

The **LUTHERAN** **CLARION**



Lutheran Concerns Association
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An Endorsement of President Matthew Harrison

Clergy delegates and lay delegates to the 2015 LCMS district conventions will soon be receiving notice from the Secretary of the Synod regarding their election of the president of the synod via online balloting on or about June 11th. The 2013 convention year was the first year that this online system was used, with three candidates nominated, and President Matthew Harrison elected for a second term.

The board members of the Lutheran Concerns Association have reviewed the presidential candidates for the 2016

convention and, as a group (with one member abstaining because of a possible conflict of interest), we believe that the incumbent, President Matthew Harrison, is the best candidate for the Missouri Synod's presidency at this time. This is based on his credentials, which will be published in the upcoming "Biographical Synopses and Statements of Nominees, 2016" and on his accomplishments as president since 2010. As with any incumbent, we also believe that there are matters in the synod that need addressing by him or are still unresolved.

What are President Harrison's accomplishments during his term of office from September 2010 to the present? The following is only a cursory report, gleaned mostly from synod periodicals: *Reporter*, *Lutherans Engage the World*, *The Lutheran Witness*, and the synod's online website. Summaries of this work can be found in "State of the Synod" reports in *The Lutheran Witness*.¹ The "State of the Synod" reports have come about through President Harrison's own desire for transparency and communication with the church.

Most Missouri Synod folks remember President Harrison's strong support of religious liberty and his stance against abortion half-way through his first term. On February 16, 2012, he testified before a House Committee with other religious leaders regarding the Obama-care provision which mandated that religious employers must pay for the abortions of their employees.² His speech and responses made absolutely clear that Missouri Synod Lutherans love America, that we avoid political issues due to our two king-

doms doctrine, but that we also are vigorously pro-life out of our love for the neighbor, in this case, the unborn neighbor. More recently President Harrison had another opportunity to address political issues when the Supreme Court in June 2015 ruled that same-sex marriage is now legal throughout the United States.³ Homosexual issues have also affected the LCMS relationship with the Boy Scouts USA, which organization recently accepted homosexual adult scout leaders. As a result, in December 2015, President Harrison announced that the LCMS relationship with the Boy Scouts is "no longer tenable."⁴ As we would expect of our synodical president, President Harrison has expressed the stance of our church-body in the public square without equivocation and without apology.

"...Missouri Synod Lutherans love America...we avoid political issues due to our two kingdoms doctrine, but...we also are vigorously pro-life out of our love for the neighbor, in this case, the unborn neighbor."

President Harrison's testimony before a House Committee hearing on the Obama Healthcare Ruling, February 16, 2012.

With respect to internal doctrinal matters, progress has been made under the auspices of the "Koinonia Project."⁵ Most significant is that the Council of Presidents itself, which includes all district presidents, has been having "koinonia discussions," specifically about the matters of communion practice and the relationships between pastors and their congregations.⁶ Through these and other discussions with the district presidents, President Harrison and the Vice-Presidents of synod have been working toward greater unity in doctrine and practice in all of the synodical districts. A case pertaining to internal doctrinal matters has been the anomalous situation of Dr. Matthew Becker, a theology

professor at Valparaiso University, whose LCMS synod membership was held in the Northwest District in order to prevent proper doctrinal supervision of his case. The synod's Commission on Constitutional Matters ruled that the synodical president lacked authority in the Becker case and had to work through the president of the Northwest District.⁷ The final resolution of the Becker case came from the initiative of the LCMS Montana District President, the Rev. Terry Forke, and from his willingness to oppose the false doctrine that was being advocated by Dr. Becker.⁸

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Thank You **Balance-Concord, Inc.**

Balance-Concord, Inc., has been a most faithful contributor to **The Lutheran Clarion** in honor of the sainted **Rev. Raymond Mueller** and the sainted **Rev. Edgar Rehwaldt**, both of whom faithfully served the Synod and Balance-Concord, Inc., for many years.

The Clarion is most appreciative of such continued support from Balance-Concord, Inc., as well as the wonderful support of our readers. These contributions make it possible to bring you substantive articles by respected and qualified authors on issues affecting YOUR Synod. Please continue your support. It is both appreciated and needed.

One of the complaints expressed about some previous synodical presidents was their attempt to control the legislative branch of synodical government, i.e., the national convention, by various means. They would also ignore resolutions of the convention with which they personally disagreed. President Harrison has been a refreshing change in this matter of the relationship of the national convention to the president's office. Evidence of this is seen in his appointment of competent task forces to address resolutions from the 2013 convention and by timely communication of the work of those committees to the synod at large.⁹ These task forces have dealt specifically with: the call process for returning missionaries, chaplains, and C.R.M.¹⁰ workers (Res. 3-10A); service of licensed lay deacons (Res. 4-06A); Lutheran identity of the Concordia universities (Res. 5-01A); and alternate routes to the pastoral ministry and the Specific Ministry Pastor program (Res. 5-03E, 5-04B, and 5-14A). President Harrison also sent to the synod a "2013 Convention Resolution Update" that explains what work has been done to address all resolutions requiring action.¹¹ The approach of President Harrison to these issues goes a long way toward greater transparency and toward the feeling that Saint Louis is working together with the synod-as-a-whole, not against it.

Since the restructuring of the national offices in 2010, the synodical president has become directly involved in the work of the Office of National Mission, Office of International Mission, in Mercy Work, and other areas that were, before 2010, under the supervision of the "program boards" of synod. In the 2010-13 triennium, President Harrison and his staff spent an enormous amount of time and energy down-sizing and restructuring, as was required by synodical resolutions, in order to keep synod's budget in the black.

