this review process and is reminded to submit for the congregation’s files a clean copy of the bylaws as adopted.

### **104. Northwest District Bylaw Proposal Resubmission (20-2954B, 20-2954C)**

The Northwest (NOW) District Secretary forwarded a September 13 memorandum responding in part to the review of Op. 20-2954 (this response docketed as Ag. 20-2954B), specifically relating to the commission’s concerns with NOW Bylaws 2.4.2–3, 4.2.2–3, 5.3.1, and 5.7.1–3 and the district’s “Carver Model of Policy-Based Governance” [sic]. The correspondence notes that “Policy-Based Governance” has as one of its primary characteristics “clarity” and that in the district’s governance policies “the roles, responsibilities, expectations, and limitations of [district officers and board] are clearly defined.”

The commission reiterates its concern that the Constitution and Bylaws of the Synod delineate specific roles for the board and president of a district that do not fit neatly into a Policy Governance framework, at least as it might be applied to a typical corporation, or even a typical non-profit corporation. The commission reiterates further its concern that the use of Policy Governance language and styles in the bylaws and policies of a district can lead, relative to these specific roles, to significant *unclarity*. Admitting the possibility that relevant policies may clarify how the district applies the governance principles evidenced in its bylaws and noting the commission’s responsibility to review also policy manuals of Synod agencies (Bylaw 3.9.2.2.3), the commission requests the district submit its noted “governance policies” for review.

The commission reiterates its concerns that Bylaws 3.6 and 5.7.5 are in violation, as they stand, with the Constitution and Bylaws of the Synod and require revision as indicated in the prior review. Bylaw 5.5.2 also continues to require attention as an inadequate recitation of requirements in Synod’s Bylaws.

The district is requested to submit its governance policies, as well as a bylaw proposal that addresses these inconsistencies with the Constitution and Bylaws of the Synod.

Regarding the other item, Ag. 20-2954C, the Northwest District Secretary also forwarded, on November 10, an additional proposed change to NOW Bylaw 4.1.1, reflective of Synod Bylaw 4.5.1’s provision for district boards to appoint “additional voting lay members from the district’s congregations to obtain additional skill sets.” The proposed insertion itself is consistent with Synod Bylaw 4.5.1. The commission cautions, however, that the rationale presented identifies specifically, as the skill set to be sought, “cultural competency (ability to understand, communicate, and interact in and with a culture or ethnic group as a peer) is a skill set that is essential to effective evangelism and worship.” The skill sets mentioned in Bylaw 4.5.1 are, however, intended to correspond to the core responsibilities of a board of directors, which, rather than consisting of “evangelism and worship,” relate to the business, property, and legal matters elaborated

in the same bylaw; thus, Bylaw 4.5.1 lists as examples of skill sets suitable for appointment: “legal, finance, investment, administration.” Use of this provision as a pretext to augment the board for purposes other than obtaining such skill sets would be contrary to the Bylaws of the Synod. The district is free to incorporate the provision for appointment of additional board members as written in Synod Bylaw 4.5.1, and this language is approved for presentation to the convention. The district is, however, not free to use the provision for purposes other than those intended in the Synod bylaw.

#### **105. Division of Bylaw 3.3.1.3 (g) (21-2965)**

In its meeting of March 11, 2021, and in connection with its Issue 19-013A, “Language relating the Synod President and Chief Mission Officer (Bylaw 3.3.1.3 [g]),” the Commission on Handbook requested that the Secretary, on its behalf, pose the following question to the Commission on Constitutional Matters:

Background: Bylaw 3.3.1.3 (g) begins with the words “as ecclesiastical supervisor” but belongs to the ecclesiastical and administrative category of Bylaw 3.3.1.3; the term “supervise,” presumably in the sense of the definition of Bylaw 1.2.1 (u) instead of that of Bylaw 1.2.1 (j), is used subsequently in the same subparagraph.

It has been suggested that this juxtaposition may lead to an unintended unclarity as to the nature of the President’s supervision in each involved instance—either in regard to “[other] officers, agencies, and national office staff” or in regard to his supervision, through the Chief Mission Officer, “of the duties listed in Bylaws 3.4.3–3.4.3.8.” Different types of supervision appear to be contemplated within one bylaw—on the one hand, an ecclesiastical *leadership* (perhaps not exactly coterminous with the *ecclesiastical supervision* defined in Bylaw 1.2.1 [j]), and on the other, a supervision—while executed through the Chief Mission Officer—likely more congruent with the definition of Bylaw 1.2.1 (u).

