

Virginia Synod
Evangelical Lutheran Church in America

STATEMENT OF POLICY REGARDING
SEXUAL MISCONDUCT
BY MEMBERS OF THE CLERGY AND
ASSOCIATES IN MINISTRY

Approved by Synod Council
At its October 2000 Meeting

PREAMBLE

The Church must be a safe place for all. The Virginia Synod of the evangelical Lutheran Church in America 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 will act upon these commitments.

THEOLOGICAL FRAMEWORK

God's mission and ministry in the world is the redemption and restoration of all creation (Colossians 1:20). God's activity is to redeem what is lost, restore what is broken, and offer salvation and hope where there is transgression and despair. This policy is intended to provide a context for God's gracious activity with scripture setting the standard of conduct in sexual matters. It must be clear that God's restorative work is not without pain, suffering, discipline and struggle. To live the life of faith is to enter a community that does not shy away from this struggle. The goal of this policy is the restoration to wholeness for the victim of misconduct, the accused and the community of faith in which the misconduct has occurred.

The exercise of public ministry is sacred trust. Persons on the roster of public ministry are not exempt from the consequences when this sacred trust is violated. Where there is sin, there is opportunity through Christ for repentance, forgiveness and amendment of life. But forgiveness must not include denying, forgetting or diminishing the realities. Forgiveness does not include excusing the sinner from acknowledging and accepting responsibility for the behavior and its social, institutional and legal consequences.

It is our fervent belief that through the Holy Spirit and the shared wisdom and prayer of the community of believers, the redemptive activity of God can and will be accomplished.

I. INTRODUCTION

A. Definitions

1. **"Sexual Misconduct."** Includes, but is not limited to any activity in which a rostered person engages in sexual behavior with a parishioner (other than his/her spouse), client, staff member, organizational employee or other person with whom the rostered person is carrying out his/her responsibilities as a rostered person. This can include but is not limited to sexual intercourse, oral sex, fondling of breasts, genitals or buttocks, kissing, sexual jokes, verbal advances, inappropriate sexual conversation, or suggestions of sexual or romantic involvement. Misconduct may occur with or without the consent of the victim. Sexual Misconduct with a person outside of the rostered person's area of responsibilities as a rostered person may also subject a rostered person to Church's discipline in certain circumstances.

Federal and state laws make distinctions among various types of sexual misconduct, such as "sexual harassment," "sexual abuse," "sexual exploitation" and sexual assault." Similarly, the governing documents of the ELCA define what types of sexual misconduct can result in a rostered person being disciplined. Some types of sexual misconduct may provide grounds for discipline but may be lawful.

These distinctions should not concern a person who is troubled about the sexual conduct of rostered person. 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 contact between the rostered person and a parishioner (other than his/her spouse), client, staff member, organizational employee or other person with whom the rostered person is carrying out his/her responsibilities as a rostered person.

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 and 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 person is not necessarily one who has been directly victimized. However, in this Statement of Policy the term "complainant" will generally refer to the victim of the alleged sexual misconduct.
3. **"Pastor" or "Clergy."** As used in this statement of Policy, "pastors" and "clergy" include ordained ministers, associates in ministry, and diaconal ministers. This Statement of Policy will assume that the pastor, associate in ministry, or diaconal minister who is accused of sexual misconduct is under call to a congregation, however it recognizes that a rostered person may be under call from a church body other than a congregation, and that a retired pastor or associate in ministry may be subject to this policy.

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.

Generally, 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 commitments 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 creates and acute need for such care and leadership. Second, pastors who commit sexual misconduct may be disciplined in accordance with the synod and Churchwide Constitutions-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 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 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 for the pastoral care of 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 counselor, advocate, 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 interest 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 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 preventive efforts are intended to complement similar efforts that have been or will be made by the Synod's member congregations, by the church-wide organization, by ELCA seminaries, and by other entities affiliated with the ELCA.

B. Initial Contact - First Response

Even the best preventive 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 an assistant to the bishop. If a complainant is uncomfortable about contacting the bishop or an assistant to the bishop, then the complainant should contact one of the other people appointed by the Synod Council to receive reports of sexual misconduct. These other reporting persons shall include lay and rostered persons, and a non-Lutheran person. However, it must be stressed that all these people are acting on behalf of the Synod, and 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 bishop of the ELCA will be contacted.). A list of these contact persons, together with their names, their occupations, religious denomination, telephone numbers, and addresses should be disseminated within the Synod.

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 (1) assure the complainant that the Synod does not tolerate sexual misconduct and takes seriously all reports of such misconduct; (2) explain the Synod's process for responding to reports of sexual misconduct and offer to provide a copy of this Statement of Policy; (3) answer the complainant's questions about the policies and procedures of the Synod; (4) express care and concern for the complainant; (5) when the complainant is anonymous, encourage the complainant to identify herself or himself and the pastor involved in the misconduct; (6) offer to arrange for appropriate pastoral care for the victim (however neither the Bishop nor his/her staff may provide this care); and (7) if the victim is a minor or was one at the time of the alleged misconduct, the complainant will be advised that they have a duty to report the matter to their local Virginia Department of Social Services, and that the contact person may be required to likewise contact the local Virginia Department of Social Services under Virginia law.

Promptly after a report of clergy sexual misconduct has been received from an identified complainant, the bishop and/or bishop's designee(s) will interview the complainant in person or, if that is not possible, by telephone. In this and all meetings with the bishop and/or bishop's designee(s), the complainant may be accompanied by a friend, family member, support person, or advocate of her or his choice. The bishop or bishop's designee(s) 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(s) will also ask the complainant what she or he 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(s) 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 the confidentiality, however the complainant should be advised that in order to make a through investigation into the allegations the identity of the victim may need to be disclosed to persons involved with the investigation and with the accused. In addition, 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(s) 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 their anonymity. The Synod cannot guarantee confidentiality to a complainant.

If the bishop or bishop's designee(s) learns that a child or vulnerable adult may have been neglected or physically or sexually abused, the bishop or bishop's designee(s) 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(s) 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(s) 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 advocate, pastor, or counselor. Complainants are strongly encouraged to seek the care of an able counselor.

The bishop may appoint a contact/liaison person within the Synod. That contact/liaison person will keep in regular contact with the complainant and will inform the complainant of significant developments. The contact/liaison 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(s) 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(s) may conduct a preliminary investigation to determine whether information either supporting or contradicting the report exists. This preliminary investigation may include, but is not limited to: further discussions with the complainant; discussion with the pastor; a review of the records of the Synod, another ELCA Synod, the ELCA, or an entity affiliated with the ELCA; or interviews of former bishops of the pastor, those who served as assistants 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.

The 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 the pastor and 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 other persons designated by the bishop who have been involved in the investigation) 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(s) 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 or his/her designee(s) will provide the pastor with information regarding the complaint and ask the pastor to respond. The bishop or his/her designee(s) may ask the pastor to reduce his or her response to writing. The bishop or his/her designee(s) will also (1) assure the pastor that, while the Synod does not tolerate sexual misconduct, the Synod will give any pastor who denies the 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 the 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; and (6) invite the pastor to contact and advocate and to be accompanied by that advocate through the investigative, and, if necessary, disciplinary processes. The pastor may decline to use an advocate.

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 ask the pastor to resign his or her call or to resign from the clergy roster of the ELCA. The bishop cannot force the pastor to resign. Only a discipline hearing committee can remove the pastor from the clergy roster.