In the 2013-16 triennium, the president and his staff have been able to build on this new structure with new staffing and expanded capacity. In the areas of National Mission, there have been new developments in: witness and outreach, congregational revitalization, black ministry, the Rosa Young film project, urban/inner city ministry, rural/small town ministry, LCMS U,¹² the "Taboo conference," and church-worker support/wellness (Res. 3-11A). In the

areas of International Mission, work has moved forward in: a strategic mission plan, meeting the goal of doubling career missionaries by 2016 (Res. 1-11),¹³ the Global Seminary Initiative (Res. 1-01A), completion of the Lutheran Malaria Initiative, and the "Theological Statement of Mission for the 21st Century" (Res. 1-03A). The progress in Missouri Synod missions is occurring at the same time that the Southern Baptist Convention,¹⁴ and others, are experiencing drastic downsizing in missions. The fact that the Missouri Synod missions are going up while the Southern Baptist missions are going down has to be due to both a work of God and excellent leadership at our headquarters.

Other areas of progress and growth under the president in this triennium have been: disaster conferences; the staffing of LCMS Disaster Response; Disaster Preparedness network; new church discussions with Lutheran churches in Ethiopia, Madagascar, and Tanzania; discussions with the Wisconsin Synod (WELS) and Evangelical Lutheran Synod (ELS); ending discussions with the Evangelical Lutheran Church in America (ELCA); integrated message strategy for synodical periodicals, social media, photography, videography, and tweets; better integration of the KFUE radio/podcast ministry with the synod's own ministries; appointment of Mark Hofman for mission advancement and new staffing in that department; appointment of Dr. Dean Wenthe and Dr. Paul Philp for the Concordia University System (CUS); election of Dr. Dan Gard as president at Concordia-Chicago; expanding multi-lingual capabilities in the CUS (Res. 1-10A); working on eliminating the historic CUS debt (Res. 6-01A); special attention to the financial and administrative needs of Concordia College, Selma; the Reformation 2017 project;¹⁵ visitation of districts by President Harrison and Vice-President Mueller;

Extra Clarion Issues for 2016 Convention—Please Help!

With the 66th Convention of the LCMS coming up July 9-14, 2016, in Milwaukee, WI, the *Clarion* editors are publishing two extra issues (April and June). We want to keep everyone, particularly the delegates, informed on the matters that will be brought before the convention.



We sure could use your help with the expense of this as we urge delegates to uphold God's Word and doctrine during the convention.

If you can help with the costs, there's an enclosed envelope so you can mail your check to Lutheran Concerns Association, 149 Glenview Drive, New Kensington PA 15068-4921. Do it now. **Thank you!!**

“Preach the Word” preaching initiative; Post-Seminary Applied Learning and Support (PALS)/Continuing Education (Res. 5-02A; 5-08B); “Free to be Faithful” campaign; revision of Small Catechism Explanation (Res. 3-13A); work on our International Schools; addressing the financial position of synod and its demographic decline; LCMS Constitution Article VI and VII Bible Studies (2010 Res. 8-30B and 8-32B); Commission on Theology and Church Relations (CTCR) statements on infant communion and gender identity; the new “What Does This Mean?” series; and President Harrison’s meeting in February 2016 with the bishop of the conservative Anglican Church in North America (ACNA) and the president of the Lutheran Church—Canada (LCC).¹⁶

President Harrison and Vice-President Daniel Preus met with Dr. Kloha and advised him on necessary revisions. ... “I am pleased to report ... We find no false doctrine in the revised paper.”
Matthew C. Harrison.

Matters in the synod that need addressing by the president of synod or are still unresolved include the following: extension of the Koinonia Project to all districts and making available to the public the doctrinal points at issue; spending more time

and periodical space addressing doctrinal issues—especially those that affect and divide congregations and pastors—in *The Lutheran Witness, Reporter*, and in essays at pastoral conferences, district conventions, and synod conventions; facing up to the fact that, although (thanks be to God!) more of our district presidents and pastors are becoming united under the same convictions, yet many of our congregations and lay leaders have less interest in being Lutheran than ever before—and this in spite of the best and most patient efforts of our pastors; persuading the church that Lutheran worship is distinguished from others by more than just the Ordinary of divine worship, but also by Lutheran hymnody and the entire approach to worship; determining the best way to handle incidents like the Newtown, Connecticut, ecumenical service;¹⁷ and finding some way to resolve the issues raised by modern textual criticism,¹⁸ either through a CTCR document or joint statement of the seminary faculties.

To reiterate: we, of the Lutheran Concerns Association, believe that the incumbent, President Matthew Harrison, is the best candidate for the Missouri Synod’s presidency at this time. As with any incumbent, we also believe that there are matters in the synod that need addressing by him or are still unresolved. We pray that God’s will be done in this election and July’s convention for the progress of the Gospel and the welfare of our beloved synod!

Rev. Dr. Martin R. Noland

Pastor, Trinity Lutheran Church, Evansville, Indiana

1 These would be *The Lutheran Witness* issues of May 2011, September 2012, September 2013, November 2014, and November 2015. The 2011 and 2012 issues are available for free here:

<http://blogs.lcms.org/the-lutheran-witness/lutheran-witness-archives> ; the 2013 here: <http://blogs.lcms.org/2013/lutheran-witness-september-2013> ; the 2014 here: <http://blogs.lcms.org/2014/lutheran-witness-november-2014> ; and the 2015 here: <http://blogs.lcms.org/2015/lutheran-witness-november-2015> . All web-pages in this article were accessed on March 22, 2016.

