

North/West Lower Michigan Synod
Considerations for Remote Council and Congregational Meetings
during the COVID-19 Pandemic
August 2020

Introduction

During this time of COVID-19 pandemic social distancing, many congregation leaders are asking how they can utilize technology to conduct meetings necessary for the business of the congregation. Please bear in mind that some matters may best be postponed until restrictions on gatherings are lifted. Other matters, though, are pressing, or are mandatory under the congregation's constitution and bylaws, and need to be addressed. Bishop Satterlee and the Synod staff can help you determine what needs to be accomplished now or if matters might better be left for another time.

If your congregation is considering whether to conduct a remote meeting, there are some important factors to consider before calling a meeting. Below is an FAQ of the questions being asked most often. Please remember you may consult with Bishop Satterlee, Synod staff, or your congregation's attorney before scheduling a meeting. Importantly, even in the current pandemic situation, there are still rules; state law, as well as the congregation's constitution, bylaws, and continuing resolutions, must be followed.

Please note:

- In Michigan, remote council and congregational meetings are acceptable as long as they are not specifically prohibited by the congregation's governing documents.
- First step: Review the congregation's constitution, bylaws, and continuing resolutions; a congregation must comply with those documents in announcing a meeting, establishing a quorum, and voting.

Q1: How does a congregation determine if it can have remote council and congregational meetings?

A: The law of the state in which your congregation is incorporated (which for congregations in the NWLMS should be Michigan; if you are not sure, this is a good time to ensure you are registered and up-to-date with the State of Michigan Corporations Division; search link: <https://cofs.lara.state.mi.us/SearchApi/Search/Search>). Most states allow remote meetings for the corporation's members (i.e., the congregational meeting) and/or directors (i.e., the congregation council). These provisions are located in a state's nonprofit corporation act. For Michigan, remote meetings are addressed in Section 450.2405 of Michigan's Nonprofit Corporation Act.

Q2: What do state laws say generally?

A: The state in which a congregation is incorporated provides guidelines; three common options include:

- State law specifically authorizes remote meetings.
- State law authorizes remote meetings unless the corporation’s bylaws say otherwise. In this case, a remote meeting is permissible unless the congregation’s constitution and bylaws specifically prohibit remote meetings. This is unlikely for ELCA congregations because the ELCA does not have model constitutional provisions prohibiting remote meetings.
- State law authorizes remote meetings only if the corporation’s bylaws specifically permit them. In this case, the congregation’s constitution must contain a provision authorizing remote meetings.

Michigan nonprofit corporation law follows the second option: remote meetings are permissible unless the congregation’s constitution or bylaws say otherwise.

Q3: Where might remote meetings be addressed in a congregation’s constitution?

A: For congregational meetings, the congregation may have a provision from the Model Constitution for Congregations (or a similar one):

C10.08. This congregation may hold meetings by remote communication, including electronically and by telephone conference, as long as there is an opportunity for simultaneous aural communication. To the extent permitted by state law, notice of all meetings may be provided electronically.

For council meetings, the congregation may have a provision from the Model Constitution for Congregations (or a similar one):

C12.13. The Congregation Council and its committees may hold meetings by remote communication, including electronically and by telephone conference and, to the extent permitted by state law, notice of all meetings may be provided electronically.

Q4: We never updated our constitution to include these provisions. Does this mean we can’t hold a remote meeting?

A: Not necessarily. As discussed above, in Michigan remote meetings are permissible unless the congregation’s constitution specifically prohibits them. (Only in a state that requires authorization in the bylaws could a congregation be barred from holding a remote meeting if the congregation’s governing documents do not authorize it.) In Michigan, if the congregation’s constitution is silent on the issue, the congregation may hold a remote meeting. (See Q5.)

Q5: We have confirmed that we are legally authorized to hold remote meetings. Now what?

A: Next you must determine how your meeting will be carried out.

In Michigan, there are general requirements for a valid remote meeting:

- 1 Advise: All eligible participants must be advised of the means of remote communication for the meeting.
- 2 Identity Verification: Reasonable methods must exist to verify the identity of the individual who is participating and that the individual is permitted to vote (i.e., Who is participating? Are they truly who they say they are?)
- 3 Participation: Each individual must have the opportunity to read or to hear the proceedings, with two-way communication possible. A platform that only allows people to listen, for example, would not be appropriate because there is not the ability to respond (i.e., participate). Arrangements must be made for individuals who do not have online access. In choosing a technological platform, it is advisable to select one that allows for both online and dial-in participation so that as many individuals can participate as reasonably possible. Printed or visual material should be available in real time on a computer so that individuals also have an opportunity to participate visually. Zoom meetings are an example that may work for a congregation (a secure platform is strongly recommended).
- 4 Voting: Each eligible individual has the ability to vote on matters submitted. (See Q8.)
- 5 Documentation: The congregation must maintain record of a vote or other action taken.

Recommendation: Make sure an agenda is sent to all meeting attendees ahead of time, ideally via email from an email that will be monitored during the meeting so people have an efficient way to participate and respond visually. It also is helpful to send any documents that will be referenced or reviewed during the meeting ahead of time so that individuals are prepared to participate and/or vote. This is always recommended, but may be even more crucial for an effective remote meeting and can be accomplished via email or making documents available on a shared server location via a website, etc.

Q6: What notification is required for a remote meeting?