It has been suggested, further, that a simple division of the two sentences of Bylaw 3.3.1.3 (g) into two subparagraphs might eliminate any potential confusion.

Question: Can the two sentences of Bylaw 3.3.1.3’s subparagraph (g) be divided into two subparagraphs without injury to the meaning of the language?

Opinion: The two sentences of Bylaw 3.3.1.3 (g), introduced by 2010 Res. 8-08A, reside under the broad scope of Bylaw 3.3.1.3: “The President shall have responsibilities and duties that are both ecclesiastical and administrative.” This is not to suggest that each of the two sentences reflects responsibilities that are *uniformly* ecclesiastical and administrative; indeed, each sentence, analyzed in constitutional and bylaw context, has a unique character.

The first sentence reads: “*As ecclesiastical supervisor*, he shall provide leadership to all officers, agencies, and national office staff of the Synod.” The responsibilities and duties involved in the “leadership” referred to here, *leadership* being a term not elsewhere defined (though cf. Bylaws 1.10.4 [a]; 3.4.3.8; 3.5.1.1; 3.8.2; and 3.8.3), are subject to the introductory clause, “as ecclesiastical supervisor,” which clearly relies on the definition of “ecclesiastical supervision” in Bylaw 1.2.1 [j]. That is, the “leadership” expected *in this sentence* relates, for example, to “the presenting, interpreting, and applying of the collective will of the Synod’s congregations.” It might be carried out, as appropriate to the situation, by “visitation, evangelical encouragement and support, care, protection, counsel, advice, admonition, and, when necessary, appropriate disciplinary measures to ensure that the Constitution, Bylaws, and resolutions of the Synod are being followed and implemented.” It does not, however, extend to “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” (Bylaw 1.2.1 [j]). [It should be noted that the supervision of doctrine and administration of office inherent in ecclesiastical supervision is treated specifically and separately under the language of Bylaw 3.3.1.3 (c), also introduced by 2010 Res. 8-08A: “He shall carry out his constitutional responsibility (Constitution Art. XI B 1–4) for the supervision of the doctrine and administration of all officers, executives, and agencies of the national office.”] The leadership described in the first sentence

thus cannot relate to [*administrative*] *supervision* as defined in Bylaw 1.2.1 (u), meaning, “to have authority over, to direct actions, to control activities.”

The second sentence reads: “Through the Chief Mission Officer, he shall *supervise* the duties listed in Bylaws 3.4.3–3.4.3.8.” This sentence, read together with Bylaws 3.8.2.6 and 3.8.3.6 (as recently renumbered by Commission on Handbook; contrast Bylaws 3.8.2.1 and 3.8.3.1, which speak, as above, of specifically *ecclesiastical* supervision), contrariwise, speaks of *administrative supervision*: “All staff shall be responsible and accountable for their activities to the President of the Synod (Constitution Art. XI B 1–4) between conventions of the Synod” (Bylaws 3.8.2.6, 3.8.3.6), consistent with the definition of administrative supervision in Bylaw 1.2.1 [u]: “to have authority over, to direct actions, to control activities.” While the ecclesiastical supervisory leadership described in the first sentence (and in Bylaw 3.3.1.3 [c]) certainly extends to those administering the duties described in Bylaw 3.4.3–3.4.3.8, and while the administrative supervision described in this sentence is designated to be not direct and immediate but *through* the Chief Mission Officer (as clarified, with reference to Bylaws 3.4.3.6–8, by 2013 Res. 7-09A, Part E), it is clear that the supervision intended here—directed specifically toward those activities conducted under the aegis of the Chief Mission Officer—is of a broadly administrative and not narrowly ecclesiastical scope.

The two sentences of Bylaw 3.3.1.3 (g) thus speak of two different kinds of supervisory duties and responsibilities, and indeed of two overlapping but different groups supervised. To respond directly to the question of the Commission on Handbook, it is the opinion of this commission that the two sentences may well be separated into distinct subparagraphs without injury to their meaning.

#### **106. New Jersey District Bylaws, As Adopted (21-2966A)**

The Secretary of the New Jersey District forwarded a clean copy of district bylaws as amended by the district convention on May 21, 2021. The adopted changes are *de facto* under the procedure of Bylaw 3.9.2.2.3 (b), as the amendments were not yet approved by the commission at the time of their adoption. The commission finds the bylaws as amended to be consistent with the Constitution, Bylaws, and resolutions of the Synod, rendering them, in accordance with Bylaw 3.9.2.2.3 (b), effective. The district is thanked for its attention to its governing documents and for the submission of this clean copy of the district’s bylaws for the commission’s review and filing.