- 2 See the videos of Harrison’s testimony at: <https://www.youtube.com/watch?v=527spTZiwBU> and <https://www.youtube.com/watch?v=HADkZLHXKUs>; the transcript is available here: <http://issuesetc.org/wp-content/uploads/2012/02/Harrison-Transcript.pdf> ; other reports are found here: <http://www.canadianlutheran.ca/lcms-president-testifies-on-infringement-of-religious-rights> , <https://blogs.lcms.org/2012/harrison-testifies-as-house-leaders-spar-over-hhs-ruling> , <http://wmltblog.org/2012/02/a-brief-catalog-of-press-stories-regarding-president-harrisons-testimony-before-congress-on-religious-freedom> . This issue is now before the U.S. Supreme Court with a decision set for June 2016, see: <http://www.christianitytoday.com/gleanings/2016/march/little-sisters-supreme-court-contraceptive-mandate-cccu.html>
- 3 See <https://blogs.lcms.org/2015/harrison-letter-on-ruling> and <http://issuesetc.org/2015/06/26/6-a-pastoral-perspective-on-the-legalization-of-homosexual-marriage-pr-matt-harrison-62>
- 4 See <https://blogs.lcms.org/2015/relationship-with-bsa>
- 5 See Herbert Mueller, “Koinonia Project,” *The Lutheran Witness* 133 no. 11 (November 2014): 4-5.
- 6 Mueller, “Koinonia Project,” 5.
- 7 See Commission on Constitutional Matters minutes, September 18-19, 2015, pages 2-3, section 129 (15-2750); available here: <http://www.lcms.org/Document.fdoc?src=lcsm&id=3796>
- 8 See articles about this case in the *Lutheran Clarion*, the issues of March 2015, May 2015, July 2015, and September 2015; available for free online at: <http://lutheranclarion.org/newsletter.html> . The final resolution of the Becker case came from the initiative of the LCMS Montana District President, the Rev. Terry Forke, and from his willingness to oppose the false doctrine that was being advocated by Dr. Becker.
- 9 See <http://www.lcms.org/convention/task-force-updates>
- 10 C.R.M. abbreviates *candidatus reverendi ministerii*, which refers to a pastor who is eligible for a call but who presently does not have a call or place of service to the church.
- 11 See <https://blogs.lcms.org/2015/2013-convention-resolution-update>
- 12 LCMS U is the new LCMS campus ministry organization under the leadership of the Rev. Marcus Zill.
- 13 For recent reports on the progress in increasing the number of international career missionaries, see: <https://blogs.lcms.org/2015/board-adds-missionaries> , <https://blogs.lcms.org/2016/bim-calls-missionaries-2> , and <https://blogs.lcms.org/2016/new-missionaries-sent>
- 14 On the Southern Baptist mission cuts, see e.g. <http://www.kansascity.com/living/religion/article62643912.html>
- 15 See <http://lutheranreformation.org>
- 16 See <https://blogs.lcms.org/2016/discussions-encourage-lutheran-anglican-leaders> ; the interim report presented to the two presidents and bishop, regarding the discussions completed so far, can be found here: <https://c119b78671d19b8aee34-1ab073aa91389396dfc8b6aabc9b141e.ssl.cf2.rackcdn.com/On%20Closer%20Acquaintance%202016%20v4.pdf>
- 17 See <http://www.religionnews.com/2013/02/11/missouri-synod-president-apologizes-for-role-in-newtown-debacle> . How does the synod president, and/or district presidents, effectively deal with such cases, without on the one hand apologizing for our position on syncretism or, on the other hand, bringing needless stress to

those already under duress due to the disaster thrust upon them? We cannot expect the secular press to put us in a good light, so how can we be smarter than they are in these situations? This deserves some of the best thinking of our synodical leadership and the many smart laymen and media people we have in our membership.

- 18 The issues of modern textual criticism posed by the 28th edition of the Greek text of Nestle-Aland (published in 2012) were first raised in our circles by Dr. Jeff Kloha of the Concordia Seminary, Saint Louis faculty in an essay titled "Text and Authority." This essay was delivered to a conference of Lutheran theologians associated through the International Lutheran Council (a.k.a. ILC) with the LCMS in Oberursel, Germany in November 2013. The initial version of the essay was distributed prior to the author having an opportunity to incorporate the suggestions for revision by his colleagues and the conference attendees. This initial version raised legitimate concerns about whether the author, and maybe others on his faculty, had imbibed too deeply in the wells of modern, higher-critical thought. In response, President Harrison and Vice-President Daniel Preus met with Dr. Kloha and advised him on necessary revisions. On August 15, 2014, President Harrison reported on this meeting to the Concordia Seminary Board of Regents: "I am pleased to report to the regents that in the course of significant conversations between President Meyer, Jeff Kloha, Daniel Preus, and myself, Professor Kloha has graciously heard critique of his paper and made numerous changes and omissions to increase clarity and greatly decrease concern. We find no false doctrine in the revised paper. And we are thankful to President Meyer and Professor Kloha for the charity and humility demonstrated during these past months. Matthew C. Harrison." On January 19, 2015, at the Lutheran Concerns Association Annual Conference, after his presentation on the topic, Dr. Kloha was asked by a LCA board member the following question: "Dr. Noland read a sentence this morning, 'If we give up the theological position that all of the Scriptures are inspired by God, that all of them are useful for doctrine, rebuking, correcting, and training in righteousness. If we give that up, we open the door to an endless whittling away of Scriptural doctrines by a succession of heterodox preachers and theologians.' Have you [Dr. Kloha] retracted any of your writings?" Dr. Kloha responded: "Retracted? No." The LCA Board member continued: "... from Oberursel?" Dr. Kloha replied: "No." The final, revised essay is now available and is titled: "Theological and Hermeneutical Reflections on the Ongoing Revisions of the *Novum Testamentum Graece*," in: Achim Behrens/Jorg Christian Salzmann, eds., *Listening to the Word of God: Exegetical Approaches*, vol. 16 in Oberurseler Hefte Ergänzungsbande, edited by Werner Klän (Göttingen: Dr. Reinhilde Ruprecht, e.K., 2016), 167-210 (now available for purchase at online bookstores). Dr. Kloha gave a lecture at the seminary on the topic which is available online here: <https://itunes.apple.com/us/itunes-u/day-exegetical-reflection/id879111264?mt=10>. Dr. John W. Montgomery, an LCMS theologian, has given two critiques of Dr. Kloha's essay here: <http://www.modernreformation.org/default.php?page=issuedisplay&var1=ArtRead&var2=143> and here: <https://www.globaljournalct.com%2Fbeyond-the-plastic-text-the-plot-thickens%2F&usq=AFQjCNGSKtCncQ2RMV9IzPFTpFY-HW-yfg&bvm=bv.117218890.d.cWw>. Although the LCMS has a defined position on textual criticism in the 1973 *Statement of Scriptural and Confessional Principles* (see <http://www.lcms.org/doctrine/scripturalprinciples>), that was over forty years ago, and new challenges have come in this area from anti-Christian scholars. Dr. Kloha's essay has awakened many to the need for a scholarly response to the challenges posed by modern textual criticism. I am sure we in the LCMS are up to the theological task, if we work together with all the resources at our disposal.

