



Virginia Synod, Evangelical Lutheran Church in America

**STATEMENT OF POLICY AND PROTOCOL
REGARDING
SEXUAL MISCONDUCT
BY
ROSTERED MINISTERS**

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**Evangelical Lutheran
Church in America**
God's work. Our hands.

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PREAMBLE

The Church must be a safe place for all. The Virginia Synod of the Evangelical Lutheran Church in America is committed to 1) preventing sexual misconduct within the Church and 2) responding with justice and compassion to all parties concerned, when an allegation of 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.

DEFINITIONS

1. **"Sexual Misconduct."** Includes, but is not limited to any activity in which a rostered minister engages in sexual behavior with a parishioner (other than his/her spouse), client, staff member, organizational employee or other person with whom the rostered minister is carrying out his/her responsibilities as a rostered minister. 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 minister's area of responsibilities as a rostered minister may also subject a rostered minister to the 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 minister 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 a rostered minister. 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 minister and a parishioner (other than his/her spouse), client, staff member, organizational employee or other person with whom the rostered minister is carrying out his/her responsibilities as a rostered minister.

It should be noted that the Synod might not be able to assume primary responsibility for addressing all allegations of sexual misconduct. For example, if a rostered minister 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. Nevertheless, the Synod should be notified and/or consulted in all cases.

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. **"Rostered Person."** As used in this Statement of Policy and Protocol, "rostered person," "pastor," and "clergy" include active and retired ordained ministers and active and retired rostered deacons. This Statement of Policy will assume that the rostered person who is accused of sexual misconduct is under call to a congregation, but it also may be adapted to calls in other circumstances/ministry settings.

THE ROLE OF CONGREGATIONS

This Statement of Policy and Protocol is the Synod's and therefore it says little about the role played by congregations in preventing and responding to reports of sexual misconduct by rostered ministers. This should not obscure the fact, that congregations also have a vital role to play.

Generally, each ELCA congregation calls its own pastor, determines its rostered minister's duties and responsibilities, supervises its rostered minister's day-to-day ministry, and decides whether to terminate its rostered minister'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 sexual misconduct by rostered ministers.

THE ROLE OF THE SYNOD

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. A report of roster ministers' sexual misconduct invariably creates an acute need for such care and leadership. Second, a rostered minister who commits sexual misconduct may be disciplined in accordance with the Synod and Churchwide Constitutions: that is, he or she may be suspended or removed from the 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.

Every report of sexual misconduct by a rostered minister 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 such sexual misconduct. It will not be appropriate or even possible for the Synod to follow this approach in every case.

When the Synod provides pastoral care and leadership in the wake of rostered minister 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 roster, and the freedom of each congregation to decide who will preach and teach from its pulpit. Nothing in this Statement of Policy and Protocol is intended to diminish these freedoms in any respect or to create any legal rights or responsibilities.

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, and the rostered minister who committed the misconduct, the rostered minister's family, the members of the rostered minister's congregation, the rostered minister's colleagues, and others. However, the bishop and the bishop's staff cannot themselves function as 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.

SYNOD POLICY/PROTOCOL

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

A. Adequate Preparation

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

First, the Synod will not tolerate sexual misconduct by a rostered minister. 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 roster, and in its public and private statements regarding this issue.

Additionally, the Synod is committed to informing all congregations, and related agencies and institutions, about the larger Church's perspective on this issue, and the Synod's stance on sexual misconduct by rostered ministers via its Policy and Protocol. The synod will seek to provide an environment in which persons will feel free to ask questions, obtain information, and/or come forward with concerns or complaints.

Second, the Synod will provide ongoing educational opportunities regarding rostered minister sexual misconduct for rostered ministers, interns, seminarians, candidates awaiting call, congregations, and others. Those efforts will focus on such subjects as the dynamics of rostered minister sexual misconduct and the impact of such misconduct on its victims. The Synod will make its rostered ministers and congregations aware of the Synod's mandatory requirement effective April 2015 that all rostered ministers attend boundary training at least every three years, and will make rostered ministers aware that failure to attend such training will adversely impact the roster minister's eligibility for future calls, interim appointments, pulpit supply, and/or other positions of pastoral/church leadership in a local congregation, related agency, institution, or the synod.

