

**STATEMENT OF POLICY REGARDING SEXUAL MISCONDUCT
BY MEMBERS OF THE CLERGY AND ROSTERED LAY PROFESSIONALS**

January 28, 2005

The Central States Synod (“Synod”) of the Evangelical Lutheran Church in America (“ELCA”) is committed to preventing sexual misconduct within the church and to responding with justice and compassion when such misconduct occurs. This Statement of Policy describes how the Synod intends to act upon these commitments. The Synod recognizes that responding to allegations of sexual misconduct requires determination, sensitivity, flexibility, and respect for all persons affected, including the victim, the rostered person, their families and friends, the congregation, the synod, and the whole church. This policy is intended to provide a framework for guidance in dealing with these cases while preserving the Synod’s discretion to treat each person and each case in the manner necessitated by differing facts, circumstances, and needs of those affected. This policy cannot be imposed as rigid law, binding the Synod and others to its dictates; it must be interpreted and applied compassionately in accordance with the theological and biblical principles of the Gospel.

I. INTRODUCTION

A. Definitions

1. “Sexual Misconduct.” Federal and state law make distinctions among various types of sexual misconduct, such as “sexual harassment,” “sexual abuse,” and “sexual assault.” Similarly, the governing documents of the ELCA define what types of sexual misconduct can result in a pastor being disciplined. Some types of sexual misconduct may provide grounds for discipline but may not be unlawful, while other types may be unlawful but may not provide grounds for discipline.

These distinctions should not concern a person who is troubled about the sexual conduct of a pastor or associate in ministry. The synod is concerned about all types of sexual misconduct by these professionals, regardless of whether or how the misconduct is characterized by the law or by the governing documents of the ELCA. Any sexual misconduct committed by one of these professionals should be reported to the synod, including, but not limited to, any sexual misconduct between the professional and a congregant, counselee, employee, or volunteer.

It should be noted that the Synod may not be able to assume primary responsibility for addressing all allegations of sexual misconduct. For example, if a pastor who is under call to a congregation is accused of sexually harassing another of the congregation’s employees, civil law may require that the congregation take timely appropriate action and may prevent the synod from interfering in the situation.

2. “Complainant.” As used in this Statement of Policy, “complainant” means a person who reports sexual misconduct to the Synod. This Statement of Policy will assume that the complainant is also the victim of the alleged sexual misconduct.

3. “Pastor” or “Clergy.” As used in this Statement of Policy, “pastors” and “clergy” include both ordained ministers and rostered laypersons such as associates in ministry, deaconesses and diaconal ministers. This Statement of Policy will assume that the rostered person who is accused of sexual misconduct is under call to a congregation, but it may also be adapted to calls in other circumstances.

B. The Role of Congregations

The Synod and its member congregations have different responsibilities and thus different roles to play in preventing and responding to reports of clergy sexual misconduct.

Each ELCA congregation calls its own pastor, determines its pastor's duties and responsibilities, supervises its pastor's day-to-day ministry, and decides whether to terminate its pastor's call. The Synod has neither the authority nor the ability to make those decisions. Obviously, then, the Synod cannot be a safe place unless every one of its member congregations shares its commitment to ending clergy sexual misconduct.

The Synod's role is essentially twofold. First, the bishop is responsible for providing pastoral care and leadership to the Synod's congregations and pastors. Reports of clergy sexual misconduct invariably create an acute need for such care and leadership. Second, pastors who commit sexual misconduct may be disciplined – that is, they may be suspended or removed from the clergy roster of the ELCA. The bishop is primarily responsible for overseeing the preliminary or consultation stage of the disciplinary process and for initiating the formal stage of the disciplinary process.

This Statement of Policy is the Synod's, and therefore it says little about the role played by congregations in preventing and responding to reports of clergy sexual misconduct. This should not obscure the fact that congregations also have a vital role to play. The Synod strongly urges its member congregations to develop their own sexual misconduct policies.