The Dispute Resolution System - Whom does it Serve?

Introduction

I should note that I am a lawyer with more than 40 years of experience in the general practice of law in Indiana, and also a trained and registered civil mediator. I had no hand in crafting the dispute resolution/expulsion process contained in Bylaw Chapter VIII, or any of its later revisions (currently appearing in Bylaw Section 1.10 and 2.14), but only recently have I examined these processes. I have also reviewed the process that was in place in Chapter VIII: Reconciliation, Adjudication, and Appeal of the Handbook (1989 Edition) before the adoption of a new process in 1992. I currently serve as Vice-Chairman on the Concordia University System Board of Directors.

Prologue.

Many years ago, while deer hunting in the Upper Peninsula of Michigan, I walked into a woods that was so deep and dense and filled with bogs that I became lost, and thought seriously that I might never walk out. Hours later I did walk out of the woods, but I was still lost.

Even with my 40 plus years of lawyering, reading statutes, reading and writing hundreds of ordinances, and even writing some legislation for the Indiana Legislature, once I delved into the synodical dispute resolution/expulsion process I experienced that same feeling when I first walked out of the woods so many years ago. Whoever conjured up the current process created a thicket as deep and dense as any woods in the Upper Peninsula. It is my impression that the current procedures are at best confusing, and at worst, they prolong and conflate the dispute resolution/expulsion processes, and lead to further discord within the Synod. It is also arguable that lack of clarity for application, lack of substantive procedure, and the binding effect of CCM (Commission on Constitutional Matters) and CTCR (Commission on Theology and Church Relations) opinions have a chilling effect on the process. In my opinion, the current procedures need to be discarded and new, concise, understandable procedures which provide for fair and expeditious resolution/expulsion hearings and dispositions are in order.

Dispute Resolution, Handbook 2001 Edition.

I first became acquainted with the Handbook of the Lutheran Church Missouri Synod in 2001 (the "2001 Handbook") when I was elected to the Synod's Board of Directors. I still have my well-worn copy of that handbook, and a copy of each handbook adopted for use in the Synod by each successive Synodical Convention.

Over the years, dispute resolution provisions contained in chapter VIII of the 2001 Handbook have doubled from ap-

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proximately 7½ pages, to 15 pages in section 1.10 of the 2013 Edition, augmented by a 30 page Standard Operating Procedures Manual, Dispute Resolution, Bylaws Section 1.10 (“SOPM”). If one were to add all the expulsion sections (Bylaw sections 2.14, 2.15, 2.16, and 2.17), the number grows by an additional 50 pages.

When comparing the 2001 Handbook to the 2013 Handbook, the Preamble appears to be identical, and the Purpose and Objectives have similar language, identifying whom the procedure is designed to serve: “members of the Synod [as defined by the Constitution, Art. V], the Synod itself, a District or an organization owned and controlled by the Synod, persons involved in excommunication or by lay members of congregations of the Synod holding positions with the Synod itself or with Districts or other organizations owned and controlled by the Synod and shall be the exclusive remedy to resolve such disputes.”ⁱ

By implication, the 2001 Handbook also applies to “theological matters,” and the parties are “urged, in matters of a doctrinal nature to follow the procedures as outlined in Bylaw 2.39 c.”^{ii iii} It did not apply to expelling congregations or individual members from membership in the Synod which was controlled by Bylaw 2.27.

Dispute Resolution, Handbook 2013 Edition - “The New Process.”

By 2013, dispute resolution was explicitly the “exclusive remedy to such disputes that involve *theological, doctrinal, or ecclesiastical* [terms which are undefined] issues except those covered under Bylaw sections 2.14-2.17” (i.e., procedures for expulsion from membership under the Constitution Art. XIII). The Bylaws expanded upon the requirements for informal reconciliation beyond the compulsory face-to-face meeting under Matt. 18:15, and include a process that can only be described as convoluted.^{iv}

Under this new process, dispute resolution could involve, in a consultative role, the complainant’s district president and vice-presidents as well as the district president of the respondent. In addition it may also result in opinions from the CCM and/or the CTCR, or both, which in either case must be followed by the complainant’s district president. All of this could occur before the formal reconciliation process begins. There is no time limit on the consultative phase. It is only within 45 days after that phase is concluded that the district president must advise the complainant and the respondent’s district president of the bylaw section to be followed, and then require the face-to-face meeting if that has not occurred.