The synod also will inform interns, students serving a congregation as part of their seminary education, and those approved candidates awaiting call, who are serving in our synod, of the need to complete a basic Boundary Training. Those rostered ministers who have received a call or who are retired and officially transferred into the Virginia Synod from another synod/denominational judicatory, and who are not current with a basic Boundary Training, will have one year from the date of transfer to complete a basic Boundary Training acceptable to the Virginia Synod. Upon learning the names of rostered ministers who have returned to the Virginia Synod and/or moved to Virginia from another synod, the synod will inform those individuals of the synod council's Statement of Policy requirements regarding Boundary Training.

The synod office will maintain an official record of all individuals' compliance status with Boundary Training. When necessary, the names of those rostered ministers and individuals who are actively serving as stated above, and who are not in compliance with Boundary Training attendance, will be submitted to the synod council president and/or vice-president. Certified letters noting non-compliance will be sent to the

rostered minister or individual, and to the rostered minister's or individual's congregation/pastor/institution.

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 rostered minister 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 rostered minister 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 such sexual misconduct will be reported.

Anyone who knows or suspects that a rostered minister 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 may include lay and rostered persons, and a non-Lutheran person. Persons serving in this capacity should themselves be current in boundary training. 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 presiding 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 rostered minister 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 rostered minister 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 the bishop or designee(s) may be required by applicable state law 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 rostered minister 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) also will ask the complainant what she or he is seeking in coming forward. The complainant will be given a copy of this Statement of Policy and Protocol 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 the accused or others may know her or his identity. Insofar as possible, the Synod will respect the wishes of the complainant regarding confidentiality, however the complainant should be advised that in order to make a thorough 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 his/her 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 also will 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 rostered minister 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 accused; 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 accused, those who served as assistants to former bishops of the accused, rostered ministers who succeeded the accused at congregations that he or she served, rostered ministers who served on the same staff with the accused at congregations that he or she served, rostered ministers who presently serve on the same staff with the accused, respected members of congregations that the accused served, respected members of the congregation that the accused now serves, friends of the accused, 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 accused did not commit sexual misconduct, that conclusion will be communicated to the accused and to those who were contacted by the Synod in the course of its preliminary investigation.

D. Conversation with the Accused

The bishop usually will meet with the accused after the preliminary investigation is concluded. Other persons designated by the bishop who have been involved in the investigation may accompany the bishop. In some cases, such as when the accused is aware of the complainant's report or when the accused may pose an immediate danger to members of his or her congregation, the bishop or bishop's designee(s) may meet with the accused immediately after or perhaps even before meeting with the

complainant. If the bishop meets alone with the accused, 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 accused with information regarding the complaint and ask the accused to respond. The bishop or his/her designee(s) may ask the accused to reduce his or her response to writing. The bishop or his/her designee(s) also will (1) assure the accused that, while the Synod does not tolerate sexual misconduct, the Synod will give any rostered minister 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 and Protocol; (3) answer the accused's questions about the policies and procedures of the Synod; (4) express care and concern for the accused; (5) strongly discourage the accused from having any contact with the complainant, either directly or indirectly; and (6) invite the accused to contact an advocate and to be accompanied by that advocate through the investigative, and, if necessary, disciplinary processes. The accused may decline to use an advocate.

The bishop or bishop's designee(s) will discuss with the accused her or his needs for pastoral care or professional counseling. If the accused requests, the bishop or bishop's designee(s) will help to put the accused in touch with persons who can provide such care or counseling. Under no circumstances will any employee of the Synod function as the accused's advocate, pastor, or counselor. Rostered ministers who are accused of sexual misconduct will be strongly encouraged to seek the care of an able counselor.

The bishop may appoint a contact/liason person within the Synod. That contact/liason person will keep in regular contact with the accused and will inform the accused of significant developments. The contact/liason person also will be available to respond to the accused's questions and concerns about the process.

Depending upon the circumstances, the bishop may ask the accused 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 accused refuses, the bishop may ask the congregation to impose the restrictions upon the accused. The bishop also may ask the accused to take a leave of absence, either with or without pay, until the investigation and/or disciplinary proceedings are concluded. If the accused refuses, the bishop may ask the congregation to place the accused on involuntary leave of absence, or, in extreme circumstances, the bishop may ask the accused to resign his or her call or to resign from the roster of the ELCA. The bishop cannot force the accused to resign. Only a discipline hearing committee can remove the accused from the roster.

E. Assess the Information

After meeting with the accused, the bishop will carefully review the information provided by the complainant, discovered during the preliminary investigation, and provided by the accused. The bishop then will decide upon a course of action. Options available to the bishop include the following: no further action; further investigation; requesting the accused to undergo a psycho-diagnostic evaluation; requesting the accused's congregation to take some action; convening a consultation or advisory panel; or initiating the formal disciplinary process. Depending upon the circumstances, additional options may be considered.