C. Disclaimers

1. Every report of clergy sexual misconduct involves unique people and unique circumstances. This Statement of Policy merely describes the general approach that the Synod will follow in responding to reports of clergy sexual misconduct. It will not be appropriate or even possible for the Synod to follow this approach in every case. The Synod reserves the right to depart from this Statement of Policy at any time and for any reason.

2. When the Synod provides pastoral care and leadership in the wake of clergy sexual misconduct, it is performing acts of ministry. The freedom of the Synod to decide for itself how God has called it to minister to those harmed by sexual misconduct is a precious one that is constitutionally protected from governmental interference. The same is true of the Synod's freedom to decide who will be on its clergy roster, and of the freedom of each congregation to decide who will preach and teach from its pulpit. Nothing in this Statement of Policy is intended to diminish these freedoms in any respect or to create any legal rights or responsibilities.

3. In every sexual misconduct case, the bishop and his or her staff will attempt to provide pastoral care to the victim of the misconduct, the victim's family, the pastor who committed the misconduct, the pastor's family, the members of the pastor's congregation, the pastor's colleagues, and others. However, the bishop and the bishop's staff cannot themselves function as a pastor, counselor, guide, attorney, or other "fiduciary" to any of these people. The ultimate responsibility of the bishop and his or her staff is to the Synod, and not to any individual within the Synod. If a conflict arises between what is in the synod's interests and what is in the interests of someone else, the bishop and the bishop's staff are obligated to act on the Synod's behalf.

II. SYNOD POLICY

An ELCA Strategy for Responding to Sexual Abuse in the Church (Nov. 1992) recommended that nine elements be included in any synodical policy regarding clergy sexual misconduct. This Synod has decided to incorporate those nine elements as follows:

A. Adequate Preparation

The Synod is committed to preventing clergy sexual misconduct in the following ways:

First, the Synod will not tolerate any clergy sexual misconduct. The synod will make that clear in educational opportunities that it provides, in the manner in which it responds to reports of clergy sexual

misconduct, in discussions that it has with seminarians and others who seek to join its clergy roster, and in its public and private statements regarding this issue.

Second, the Synod will provide ongoing educational opportunities regarding clergy sexual misconduct for pastors, congregations, and others. Those efforts will focus on such subjects as the dynamics of clergy sexual misconduct and the impact of such misconduct on its victims. The Synod strongly urges its pastors and congregations to take advantage of these educational opportunities.

Finally, the bishop and the bishop's staff will continue to take advantage of educational opportunities that are available to them. The Synod recognizes that society generally and churches particularly have much to learn about clergy sexual misconduct. As the Synod's understanding of this problem changes, its Statement of Policy and educational efforts will change as well.

These preventative efforts are intended to complement similar efforts that have been or will be made by the Synod's member congregations, by the churchwide organization, by ELCA seminaries, and by other entities affiliated with the ELCA.

B. Initial Contact – First Response

Even the best preventative measures cannot completely eliminate clergy sexual misconduct. The Synod must always be prepared to respond to reports of misconduct. The more open it is to receiving such reports, the more often clergy sexual misconduct will be reported.

Anyone who knows or suspects that a pastor may have been involved in sexual misconduct should report that knowledge or suspicion to the bishop or a bishop's Associate. The names, addresses, and telephone numbers of the bishop and his or her bishop's Associates are attached to this Statement of Policy. If a complainant is uncomfortable about contacting the bishop or a bishop's associate, then the complainant should contact one of the other people listed in the attachment. Those people – who include men and women, clergy and laypersons, Lutherans and non-Lutherans – have agreed to be available to receive reports of sexual misconduct from complainants who are uncomfortable contacting the bishop directly. However, it must be stressed that these people are acting on behalf of the Synod, and any information that they are given will be shared with the bishop (unless it is the bishop who is being accused of sexual misconduct, in which case the presiding bishop of the ELCA will be contacted).

A contact may be made with the bishop or other authorized person by mail, by telephone, email, or in person. The complainant need not identify herself or himself when she or he first contacts the Synod. The complainant may anonymously ask questions about how the Synod would respond to a particular complaint of misconduct. However, the Synod can do little about a report of sexual misconduct until the complainant identifies herself or himself and the pastor involved in the misconduct.

