

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

I. INTRODUCTION

The Metropolitan Chicago Synod (MCS) 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. The church must be a safe place for all. This Statement of Policy describes how the synod intends to fulfill these commitments. The goal of this document is to outline a procedure that uses justice and mercy to respond to allegations of sexual misconduct by rostered leaders so that truth may be discovered, justice administered, and a path to healing opened so that the church, which is the body of Christ, may be a people wherein God is glorified. The synod recognizes that responding to allegations of sexual misconduct requires determination, sensitivity, flexibility, and respect for all people affected, including the victim, the rostered person, their families and friends, the congregation, the synod, and the whole church.

Although this policy is intended to provide a framework within which the synod has discretion to treat each person and each case according to the facts, circumstances and needs of those affected, it shall be interpreted and applied consistently. Moreover, it must be applied with compassion for all those affected, including the accused, in accordance with the theological and biblical principles of the Gospel.

A. Definitions

1. Sexual Misconduct

Federal and state laws 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 rostered person being disciplined. This policy is intended to address those types of sexual misconduct that may lead to discipline of a pastor or rostered layperson under Chapter 20 of *Constitutions, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America*. The document *Vision and Expectations* [ELCA] contains the following statement:

Sexual Conduct. The expectations of the church regarding the sexual conduct of its ordained ministers are grounded in the understanding that human sexuality is a gift from God and that ordained ministers are to live in such a way as to honor this gift. Ordained ministers are expected to reject sexual promiscuity, the manipulation of others for purposes of sexual gratification, and all attempts of sexual seduction and harassment, including taking physical or emotional advantage of others." (p.13)

The synod is concerned about all types of sexual misconduct by rostered people, 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 rostered people should be reported to the synod, including but not limited to, any sexual contact between the rostered person and a congregant, counselee, employee, or volunteer.

2. Complainant

As used in this Statement of Policy, "complainant" means a person who reports sexual misconduct to the synod. The complainant may or may not be the victim.

3. Rostered Person

As used in this Statement of Policy, "rostered person," "pastor" and "clergy," include ordained ministers and rostered lay people such as associates in ministry, deaconesses, and diaconal ministers. Such people may be currently under call, awaiting call, on leave from call, retired, or any other status. 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 people in other circumstances.

4. Investigator

As used in this Statement of Policy, "investigator" means the person or people assigned by the bishop to carry out an investigation of allegations of sexual misconduct by rostered people of this synod. Investigators are people of integrity who are knowledgeable in the area, who have appropriate training and are members of an ELCA congregation.

B. 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 sexual misconduct by rostered people. Within the guidelines of its constitution, each ELCA congregation calls its own pastor or other rostered leader, determines his or her duties and responsibilities, and supervises his or her day-to-day ministry.

The synod has neither the authority nor the ability to make these decisions for a congregation. Obviously, then, the synod cannot be a safe place unless every one of its member congregations shares its commitment to preventing sexual misconduct by its rostered leaders.

The synod strongly urges its member congregations to develop their own sexual misconduct policies. The publication *Safe Connections: What Parishioners Can Do To Understand and Prevent Clergy Sexual Abuse*¹. This is a useful resource for congregations in addressing this issue. The publications *Vision and Expectations: Ordained Ministries in the Evangelical Lutheran Church in America*² and *Vision and Expectations: Commissioned Associates in Ministry in the Evangelical Lutheran Church in America*³ are also recommended.

¹ Available from the ELCA Division for Ministry or Augsburg Fortress Publishers, Item No: 6000058152

² Available from the ELCA Division for Ministry or Augsburg Fortress Publishers, Item No: 600002990-X

³ Available from the ELCA Division for Ministry or Augsburg Fortress Publishers, Item No: 600002991-8

C. Role of the Synod

The synod's role is essentially twofold; through the office of the bishop to provide pastoral care and leadership throughout the process and to initiate the disciplinary process when warranted, following the constitution of the synod and the Evangelical Lutheran Church in America.

First, the bishop is responsible for providing pastoral care and leadership to the synod's congregations and rostered leaders. Reports of sexual misconduct by rostered leaders in the church invariably create an acute need for such care and leadership.

Second, rostered people who commit sexual misconduct may be disciplined, leading to possible removal from the roster of the ELCA. The bishop is primarily responsible for overseeing the preliminary stage and, if warranted, the consultation stage of the process, and for initiating the formal stage of the disciplinary process. This policy recommends that the bishop refer the investigation of allegations of sexual misconduct by a rostered person to one of the following: (1) a member of the synod staff, (2) a member of the synod trained in issues of professional misconduct in the church, (3) a representative from the Consultation Committee elected by the Synod Assembly, or (4) another knowledgeable person(s).

Every case of alleged sexual misconduct involves unique people and unique circumstances. This Statement of Policy describes the general approach that the synod will follow in responding to the reports of sexual misconduct by rostered people. It will not be appropriate or even possible for the synod to follow every detail of this approach in every case. Nevertheless, the principles described in this policy always serve as a guide to the synod as it responds to allegations of sexual misconduct by people on its roster.

When the synod provides pastoral care and leadership in the wake of sexual misconduct by a rostered leader, it is performing acts of ministry. The synod has the right and responsibility to decide for itself how it shall minister to those harmed by sexual misconduct. The same is true of the synod's right and responsibility to decide who will be on its roster. Nothing in this Statement of Policy is intended to diminish these rights and responsibilities or to create any legal rights or responsibilities.

