

# STANDARD OPERATING PROCEDURES MANUAL

## *Expulsion from Membership: President of Synod*

BYLAW SECTION 2.16



*2023 Handbook*

December 2023



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## I. GENERAL PRINCIPLES FOR BYLAW SECTION 2.16

- 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]). In the case of the President of the Synod, however, the Synod itself is responsible for any decision regarding his continued membership.
- 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 (Bylaw 2.14.7.8 [a]; Bylaw Sections 1.6–1.8); and the procedures provided in this *Standard Operating Procedures Manual* (Bylaw 2.16.10.4).
- C. According to provisions and procedures set forth in Article VIII of the Constitution and Chapter 1 of the Bylaws, the self-governing congregations of the Synod state in convention resolutions their collective understanding and application of the Holy Scriptures and the Lutheran Confessions (Constitution Art. II<sup>1</sup>) and the conditions of membership (Constitution Art. VI<sup>2</sup>). These resolutions help to determine whether an act is contrary to Articles II and VI (cf. Art. XIII).

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<sup>1</sup> 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.

<sup>2</sup> 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.

- D. The procedures of Bylaw section 2.16 (among other bylaws) and this *Standard Operating Procedures Manual* provide the means to carry out Article XIII<sup>3</sup> of the Constitution as well as the Synod's objectives as set forth in Article III, especially paragraphs 1, 8, & 9.<sup>4</sup> Bylaw section 2.16 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 2.16, only a district president may bring forward a formal complaint or accusation that could lead to the expulsion of the President of the Synod.
- F. Matthew 18 and the Eighth Commandment provide the foundation for this Bylaw section 2.16 process governing expulsion of the President of the Synod 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 the President of the Synod from the Synod is intended to reflect a presumption of innocence. The burden of proof is on the chairman of the Council of Presidents and must be established by evidence that is both convincing and clear (See *General Regulations, [L] Burden of Proof*). In addition, a member of the Synod, including its President, can be expelled from the Synod only after previous futile admonition whenever such admonition is possible (Constitution Art. XIII).

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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.

<sup>3</sup> 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.

<sup>4</sup> 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;

- H. The primary purpose of Bylaw section 2.16 and the procedure further provided in this manual is not to expel a member from the Synod but to foster repentance and reconciliation, to win and restore the brother, 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 2.16), consultation with the Council of Presidents is required. See below, *IV. General Regulations, (E) Required Consultation* (p. 15).
- J. Elected ecclesiastical supervisors alone 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. In the case of Bylaw section 2.16, the Council of Presidents assumes a collective role in carrying out the expulsion process. This responsibility does not make district presidents collectively the ecclesiastical supervisor of the president. The Synod has reserved that right to itself.
- K. As its chief ecclesiastical officer, the President of the Synod shall supervise the doctrine taught and practiced in the Synod.<sup>5</sup> 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). His accountability, in turn, is to the congregations of the Synod, who exercise final decision-making authority regarding his membership in the Synod.
- L. The chairman of the Council of Presidents 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.
- M. The carrying out of the Bylaw 2.16 process by the Council of Presidents is to be guided by the principle that all constitutional and bylaw functions of an 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.
- N. The chairman of the Council of Presidents 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 2.16 allow ample opportunities for him to obtain advice and help in this servant role.

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<sup>5</sup> 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.

- O. 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 set forth in Bylaw section 2.16 (cf. Constitution Art. XIII), a commission opinion regarding a matter at issue may be requested by the Council of Presidents during the consultation phase (Bylaw 2.16.3 [a]); by a party to the matter through the Hearing Panel (Bylaws 2.14.7.8 [k] and 2.16.7.6), which panel shall determine the wording of the question(s) according to instructions provided in the bylaw; or by the President of the Synod and/or the district presidents in connection with a Final Hearing (Bylaw 2.16.8 [b]). 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 2.16 process and a panel is in place, all related questions must be submitted through the panel (Bylaws 2.14.7.8 [k] and 2.16.7.6). As much as possible, such questions submitted to the commission through the panel should be non-case-specific. Such opinions shall be followed.
- P. 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). As set forth in Bylaw section 2.16 (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 Council of Presidents during the consultation phase (Bylaw 2.16.3 [a]); by a party to the matter through the Hearing Panel (Bylaws 2.14.7.8 [k] and 2.16.7.6), which panel shall determine the wording of the question(s) according to instructions provided in the bylaw; or by the President of the Synod and/or the district presidents in connection with a Final Hearing (Bylaw 2.16.8 [b]). 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 2.16 process and when a panel is in place, all related questions shall be submitted through the panel (Bylaws 2.14.7.8 [k] and 2.16.7.6). 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 2.16.7.6).

- Q. 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).
- R. In protecting the rights of its members (Constitution Art. III 9), including the President of the Synod, the Synod has also made provision for challenging decisions that may result in suspension and loss of membership (Bylaw section 2.16). Such provisions serve to protect the rights of both the accuser and the accused.
- S. The official and formal provisions and processes of Bylaw section 2.16 (Expulsion of a President of the Synod 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 so long as the constitutional responsibility for ecclesiastical supervision is not being assumed.

- T. 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 2.14–2.15 and 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.

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## II. PREAMBLES (BYLAWS 2.1.1–2, 2.14.1 / 2.16.1)

- 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.

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). (Bylaw 2.14.1)

The action to commence expulsion of a President of the Synod from membership in the Synod is the responsibility of the district presidents of the Council of Presidents, who collectively comprise the ecclesiastical supervisors of all the respective districts of the Synod. This responsibility does not make the district presidents collectively or individually the ecclesiastical supervisor(s) of the President of the Synod. The Synod in convention reserves that right to itself alone. This Bylaw section 2.16, among others, provides the procedures to carry out Article XIII of the Constitution, “Expulsion from the Synod.” While the Council of Presidents commences and facilitates the process of expulsion on behalf of the congregations of the Synod, this bylaw allows only the congregations of the Synod to expel a President of the Synod. This bylaw does not provide the procedure for the expulsion of a district president or an officer of the Synod (Bylaw section 2.15), an individual member in cases involving sexual misconduct or criminal behavior (Bylaw section 2.17), or a congregation or individual member from the Synod (Bylaw section 2.14). (Bylaw 2.16.1)

### III. DEFINITIONS OF TERMS (BYLAW SECTION 2.16)

Definitions of key terms used in this *Standard Operating Procedures Manual* as well as throughout Bylaw section 2.16 (and Bylaw sections 2.14, 2.15, and 2.17) are provided by Bylaw 2.14.2, as follows (except when defined otherwise by specific provisions within Bylaw section 2.16, as annotated below):

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. (n/a: not applicable to Bylaw section 2.16)~~

(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~~ chairman of the Council of Presidents 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. (n/a)~~

(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. (See unique definition and role of a Bylaw section 2.16 Hearing Panel in bylaws 2.16.7–2.16.7.7)~~

(l) **Investigation committee:** Any number of persons appointed by the ~~ecclesiastical supervisor~~ chairman of the Council of Presidents 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/a)~~

(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.~~ (portions n/a)

(o) **Party to the matter:** A “party to the matter” is the accused President of the Synod and the ~~suspending ecclesiastical supervisor~~ chairman of the Council of Presidents, acting on behalf of the district presidents of the Council of Presidents, who may by 51 percent vote suspend the President of the Synod.