Apart from the potential for delay occasioned by the new process, the binding effect of a CCM opinion or a CTCR opinion (“which the district president *must follow*”) are particularly problematic. So often, the result of the opinion is dependent of the wording of the question or the issue presented by the district president. The process does not provide for any input by the complainant or respondent, and these opinions could conceivably terminate the process

before it is started.^v

The binding effect of the CCM or CTCR opinion also creates what I will refer to as the “non-Lutheran problem.” By that I mean it appears that this is contrary to a hallmark of the Evangelical Lutheran Church; namely the right to a “proper judicial process.”^{vi} Edicts which forbid judicial examination within the Church, whether they

contain error or not, deprive members the fair hearing that has served to preserve the doctrines of the Church since the time of Luther.

Unlike the current procedure, the 1989 Handbook provided “the Commission on Adjudication or the Commission on Appeals, at the request of either party, shall seek the *advisory* opinion of the Commission on Constitutional Matter on questions of interpretation of the Synod’s Constitution, Bylaws, and resolutions and also that of the Commission on Theology and Church Relations on questions of interpretations of theological issues.”^{vii}

In addition, it is possible that the complainant’s district president may determine that the “appropriate bylaw procedure” is under the procedures for expulsion rather than the dispute resolution process. Is there a bright line that guides the determination of who has the authority for these “theological, doctrinal or ecclesiastical” issues? Obviously not; just look again to the extensive consultative provisions in Bylaw 1.10.5 mentioned above. Further, perhaps another clue is found in Bylaw 1.10.8 which provides: “Within 30 days after a decision of the Dispute Resolution Panel, any party to the dispute *or the President of the Synod, if a question of doctrine or practice is involved* (Constitution Art. XI B 1-3) may appeal the decision.”^{viii}

This raises another question: if Constitution Article XI specifically assigns to the President of Synod the duty to supervise doctrine, and the authority to maintain the unity of doctrine and practice in the Synod, does the new process, in matters involving a question of doctrine or practice, conflict with the constitutional authority of the President? Keep in mind that under the bylaw, the appeal panel may decide not to approve reconsideration. In that instance there is no further right of review by a review panel, and the decision is binding on the parties but of no precedential value.^{ix}

In addition, Bylaw 1.10.6 carries forward the language of Bylaw 8.07 from the 2001 Edition, but it expands upon who can formally request the appointment of a reconciler. While only the complainant could request a reconciler if that person felt the informal reconciliation efforts failed under Bylaw 8.07, now that has been expanded to “any party” (“if any party to the dispute is of the opinion that the informal reconciliation efforts have failed, such party, in consultation with

“Apart from the potential for delay occasioned by the new process, the binding effect of a CCM...or a CTCR opinion (‘which the district president *must follow*’) are particularly problematic.”

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his/her/its ecclesiastical supervisor, shall submit a request...”). While the complainant may be satisfied, if the respondent is not, the next step toward formal reconciliation process can be taken by the respondent with a request to appoint a reconciler. This is not just a theoretical issue; just think “counterclaim” in civil litigation. Rather than settling a dispute, with a role reversal the respondent in fact becomes the complainant, and now the dispute can further escalate.

In Bylaw 1.10.7.4 (a), rules for the conduct of the hearing before the dispute resolution panel are set forth in one short paragraph, supplemented by Bylaw 1.10.18 (c) and (f), and portions of the General Regulations of the SOPM. These rules differ greatly from the process in place in the 1989 Handbook. For example, unlike the 1989 Handbook procedure which limited the parties to not more than two advisors to participate in the discussions (with the exception of an advisor of who was not a member of the congregation of the Synod being limited to discussions of procedure only),^x the current process allows only one advisor who is not allowed to “address the panels or participate in the discussion at the hearing.”^{xi} Clearly, when the parties are in “dispute,” isn’t it reasonable to expect that parties should have the opportunity to have the issues carefully articulated by the party or the advisor in a way that promotes a clear and concise decision based upon issues which are fully developed?

Further the panel determines the number of witnesses necessary for a full and complete understanding of the facts, has the prerogative to question the parties and witnesses directly, and permits the parties to do so as well. Once again at this stage, the bylaw and the General Regulations in the SOPM establish an independent right of the Dispute Resolution Panel or the Review Panel to solicit an opinion from either the CCM or the CTCR, the finality of which is reiterated. This independent right raises questions of substantive due process and fundamental fairness, and is potentially a significant deterrent to using the process.

The rest of section 1.10, over several pages establishes the procedures for the selection of District Reconcilers, Hearing Facilitators, Dispute Resolution Panels, Appeal Panels, and Review Panels, but contains no substantive provisions of the actual dispute resolution process. Bylaw 1.10.9 makes clear the dispute resolution process also applies to congregations of the Synod. Notwithstanding the all-inclusive provision of Bylaw 1.10.2, Bylaw 1.10.3, specifically provides that the dispute resolution process does not apply to cases

under Article XIII of the Constitution, and termination of membership procedures set forth in Bylaw sections 2.14-2.17.

Expulsion of Congregations or Individual Members.

Although not specifically part of Dispute Resolution, it certainly has elements that relate to and are parallel to provisions set out in section 1.10, which deserve a few comments.

2001 Handbook.

Provisions leading up to and providing for expulsion from membership in the Synod were contained in Bylaws 2.21-2.27 in the Handbook, 2001 Edition. The action to terminate congregational or individual membership was initiated either by a written complaint *by any person* to the district president having ecclesiastical supervision of the member, or by the district president having personal knowledge of facts giving rise to expulsion under Article XIII of the constitution.^{xii} Even after initiation of the formal process, however, reconciliation efforts were mandated.^{xiii} In the event that the district president declined

to suspend or failed to act within 90 days, the complainant could present the complaint to the Praesidium, which could act in the same fashion required of a district president, or decline to act and terminate the matter.^{xiv} Upon notification of suspension, a member could request a hearing and the Secretary of the Synod was required to form a Dispute Resolution Panel in accordance with the Bylaws. The Dispute Resolution Panel to be formed and bylaws referred to are those in Bylaw chapter VIII.