The bishop or other person contacted by the complainant will also offer to provide the complainant with a list of guides who are available to provide support and to help interpret the synod's policies and procedures. This list will include guides who are affiliated with the ELCA and guides who are not. The complainant will be invited to contact a guide and to be accompanied by that guide through the reporting, investigative, and, if necessary, disciplinary processes. If the complainant requests, the Synod will contact a guide for her or him. The complainant is welcome to use a guide who does not appear on the list – such as a friend or family member – or to decline to use a guide.

Promptly after a report of clergy sexual misconduct has been received from an identified complainant, the bishop and/or bishop's designee will interview the complainant in person or, if that is not possible, by telephone. In this and all meetings with Synod personnel, the complainant may be accompanied by a friend, family member, support person, or guide of his or her choice. The bishop or bishop's designee will ask the complainant to provide as much information about the sexual misconduct as the complainant is comfortable sharing. The complainant may be asked to reduce the information to writing or to sign a written statement prepared by the Synod. The bishop or bishop's designee will also ask the complainant what he or she is seeking in coming forward. The complainant will be given a copy of this Statement of Policy if she or he has not already received it.

The bishop or bishop's designee will discuss with the complainant how she or he feels about the possibility that her or his identity may become known to the accused or others. Insofar as possible, the Synod will respect the wishes of the complainant regarding confidentiality. However, at some point, the Synod may be required by civil law or by the governing documents of the ELCA to disclose the identity of the complainant. Also, in unusual circumstances, the fact that the bishop or bishop's designee is responsible to the Synod may require that he or she act contrary to the wishes of the complainant. Finally, the identity of the complainant may become known despite the best efforts of the Synod to protect it. The Synod cannot guarantee confidentiality to a complainant.

If the bishop or bishop's designee learns that a child or vulnerable adult may have been neglected or physically or sexually abused, the bishop or bishop's designee may be legally required to report that information to law enforcement authorities. If possible, the complainant will be notified before such a report is made.

The bishop or bishop's designee will discuss with the complainant her or his needs for pastoral care or professional counseling. If the complainant requests, the bishop or bishop's designee will help to put the complainant in touch with persons who can provide such care or counseling. Under no circumstances will any employee of the Synod function as the complainant's guide, pastor, or counselor.

The bishop or bishop's designee will appoint a contact person within the Synod. That contact person (who may be the bishop or bishop's designee) will be available to the complainant and may inform the complainant of developments. That contact person will also be available to respond to the complainant's questions and concerns about the process.

C. Initial Investigation of the Complaint

After interviewing the complainant, the bishop and/or bishop's designee will carefully review the information provided by the complainant. If the report appears credible and involves sexual misconduct for which the pastor might be disciplined, the bishop or bishop's designee may conduct a preliminary investigation to determine whether information either supporting or contradicting the report exists. This preliminary investigation may include (1) further discussions with the complainant; (2) a review of the records of the Synod, another ELCA synod, the ELCA, or an entity affiliated with the ELCA; or (3) interviews of former bishops of the pastor, those who served as bishop's associates to former bishops of the pastor, pastors who succeeded the pastor at congregations that he or she served, pastors who served on the same staff with the pastor at congregations that he or she served, pastors who presently serve on the same staff with the pastor, respected members of congregations that the pastor served, respected members of the congregation that the pastor now serves, friends of the pastor, or friends, family members, pastors, or counselors of the complainant.

This preliminary investigation will be conducted as quickly and as discreetly as is possible under the circumstances. All of those contacted will be asked to keep the contact in strictest confidence. If the Synod or a discipline hearing committee later determines that the pastor did not commit sexual misconduct, that conclusion will be communicated to those who were contacted by the Synod in the course of its preliminary investigation.