The commission notes for future work, in addition to the longer-term items noted in the previous review, a few very minor items for the district’s consideration:

- There remain instances of the term *clergy roster* where *ordained minister roster* would be the present language.
- In Bylaw 3.31 (a), “expired” should apparently read “unexpired.”
- In Bylaw 5.09 (c), the fourth line, “~~if~~ such corporate agent.”

#### **107. Wyoming District Bylaws (21-2967)**

By an email of July 1, 2021, the Wyoming District Secretary forwarded a bylaw amendment for the commission’s review, consisting of the addition of language, as previously suggested by the commission, to WY Bylaw section V (as renumbered, WY Bylaw 5.2.1), to allow the district board of directors to make amendments to the district bylaws as “necessitated by amendments to the Synod Constitution or Bylaws, or otherwise directed by a resolution of the Synod in convention.” The change is approved as adopted by the district convention, having already taken place.

By the same email, the Wyoming District Secretary forwarded, for the commission’s files, a clean copy of the district bylaws as adopted (and as reformatted and renumbered). For this the commission is grateful.

The commission notes with regard to WY Bylaw 5.1.1, as renumbered, that planned changes to the bylaws need to be reviewed and approved in advance by the Synod Commission on Constitutional Matters (Bylaws

3.9.2.2.3 [a] and 4.1.1.2 [b]). This is not evident in the district bylaw and should be addressed in the next revision.

#### **108. California-Nevada-Hawaii District Bylaw Review (21-2968)**

By an email of August 18, the Secretary of the California-Nevada-Hawaii District requested review of the district's bylaws as they stand, preparatory to changes to be presented to the upcoming district convention, the district's bylaws not having been reviewed in some time. The commission noted that the district's articles of incorporation will require revision to meet the relationship and asset disposition requirements of Synod Bylaw 1.5.3.6 and 2016 Res. 9-02A. With regard to the district's bylaws, the commission noted the following items requiring attention:

- Article II: The first sentence needs to be replaced with these, based more directly on Synod Bylaw 4.1.1.2: "The Constitution of the Synod is also the constitution of the California-Nevada-Hawaii District. The Bylaws of the Synod shall be primarily the bylaws of the district."
- Article III A 2: "*Handbook*" should read "Constitution and Bylaws." Additionally, after "and the statutes of the states in which the District operates," it would be well to add the language from Synod Bylaw 1.2.1 (f)(2): "with regard to which the district intends to retain all authority and autonomy allowed a church under the laws and Constitution of the United States and the states in which the district operates."
- Article III A 3 a: The board is "vested with general management and supervision of...business and legal affairs" (Synod Bylaw 4.5.1 [b]). Outcome-based governance cannot be adopted by the district to such a degree that the more concrete responsibilities of Bylaw section 4.5 and the model of the Synod Board of Directors are excluded. This emphasis should at least be balanced with that material.
- Article III A 3: These bylaws seem to reflect a "Policy Governance" or "Carver" model that understands the District President as "chief executive officer" under the board. This is problematic for a few reasons. LCMS Bylaws expect the Board to provide for handling of business and legal affairs. The President has ecclesiastical supervisory responsibilities. He may assist the board with its responsibilities but (1) the board may not impose policy on the president's sole responsibility for ecclesiastical supervision and (2) the demands on the district president's time for administrative duties as assigned by the board must not impinge on his ability to perform his ecclesiastical supervisory work. The exclusive delegation of all non-policy authority to the district president (III A 3 d) does not conform to the constitutional and Synod bylaw relationship of board and president. The district president serves principally for reasons other than administering the board's affairs; likewise, the board needs the flexibility, at least, to delegate otherwise.
- Article III A 3 g needs to exclude explicitly the ecclesiastical supervisory duties of the district president, over which the board does not have supervision (likewise, in Article III A 3 o, where the board's acceptance of responsibility is unwisely broad); likewise, Article III A 3 j should be limited to "any formal concern related to the board's area of responsibility." Bylaws provide other authorities for many fields of formal concern not related to the board's own area of responsibility and authority.
- Article III B 1: The district president is the "chief executive" (Bylaw 4.4.1) but not "chief executive officer" of the district.
- Article III B 2: The district president may be elected from the roster of the Synod but must be a member of the district during his tenure (Bylaws 4.3.1, 3).
- Article III B 2 c-i and III G d: These subparagraphs continue to reflect a "Policy Governance" model, whereby a great deal of responsibility that is natively the work of the board is delegated, apparently wholesale, to the district president. Aside from structural confusion about who is ultimately responsible, a practical issue arises: Does the district president have the time and space to do the work that is natively his (i.e., his office of visitation and ecclesiastical supervision, counsel and care)? Can the district and board better prioritize the use of his "greater gifts" by relieving him

of responsibility for some administrative functions? (In Article III B 2 e, “insure” should read “ensure.”)

