### Sample Issue Statements for LCMS


### Prepared for LCMS Reconcilers in training by Ambassadors of Reconciliation

### Revised January 1, 2020

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**Crucial to the process**

In adjudication, carefully worded issue statements are crucial for reaching sound decisions. Issue statements directly impact the following:

In adjudication, precise wording of the issue statements is critical. Issue statements determine what decisions will be made.

* Decisions must be made on the issues identified. Thus, **they limit the specific authority that an adjudicator has** in making decisions.
* **Parties prepare their evidence based on the specific issues** agreed upon.
* **If issue statements are poorly written, the decision will likely fail** to adequately resolve the most important issues.

**Preparation of issue statements for non-synodical disputes**

In non-synodical disputes, the administrator works together with the parties (and their attorneys) to finalize the wording of issue statements prior to the hearing:

* Must be agreed to by both parties as part of the arbitration agreement.
* Necessary for parties to prepare for the arbitration hearing.
* Necessary for arbitrators to hear the case and issue a fair decision.

**Preparation of issue statements for LCMS disputes**

* In synodical disputes, the panel with guidance from its facilitator must define the issue statements according to the appropriate rules from the *SOPM*:

Drafting a precise issue statement is critical. If issue statements do not follow these basic guidelines, they could put the entire decision in jeopardy and create legal complications for everyone involved.

* + As soon as notification of the request has been made by the complainant for a Dispute Resolution Panel to be formed, the parties shall provide through the Office of the Secretary a written description of the issues and the desired remedies that they wish the panel to consider.
	+ The panel shall review the issues and desired remedies submitted by the parties in addition to any issues identified by the reconciler in his/her report upon conclusion of the formal reconciliation meeting(s).
	+ The panel shall make the final determination of the issues to be decided.
* The panel through its facilitator may need to hold a preliminary hearing to gather information necessary to make the final determination of the issues to be decided.
* Must be done well in advance of the hearing.
* Final issue statements must be given to parties so that they can properly prepare for the hearing.

**Sample Issue Statements for LCMS Panels**

**For Jurisdictional Issues (cases where a party challenges the authority of a Panel)**

*Note: Every Dispute Resolution Panel (DRP) should address this issue, even if the parties do not raise the issue. When the parties do not raise the issue, the DRP does not need to define it as an issue to be resolved, but the DRP should still document its basis for authority during the hearing and in its decision. In cases where the parties raise the issue, such parties are assured that the panel itself will allow the parties to present evidence on this matter, providing parties with opportunity to address the issue and increase process satisfaction.*

* On what basis does this Dispute Resolution Panel have the authority to act in this matter?

*In answering this issue, the panel should answer two sub-issues with reference to specific articles, bylaws, and synodical convention actions (these questions should not be written out as sub-issues of the main question):*

* Does this panel have authority over the parties involved?
* Does the panel have authority on the subject involved?

**For issues regarding any decision or action of a LCMS congregation**

### *Note: These types of issues must respect the autonomy of a congregation. See Constitution Article VII and the Synod’s bylaws.*

* **Appeal for an excommunication of a member from a LCMS congregation:**

*Note: A Dispute Resolution Panel may only make a decision on excommunication appeals* ***based on procedural questions******and not on substance*** *(see current* Handbook and SOPM*).*

* Should the action of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of congregation) regarding the excommunication of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of individual appealing communication) be upheld, or should the congregation be advised to review and revise its action?

*In order to address this issue, the following sub-issue must be addressed:*

* Did \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of congregation) properly follow its own procedures in its actions to excommunicate \_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_ (name of individual appealing excommunication)?

If a congregation terminated membership of a member but claims that it did not excommunicate the person, then the following sub-issue must also be addressed:

* Was the action of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of congregation) in essence an action to excommunicate \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of individual appealing excommunication)?
* **Removal of any synodical member (pastor, teacher, other called worker, etc.) from his or her position in the congregation or school:**
* Should the decision of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of congregation) to remove \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of worker) from the position of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ be upheld, or should the congregation be advised to review and revise its decision?

*In order to address this issue, two sub-issues must be considered:*

* Did the congregation follow its prescribed procedures in removing \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of worker) from the position of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_?
* Is there sufficient reason according to the congregation’s constitution and bylaws, or according to Synod’s constitution and bylaws, for removing \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of worker) from his/her position?
* **For issues of complaint against a congregation from another congregation:**
* Under the Synod’s constitution, bylaws, or convention actions, should the action (decision) of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of congregation) to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (description of the specific act or decision) be upheld, or should the congregation be advised to review and revise its action (decision)?

**For issues regarding any decision or action of a district or other synod-controlled organization or auxiliary or recognized service organization**

* **Removal of any synodical member (pastor, teacher, other called worker, etc.) from his or her position in the synod, district, or other synod-controlled organization or auxiliary or recognized service organization:**
* Should the decision of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of organization) to remove \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of worker) from the position of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ be upheld, or should the decision be reversed and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of worker) be reinstated?