(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 chairman of the Council of Presidents, the accused, the Hearing Panel, the Final Hearing Panel the Council of Presidents (who determine whether to suspend and who conduct the Final Hearing), 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~~ Council of Presidents or its chairman (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~~ the Council of Presidents or its chairman shall not testify as a witness before a Hearing Panel or a Final Hearing ~~Panel~~ in the same matter or case.

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## IV. GENERAL REGULATIONS FOR BYLAW SECTION 2.16

- A. Purpose of General Regulations:** These general regulations shall serve as guidelines for the implementation of Bylaw section 2.16 to ensure consistency and uniformity in the process. They also further define the guidelines and general regulations provided in Bylaws 2.14.7.8 (as referenced by Bylaw 2.16.7.6) and 2.16.10–2.16.10.4. 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 Council of Presidents. Challenges to his impartiality shall be made to the chairman of the Council of Presidents, who shall, if appropriate, appoint another administrator for the case.
- When the secretary of the Council of Presidents 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).
- The Secretary of the Synod, the administrator of the dispute resolution and expulsion processes of the Synod (Bylaw 3.3.3.2 [b]), shall assist the administrator of the Bylaw section 2.16 process to ensure compliance with its provisions and procedures.
- C. Filing an Accusation:** In all cases under Bylaw section 2.16, the filing of a signed and dated formal written accusation is limited to a district president, who acts upon information of which he has become aware and which could lead to the expulsion of the President of the Synod from membership in the Synod.
- D. Acting on an Accusation:** Whereas elected ecclesiastical supervisors ordinarily 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), in the case of Bylaw section 2.16, the Council of Presidents assumes a collective role in carrying out the expulsion process. This responsibility does not make the district presidents collectively the ecclesiastical supervisors of the President. The Synod has reserved that right to itself.
- E. Required Consultation:** To begin this Bylaw section 2.16 process, when a district president becomes aware of information that could lead to the expulsion of the President of the Synod, consultation with the Council of Presidents is required. The purpose of this consultation is to provide opportunity (1) for the accusing district president to seek advice; (2) for a determination whether Bylaw section 2.16, if any, is the appropriate bylaw procedure; (3) for the Council of Presidents to ask an opinion of the CCM and/or the CTCR; (4) for the Council of Presidents to provide, for the persons involved, evangelical supervision, counsel, and care; (5) for the Council of Presidents to make certain that a face-to-face meeting has taken place between the accusing district president and the accused President of the Synod (Matthew 18:15); (6) for the Council of Presidents to appoint a small committee to assist in reconciliation efforts as deemed helpful; and (7) for the Council of Presidents to commence satisfying the constitutional requirement (Const. Art. XIII) for previous admonition, if applicable.
- F. Investigations:** A thorough investigation shall be conducted by the chairman of the Council of Presidents (Bylaw 2.16.4 [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 2.16 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 spiritual needs of all those affected shall be attended to, and efforts shall be continued to resolve matters even when formal action is the outcome (Bylaw 2.16.10.1).
- 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:*** The accusing district president may be called as a witness. All persons involved in hearings shall cooperate with the chairman of the Council of Presidents, 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, in the case of the Hearing Panel in Bylaw section 2.16, the secretary of the Council of Presidents 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 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 (Bylaw 2.14.7.8 [c]).

(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.

The accused President of the Synod and the chairman of the Council of Presidents shall be provided ample opportunity to present their positions.

- 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), the chairman of the Council of Presidents should recommend formal proceedings and the district presidents of the Council of Presidents 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:*** Expenses of the accusing district president, Council of Presidents, and the accused President of the Synod shall be borne by the Synod, as well as any expenses accrued by the Secretary of the Synod. Expenses of witnesses or evidence produced upon request of the parties and the expenses of all panels shall also be covered by the Synod.
- N. *Blind Draws:*** Blind draws for the selection of the Bylaw section 2.16 Hearing Panel are the responsibility of the secretary of the Council of Presidents. Other blind draws 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) 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 for service, potential panel members shall be contacted personally by the secretary of the Council of

Presidents to discuss their availability to serve. He shall provide general information regarding the matter and identify the persons involved in the matter in order to surface potential conflict of interest concerns. The chairman of the Council of Presidents and any 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 Council of Presidents, as appropriate.

If a panel member concludes that he has personal knowledge of one or other of the parties to the matter, he shall, upon becoming aware of the same, disclose to the administrator the knowledge and nature thereof and his 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 chairman or secretary of the Council of Presidents to serve according to the stipulations of Bylaw 2.16.4.1. In the event that the chairman or secretary of the council is challenged under Bylaw 2.14.4.1 but disagrees with the challenge, the question shall be decided by a majority vote of the district presidents, excluding any involved district presidents. In the event of the disqualification of the chairman or secretary of the council, the next qualified officer of the council shall function in his place. If necessary, as when there is no next qualified officer, another member of the council shall be appointed by the council.

Either party to the matter may challenge the eligibility of a panel member to serve. In the event the service of a panel member is challenged and the panel member panel 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 2.16 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 2.16 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 2.16 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 Council of Presidents 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 Council of Presidents 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 2.16 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 2.16 process."

In the interest of the integrity, trustworthiness, and credibility of the process in the eyes of all parties, the 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 Council of Presidents, 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 2.16 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 2.16 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 Synod shall be encouraged to continue financial support, existing housing, and insurance of the accused President of the Synod at least until a final decision is rendered (Bylaw 2.16.10.2).
- 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 panel shall document the error and its correction in the official record of the case. Should either the panel 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 2.16.7.6 [f]) are specifically to be included as violations that are subject to the disciplinary measures set forth in the process (Bylaw 2.16.10.3).
- 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.
- Z. *Interpretation and Application of Standard Operating Procedures Manual Provisions:*** The Council of Presidents and the panels selected for this Bylaw section 2.16 process 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 (Bylaws 2.14.2 [s], [v] and 2.16.2). 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 chairman of the Council of Presidents.

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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 2.16

### 1. Consultation with Council of Presidents (2.16.3; 2.16.10.3)

- 1.1 District president bringing accusation consults with Council of Presidents
- 1.2 Council of Presidents may ask for CTCR/CCM opinions
- 1.3 Council of Presidents decides correct process
- 1.4 Accuser must meet face-to-face with the accused
- 1.5 Council of Presidents may appoint committee to assist in reconciliation efforts

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### 2. Commencing Action (2.16.4—2.16.5)

- 2.1 Chairman of Council of Presidents officially receives allegations
- 2.2 Chairman of Council proceeds in Matthew 18:15–16 manner
- 2.3 Chairman of Council thoroughly investigates (may appoint small committee to assist)
- 2.4 Chairman of Council may appoint committee for reconciliation
- 2.5 Chairman of Council makes recommendation whether or not to proceed
- 2.6 Council of Presidents votes whether to initiate formal proceeding
- 2.7 Decision not to proceed terminates the matter
- 2.8 Decision to proceed commences suspension

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### 3. Commencing Formal Proceedings (2.16.6)

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

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### 4. Hearing Panel (2.16.7)