**“It is arguable that...
Bylaws 1.10.5 and
1.10.6 collectively
have a chilling effect;
they delay or deter
honest discourse,
discussion and set-
tlement.”**

2013 Handbook.^{xv}

The Preamble provides termination of membership in the Synod is “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 the Constitution Art. II or the conditions of membership laid down in Constitution Art. VI or have persisted in offensive conduct (Constitution Art. XIII).” Furthermore, under Article 2.14, “the action to commence expulsion of a congregation or individual from membership in the Synod is the sole responsibility of the district president who has responsibility for the ecclesiastical supervision of the member.”^{xvi}

Bylaw 2.14.5, however, has a provision not contained in section 1.10 or Bylaw 2.27; namely, the referral panel. Under that provision, the district president has the option to form a referral panel consisting of three circuit visitors of the district who may make a determination whether or not to initiate formal proceedings. In the event that a decision is made not to initiate formal proceedings, whether made by the district president or the referral panel, the matter is terminated without recourse.^{xvii}

Thank You Balance-Concord, Inc.

Balance-Concord, Inc., has been a most faithful contributor to *The Lutheran Clarion* in honor of the sainted **Rev. Raymond Mueller** and the sainted **Rev. Edgar Rehwaldt**, both of whom faithfully served the Synod and Balance-Concord, Inc., for many years.

The Clarion is most appreciative of such continued support from Balance-Concord, Inc., as well as the wonderful support of our readers. These contributions make it possible to bring you substantive articles by respected and qualified authors on issues affecting YOUR Synod. Please continue your support. It is both appreciated and needed.

Another significant departure from Bylaw 2.27 is the absence of the provision for a complainant’s recourse to the Praesidium in the event of the district president’s failure to suspend or act within 90 days.

The Preamble to section 2.14 acknowledges that termination is a “serious matter” and it “also provide[s] for the protection of members by including provisions for challenging the decisions of ecclesiastical supervisors....”^{xviii} However, the same flaws that were present in Bylaw 1.10.5 are duplicated in Bylaw 2.14.3, including the mandatory requirement to follow CCM and/or CTCR decisions should the district president request one. Although a “right to challenge” is suggested, how does a member “challenge” a CCM opinion which is by definition not subject to challenge? How does a member “challenge” a CTCR “opinion” when the CTCR is limited to Doctrinal Resolutions (which only “come into being in the same manner as any other resolutions of a convention of the Synod”) and Doctrinal Statements, for which corresponding responsibilities are not found in section 3.9.5?^{xix}

Following a decision to initiate formal proceedings, the expulsion proceedings follow in large part the dispute resolution proceedings of section 1.10, with the exception that the hearing panel is composed of two district presidents and one layman who is a reconciler. Consequently, most if not all the previous comments relative to Bylaw 1.10 are applicable to section 2.14.

Once again, this new process is a radical departure from that which preceded it in 1989. In the former procedure each district *elected* a District Commission on Adjudication, consisting of “four ordained-ministers and three laymen, at

least two of whom shall be lawyers,” and a Synodical Commission on Adjudication and a Synodical Commission on Appeals was elected at the Synodical Convention, each of which also required at least two lawyers.^{xx}

Since 1992, the process includes four District Reconcilers (ordained, commis-

sioned and lay, no more than two of which shall be ordained), who are appointed by the district board of directors, and Hearing Facilitators selected by the Secretary of Synod (“who exhibit skills in the proper conduct of a fair and impartial hearing”) who shall be trained for that purpose.^{xxi}

Just as conspicuous as the absence of the requirement for lawyers to serve, the reduced involvement of districts and the greater involvement of district presidents in the process is also conspicuous. One can only speculate about the reasons for these changes.

Final Comments.

So, whom does the dispute resolution process serve? Perhaps that is the wrong question. Perhaps the better question is: what does the current dispute resolution process accomplish?

It is arguable that section 1.10, and particularly Bylaws 1.10.5 and 1.10.6 collectively have a chilling effect; they delay or deter honest discourse, discussion and settlement. They also have the potential to conflate proceedings from an informal to a formal dispute resolution process, and even can lead to expulsion procedures. In this age of the blog and computers, they invite allegation without confrontation and timely resolution.

The current bylaws certainly result in great expenditure of time and money, involving reconcilers, facilitators, district presidents, and even the CCM and the CTCR (from which there is no recourse), thereby creating potential substantive dues process issues and the non-Lutheran problem.

They invite confusion regarding procedures that were once more straight forward. While the current process was engrafted upon the provisions from Reconciliation, Adjudication, and Appeal from the 1989 Handbook, unfortunately the graft did not take. The current procedures do not enjoy the clarity, conciseness, the substantive due process and fairness, or the speed with which decisions were required to be rendered.

They also invite distrust and great harm to the Church at large. One only has to think back to the Yankee Stadium Event in which a District President participated, and the fallout that resulted from what some observers refer to as an unbiblical decision of the CCM which read a non-existent “ecclesiastical supervisor’s prior approval” into the bylaws. This still has repercussions in the Synod.

More recently, a district president’s use of a referral panel instead of personally acting on the discipline case of Rev. Matthew Becker has provoked widespread criticism and overtures from congregations and Districts to the 2016 Convention of The Lutheran Church—Missouri Synod for corrective actions.

Epilogue

When I walked out of the woods those many years ago, although I was still lost, I saw another hunter that knew where he was, who was able to point me in the right direction so that I was able to find my way back to camp.