- Article III B 2 j: The district president’s native duties of ecclesiastical supervision, counsel and care of congregations and individual members are listed last, almost as a catchall. While surely not the intent, this may be an impression best avoided by restructuring the provisions.
- Articles III C 1 b and III C 2 b: Cf. Bylaw 3.3.2. The district board can’t direct a vice-president to represent the district president in some capacity; the district president must do this (except in case of the president’s determined incapacity).
- Articles III C 2 d and III D c: Regional offices may be *selected* by regional caucuses (cf. Bylaw 5.2.2, regarding selection and election of circuit visitors) but must be *elected* by majority vote of the whole district convention (Bylaw 4.7.1, 3), with the slate of those selected presented for ratification by the district convention and the convention retaining the right to amend the slate, such ratification constituting election.
- Article III C 2 e: Some form of ranking seems to be necessary to provide for order of succession (Bylaw 4.7.1) in case of resignation or temporary or permanent incapacity of the President or First Vice-President; likewise, for cases in which the “next district officer in line” must act (e.g., Bylaw 1.10.5 [f]).
- Article III F c: Rather than “proceedings,” which may refer to the convention, it seems “minutes” is meant here. Executive session minutes should probably be excluded explicitly.
- Articles III F d, IV C 6 b iv, V C 1, V C 3: Language of “Convention Manual” should probably be standardized to that of Bylaw 4.2.1 (g), if this refers to the *Convention Workbook*.
- Article IV A 1 should read “in accordance with the Constitution and Bylaws of the Synod, the Bylaws of the District, Resolutions of the Conventions...”
- Article IV A 2 a: Again, much responsibility is placed on the district president to make sure these committees work and to keep them working. It does allow a president to shape his “administration,” if that’s what these are, but this may be another opportunity to consider whether the district might need to free more of its district president’s time for core visitation and ecclesiastical supervision, counsel and care efforts by assigning other administrative responsibilities otherwise or to a lesser degree.
- Article IV C: Much in this section may require updating to reflect post-2010 Synod structure.
  - Article IV C 1 a: This work would properly be coordinated with the Office of National Mission (as noted in subsequent sections) and, to the extent that the missions of congregations have in view international missions, the Office of International Mission.
  - Article IV C 1 b: It may be well to note that the committee would also need to work in a manner congruent (as noted below) with “objectives of the Synod as set forth in Const. Art. III, and mission and ministry emphases adopted by the Synod (Bylaw 3.8.2.4), as well as resolutions of the district, as regard its area of work.”
  - Articles IV C 2 b i, IV C 3 b i: liaison would be principally to the *Office* of National Mission.
  - Articles IV C 2 b v, IV C 3 b iv: again, consistent with the suggestion above, better language would be: “congruent with the Objectives of the Synod as set forth in Const. Art. III, and mission and ministry emphases of the Synod (Bylaw 3.8.2.4), as well as resolutions of the district, as regard its area of work.”
  - Article IV C 3 b iii: The language of “conflict[ing] directly” with the Articles of Incorporation may lead to interpretive challenges. The language would better be stated positively, in terms of receipt and administration of gifts directed toward the constitutional objectives and mission priorities of the Synod and of the district.
  - Article IV C 4 b iv: This language “incorporate changes made by the district in convention to its bylaws or articles” might be more clearly stated; the convention should be adopting the language, not giving direction to the committee for later development.