- 4.1 Secretary of Council of Presidents forms Hearing Panel (30 days)
- 4.2 Hearing Panel selects chairman of panel (15 days *after panel formation*)
- 4.3 Hearing Panel selects date and location for hearing (45 days *after panel formation*)
- 4.4 Statement and memorandum provided to panel
- 4.5 Panel conducts hearing according to guidelines
- 4.6 Panel issues written decision (30 days)
- 4.7 Request for final hearing (15 days)

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### 5. Final Hearing Panel (2.16.8)

- 5.1 Final Hearing before Council of Presidents (45 days)
- 5.2 Opinion from CCM/CTCR may be requested
- 5.3 Affirmative vote of Council of Presidents submits matter to congregations
- 5.4 Failure of vote terminates the matter
- 5.5 Council of Presidents informs congregations
- 5.6 Congregations register votes (45 days)
- 5.7 Decision not to terminate removes suspended status
- 5.8 Decision to terminate carried out by First Vice-President

## VI. FLOW CHART DETAIL FOR BYLAW SECTION 2.16

### *1. Consultation with Council of Presidents (2.16.3; 2.16.10.3)*

#### *1.1 District president bringing accusation consults with Council of Presidents*

When a district president of the Synod is aware of information which could lead to the expulsion of the President of the Synod from the Synod under Article XIII of the Constitution, prior to any formal written complaint or accusation, the district president shall consult with the Council of Presidents to seek advice and also so that it can be determined whether this is the appropriate bylaw procedure (Bylaw section 2.16) or whether the matter falls under Bylaw sections 2.17 or 1.8, or dispute resolution under Bylaw section 1.10... (Bylaw 2.16.3)

Any district president participating in this bylaw procedure who violates any of the requirements or procedures in this bylaw or is persistent in false accusations is subject to the same disciplinary measures as set forth in Bylaw sections 2.14 or 2.15. Violations of the prohibition against publicity while a matter is still undecided or while an appeal is contemplated or pending (Bylaw 2.16.7.6 [g] above) by any of the parties to the matter involved are specifically included as violations subject to the same disciplinary measures set forth in Bylaw sections 2.14 or 2.15. (Bylaw 2.16.10.3)

- a. When a district president becomes aware of or has received information regarding the President of the Synod that would call into question his continued membership in the Synod, he shall decide whether the information could lead to expulsion of the President from the Synod.
- b. When consulted by the district president, the Council of Presidents at this point is not asked to decide regarding the verity of the information but only to advise the district president and to help him determine which bylaw procedure to follow.
- c. To facilitate the required consultation, the President of the Synod shall absent himself from the meeting(s) in which such discussion takes place.
- d. Given the sensitivity of this matter, district presidents must hold themselves to the highest standards of confidentiality and Eighth Commandment expectations.
- e. This and all subsequent discussions of the matter by the Council of Presidents shall be held in executive session.

#### *1.2 Council of Presidents may ask for CTCR/CCM opinions*

(a) The Council of Presidents by 51 percent of the votes of the district presidents may ask an opinion of the Commission on Constitutional Matters (CCM) and/or the Commission on Theology and Church Relations (CTCR) and must follow any opinion received from either, which shall be rendered within 30 days or such additional time as the district president may allow. (Bylaw 2.16.3 [a])

- a. Further clarification of issues involved may be obtained from the CCM and/or the CTCR. Questions should be phrased in such manner that they are not case-specific and do not give cause for rumor or alarm in the Synod.
- b. The vote of the Council of Presidents is a vote solely of the district president members of the council and requires at minimum 51 percent of the votes of the district presidents.
- c. Due to the nature of the request, the CCM and the CTCR shall do everything necessary to respond to requests for opinions within the 30-day time requirement.

### ***1.3 Council of Presidents decides correct process***

(b) By 51 percent of the votes of the district presidents, the Council of Presidents shall require the accuser district president to follow the correct bylaw provision under the circumstance, if any, and shall provide for evangelical supervision, counsel, and care to the persons involved. (Bylaw 2.16.3 [b])

- a. It is the responsibility of the Council of Presidents to evaluate the information that is being shared and to provide proper direction to the accusing district president. The decision of the Council of Presidents shall be followed.
- b. The vote of the Council of Presidents is a vote solely of the district presidents of the council and requires a minimum 51 percent vote of the district presidents. The vote shall be by written ballot.
- c. The accuser has 45 days from the date of this vote to proceed under the appropriate bylaw process (Bylaw 2.16.3 [f]). Should he fail to proceed within the 45 days, he forfeits the right to proceed upon the facts as presented.
- d. It is also the responsibility of the Council of Presidents to provide counsel and care to all involved by arranging for this to be done by members of the council and others.
- e. All conversation and exchange of information shall be held in confidence by all who are involved, for the sake of the welfare of the Synod and to protect the reputations of all involved.
- f. It is essential that all conversation and exchange of information reflect the presumption of innocence.

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

(c) If the Council of Presidents by 51 percent of the votes of the district presidents determines that Bylaw section 2.16 applies, then the Council of Presidents shall ensure that the accuser has met face-to-face with the accused President of the Synod 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 to the matter is to be protected as commanded in the Eighth Commandment.

(e) The requirement of the Synod of previous admonition called for in Article XIII of the Constitution commences at this stage if applicable. (Bylaw 2.16.3 [c, e])

- a. The accusing district president must have discussed the matter with the President of the Synod in face-to-face conversation. The President of the Synod must make himself available for such conversations.
- b. The face-to-face meeting must be in person. Email, regular mail, fax, or telephone call (or any combination thereof) will not satisfy this requirement. (See above, under III. Definitions, Bylaw 2.14.2 [f].)
- c. Such face-to-face meetings contribute toward satisfying the requirement for previous admonition called for in Article XIII of the Constitution. An expulsion from membership cannot take place without previous admonition (Const. Art. XIII), even if futile. The activity of face-to-face meetings is regarded as contributing to such admonition when applicable.
- d. If such meeting has not taken place, failure to conduct a face-to-face meeting after being directed to do so by the Council of Presidents shall result in dismissal of any accusation if the fault lies with the accuser or movement to the next stage if the fault lies with the accused.
- e. All conversation and exchange of information shall be held in confidence by all who are involved, for the sake of the welfare of the Synod and to protect the reputations of all involved.
- f. It is essential that all conversation and exchange of information reflect the presumption of innocence.

### ***1.5 Council of Presidents may appoint committee to assist in reconciliation efforts***

(d) The Council of Presidents 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).

(e) The requirement of the Synod of previous admonition called for in Article XIII of the Constitution commences at this stage if applicable. (Bylaw 2.16.3 [d–e])

- a. A reconciliation committee consists of persons chosen by the Council of Presidents according to their understanding of the situation and persons involved.
- b. An expulsion from membership cannot take place without previous admonition (Const. Art. XIII), when possible, even if futile. The activity of the reconciliation committee is regarded as contributing to such admonition when applicable.