While it is not my intention to denigrate the work of those who have developed the current dispute resolution/expulsion process, it is my hope that the issues and perceived shortcomings that I have noted concerning the current processes will resonate with others within the Synod. Hopefully these comments, along with the comments of others who have lived with and who have expressed their concerns about, or who, in certain circumstances, have recognized the benefits from the current dispute resolution/expulsion process, will help point the Synod in a direction that leads to the adoption of a more straight forward, simplified procedure for dispute resolution/expulsion; the Church

“The current bylaws certainly result in great expenditure of time and money, ... They invite confusion regarding procedures that were once more straight forward. ... They also invite distrust and great harm to the Church at large.”

is not served by a confusing, prolonged process and unending disputes.

Mr. David Hawk, Esq.

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- i Bylaw 8.01, 2001 Handbook. See, also Bylaw 1.10.2
- ii Preamble to Synodical Dispute Resolution, Chapter VIII, 2001 Handbook.
- iii Bylaw 2.39 c related to dissent to doctrinal resolutions, which can go to the CTCR before “finding expression as an overture to the convention calling for revision or rescision.” 2001 Handbook.
- iv See the text of Bylaw 1.10.5 of the 2013 Handbook which is appended hereto.
- v While opinions of the CCM are binding unless overturned by the Synod in Convention, there is no corollary for overturning “opinions” of the CTCR. Bylaw 3.9.2.2(c).
- vi *Treatise on the Power and Primacy of the Pope*, 51 (Tappert, *Book of Concord*, 329).
- vii Bylaw 8.51 d, 1989 Handbook.
- viii Bylaw 8.09 d in the 2001 Edition stated, in part, “Within 30 days after receiving the decision of the Dispute Resolution Panel, any party to the dispute, or the President of the Synod if a question of doctrine or practice is involved (Constitution Art. XI B 1-3) may request a decision regarding a reconsideration.”
- ix Bylaw 1.10.8.5, 2013 Handbook.
- x Bylaw 8.09 j, 1989 Handbook.
- xi Bylaw 1.10.7.4, 2013 Handbook.
- xii Bylaw 2.27 a, 2001 Handbook.
- xiii Bylaw 2.27 a 2, 2001 Handbook.
- xiv Bylaw 2.27 b, 2001 Handbook.
- xv The 2013 Handbook contains specific sections for expulsion of a district president or officer from membership in Synod, expulsion of the President of Synod, and expulsion of individuals from membership as a result of sexual misconduct or criminal behavior which are beyond the scope of these comments.
- xvi Bylaw 2.14 Preamble (b), 2013 Handbook.
- xvii Bylaw 2.14.5.2, 2013 Handbook.
- xviii Bylaw 2.14.1, 2013 Handbook.
- xix Bylaw 1.6.2, 2013 Handbook.
- xx Bylaws 8.11, 8.13, and 8.15, 1989 Handbook.
- xxi Bylaws 1.10.10 and 1.10.10.3, 2013 Handbook

The CCM and Due Process

If you are like me, there is a good chance that you know something about the deep internal workings of the bureaucracy that is the LCMS, but unless there is a specific question or concern, the synodical handbook remains on the shelf, collecting dust. That all changed for me in early 2012, when I was informed that the Synod’s CCM (Commission on Constitutional Matters) had issued an opinion against the ACELC (Association of Confessing Evangelical Lutheran Congregations) of which I just happen to be the Chairman. I was baffled; how could this be?

One of our members was perusing the minutes of the CCM’s September 2011 meeting (I did not even know such minutes existed) and discovered Opinion 11-2589 on pages 171 and 172 of the minutes (that’s not a typo) that mentioned the ACELC by name. Considering how slow the wheels of synod often turn, how is it possible for a group like the CCM to issue a multiple page opinion against the ACELC without us having any knowledge of the concern? What prompted the CCM to write this opinion? Why were we not contacted?

It’s time for a brief review of how things work in the LCMS. The CCM consists of six members, three ordained, two lawyers, and the Secretary of Synod. The members are appointed by the Synodical President from a list of five names provided by the Council of Presidents for each vacant appointed position and after appointment by the Synodical

President in consultation with the vice-presidents of the Synod, ratified by the Council of Presidents (Bylaw 3.9.2.1.1, pps. 145-46). From the Synod’s website, this is what they do: *The Commission on Constitutional Matters (1) interprets the Constitution, Bylaws, and resolutions of the Synod upon written request of a member congregation, ordained or commissioned minister, or official or agency of the Synod; (2) examines all governing instruments of the Synod and its agencies to ensure that they are in accord with the Constitution and Bylaws of the Synod; and (3) examines all convention reports, overtures, and resolutions that ask for amendments to the Synod’s Constitution and Bylaws to determine their agreement in content with the Constitution and Bylaws of the Synod.*

“...the ACELC was not informed that anyone had asked for an Opinion against us, we were not given the opportunity to explain or clarify any issues, and we were never allowed to know the identity of our accuser/questioner.”

Here is how Opinion 11-2589 came to be... The ACELC mailed a Letter of Fraternal Admonition to every congregation in the LCMS on July 15, 2010. An unnamed pastor in the LCMS apparently took offense at the letter and (ten months later!) wrote to the CCM for an Opinion. Less than five months later the Opinion was published in the CCM minutes. During this entire time the ACELC was not informed that anyone had asked for an Opinion against us, we were not given the opportunity to explain or clarify any issues, and we were never allowed to know the identity of our accuser/questioner. We were mentioned by name in the Opinion, but the person who asked the question of the CCM remained anonymous.