- Article IV C 4 b v: The constitution committee of the district (Bylaws 2.2.1; 2.4.1), while it may serve as a clearinghouse for helpful information for congregations on such matters, is not charged to conform congregations' documents to state laws.
- Article IV C 4 b vii: "congruent with those of the Synod Commission on Constitutional Matters, but with regard to the governing documents unique to the district."
- Article IV C 5 b i: Bylaw 3.6.2.2.3 speaks in terms of establishing an office of "Archivist-Historian." It would be well for that to be more explicit here.
- Article IV C 6 b i: Rather than "as prescribed in," perhaps "as required by," as a specific process is not prescribed other than that the committee be elected by the district convention (Bylaw 4.7.2)—unless the "prescription" refers to the election procedure of Bylaw 3.12.4.2, in which case that should be clarified. Provision ought also to be made for election, in alternate conventions, of a district representative to the Synod Committee for Convention Nominations (Synod Bylaws 3.12.3 and following)
- Article V: The commission notes that, as to convention date, additional flexibility might have proven necessary in this hopefully exceptional four-year triennium. "Handbook" should read "Constitution and Bylaws" (see above).
- Article V C 1: This discretion to publish reports and overtures is not arbitrary but should be limited to the conditions of Bylaw 3.1.6.2 and 3.1.6 (a). It is unclear which reports would be "unofficial."
- Article V C 3: The district has the option of at least partial electronic distribution of its pre-convention materials, if it would like (Bylaw 4.2.1 [g]).
- Article V D 1: "overtures" include memorials and petitions, rendering the latter superfluous and possibly confusing.
- Article V E 2: Bylaw 4.2.1 (g) provides modern options for distribution of these materials.
- Article VI B 2: "One-half or more of a term" should read "More than one-half of a term" (Bylaw 3.2.4.2 [b]).
- Article VI C b: candidates for First Vice-President must be nominated from the roster of the *district* (Bylaw 4.3.1).
- Article VI C f: Reference to the Synod *Handbook* should be removed as election of the Synod First Vice-President is now by a different procedure.
- Article VI F 3 c: If the commission understands correctly, the first sentence should continue: "upon closure of the slate, the caucus shall by ballot select its candidate... (Bylaw 4.7.1 speaks in terms of *selection* and *ratification*).
- Articles VI F 3 d and V F 4 c: It should be explicit that the convention as a whole retains the right to amend the slate by majority vote, as in the election of circuit visitors. This right is inherent in the convention's right to elect all officers and board members by its majority vote (Bylaw 4.7.3).
- Article VI G/H: The district might do well to pattern new language here after Bylaw 3.12.4 to allow explicitly for electronic voting and tabulation.
- Article VII 1: This seems to refer to permanent incapacity, a removal from office. Procedure should be specified. A procedure should also be specified for temporary incapacity, like that of Bylaw 3.3.1.4.
- Article VI I 2: It appears that the line of succession effectively ends with the First Vice-President. In the Synod and other districts, further vice-presidents are ranked in order of succession "in case of vacancies" (Bylaw 4.7.1) Compare Bylaws 3.3.2.1, 4, and to provide for clarity in instances where the "next district officer in line" is called for (e.g., Bylaw 1.10.5 [f]).
- Article VI I 3: Removal of an officer, other than the district president, is subject to Bylaw 1.5.8. The district should have a procedure for determination that a district president or other officer is temporarily or permanently incapacitated.
- Article VI J 4: Synod's *Handbook* contains no prescriptions for district youth task forces.
- Article VI K 1: Installation should not precede assumption of office (#2 below), lest there be confusion for a time over who really is the president, etc. Cf. Bylaw 3.2.4 (c), (f), and (a).



- Article VII 3: This should state explicitly that it is for officers other than the circuit visitor, who is selected by the forum but elected by the *convention*.
- Article VII 4: This should read “each congregation or multi-congregation parish (Bylaw 5.3.2).” It should also be clarified that additional representation at the forum, while possible, is not *voting* representation. See Synod Bylaw 5.3.2.
- Article VIII A: This section needs to account for review and prior approval requirements of Bylaw 3.9.2.2.3 (a–b).
- Article VIII B–C: These sections need to be reconciled with Bylaw 3.9.2.2.3 (b) or the suggestion of the Secretary’s November 2019 memorandum patterned on Bylaw 7.1.2.

The district and its secretary are thanked for their attention to these governing documents and for submitting them for review. The commission looks forward to receiving for further review a draft that addresses the noted issues, with the hope such might yet be presented to the upcoming convention of the district.

#### **109. Concordia University Irvine Bylaw Change and Articles of Incorporation (21-2969)**

By an email of October 4, counsel for Concordia University Irvine (CUI) forwarded for review a proposed revision of the university’s bylaws. The university’s articles, reviewed under Op. 17-2808A, contain the language required by Bylaw 1.5.3.6 and 2016 Res. 9-02A.