## ***2. Commencing Action (2.16.4–2.16.5)***

### ***2.1 Chairman of Council of Presidents officially receives allegations***

(f) Within 45 days after all the requirements of the consultation provided in this bylaw (Bylaw 2.16.3) have been followed the accuser district president may bring the matter to the chairman of the Council of Presidents (acting on behalf of the district presidents) for action under this bylaw provision, if so determined by the Council of Presidents (paragraph [b] above). (Bylaw 2.16.3 [f])

Under this bylaw (Bylaw section 2.16), the chairman of the Council of Presidents, acting on behalf of the district presidents, shall commence the following action when he officially receives information or allegations that could lead to expulsion of the President of the Synod from the Synod under the provisions of Article XIII of the Constitution by such information or allegations being conveyed to him in a formal written complaint or accusation made by a district president of the Synod who has carried out the above provision (paragraph 2.16.3). In commencing such action, the chairman of the Council of Presidents:

(a) Shall determine whether Bylaw 2.16.3 provisions have been carried out... (Bylaw 2.16.4)

- a. When a matter is brought forward, it is the responsibility of the chairman of the Council of Presidents to make certain that all of the requirements of the consultation have been followed.
- b. The right and responsibility to bring forward information that could lead to expulsion of the President from the Synod is now the responsibility of the accusing district president. He shall do so in a formal written complaint or accusation.
- c. The formal written complaint or accusation shall be signed and dated and becomes a part of the official record of the matter maintained by the chairman of the Council of Presidents.
- d. Use of this bylaw section is reserved solely for addressing information or allegations that could lead to expulsion of the President of the Synod from the Synod. Information or allegations of lesser consequence or that pertain to sexual misconduct or criminal behavior are to be addressed by other bylaw sections.

## 2.2 *Chairman of Council proceeds in Matthew 18:15–16 manner*

In commencing such action, the chairman of the Council of Presidents:

(b) Shall proceed in the manner described in Matthew 18:15–16 as the requirement for admonition in Article XIII of the Constitution, if applicable, continues to be carried out. (Bylaw 2.16.4 [b])

- a. An expulsion from membership cannot take place without previous admonition (Constitution, Art. XIII, 1) when applicable, even if futile. The activity of the chairman of the Council of Presidents as he carries out his responsibilities contributes to satisfying that requirement.

In the event the chairman of the Council of Presidents is disqualified because he is a party to the matter, has a conflict of interest, or is unable to act, the next qualified officer of the Council of Presidents shall function in his place. The majority vote of the district presidents, excluding any involved district president, shall determine any challenge to the eligibility of the chairman of the Council of Presidents to act which is not agreed to by the chairman. (Bylaw 2.16.4.1)

- b. In cases in which the chairman of the Council of Presidents does not agree that he should be disqualified for the reasons given, the matter shall be presented to the Council of Presidents with opportunity for input by the challenger and the chairman.

The final determination shall be made by majority vote of the district presidents present and voting at the meeting, excluding participation by the chairman, challenger, and accusing district president. All associated communications and the record of the final decision shall be included in the official record of the investigation along with the written complaint or accusation.

### **2.3 Chairman of Council thoroughly investigates (may appoint small committee to assist)**

In commencing such action, the chairman of the Council of Presidents:

(a) Shall determine whether Bylaw 2.16.3 provisions have been carried out and shall thoroughly investigate the matter to determine whether the facts learned from his investigation form a basis for expulsion of the President of the Synod under Article XIII of the Constitution. He may appoint a small investigation committee (cf. Bylaw 4.4.6). (Bylaw 2.16.4 [a])

- a. The purpose of the investigation will be (1) to determine the truth of 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 expulsion from the Synod under Constitution Art. XIII.
- b. Care shall be taken during the investigation to offer spiritual support and guidance to the involved parties.
- c. The chairman of the council may appoint a small investigative committee to assist him in reviewing the allegations and in conducting the investigation.
- d. The chairman or his representative(s) shall attempt to meet or speak with the original accuser(s). A written record of all meetings and conversations will 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 shared.
- e. The President of the Synod shall be asked to meet with the chairman of the council or his representative(s) to be informed regarding the statements that have been received and to have opportunity to respond to the allegations. A written record of this meeting shall be maintained and shared with the President of the Synod prior to its inclusion in the official record of the investigation to provide opportunity for additional written comment.
- f. The President of the Synod shall refrain from initiating any personal or private contact with the accuser(s) while the investigation is underway except in the presence of two or three witnesses.
- g. The investigation shall also include interviews with persons suggested by the accuser(s) or the accused as well as other witnesses as necessary for a full and thorough investigation. A summary of these interviews shall be prepared, and written statements and other documents shall be requested for inclusion in the official record of the investigation.
- h. The chairman of the Council of Presidents shall consider all evidence relating to the allegations brought forward against the accused, presuming innocence/fitness for ministry until evidence clearly establishes otherwise.

- i. In those cases in which the chairman of the council did not personally conduct the investigation, his representative(s) shall submit a full report and all written materials upon their completion of the investigation.

#### ***2.4 Chairman of Council may appoint committee for reconciliation***

In commencing such action, the chairman of the Council of Presidents:

- (b) Shall proceed in the manner described in Matthew 18:15–16 as the requirement for admonition in Article XIII of the Constitution, if applicable, continues to be carried out.
  - (c) May, apart from the investigation, also appoint a small committee to assist in reconciliation efforts (see Bylaw 2.16.3 [d] above). (Bylaw 2.16.4 [b–c])
- a. Throughout the investigation, the required admonition of Const. Art. XIII 1 (if applicable) and the manner described in Matthew 18:15–16 must be carried out. This requirement may be satisfied in part by the appointment of a small committee to assist in reconciliation efforts.
  - b. The reconciliation committee may consist of a small number of persons chosen by the chairman of the Council of Presidents according to his understanding of the situation and the persons involved.
  - c. Throughout the entire process, it must be borne in mind that its primary purpose is not to expel the President from the Synod but to bring about repentance and reconciliation and to win and restore, even if the process brings about expulsion from membership.

#### ***2.5 Chairman of Council makes recommendation whether or not to proceed***

The chairman of the Council of Presidents shall make his recommendation whether or not to suspend the President of the Synod within 120 days of receipt of a formal written complaint or accusation, unless the majority of the uninvolved district presidents concur in his desire to extend an investigation. (Bylaw 2.16.5)

#### ***2.6 Council of Presidents votes whether to initiate formal proceeding***

In the recommendation whether or not to initiate formal proceedings, the chairman of the Council of Presidents shall bring the matter to the Council of Presidents for hearing the recommendation, for discussion, and for vote.

- (a) An affirmative vote to proceed, by written ballot of at least 51 percent of the total number of district presidents (the collective ecclesiastical supervisors elected by the districts), shall be required for the determination to initiate formal proceedings. Any district president that is a party to the matter shall be excluded from voting. (Bylaw 2.16.5.1)
- a. Although a decision is made by the chairman of the Council of Presidents, it is treated only as a recommendation.

- b. The affirmative vote of at least 51 percent of the total number of district presidents (excluding members of the Praesidium) will be required for the initiation of formal proceedings.

## ***2.7 Decision not to proceed terminates the matter***

(b) If the result of the vote is not to initiate formal proceedings, the chairman shall in writing so inform the accuser and the President of the Synod, which shall terminate the matter. (Bylaw 2.16.5.1 [b])

- a. When the district presidents determine that the validity of accusation(s) received has not been established or the findings of the investigation have not uncovered sufficient cause for suspension, the chairman of the Council of Presidents or his representative shall close the inquiry and inform all involved of the decision.
- b. The chairman of the council shall offer to issue a public statement as necessary to aid in restoring reputations that may have suffered from the investigation process.
- c. Sensitivity shall be shown to any original accuser(s) and their concerns and referral to professional resources shall be provided if there is need for restoration and healing.
- d. As necessary, attention shall be given to enable the accused to take responsibility for any behavior and consequences associated with concerns that, while they may have existed, did not warrant suspension of membership.
- e. Accurate and reliable information shall be provided to the President's peers as judged necessary and helpful by the chairman of the Council of Presidents.