F. Consultation or Advisory Panel

Reports of sexual misconduct always present a bishop with difficult decisions. To assist the bishop in making these decisions, the 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* 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*. Both of these documents are available from the Synod.

Essentially, a consultation or advisory panel is a small group of rostered ministers and laypersons that are asked to recommend a course of action to the bishop. Before making that recommendation, the panel may interview the complainant, the accused, 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 to 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 the disciplinary process should be initiated.

Whether to employ the advisory or consultation process is always discretionary with the bishop. Use of such panels may be beneficial in a variety of circumstances. For example, a bishop may be confronted with a situation in which both the complainant's report and the accused's denial of the report appear equally credible, and there is no corroborating evidence supporting either version.

G. Formal Hearing

Disciplinary proceedings is the process by which the ELCA determines whether or not a rostered minister is guilty of the charges and, if so, what the penalty should be. The process is governed by Chapter 20 of the *Constitution and Bylaws of the ELCA* and by the *Rules Governing Disciplinary Proceedings*. A rostered minister 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 Ministers* to include adultery, promiscuity, the sexual abuse of another, or the misuse of counseling relationships for sexual favors. *Definitions and Guidelines* is available from the Synod.

To briefly summarize the disciplinary process, generally the bishop as "accuser" will initiate the proceedings against an accused rostered minister by filing written charges setting forth the offense that the rostered minister is accused of committing and the alleged facts supporting the charge; for example, the name of the person the accused is alleged to have abused and the date, place, time and other circumstances of the alleged abuse. A committee of twelve persons, six from a panel elected by the Synod and six from a panel elected by the Churchwide Assembly, are convened 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 accused presents testimony and other evidence in opposition to the charges. Typically, a bishop will not initiate formal disciplinary proceedings unless the complainant agrees to be a witness against the accused. The governing documents of the ELCA provide for certain rights for the accuser, the accused, and the complaining witnesses.

The hearing described in the preceding paragraph is the usual process for hearing the written charges. There is an alternative process described in ELCA Bylaws 20.23.01 through 20.23.09 that is invoked when the written charges specify that the accuser will not seek removal or suspension for a period exceeding three months. In such cases, the proceedings are conducted before a hearing committee of six members with less formality and without all of the procedural requirements of the full hearing process.

Under either process, the disciplinary hearing committee decides whether the charges are true and, if so, what discipline should be imposed. The options available (except under the alternative process described in the preceding paragraph) are private censure and admonition, suspension from the roster of the ELCA for a designated period of time or until the accused complies with specified conditions, or removal from the roster. The disciplinary hearing committee's decision is generally made within four months after charges are filed.

H. Disclosure

Decisions regarding who will make what disclosure to whom and when will vary from case to case; however, the Synod will generally abide by the following guidelines:

1. Disclosure of sexual misconduct by a rostered minister will be made to the leadership of the accused's present congregation, to the members of the accused's present congregation, to synods where the accused was previously rostered, and to other rostered ministers within the Conference or the entire Synod. In some situations, wider disclosure to previous congregations, to the entire Synod, or even to the news media may be made as well.

2. Typically, disclosure will be made when (a) the accused admits to committing sexual misconduct; (b) the accused resigns his or her call or from the roster of the ELCA after being accused of sexual misconduct; (c) the accused is placed on leave of absence or

temporarily suspended in response to an allegation of sexual misconduct; (d) the accused is suspended or removed from the roster as a result of formal disciplinary proceedings; or (e) secular legal proceedings (civil or criminal) are initiated against the rostered minister.

3. The Synod intends to work closely with the congregational 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 misconduct, only the following will be disclosed: (a) the fact that the rostered minister has been accused of, admitted to, resigned, or been found guilty of committing sexual misconduct; (b) whether the complainant was an adult or a minor at the time of the misconduct; and sometimes (c) whether the complainant was a member of the rostered minister's congregation or a person to whom the rostered minister was providing pastoral care. Disclosure should never include the name of the complainant or facts from which he or she could readily be identified. If the rostered minister has denied the allegations, that fact also will be disclosed.

5. Persons who believe they have been harmed, whether directly or indirectly, by the accused 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 rostered minister 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 resource persons and materials that might help them on their journey to healing. The Synod will assist the congregation in dealing with the pain and disruption caused by the rostered minister's misconduct and will help the congregation continue in its mission and ministry for the sake of the Gospel.