With regard to proposed changes the commission notes no new concerns. The following items do, however, require attention in this revision:

- CUI Bylaw 5.3 (f, g, and h): Here, the commission reiterates its concern of Op. 17-2808A, that the membership of the board of regents is fixed by the Bylaws of the Synod (Bylaw 3.10.6.2) and that while additional individuals may be welcomed as *advisors* to the board, they may not properly be referred to as or understood to be *advisory members*. The language needs to be corrected.
- CUI Bylaw 5.4 (a): Synod Bylaw 3.2.4.2, dealing with term limitations, does not identify “annual service” dates or calculate years of service or intervals between periods of service as here indicated. The second sentence of CUI Bylaw 5.4 (a) should be removed and the fourth modified as follows to conform the language to that of Synod Bylaw 3.2.4.2: More than one-half of a term of service shall be regarded as a full term for purposes of calculating term limitations.”
- CUI Bylaw 5.4 (b): Regents elected by the district convention now assume office at the close of the convention at which elected (Synod Bylaw 3.2.4 [a]). The following modifications would conform the language to the Synod bylaws: “All newly elected members of the Board of Regents shall begin their service ~~on September 1 following the date of their election~~ as indicated in the LCMS Bylaws. All newly appointed members of the Board of Regents shall begin their service on the date specified by the Board of Regents (or other appointing body) when making the appointment. Appointments to the Board of Regents may not be made during the interim period between a LCMS Convention or Pacific Southwest District election and ~~September 1 following such election~~ the date on which those elected assume office. Incumbents shall serve until their successors assume office.”
- CUI Bylaw 6.7: Provisions for electronic meetings need to reflect the full content of Synod Board of Directors Policy 5.7.8 (available at <https://lcms.org/bod>) or include such policy by reference as required by Synod Bylaw 1.5.3.
- CUI Bylaw 10.1 (see also CUI Bylaw 12.3): To the extent the committees may be acting with delegated authority of the board, they are subject to the requirement of Bylaw 1.5.3.5, namely, that their activities are subject to the requirement of policies and procedures for making available official minutes of their meetings. The minutes requirements, therefore, need to stand and the removal of the language may be problematic if it reflects a change in practice.

Provided the above are addressed as indicated, the commission gives its approval to the bylaw revision proposal, thanks the university for its attention to its governing documents and to this review process, and requests a clean copy of the bylaws as finally adopted by the board of regents.

### **110. Slate of Candidates for Synodwide Corporate Entities (21-2970)**

By an email of October 22, 2021, a member of a synodwide corporate entity board of directors posed, at the direction of the board's chairman, the following question. The commission, in accordance with Bylaw 3.9.2.2 (b), solicited input from the board and from the President of the Synod.

Background: Bylaw 3.6.1.5 (a)(1) requires that “the slate of candidates for the initial appointment of the chief executive” of synodwide corporate entities “shall be selected by the governing board in consultation with and with the mutual concurrence of the President of the Synod.” And in the event of a vacancy in the chief executive position, Bylaw 3.6.1.5 (a)(2) requires that the governing board “shall present its list of candidates [plural] to the President.”

Question: Does the word “candidates” (plural) in subparagraphs (1) and (2) of Bylaw 3.6.1.5 (a) indicate that said “slate” and “list” must contain the names of at least two candidates when presented to the President for his concurrence?

Opinion: Regarding the initial appointment (as opposed to reappointment) of the chief executive of a synodwide corporate entity, Bylaws 3.6.1.5 (a)(1) and 3.3.1.3 (f) speak of the President of the Synod and the entity's governing board engaging in “consultation” to reach “mutual concurrence” on a “slate of candidates.” The first sentence of Bylaw 3.6.1.5 (a)(2) requires further that “the appropriate governing board and the President of the Synod shall act expeditiously to fill the vacancy.”

Bylaw 3.6.1.5 (a)(2) (the content of which is due, along with [b][1–2], to 2004 Res. 7-11A) contains also a second sentence (“This governing board shall present its list of candidates to the President.”), which is the remnant of a longer sentence from the two precipitating overtures (2004 Ov. 7-36, 37) that concluded with the additional words, dropped by the floor committee: “...within six months after the vacancy in the executive position occurs.” The practically vestigial remainder, suggesting at most the initiative of the board in identifying potential candidates and presenting them to the President, adds little to the consideration of this question. It must be comprehended within the process described primarily in Bylaws 3.6.1.5 (a)(1) and 3.3.1.3 (f)—one of “consultation” leading to “mutual concurrence” on a “slate of candidates,” in which the board and President “shall act expeditiously to fill the vacancy.”