## ***2.8 Decision to proceed commences suspension***

(c) If the results of the vote require the case to proceed, the chairman shall proceed as hereafter required. (Bylaw 2.16.5.1 [c])

If the district presidents according to the procedure set forth in Bylaw 2.16.5 above conclude that the facts form a basis for expulsion of the President of the Synod under Article XIII of the Constitution... (Bylaw 2.16.6)

- a. When the validity of the accusation(s) received has been asserted by the vote of the district presidents, the chairman of the Council of Presidents shall proceed, consulting with other resource persons, as appropriate to assess professional and personal consequences and initiating formal proceedings for expulsion from the Synod when warranted under Article XIII of the Constitution.
- b. Sensitivity shall be shown to any victims of the President's actions, including referral to professional resources in order to help assess needs and recommend resources for restoration and healing.
- c. Diligent attention shall be given to enabling the President to take full responsibility for behavior and consequences, to facilitate moral and spiritual rehabilitation, and to make use of the services of qualified professionals.

- d. The chairman of the Council of Presidents shall assess the needs of the President of the Synod and his family, provide reasonable support, and refer them to competent professional care as appropriate.
- e. Accurate information shall be provided to the church at-large on a need-to-know basis as judged necessary and helpful by the chairman of the Council of Presidents.
- f. Leaders of the church at large shall be consulted to evaluate needs for information and assistance, especially if a resignation has been tendered.

### ***3. Commencing Formal Proceedings (2.16.6)***

#### ***3.1 Chairman of Council provides notification of suspended status***

If the district presidents according to the procedure set forth in Bylaw 2.16.5 above conclude that the facts form a basis for expulsion of the President of the Synod under Article XIII of the Constitution, the chairman of the Council of Presidents in commencing the formal proceedings shall

- (a) provide to the President of the Synod a written notification of his suspended status under Bylaw 2.13.4; (Bylaw 2.16.6 [a])
  - a. When possible, notification shall be made in a manner that results in a signed receipt to verify delivery, thereby to provide evidence that the notification was received by the accused President of the Synod and to establish the date of its receipt.
  - b. The notification of suspended status shall include reference to Bylaws 2.13.4–2.13.4.3 and their provisions for such status.

#### ***3.2 Chairman of Council provides statement with facts to the President***

[T]he chairman of the Council of Presidents in commencing the formal proceedings shall [further]:

- (b) provide to the President of the Synod a written statement of the matter which sets forth the facts and states that he is requesting expulsion of the President of the Synod from membership in the Synod in accord with Article XIII of the Constitution;
- (c) prepare a written memorandum describing the manner in which there was compliance with the guidelines provided in Matthew 18:15–16 and “previous futile admonition” (Constitution Art. XIII), as well as all of the provisions of Bylaws 2.16.3–2.16.5; (Bylaw 2.16.6 [b–c])
  - a. The written statement of the matter (Bylaw 2.14. 2 [u]) requires careful preparation, since it will serve as the basis for the proceedings that may follow, in which case it will serve as the subject of the President’s defense. The statement should be concise, contain factual assertions regarding the issues of the case, and demonstrate their relevance to Const. Art. XIII and its stated causes for expulsion from membership in the Synod. The statement becomes a part of the official record of the matter.

- b. A memorandum describing how the accuser met face-to-face with the President of the Synod in the manner described in Matthew 18:15–16 (Bylaw 2.16.4 [b]) shall also be prepared and becomes part of the official record of the matter.

### ***3.3 Chairman of Council provides notification of right to request hearing***

[T]he chairman of the Council of Presidents in commencing the formal proceedings shall [further]:

- (d) provide to the President of the Synod a written notification that he has 15 days from the date of receipt of the statement of the matter to advise the secretary of the Council of Presidents that there is a desire to have the matter heard and resolved. (Bylaw 2.16.6 [d])

The Synod is encouraged to continue financial support, existing housing, and insurance of the accused President of the Synod at least until the final decision is rendered. (Bylaw 2.16.10.2)

- a. When possible, notification shall be made in a manner that results in a signed receipt to verify delivery, thereby to provide evidence that the notification was received and to establish the date of its receipt.
- b. This written notification must make clear to the President of the Synod how the end date of the 15-day period will be calculated, also making clear that a request for a hearing is to be directed back to the chairman of the Council of Presidents.
- c. When the President of the Synod is placed on suspended status, the President shall continue to receive financial and other support at current levels until a final decision is reached.

### ***3.4 Failure of accused to request hearing results in expulsion***

Failure by the President of the Synod 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 2.16.6.1)

- a. A written request for a hearing and resolution of the matter shall include means of verification that it was sent within the required 15-day period. If a request for a hearing is not filed within the prescribed time, the President's membership ceases and all related records shall be retained in the office of the president of the Missouri District for future reference.
- b. After sufficient time has passed to ascertain that a written request for a hearing will not be filed, the chairman of the Council of Presidents shall inform the President of the Synod of his expulsion from the Synod.
- c. The chairman of the Council of Presidents shall inform the Department of Rosters and Statistics and the members of the Council of Presidents of the termination of membership, stating as the date of termination the date upon which the member was notified of expulsion from the Synod.
- d. The chairman of the Council of Presidents shall also inform the Synod at large as appropriate.

- e. The chairman of the Council of Presidents shall take such steps as are possible and necessary to assure that the spiritual needs of all involved are met.

### ***3.5 Request for hearing commences panel process***

If the request for hearing as granted in Bylaw 2.16.6 (d) is made... (Bylaw 2.16.7)

- a. The request for a hearing must be made in writing to the chairman of the Council of Presidents, postmarked within the required 15-day period.
- b. The request for a hearing and resolution of the matter shall be forwarded immediately to the secretary of the Council of Presidents 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 be retained and shall become a part of the official record of the matter along with all previous documentation heretofore retained by the chairman of the Council of Presidents and shall be forwarded to the secretary of the council along with previous documentation.
- d. When the secretary of the Council of Presidents is involved personally as a witness or has a direct interest in the outcome of the matter, an alternate administrator shall be appointed by the council. 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 can be appointed.