D. Conversation with the Pastor

The bishop will usually meet with the pastor after the preliminary investigation is concluded. (The bishop may be accompanied by the bishop's designee or another person). In some cases – such as when the pastor is aware of the complainant's report or when the pastor may pose an immediate danger to members of his or her congregation – the bishop or bishop's designee may meet with the pastor immediately after or perhaps even before meeting with the complainant. If the bishop meets alone with the pastor, the bishop will clarify that the meeting is not confidential, and that the bishop may disclose anything that he or she is told.

At their meeting, the bishop will provide the pastor with information regarding the complaint and ask the pastor to respond. The bishop may ask the pastor to reduce his or her response to writing. The bishop will also (1) assure the pastor that, while the Synod does not tolerate sexual misconduct, the Synod will give

any pastor who denies an allegation of sexual misconduct a full and fair opportunity to contest it; (2) explain the Synod's process for responding to reports of sexual misconduct and provide a copy of this Statement of Policy; (3) answer the pastor's questions about the policies and procedures of the Synod; (4) express care and concern for the pastor; (5) strongly discourage the pastor from having any contact with the complainant, either directly or indirectly, unless the contact is initiated or requested by the complainant; and (6) invite the pastor to contact a guide and to be accompanied by that guide through the investigative, and, if necessary, disciplinary processes. If the pastor requests, the Synod will assist the pastor in finding a guide. The pastor may decline to use a guide.

Depending upon the circumstances, the bishop may ask the pastor to voluntarily agree to certain restrictions upon his or her ministry – such as agreeing not to have contact with children – until the investigation and/or disciplinary proceedings are concluded. If the pastor refuses, the bishop may ask the congregation to impose the restrictions upon the pastor. The bishop may also ask the pastor to take a leave of absence – either with or without pay – until the investigation and/or disciplinary proceedings are concluded. If the pastor refuses, the bishop may ask the congregation to place the pastor on involuntary leave of absence, or, in extreme circumstances, the bishop may temporarily suspend the pastor without prejudice. Finally, the bishop may ask the pastor to resign his or her call or from the clergy roster of the ELCA. The bishop cannot force the pastor to resign. Only a disciplinary hearing committee can remove the pastor from the clergy roster.

The bishop or bishop's designee will discuss with the pastor his or her needs for pastoral care or professional counseling. If the pastor requests, the bishop or bishop's designee will help to put the pastor in touch with persons who can provide such care or counseling. Under no circumstances will any employee of the Synod function as the pastor's guide, pastor, or counselor.

The bishop or bishop's designee will appoint a contact person within the Synod. That contact person (who may be the bishop or bishop's designee) will keep in regular contact with the pastor and will inform the pastor of significant developments. That contact person will also be available to respond to the pastor's questions and concerns about the process.

E. Assess the Information

After meeting with the pastor, the bishop will carefully review the information provided by the complainant, discovered during the preliminary investigation, and provided by the pastor. The bishop will then decide upon a course of action. Among options available to the bishop are: no further action; further investigation; requesting the pastor's congregation to take some action; convening a consultation or advisory panel; or initiating the formal disciplinary process.¹

F. Consultation or Advisory Panel

Reports of sexual misconduct often present a bishop with a difficult decision. For example, a bishop may be confronted with "one person's word against another's" – that is a situation in which both the complainant's report and the pastor's denial of the report appear credible, and no one but the complainant and the pastor can know for certain who is being truthful.

To assist him or her in making these difficult decisions, a bishop may, at his or her sole discretion, appoint a consultation or advisory panel. The function of a consultation or advisory panel is described at length in Sections 20.21.04 to 20.21.06 of the Constitution and Bylaws of the ELCA (November 2003 edition) and Section D of *Rules Governing Disciplinary Proceedings Against an Ordained Minister, a Rostered Layperson, or a Congregation of the Evangelical Lutheran Church in America* (November 14, 1999). Both of these documents are available from the Synod office.

¹ The Bishop may also request a psychodiagnostic evaluation. However, this should be requested only when there is substantial agreement between the pastor and the complainant as to the facts. This evaluation will normally involve psychological testing as well as a thorough history gathering, including interviews with the pastor, the complainant, and others whose observations can provide information about the personal and professional functioning of the pastor. The evaluation may then be used to make recommendations to the Bishop.