*In order to address this issue, two sub-issues must be considered:*

* Did the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of organization) follow its prescribed procedures in removing \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of worker) from the position of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_?
* Is there sufficient reason according to the Synod’s (or other organization) constitution and bylaws for removing \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of worker) from his/her position?
* **For issues of complaint against one organization from another organization:**
* Under the Synod’s constitution, bylaws, or convention actions, should the action (decision) of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of organization) to \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (description of the specific act or decision) be upheld, or should the action (decision) be reversed?

**For issues regarding the expulsion from membership in the synod**

* **Removal of any synodical individual member (pastor, teacher, other called worker, etc.) from membership in the Synod:**
* Should the suspension of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of member) be upheld, or should the decision to suspend be overturned and the individual’s membership in Synod reinstated?

*In order to address this issue, two sub-issues must be considered:*

* Did the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of office suspending the member) follow Synod’s prescribed procedures in suspending\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of worker)?
* Is there sufficient reason according to the Synod’s constitution and bylaws for removing \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of worker) from membership in Synod?
* **Removal of any synodical congregational member from membership in the Synod:**
* Should the suspension of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of congregation) be upheld, or should the decision to suspend be overturned and the congregation’s membership in Synod reinstated?

*In order to address this issue, two sub-issues must be considered:*

* Did the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of office suspending the member congregation) follow Synod’s prescribed procedures in suspending\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of congregation)?
* Is there sufficient reason according to the Synod’s constitution and bylaws for removing \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of congregation) from membership in Synod?
* **Removal of any synodical district president or officer from membership in the Synod:**
* Should the suspension of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of individual) be upheld, or should the decision to suspend be overturned and the individual’s membership in Synod reinstated?

*In order to address this issue, two sub-issues must be considered:*

* Did the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of office suspending the member congregation) follow Synod’s prescribed procedures in suspending\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of individual)?
* Is there sufficient reason according to the Synod’s constitution and bylaws for removing \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (name of individual) from membership in Synod?

**For issues regarding lack of agreement between CCM and Board of Directors on whether a matter interpreting Synod’s Constitution, Bylaws, and resolutions that pertain to business, legal, or property matters is governed by the laws of the state of Missouri**

* Is the matter of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (description of matter under dispute) governed by the laws of the state of Missouri and thus subject to the decision of the Board of Directors, or is the matter not governed by the laws of the state of Missouri and thus subject to the decision of the Commission on Constitutional Matters?

# For the issue of an appeal panel for reconsideration of a decision by a dispute resolution panel (1.10.8)

* Should the request for reconsideration of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (identification of decision) be approved and the matter heard before a Review Panel, or should the request be denied and therefore the decision of the Dispute Resolution Panel be regarding as final and binding upon the parties to the dispute?

# For the issue of an appeal panel for reconsideration of a decision by a hearing panel (Bylaw 2.14.8 and Bylaw 2.17.8)

* Should the request for reconsideration of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (identification of decision) be approved and the matter heard before a Final Hearing Panel, or should the request be denied and therefore the decision of the Hearing Panel be regarded as final and binding upon the parties to the dispute?

# Other Issues

Other issues may be considered by the panel. For example, in the case of termination of employment, an issue statement might be:

* What restitution, if any, is owed by either party in this dispute to the other?

*A panel may require that a synod-controlled entity make restitution. Note, however, that a panel may be limited in requiring restitution from a congregation to someone because of that congregation’s autonomy. In such cases, the panel may decide that a member (pastor, called worker, congregation) is advised to make restitution, or in the failure thereof, such member might face potential action of suspension from the membership roster of synod. A similar principle applies when applied to an auxiliary or recognized service organization, which are independent from Synod. Such an organization may face losing their special relationship to Synod.*

For entities not owned by Synod, ask parties to sign an arbitration agreement with restitution as an issue. This provides the authority necessary to make a binding decision.

* Where the bylaws on dispute resolution do not specifically prescribe remedy for resolving certain disputes, parties may agree to have a dispute resolution panel decide such issues by signing a mediation, adjudication, arbitration, or mediation/arbitration agreement that specifically provides a system for addressing other issues. However, the parties may be responsible for any additional costs and fees incurred for such issues.

Note Bylaw 1.10.3

# Help Is Available for Drafting Issue Statements

Please contact the Secretary of Synod on how to proceed in such cases, or call Ambassadors of Reconciliation under the synod’s consultation agreement to acquire forms and receive advice on how to frame the issues. Ambassadors of Reconciliation may also be available to administrate special cases for reconcilers or panels.

For help on drafting issue statements or other reconciler processes, please contact us:

 **Ambassadors of Reconciliation**

**406/698-6107**

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