## ***4. Hearing Panel (2.16.7)***

### ***4.1 Secretary of Council of Presidents forms Hearing Panel***

If the request for hearing as granted in Bylaw 2.16.6 (d) is made, the secretary of the Council of Presidents shall form a Hearing Panel of district presidents within 30 days of the request in accordance with the provisions in this bylaw. (Bylaw 2.16.7)

A Hearing Panel consisting of three district presidents, excluding the chairman of the Council of Presidents and any district president that is party to the matter, shall conduct the hearing. The Panel shall be selected as follows:

- (a) One district president selected by the President of the Synod.
- (b) One district president selected by the vice-chairman of the Council of Presidents.
- (c) The third district president selected by the other two Hearing Panel members. If the two Hearing Panel members cannot agree on the third Hearing Panel member, then such third member shall be chosen by blind draw from among the remaining district presidents, with the blind draw administered by the secretary of the Council of Presidents and audited by witnesses. (Bylaw 2.16.7.1)

Upon receipt of a request for the hearing from the President of the Synod, the secretary of the Council of Presidents shall promptly notify the accused and the vice-chairman of the Council of Presidents 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 Council of Presidents within 15 days from the date of such notice. If either party declines to make a selection within 15 days, the secretary of the Council of Presidents shall then make such selection within five days by blind draw, audited by witnesses. (Bylaw 2.16.7.2)

When two Hearing Panel members have so been chosen, the secretary of the Council of Presidents shall promptly notify them of their selection to the Hearing Panel and direct that they select the third member of the Hearing Panel within 10 days and notify the secretary of the Council of Presidents of their selection. (Bylaw 2.16.7.3)

- a. When a request for a hearing has been made, the secretary of the Council of Presidents shall facilitate the formation of the requested panel in the manner described in the bylaw.
- b. The secretary of the Council of Presidents shall also serve as timekeeper to assure that the panel functions according to the time requirements provided in the Bylaws, a service that he will continue to provide throughout the panel process. He is authorized to require exceptions to time line expectations for good cause shown (Bylaw 2.14.2 [s]) and is required to report to the First Vice-President of the Synod “incidents of purposeful non-compliance” (Bylaw 2.14.2 [v]). See *IV. General Regulations, (W) Consequences of Violations*, p. 20.
- c. When possible, notifications to the accused and the vice-chairman of the Council of Presidents shall be made in a manner that results in a signed receipt to verify delivery, thereby to provide evidence that notifications were received and to verify the date of their receipt.
- d. Responses to the notifications shall be postmarked within the required time limits. After sufficient time has passed to make certain that any required responses will not be received, the secretary of the Council of Presidents shall proceed to move the panel selection process forward.
- e. If a blind draw is required, such method shall be used by the secretary of the Council of Presidents as will accomplish a truly “blind” draw, to be carried out in the presence of at least two other neutral persons. Written verification signed and dated by the witnesses to the blind draw shall attest to the proper conduct of the draw.
- f. 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 to allow the secretary of the Council of Presidents to proceed with his responsibilities prior to his reception of the official responses.
- g. Upon completion of the formation of the Hearing Panel, information regarding the membership of the panel shall be provided by the secretary of the Council of Presidents to the accused President of the Synod, the accusing district president, the chairman of the council, and the panel members.
- h. All documentation associated with panel selection shall be included in the official record of the matter now being maintained by the secretary of the council.

#### 4.2 *Hearing Panel selects chairman of panel*

Within 15 days after the Hearing Panel is constituted, it shall select one of its members as chairman... (Bylaw 2.16.7.4)

- a. When notifying the members of the Hearing Panel of their final selection, the secretary of the Council of Presidents shall identify one member of the panel to serve as convener, whose responsibility it will be to arrange for an initial meeting of the panel, in person or by telephone conference.
- b. The purpose of the initial meeting of the panel will be to select one of its members to serve as its chairman, who will provide leadership to the panel and to serve as its spokesman. The panel shall also designate one of its members to serve as its secretary, who will prepare and maintain a record of the panel's proceedings and acquire and retain for the official record original copies of all documents provided to the panel prior to and during the hearing(s).
- c. All panel members must be involved at all stages of the decision-making process (Bylaw 2.14.2 [n]). If a panel member withdraws or is unable to perform required duties after the panel has begun its work, the remaining panel members shall continue without filling the vacancy. Decisions by the panel shall continue to require a majority vote of those members remaining.

### ***4.3 Hearing Panel selects date and location for hearing***

[The panel chairman] shall then, after conferring with the accused President of the Synod, and the chairman of the Council of Presidents, select a date and location within 45 days after the panel is constituted when and where the Hearing Panel will 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 2.16.7.4)

- a. The formal hearing by the Hearing Panel shall take place within 45 days after the date that the secretary of the Council of Presidents 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 Council of Presidents, as timekeeper of the process, shall be notified of the delay and the panel's reasoning as to its necessity.
- b. Meeting arrangements shall be the responsibility of the chairman of the Hearing Panel. He shall confer with the accused President of the Synod and with the chairman of the Council of Presidents 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.
- c. A preliminary conference of the chairman of the panel and the parties to the matter may be scheduled to arrange for an exchange of information and the stipulation of uncontested facts to expedite the panel proceedings. Such conferences may also be used to arrange for the production of relevant evidence, identify potential witnesses, schedule a hearing, and consider other matters that will expedite the panel proceedings.
- d. Panels may require that the accusing district president and the accused President of the Synod deliver to the panel and to each other copies of the documents that they plan to introduce and a list of the witnesses they plan to call. All documents shall be delivered through the office of the chairman of the Council of Presidents by such method and dates as determined by the panels. The panel may decide at any time during the process, however, not to accept any communication outside of hearings.

- e. The chairman of the panel shall provide at least ten (10) days' written notice of the time and place of a hearing unless the parties waive such notice requirement. Each party and the panel are responsible for notifying their witnesses.
- f. No party to the matter or anyone on either's behalf shall either directly or indirectly communicate with a panel or a member of a panel regarding the matter outside of hearings, except as otherwise specifically provided in this manual.

#### **4.4 Statement and memorandum provided to panel**

The chairman of the Council of Presidents 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 provisions of Bylaws 2.16.3–2.16.6.1. (Bylaw 2.16.7.5)

- a. The basis for the panel to begin its work are the referenced “statement of the matter” and the “memorandum.”
- b. Certified copies of the documents previously forwarded by the chairman of the Council of Presidents to the secretary of the Council shall be forwarded by the secretary to the members of the Hearing Panel at the time of their notification of selection to the panel. The original copy of the statement as received by the secretary of the Council of Presidents becomes part of the official record of the matter and remains with the chairman of the Council for the duration of the process.
- c. The secretary of the Hearing Panel shall be responsible for the official record of the matter before the panel. He shall retain for the record his copies of the statement and memorandum documents upon their receipt from the secretary of the Council of Presidents and shall maintain a record of the panel's activity, to include its hearing(s), the evidence received, and its findings.

#### **4.5 Panel conducts hearing according to guidelines**

The Hearing Panel and all parties to the matter shall follow the guidelines as set forth in Bylaw 2.14.7.8 with the exception of paragraph (f) and instead shall follow this guideline in its place: (Bylaw 2.16.7.6)

- (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 (i) 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 anyone on the party's behalf shall communicate either directly or indirectly with the panel or any member of the panel without

the full knowledge of the other party to the matter. (Bylaw 2.14.7.8 [a]–[e])

(f) While the matter is still undecided or while a request for a final hearing 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 the President of the Synod, which necessarily means that the case will most likely have a broad public exposure, the chairman of the Council of Presidents, at his discretion and in consultation and concurrence with the Council of Presidents, may carry out actions to 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 the members of the Synod (Constitution Art. III 8, 9). (Bylaw 2.16.7.6 [f])

(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 dispute arose or any district of any party to the dispute.