A: The same notice normally required by the congregation's constitution and bylaws for the type of meeting being conducted. For example, if the constitution requires that notice be given by mail or electronically a certain number of days before a meeting, and that it be announced at two consecutive Sunday worship services, you would still need to comply with those requirements. If you are streaming worship services, you would need to announce the meeting in those services, just as you would normally do.

Q7: How is a quorum established?

A: The same quorum requirements that the congregation’s constitution establishes for face-to-face meetings apply to remote ones. The most effective means of assessing whether there is a quorum might be by taking an oral roll call of voting members who are participating in the meeting. Some electronic platforms will list all the participants in a meeting. It may be possible to take a screenshot or print out the list of participants and save it for the congregation’s records. One challenge may be verifying the identity of persons who are dialing in and are not visible, but in many congregations it should be possible to verify by voice if members are known to one another. You also need to allow for situations where more than one person is participating from a single post (e.g., couples or families with teens who are voting members).

Q8: How do we take a vote?

A: There are various ways a vote can be taken; the main requirement is that all persons permitted to vote have a reasonable opportunity to do so.

Some alternatives include:

- 1 Drive in and drop off ballots. Some congregations have members drive in written ballots to drop off at a designated location between a set start and stop time. If using this option, a list of participants must be created and maintained so only those individuals who were in attendance at the meeting are permitted to vote. (This is an option, although not recommended as it puts multiple people at greater risk health-wise; and it is more difficult to ensure that only those eligible to vote actually cast their own votes.) If any member calls for a secret ballot or a written ballot, or if your constitution and bylaws require a written ballot for certain kinds of votes (such as calling a pastor), you might have a sign-in list of those present at the meeting, then allow a certain period of time for people to come to the church to drop off their ballot. Check your governing documents, as secret or written ballots may not be required.
- 2 Spoken Yeas or Nays. Other congregations are going by spoken yeas or nays or polling each individual voting member participating in the meeting in a voice vote. This option is certainly the most simple and straight forward. A ‘regular’ verbal vote can be taken, and if there is call for a division of the house or the chair is unable to discern the results, then the leader could move to a roll-call vote.
- 3 Electronic Polling. Some congregations are choosing to take votes using the poll feature of their electronic platform, though a challenge with that option is allowing for votes of members who do not have online access, as well as dealing with the problem of multiple voting members participating from one location. Note that the poll feature only allows for one vote per sign in, so multiple voters in the same household would each need to be on the meeting from their own device.

- 4 Hand Raise Vote. Another option when using a video platform is a hand-raise vote, combined with roll call for those not on video.
- 5 Online Voting Platforms. Online voting may be an option. One such platform is Election Runner (<https://electionrunner.com/>). There is a small fee for each election, but this platform provides for anonymous, secure voting.

None of these options are perfect, and any option will mean that some section of people in your congregation may be limited in the ability to participate. Whatever you choose to do, you must comply with state laws, and you must allow for all voting members to be able to cast their vote. Every congregation and community in our Synod are different in some ways, please make an informed decision which will work best for your church and community.

Q9: May an individual eligible to vote authorize another individual to vote by proxy?

A: The Michigan Nonprofit Corporation Act allows proxy voting “except as otherwise provided by statute, in the articles of incorporation [i.e., the constitution], or in a bylaw”. Under Michigan law, unless provided otherwise in the proxy authorization, a proxy is valid for three years from its date.

We do not recommend or support proxy voting. As a church, we seek to be faithful to and respond to God’s will. We trust the Holy Spirit to speak and act as we gather to listen, discuss, and pray together. It is important that each individual who votes has the opportunity to participate in this process.

In addition, The ELCA model constitution includes a proxy prohibition and many congregations have included this prohibition in their constitutions.

C10.05. Voting by proxy or by absentee ballot shall not be permitted.

(Our Synod Constitution contains a similar prohibition: S7.31 Proxy and absentee voting shall not be permitted in the transaction of any business of this synod.)

A congregation again needs to review governing documents (the model constitution provision is not mandatory); the congregation’s constitution and by-laws will govern whether proxy voting is allowed for that congregation.

Recommendation if proxy voting is allowed: The congregation should create a standard required proxy authorization document which is valid ONLY for the meeting for which it is intended (or perhaps, through the end of the calendar year in which the meeting occurs unless the proxy authorization is revoked in writing prior to the meeting and/or the expiration date).

Q10: Are there other recommendations which a congregation may want to consider?

A: Yes!

- This is a good time to ensure congregation member contact information is up-to-date. Up-to-date information is vital for member participation in a remote meeting.
- The leader of the meeting may want to have the church name appear on the leader's screen so that participants know they are in the correct church meeting.
- Remote meetings should be conducted using secure technology, links, and passwords.
- The leader may need to "teach" participants meeting etiquette so that the meeting flows more smoothly; for example, participants should mute their device when not speaking; participants should visually raise their hand and be acknowledged before speaking or message the leader they would like to speak, etc.
- It is helpful to have an individual facilitating and monitoring the technology before and during the meeting; this individual should be available to respond to emails or calls for technological assistance during the meeting and should not be the leader.
- Please be patient with each other and with technology – some are very adept while others are trying to learn new skills.

Source: The information provided in this document is from the ELCA Office of the Secretary, with minor edits and additional information specific to Michigan. Please contact Bishop Satterlee, the Synod staff, or your congregation's attorney for more information or questions.