Essentially, a consultation or advisory panel is a small group of clergy and laypersons who are asked to recommend a course of action to the bishop. Before making that recommendation, the panel may interview the complainant, the pastor, the bishop, the bishop's designee, and/or others. If possible, the panel will seek to resolve the controversy through recommendations that are pastoral and therapeutic and that will eliminate the need for disciplinary proceedings if they are accepted by all concerned. If such a resolution does not appear possible, the panel will advise the bishop whether it believes that the disciplinary process should be initiated.

G. Formal Hearing

The disciplinary process is the process by which the ELCA determines if a pastor should be suspended or removed from its clergy roster. The process is governed by Chapter 20 of the Constitution and Bylaws of the ELCA and by the Rules Governing Disciplinary Proceedings.

A pastor may be disciplined for committing "conduct incompatible with the character of the ministerial office," which is defined in *Definitions and Guidelines for Discipline of Ordained Minister* (December 5, 1993) to include "[a]dultery, promiscuity, the sexual abuse of another, or the misuse of counseling relationships for sexual favors." *Definitions and Guidelines* is available from the Synod office.

A bishop may initiate disciplinary proceedings against a pastor by filing written charges setting forth the offense that the pastor is accused of committing – e.g., "the sexual abuse of another" – and the alleged facts supporting the charge – e.g., the name of the person that the pastor is alleged to have abused and the date, place, time, and other circumstances of the alleged abuse.

The bishop and/or bishop's designees may conduct further investigation and preparation to corroborate and supplement the facts and circumstances for the formal hearing of the disciplinary process to determine if a pastor should be suspended or removed from the clergy roster.

A committee of twelve persons is appointed to hold a hearing on the charges. The hearing resembles a court trial. The bishop presents testimony and other evidence in support of the charges, and then the pastor presents testimony and other evidence in opposition to the charges. The governing documents of the ELCA provide for certain rights for the bishop, the pastor, and the complaining witnesses. A bishop generally will not initiate formal disciplinary proceedings unless the complainant agrees to testify against the pastor.

Following the hearing, the discipline hearing committee decides whether the charges are true, and, if so, what discipline should be imposed. The options available are private censure and admonition, suspension from the clergy roster of the ELCA for a designated period of time or until the pastor complies with specified conditions, or removal from the clergy roster. The discipline hearing committee's decision is generally made about three months after charges are filed.

H. Disclosure

Except in unusual circumstances, the Synod will disclose all serious allegations of clergy sexual misconduct. Although disclosure can increase the short-term pain caused by clergy sexual misconduct, experience has demonstrated that disclosure speeds the healing of the primary and secondary victims of the misconduct, empowers unknown victims to come forward and seek help, protects others from being victimized by the same pastor, and demonstrates the commitment of the church to deal openly and honestly with the problem.

Decisions regarding who will make what disclosure to whom and when will vary from case to case. In general, though, the Synod will abide by the following guidelines:

1. Disclosure of clergy sexual misconduct will be made to the leadership of the pastor's congregation, the members of the pastor's congregation, the members of the pastor's family, and other pastors within the Synod.

2. Disclosure will be made if (1) the pastor admits to committing sexual misconduct; (2) the pastor resigns his or her call from the clergy roster of the ELCA after being accused of sexual misconduct; (3) the pastor is placed on leave of absence or temporarily suspended in response to an allegation of sexual misconduct; (4) the pastor is suspended or removed from the clergy roster as a result of formal disciplinary proceedings; or (5) secular legal proceedings (civil or criminal) are initiated against the pastor.

3. The Synod will first disclose to the leaders of the pastor's congregation at a meeting of the officers and/or the congregation council. The Synod will then work closely with the leaders regarding appropriate disclosure to the members of the congregation. Disclosure to the members will usually be made by one or more of the leaders or by the bishop.