(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 also, through the hearing facilitator, 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. (Bylaw 2.14.7.8 [g]–[k])

- a. The issue to be decided by a Hearing Panel shall be whether the suspension of the accused President of the Synod will be upheld, including whether the Council of Presidents followed prescribed procedures and whether the burden of proof for expulsion has been met under Bylaw section 2.16.6 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 President at the time that he was informed that an accusation had been made.
- c. Hearings shall be private, attended only by the panel members, the accused President of the Synod, the accusing district president, and one advisor each if desired. The advisor shall not address the panel or directly participate in the discussions during the hearing. A party to the matter and his advisor may be present at all phases of the hearing except deliberations. Subject to the discretion of the panel as to the helpfulness of the presence of others at various points in the hearing process, attendance at hearings shall be limited to witnesses who can substantiate relevant facts to the matter and other “persons involved” (including a witness or advisor or any others involved in the matter).
- d. The panel shall establish the procedure to be followed to receive evidence and testimony and to determine their relevancy to the decisions to be made by the panel, so that each party in the matter is provided opportunity fully to present its case. Relevance is determined by whether particular evidence will (or will not) support the suspension of the President of the Synod.
- e. 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 accusing district president, or the panel. The panel may require the parties to deliver to the panel and

to each other a list of the witnesses they plan to call and copies of documents they plan to produce. Expert witnesses should be designated as such in the witness list provided. When expert witnesses are listed, it is the responsibility of the panel to determine whether such testimony will be helpful or necessary for reaching a decision.

- f. 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 President of the Synod and the accusing district president to do so. The panel will establish the process by which witnesses will testify and be available for questioning.
- g. Subject to other specific provisions in this manual, all evidence shall be received in the presence of all panel members, the accused President of the Synod, and the accusing district president, except when a party has waived the right to be present or when a hearing proceeds in the absence of a party who fails to be present.
- h. When a panel proceeds with its hearing in the absence of a party, a decision shall not be made solely on the basis of the default of a party. The panel shall allow the party to submit such evidence as the panel may find beneficial for reaching its decision. The panel also may, but need not, allow the absent party an opportunity to appear at a subsequent hearing attended by all parties.
- i. As the panel carries out its responsibilities, it shall continue efforts to reconcile the parties on the basis of Christian love, forgiveness, and justice.
- j. A panel may reopen a case for good cause and conduct additional hearings at any time before a final decision is rendered.
- k. At its discretion, panels may make audio recordings of hearings solely for its own sole use. Such recordings are not to be regarded as part of the record of the matter.
- l. 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 recommendation to the district presidents within 30 days, a copy of which shall be mailed to the accused President of the Synod, the chairman of the Council of Presidents, and the accuser. (Bylaw 2.16.7.7)

- 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 two (2) votes of the panel. In the event that a decision cannot be reached, a new panel shall be formed immediately and the matter reheard.
- c. Decisions shall be rendered in writing and signed by the chairman of the panel. The decision of the panel shall state the facts determined by the panel and the basis for the panel's decision (see *Appendix A* of this manual). [A] report may be given without an accompanying recommendation (Bylaw 2.16.8 [c]).
- 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 President of the Synod and the accusing district president and approved by the panel.

- e. The decision shall be provided to the accused President of the Synod and the chairman of the Council of Presidents by mail in a manner that requires a signature upon receipt, thereby to furnish evidence that the document has been received and to verify the date of the receipt of the notification, which triggers the 15-day prescribed period for request of a final hearing. The decision shall be provided to the accuser and the Secretary of the Synod without return receipt signature requirements.
- f. The decision shall also be provided to the secretary of the Council of Presidents along with all earlier documentation of the matter and all records of the panel, including an original signed copy of the panel's decision and post office receipts indicating the date of reception of the decision by the parties.

#### 4.7 Request for final hearing

Prior to acting upon the recommendation of the Hearing Panel and if requested within 15 days by the accused President of the Synod... (Bylaw 2.16.8)

- a. Reception of signed receipts from 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.
- b. Notification shall make clear to the accused President of the Synod how the 15-day period is determined and to whom a request for a final hearing may be directed.
- c. Publicity regarding the panel decision shall not be provided until it is clear that time has elapsed for the request for a final hearing.
- d. All records of the panel, including an original signed copy of the panel's decision and post office receipts indicating the date of reception of the decision by the parties, shall accompany the notification sent to the secretary of the Council of Presidents.
- e. The request for a final hearing with its accompanying memorandum stating the basis for the request shall be submitted no later than the 15th day after the decision of the Hearing Panel was issued. 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 no later than the 15th day.
- f. If there is no request for a final hearing, the recommendation of the Hearing Panel goes directly to the Council of Presidents for its vote (Bylaw 2.16.8 [c]; *Flow Chart Detail* step 5.3, below). The secretary of the Council of Presidents shall be responsible for the transmission of the complete record of the case to Concordia Historical Institute. Such records shall remain sealed, to be opened only for good cause shown and only after permission has been granted by a panel of three (3) district presidents selected for this purpose by the Secretary of the Synod (cf. Bylaw 2.14.7.8 [j]).

## ***4. Final Hearing (2.16.8)***

### ***5.1 Final Hearing before Council of Presidents***

Prior to acting upon the recommendation of the Hearing Panel and if requested within 15 days by the accused President of the Synod, the district presidents shall within 45 days of the request for the final hearing grant a final hearing before the full Council of Presidents.

- (a) The guidelines for this final hearing shall be the same as prescribed in Bylaw 2.16.7.6 (Bylaw 2.16.8)
- a. The President of the Synod may request a final hearing by the Council of Presidents. The request shall be made to the vice-chairman of the council.
- b. The district presidents of the Council of Presidents serve as the Final Hearing Panel, conducting the hearing in the presence of the full Council of Presidents (including the Praesidium).
- c. The original copy of the written request becomes a part of the official record of the matter.

### ***5.2 Opinion from CCM/CTCR may be requested***

(b) The President of the Synod and/or the district presidents may also request that an opinion of the Commission on Constitutional Matters (CCM) or Commission on Theology and Church Relations (CTCR) be obtained. Any opinion so requested shall be rendered within 30 days or such greater time as the district presidents may allow. When an opinion has been requested, the time limitations will not apply until the parties to the matter have received the opinion. Any opinion received from either the CCM or the CTCR shall be followed. (Bylaw 2.16.8 [b])

- a. The accused President of the Synod or the district presidents may, upon receiving a copy of the recommendation of the Hearing Panel, conclude that an opinion from the CTCR and/or CCM will be essential to the case and helpful for the final hearing.
- b. Until the requested opinion(s) of the CTCR and/or CCM has/have been received, the time limitations for conduct of a final hearing are suspended.
- c. When an opinion has been received, that opinion must be followed.

### ***5.3 Affirmative vote of Council of Presidents submits matter to congregations***

(c) In acting upon the report and/or recommendation of the Hearing Panel, if any (a report may be given without an accompanying recommendation), an affirmative vote by written ballot of at least 75 percent of the total number of district presidents of the Council of Presidents (the collective ecclesiastical supervisors elected by the districts) shall be required to submit the matter to the member congregations of the Synod for a written vote in order to terminate the

membership of the President of the Synod. (Bylaw 2.16.8 [c])

- a. The secretary of the Council of Presidents shall provide the report of the Hearing Panel to the council in executive session.
- b. The vice-chairman of the council shall chair the meeting and the discussion of the report and recommendation.
- c. The ballots for the vote of the district presidents shall be prepared by the secretary of the council.
- d. Only those district presidents present for the reception of the report and the ensuing discussion may vote. A vote equal to at least 75 percent of the entire number of district presidents on the council shall be required for the matter to be submitted to the congregations of the Synod.