CCM Opinion 11-2589, because the CCM did not ask us for clarification or even bother to read the many documents readily available on our website, is full of assumptions, innuendo, and false conclusions. On more than one occasion, it lumps the ACELC together with the people promoting Seminex. We at the ACELC were shocked, to say the least, so we put together a response for the CCM that refuted the four-part Opinion part by part. To this day we have never received an acknowledgment of our response. It is posted on our website (<http://www.ancelc.net>).

I wish that were the end of the story. Also from the synodical web site: *Not all CCM opinions are of consequence to the entire Synod. Those opinions of broad significance are provided in the Convention Workbook that is published before each national Synod convention.* You guessed it, Opinion 11-2589 was published in the 2013 Convention Workbook, along with additional supporting CCM Opinions, that take up pages 288-297. Recently, I had the opportunity for an informal discussion with one of the members of the CCM. I expressed my concern and asked for advice. His comment was to simply ignore the Opinion since it was all

done under the previous synodical leadership. He simply acknowledged what many members of the Synod rightly or wrongly perceive, whoever ultimately appoints the CCM is quite likely to get the opinion he wants.

Perhaps it is time to revamp the way the CCM works. How do we remove the politics from the CCM and allow God's Word to have its way among us? How can we get to the point where due process and basic common courtesy are a given among fellow Christians?

Rev. Clint K. Poppe

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A Primer on Doctrinal Supervision in the LCMS

In 2015 The Lutheran Church-Missouri Synod dealt with a case of doctrinal discipline of a Valparaiso University professor who was an ordained minister of the synod and a member of its Northwest District.¹ When the Northwest District President failed to exert doctrinal discipline toward that professor,² it became evident to most observers that the professor had retained his membership in that district in order to be protected from doctrinal discipline. It took action by another district president, the Rev. Terry R. Forke of the Montana District, to finally take action that would resolve this anomalous situation.

How can a district president protect an erring pastor from doctrinal discipline, when his especial duty is to carry out such discipline: "The district presidents shall, moreover, *especially* exercise supervision over the doctrine, life, and administration of office of the ordained and commissioned ministers of their district" (LCMS Constitution Art. XII.7; emphasis added). This happens, sad to say, when his district supports his neglect of duty *and* when the synodical president is unable to exert discipline over that district president.

What? I bet you thought that the synod president could suspend and remove a district president for such things. You were wrong, if you believed that. LCMS Bylaw section 2.15 details the process of disciplining a district president. The *decision for expulsion* in these cases is made by panels of district presidents and a "reconciler" (see LCMS Bylaw 2.15.7.2, 2.15.8, and 2.15.9). Furthermore, mere "failure to exert doctrinal discipline" is not an offense that would normally qualify for expulsion from the synod under LCMS Constitution, Article XIII. Article XIII provides for expulsion of members of synod who act contrary to our confession of faith (Article II³) and to the conditions of membership (Article VI⁴), or who persist in an offensive conduct after previous futile admonition.

How did this happen?⁵ Before 1941, if the synod had an erring district president, the synodical president was to deal with him, and if that proved fruitless, he was to report it to the national convention. This process is still in place (see LCMS Constitution Art. XI.B.2). Before 1941, the synodical convention would then take up the case and decide what to do with that district president.

In 1941, the LCMS transferred the disciplinary authority of synodical conventions to the "Board of Appeals," which later became the "Commission on Adjudication" and "Commission

on Appeals." Nobody seemed to have noticed in 1941, or ever since, that the linkage between the two parts of the disciplinary process had been severed. The synod president may still deal with an erring district president and report him to the synod convention, but that convention no longer has a process for disciplining the erring. It is like having policemen who can arrest, but having no judge to bring the criminals to trial. The essential part of the justice system is missing.

In order to resolve this problem, my congregation and others have memorialized the synod with the overture "To Support Proper Ecclesiastical Supervision in Synodical Districts."⁶ This provides a process by which district presidents may be held accountable for their failure to exert doctrinal discipline and be removed from office, if and when the synodical president and the synodical convention both agree that this needs to be done. This will also prevent some districts from falling into the bad habit of doctrinal indifference. This overture needs the support your delegate to pass at the convention.

Rev. Dr. Martin R. Noland

Pastor, Trinity Lutheran Church, Evansville, Indiana

"It is like having policemen who can arrest, but having no judge to bring the criminals to trial. The essential part of the justice system is missing."

1 For details on this case, see Martin R. Noland, "Doctrinal Supervision and the Becker Case," *The Lutheran Clarion* 7 no. 5 (May 2015): 1-5; also the "Open Letter" of the LCA Board of Directors published in that issue. For a free online copy of that issue, go to: <http://lutheranclarion.org/images/NewsletterMay2015.pdf>

2 See "Doctrinal Supervision and the Becker Case" for details.

3 LCMS Constitution Article II states: "The Synod, and every member of the Synod, accepts without reservations: 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 Confessions, the Apology of the Augsburg Confession, the Smalcald Articles, the Large Catechism of Luther, the Small Catechism of Luther, and the Formula of Concord."

4 LCMS Constitution Article VI states: "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, teachers, [etc.] . . . 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. Pastors, teachers, [etc.] . . . or candidates for these offices not coming from recognized orthodox church bodies must submit to a colloquium before being received. 7. Congregations and individuals shall be received into membership at such time and manner, and according to such procedures, as shall be set forth in the bylaws to this Constitution."

5 For a complete explanation of the history of synodical adjudication, see Martin R. Noland, "A Brief History of the Justice and Discipline System of The Lutheran Church—Missouri Synod," delivered to the Lutheran Concerns Association conference in Fort Wayne, Indiana, on January 18, 2016. This paper may become available on video DVD, or be published in the "Lutheran Clarion" or at its website: <http://lutheranclarion.org>

6 See Overture One at: http://lutheranclarion.org/images/Three_Overtures_for_the_2016_Convention.pdf

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