4. To protect the privacy of those harmed by the pastor, only the following will be disclosed: (1) the fact that the pastor has been accused of, admitted to, or found guilty of committing sexual misconduct; (2) the gender of the complainant; (3) whether the complainant was an adult or a minor at the time of the misconduct; and (4) whether the complainant was a member of the pastor's congregation or a person to whom the pastor was providing pastoral care. Disclosure will almost never include the name of the complainant or facts from which she or he could readily be identified. If the pastor has denied the allegations, that fact will also be disclosed.

5. Persons who believe that they have been harmed (directly or indirectly) by the pastor will be invited to contact the leaders of the congregation, the Synod, or others who have agreed to be available to those persons.

I. Follow-up

The Synod will work with congregations and others to help ensure that care and support are available to those harmed by clergy sexual misconduct. As noted above, the Synod cannot provide this care itself, but it will assist the primary and secondary victims of sexual misconduct to find human and material resources that might help them on their journey to healing.

ADDENDUM

Education and Prevention

Where the Synod holds expectations concerning the conduct of professional church workers, it also offers resources to support the establishment and maintenance of such conduct. Pastoral consultation and counseling are offered at each Synod Assembly and Bishop's Convocation, in part to assist church workers in dealing with issues which arise in the course of professional relationships. The *New Directions* program has also been established in part to support church workers who may be vulnerable or at risk of engaging in inappropriate behavior. Finally, the Synod sponsors workshops from time to time on professional ethical issues, which all professional church workers are encouraged to attend. For professionals in isolated areas, consultation resources can be arranged at [cluster] meetings, conferences, and workshops.

Church professionals often feel isolated, victimized by circumstances, personally unsupported and/or lacking in professional options. Under stress they may be particularly at risk to the temptation of violating the professional role. Sensitive persons function best when a trusting atmosphere allows the expression of feelings and the stresses which prompt such feelings. Ongoing training which bridges the personal and professional areas of life and allows for intellectual care, emotional nurture and supportive relationships can contribute to a more positive outlook and a greater sense of control over one's life, destiny and vocational direction.

Support groups among pastors which are intentionally planned and regular in their meetings can be very helpful in this regard. These may be created with peers in [cluster areas]. Such groups may wish to use skilled facilitators to keep things on track, especially at first. Sharing personal needs should be encouraged. Small group consultation/supervision can also be arranged. One advantage of the group format is in the wider range of situations presented for discussion by more participants. Small groups can also meet more frequently due to sharing of costs with peers.

Church workers who do any in-depth counseling of psychological or relationship issues are encouraged to receive qualified consultation/clinical supervision at the rate of one hour for each eight to ten hours of counseling provided. No more than four one-hour sessions with any one person are recommended unless the church worker is under the supervision of a certified or licensed mental health professional. In consultation or supervision, the factors which put a church worker at risk to behave inappropriately should be clearly and openly discussed. Individual consultation or clinical supervision are easily arranged in most areas with competent, trained professionals who have an understanding and acceptance of Christian ministry. Supervision is a recommended method for reducing the factors which place the professional in risky situations and help the professional learn ways to reduce stress in situations of intimacy. It is appropriate to use continuing education funds for this purpose. Congregational budgeting for supervision or consultation helps the congregation become a partner with the church professional in enhancing his/her ministry toward them.

Congregations are called upon to become better educated about and understanding of the pressures impinging upon the professional church worker. Not all questions of professional misconduct arise out of a counseling relationship. In some instances, a member of the congregation may seek to initiate an inappropriate relationship with a church professional. It is always the responsibility of the professional to avoid professional misconduct. When the professional has been unable to discourage an inappropriate relationship, she/he should report this difficulty to the pastoral relations committee or other responsible party as soon as possible and seek consultation as to how to proceed. It may be necessary for the professional to keep a written record of contacts with the individual and how they were handled, as well as a record of consultations and recommendations which were made. The intervention of a third party or parties may be required in some instances.

Referral is also an important skill to be learned. Appropriate referral is pastoral care. Knowledge of the limits of one's ability and time is a strength in ministry. Knowing how to refer in a helpful way is a skill appreciated by most lay people.

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