Here, the commission understands “slate of candidates” integrally, as a term of art, denoting the collection of those in candidacy for one or more positions but not requiring a specific number or even plurality of them for each position, apart from some explicit requirement otherwise. Such an explicit requirement does occur elsewhere in the bylaws—for example, in preparation of slates for a Synod convention, at the time of which a free-flowing conversation among all participants leading to “mutual concurrence” on a slate of candidates would be inconvenient (Bylaw 3.12.3.6 [a])—but not here.

Here, just such a consultation between the board and President, leading to a point of mutual concurrence, is required. Contrary to what might be inferred by an incorrect leap from the second sentence of Bylaw 3.6.1.5 [a][2], or by false analogy to other processes, such as in Bylaw 3.10.6.6.2 [b][7], this process is *not* simply a “unidirectional” one in which the board provides the President with a list of candidates and the President strikes names from that list. Envisioned instead is a continued dialogue by which the board and President jointly construct—by a process not specified in further detail in the bylaw—a slate of candidates in which they can mutually concur.

The process moves on to an appointment by the board when and only when the President and board, after consultation, reach such mutual concurrence—not on the names of one or more remaining candidates, severally, but on a *slate* of candidates, integrally. Should President and board mutually agree on a slate consisting of a single candidate, the board may proceed to appoint that candidate; should President or board

disagree with proceeding to appointment from a slate consisting of one candidate—perhaps even on the basis of an impression that such a slate is “defective,” as giving the board no actual choice between two alternatives, regardless of and without judgment on the suitability of the single candidate—the consultation would need to be resumed until such mutual concurrence can be reached on that or another slate. In this consultation both board and President would need to act responsibly, within their respective duties and in the interest of the Synod (Bylaw 1.5.2 [b]), and “expeditiously,” eagerly seeking a slate on which “mutual concurrence” can indeed be achieved, to fill the vacancy.

Noting potential unclarities and concern regarding functionality of the parallel process for interim appointments, the commission refers this matter for study to the Commission on Handbook.

#### **111. Northern Illinois District Bylaw Proposal (21-2971)**

By an email of November 11, the Secretary of the Northern Illinois District forwarded a number of overtures, three from the district’s board of directors and one from a district congregation, prepared for presentation to the district convention, as well as a redlined version of the bylaws showing the effect of their collective adoption. The commission notes the following:

- In the added language of NI Bylaws I E 3 and I F 4, it would be better to reference the Synod Bylaws as such, rather than as included in the *Handbook*.
- NI Bylaws I D 2 and II B 4 d: The word *appoint* should replace the word *elect* for consistency with Synod Bylaw 1.5.1.2. In NI Bylaw II B 4 d, it should also be added that the treasurer must be a layperson (Synod Bylaw 4.3.2).
- NI Bylaw I E 5: The appointment of standing committees is subject to the requirements of Synod Bylaw 1.5.3.4; the district might best cite these requirements here.
- NI Bylaw II B 1 a: The president is the chief executive (Bylaw 4.4.1) but not the chief executive *officer* of the district.
- NI Bylaw V A 1 d: The requirement that regents to be elected must be screened for qualification (Synod Bylaw 3.10.6.2) should be noted here.
- NI Bylaw V B 4 a: This should be more specific as to regional membership, namely, that the ordained minister must be a member of a congregation of the designated region (Bylaw 4.3.1).

Provided the above are addressed as indicated, the commission gives its approval to the bylaw revision overtures, thanks the district for its attention to its governing documents and to this review process, and requests a clean copy of the bylaws as finally adopted by the convention of the district.

#### **112. English District Bylaw Proposal (21-2972)**

By an email of November 15, the English District Secretary forwarded two overtures proposing changes to the bylaws of the district, one dealing with an analogue to Synod Bylaw 7.1.2 and the other reflecting the changes made by the 2019 Synod Convention to Synod Bylaw 4.3. The commission notes that according to its records the district’s articles of incorporation continue to require modification to satisfy the language requirements of Bylaw 1.5.3.6 and 2016 Res. 9-02A.

The commission reviewed the present overtures in the context of the English District Bylaws as revised in convention on June 21, 2018, finding both overtures to be consistent with the Constitution and Bylaws of the Synod. The district is thanked for its attention to its governing documents and for submitting these proposals for review, and is also reminded to submit a clean copy of the bylaws as adopted by the convention for the commission’s files.