#### **5.4 Failure of vote terminates the matter**

(d) If the result of the vote is not the required 75 percent of the total number of district presidents, the chairman of the Council of Presidents shall so inform the accuser and the President of the Synod, which shall terminate the matter, vacating the suspended status. (Bylaw 2.16.8 [d])

The decision of the district presidents ... shall have no precedential value and shall be final and binding and not subject to further appeal. (Bylaw 2.16.10)

- a. If less than 75 percent of all district presidents on the Council of Presidents vote in favor of submitting the matter to the congregations of the Synod for a written vote, the suspended status is ended.
- b. The chairman of the Council of Presidents is responsible for informing the President of the Synod and the accusing district president. The chairman, in consultation with the President of the Synod, shall also provide necessary information to the leadership of the Synod.
- c. The matter being terminated, the secretary of the Council of Presidents shall be responsible for the transmission of the complete record to the Secretary of the Synod for transmission to Concordia Historical Institute. Such records shall remain sealed, to be opened only for good cause shown and only after permission has been granted by a panel of three (3) district presidents selected for this purpose by the Secretary of the Synod (cf. Bylaw 2.14.7.8 [jj]).
- d. If 75 percent or more of the total number of district presidents vote in favor of submitting the matter to the congregations of the Synod for a written vote, the suspended status is continued, and the matter is submitted to the congregations for a vote.

#### **5.5 Council of Presidents informs congregations**

Prior to submitting the matter to the congregations of the Synod, the Council of Presidents shall provide and send full and complete information regarding the matter including such written responses as the President of the Synod may wish to

make to the member congregations of the Synod. This information shall also be published in an official periodical of the Synod. (Bylaw 2.16.9)

- a. All documents associated with the case shall be used by the secretary of the Council of Presidents to prepare and provide a full report to the congregations in preparation for their vote.
- b. The accused President of the Synod shall be entitled to opportunity to provide his response(s) to the information and accusation(s) as part of the full and complete information to be provided.
- c. The secretary of the council shall work with the Office of the Secretary of the Synod to prepare and execute the mailing, which shall include an official ballot for use by the congregations.
- d. The information provided to the congregations shall also be published in one of the Synod's official publications, its circulation to be timed to coincide with the mailing.

### ***5.6 Congregations register votes (45 days)***

At least one-fourth of the member congregations are required to register their vote within 45 days of the date that the matter was submitted to the member congregations of the Synod and also a majority vote of those congregations voting is required for the termination of membership of the President of the Synod. (Bylaw 2.16.9.1)

- a. A vote to terminate the membership of the President of the Synod shall require the participation in the vote of no less than one-fourth of the total number of member congregations that received information and ballots.
- b. Returned ballots shall be post-marked by the 45th day after the ballots were dated and placed into the mail by the secretary of the Council of Presidents.
- c. The secretary of the council shall work with the Office of the Secretary of the Synod to receive the ballots of the congregations. Professional help may be obtained from outside the Synod to tabulate the returns.

### ***5.7 Decision not to terminate removes suspended status***

If the decision by the member congregations is not to terminate, suspended status shall be considered removed immediately upon the vote of the congregations. (Bylaw 2.16.9.2)

- a. The decision by vote of the congregations not to terminate the President of the Synod's membership takes effect immediately upon report of the results of the balloting. The report shall be provided by the secretary of the Council of Presidents to the chairman of the council.
- b. The chairman of the Council of Presidents shall be responsible for informing the President of the Synod and the accusing district president of the lifting of the suspension. The chairman, in consultation with the President of the Synod, shall also

provide necessary information to the leadership and, as appropriate, to the membership of the Synod.

- c. The secretary of the Council of Presidents shall gather together all materials related to the matter for the permanent record, which is to be conveyed to the Secretary of the Synod for transmission to Concordia Historical Institute as prescribed above in IV. *General Regulations, (X) Retention of Records* (p. 20).

### **5.8 Decision to terminate carried out by First Vice-President**

If the decision results in the expulsion of the President of the Synod from membership, the First Vice-President of the Synod shall carry out the decision, and the decision shall be publicized as deemed appropriate under the circumstances by the First Vice-President of the Synod. Article XI C 2 of the Constitution shall take effect immediately. (Bylaw 2.16.9.3)

The President of the Synod (the previous First Vice-President of the Synod) shall take those steps necessary to assure that the spiritual needs of the terminated President of the Synod are attended to and shall continue efforts to resolve those matters which led to the commencement of the formal action against him. (Bylaw 2.16.10.1)

The decision of ... the member congregations shall have no precedential value and shall be final and binding and not subject to further appeal. (Bylaw 2.16.10)

- a. The decision by vote of the congregations takes effect immediately upon report of the results of the balloting. The report shall be provided by the secretary of the Council of Presidents to the chairman of the council.
- b. The chairman of the Council of Presidents shall be responsible for informing the accuser and the accused that the President of the Synod has been expelled from membership in the Synod.
- c. The First Vice-President of the Synod shall assume the responsibilities of the presidency of the Synod at once. It shall be his immediate responsibility to make the decision of the congregations public in the manner and to the extent that he deems appropriate.
- d. The new President of the Synod shall take particular interest in the spiritual needs of the terminated President of the Synod and his family, also continuing efforts to bring about reconciliation of the parties to the matter as necessary and possible.
- e. The secretary of the Council of Presidents shall gather together all materials related to the matter for the permanent record, which is to be conveyed to the Secretary of the Synod for transmission to Concordia Historical Institute as described above in IV. *General Regulations, (X) Retention of Records* (p. 20).



## DECISION OF HEARING PANEL

### Names of Persons Involved

Accused President of the Synod: \_\_\_\_\_  
Chairman of the Council of Presidents: \_\_\_\_\_

### 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 ecclesiastical supervisor in suspending the President of the Synod (Constitution, Art. XIII 2; Bylaws 2.16.3–2.16.10.3)?
- 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 2.16 and Article XIII 1 of the Constitution of the Synod met?

### Summary of Decisions on the Issues

- The panel determined that proper procedure *[was/was not]* followed in suspending the President 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 2.16 and Article XIII of the Constitution *[was/was not]* met.

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

### Basis for Panel Decisions

The panel determined that proper procedure *[was/was not]* followed in suspending the President 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 2.16 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]*

Appendix A: Decision of Hearing Panel

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

**Request for Reconsideration**

As provided by Bylaw 2.16.8, within 15 days after receiving a Hearing Panel decision, the accused President of the Synod may request a final hearing before the full Council of Presidents. A detailed description of this process is provided in the *Standard Operating Procedures Manual*.

**Signature of Panel Secretary and Names of Panel Members**

This concludes the decision of this panel.

Signatures of Hearing Panel Members: \_\_\_\_\_, Secretary

\_\_\_\_\_

\_\_\_\_\_, 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 Council of Presidents and included in the record of the case.

Signed: \_\_\_\_\_ *[Signature of Hearing Panel Chairman]* \_\_\_\_\_ Date: \_\_\_\_\_

Panel Chairman: Send (by overnight carrier) the original signed decision to (1) the chairman of the Council of Presidents (an advance, faxed or e-mailed signed copy is helpful); (2) the accused President of the Synod; and (3) the accuser.

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.