#### **113. Review of Dispute Resolution and Expulsion Processes (21-2973)**

The commission noted November 29, 2019, correspondence from the Synod’s reconciler training contractor regarding a few areas in the *Standard Operating Procedures Manuals* (SOPM) that might require attention, these having been referred by the Commission on Handbook in its action item 19-009B. (Certain other

aspects of this correspondence have been addressed by the Commission on Handbook, as relate to the Bylaws, in action items 19-009A and C.)

The commission determined, in the interest of clarity, to propose adding “non-appealable” before “decision” in the following locations in its next revision of the *Standard Operating Procedures Manuals*:

- in Section 1.10, IV. General Regulations, H
- in Section 2.14, IV. General Regulations, Q
- in Section 2.17, IV. General Regulations, Q

The commission also determined to make the following changes, related to inclusion of terms of settlement reached by the parties during a panel process, to reflect the fact that the panel is not compelled by such a settlement to concur in terms not in keeping with its duty:

- SOPM for Section 1.10, VI. Flow Chart Detail, 3.4 [e] and 5.3 [c]: “If the parties settle their dispute during the course of the panel hearing or prior to the rendering of a decision, the panel ~~should~~may set forth the terms of the agreed-upon settlement in the decision.”

The commission, having considered the standards for review of a panel decision (*e.g.*, Bylaw 2.14.8), determined no clarification of “hearing panel minutes” was necessary in the bylaws or procedures, but noted that their content should be addressed in training.

The commission also reviewed 2019 Overture 10-28, referred to it by 2019 Omnibus Resolution A, recalling that such an assignment invited the commission to study appropriate action on the issue but did not direct specific action. It was noted that the resolution calls for a comprehensive study of the *dispute resolution process*, though the rationale speaks more directly to the process for handling suspension appeals, Bylaw sections 2.14–17, and most specifically those changes adopted in 2016 Res. 12-14. Even apart from the resolution, the commission’s responsibility, in concert with the Council of Presidents, to maintain standard operating procedures for dispute resolution and expulsion processes, does suggest the appropriateness of periodic, broad review.

Questions are often asked how frequently and in what ways the trained reconcilers are used in the various districts; also, whether, given the small number of panels convened, a smaller pool of more highly trained and frequently utilized facilitators might be more advantageous. It has also been questioned whether, given that reconciliation and adjudication involve different skills, the use of a common pool for these two purposes is best. The present appointment process has also resulted in frustration for some districts. The commission discussed these ideas, as well as the possibility of periodic continuing education or “just-in-time” modules intended for those being drawn for particular service—as a reconciler, an adjudicator, or a hearing facilitator. Noting that most of the apparent potential for improvement in the process appears to be in how well it prepares and facilitates the people responsible for doing the work, the commission suggested that the Secretary survey the existing pools of hearing facilitators and reconcilers to inquire at least regarding the following:

- how often reconcilers and facilitators are used informally and formally, within their districts and in individual or panel matters, and how long these engagements last.
- relative comfort or feeling of preparedness for coaching, mediation, adjudication, and facilitation (as appropriate).
- how difficult the cases tend to be, in terms of demands on the reconciler / facilitator.
- biggest challenges or perceived areas for improvement in current process and training.
- interest in continuing education or “just-in-time” modules.

#### **114. Iowa West District Bylaw Proposal re Convention Dates (21-2974)**

By an email of November 24, the Iowa West District President submitted a proposed bylaw change, limited to a revision of requirements on the date of the district convention in Bylaw 2.2.1. The commission approves the change for presentation to the convention as consistent with the Constitution and Bylaws of the Synod.

#### **115. Status of 2019 Res. 7-03 Committee to Revise Concordia University System Governance**

The Secretary briefly reported on the work of the committee, which completed another round of meetings in November with Concordia University presidents and board chairs, Concordia University System (CUS) staff and board members, Synod Board of Directors members and the Council of Presidents. The committee also met to review these meetings and input from the recently concluded six-month comment period and planned two meetings on January 18 and 20, 2022, with the goal of continuing its drafting work. The secretary reviewed the areas where significant discussion continues and the potential for substantive revision remains. The commission may expect another draft for its review and feedback after these meetings, with the proposal moving toward adoption by the Board of Directors as an overture to the 2023 Synod convention.

#### **116. Adjournment and Upcoming Meetings**

The commission set its next meeting tentatively for April 8–9, 2022, with the willingness to schedule additional meetings by electronic means if necessary to handle urgent business.

Having concluded its agenda, the commission adjourned with closing prayer by Rev. Peters.

John W. Sias, *Secretary*