In every sexual misconduct case, it is important to be aware of the pastoral care needs of all those affected. In order that such care might be provided by objective third parties, the bishop and his or her staff will attempt to see that arrangements are made for pastoral care to be provided by someone not on the synod staff to the victim of the misconduct, the victim's family, the accused, the accused's family, members of the accused's present and/or former congregation(s), the accused's colleagues, and others. Even so, the responsibility of the bishop and his or her staff is to follow the constitution of the synod and of the Evangelical Lutheran Church in America.

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 or other rostered leader 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, as employer, take timely and appropriate action. However, it is always appropriate for the synod to exercise its oversight responsibility regarding its rostered people.

II. SYNOD POLICY

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

A. Adequate Preparation

The synod is committed to preventing sexual misconduct by people on its roster in the following ways:

First, the synod will not tolerate sexual misconduct by its rostered leaders. The synod will make this position clear in educational opportunities that it provides, in the manner in which it responds to reports of sexual misconduct, in discussions that it has with seminarians and others who seek to join its roster of professional leaders, and in its public and private statements regarding this issue.

Second, the synod strongly urges its pastors, other rostered people and congregations to take advantage of educational opportunities in order to be knowledgeable about the issue of sexual misconduct in a church setting. The bishop's office will provide interested people and congregations with information on educational resources.

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 sexual misconduct by rostered leaders. As the synod's understanding of this problem changes, its Statement of Policy and educational efforts may 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 churchwide 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 sexual misconduct by rostered people in the church. The synod must always be prepared to respond to reports of misconduct. The more open it is to receiving such reports, the more often this sexual misconduct will be reported.

Anyone who knows or suspects that a pastor or other rostered person may have been involved in sexual misconduct should report that knowledge or suspicion to the bishop or an associate to the bishop. The names, addresses, and telephone numbers of the bishop and his or her associates are attached to this Statement of Policy. If a complainant is uncomfortable about contacting the bishop or an associate to the bishop, then the complainant may ask for a referral to someone outside the Bishop's office for the initial contact. However, it must be stressed that any information that the complainant provides 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, e-mail, 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 person accused of the misconduct.

C. Conversation with the Complainant

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;
3. Offer to provide a copy of this Statement of Policy and a copy of the *Vision and Expectations* document;
4. Answer the complainant's questions about the policies and procedures of the synod;
5. Express care and concern for the complainant; and,
6. When the complainant is anonymous, encourage the complainant to identify herself or himself and the person accused of the misconduct.

In all meetings with synod personnel, the complainant may be accompanied by a friend, family member, support person, or advocate of her or his choice. The bishop or other person contacted by the complainant may also offer to provide the complainant with a list of resource people who are available to provide support and to help interpret the synod's policies and procedures. The complainant may be accompanied by this resource person throughout the reporting, investigative, and, if necessary, disciplinary processes. If the complainant requests, the synod will contact a resource person for her or him. The complainant is welcome to use resource or support people who do not appear on the list - such as a friend or family member - or to decline to use such resource people.

After a report of sexual misconduct has been received from an identified complainant, the investigator assigned by the bishop will interview the complainant in person or, if that is not possible, by telephone. This interview may occur through a combination of meetings, calls, and correspondence. The investigator may elect to have his or her own resource person serve as witness and/or a participant in this interview process.

The investigator will ask the complainant to provide as much information about the sexual misconduct as the complainant is comfortable sharing. The complainant will be asked to reduce the information to writing or to sign a written statement prepared by the synod. The investigator will also ask the complainant what she or he is seeking in coming forward and whether the complainant is prepared to participate in the disciplinary process if necessary. The complainant should be given a copy of this Statement of Policy if she or he has not already received it.

The investigator 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 investigator 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 investigator learns that a child or vulnerable adult may have been neglected or physically or sexually abused, the investigator shall report this to the bishop. This policy recommends that the bishop report that information to law enforcement authorities. If possible, the complainant will be notified before such a report is made.

The bishop will appoint a contact person within the synod. That contact person will keep in regular contact with the complainant, and will inform the complainant of significant developments. That contact person will also be available to respond to the complainant's questions and concerns about the process.

D. Investigation of the Complaint

After receiving the investigator's report of the interview with the complainant, the bishop will carefully review the information provided by the complainant and consult with appropriate resource person(s). If the bishop determines that the allegations are without a reasonable basis, no further action will be taken. The complainant(s) shall be informed of this decision. If the bishop determines that the allegations appear credible and involve sexual misconduct for which the accused might be disciplined, a further investigation may be conducted. This 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;
3. Interviews with former bishops of the rostered person; and
4. Others who may have relevant information.

A written record of all decisions, findings and recommendations shall be maintained by the bishop's office throughout the implementation of procedures outlined in this policy.

With the bishop's consent, the investigator may engage third parties, including, but not limited to, an attorney, a therapist, a consulting firm or an institution that specializes in clergy sexual misconduct or related matters to assist with the resolution of the allegations. The investigator may disclose confidential information to people so engaged.

This investigation will be conducted as quickly as possible and as discreetly as 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 those who were contacted by the synod in the course of its preliminary investigation.

E. Conversation with the Accused

The bishop and one investigator shall meet with the accused, generally after the investigation is concluded. 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 – this meeting may take place immediately after or perhaps even before the meeting with the complainant. The bishop will clarify that the purpose of the meeting is not for counseling or private confession and that statements by the accused may be used as evidence.

At their meeting with the accused, the bishop and the investigator shall summarize the allegations and advise the accused of his or her right to have an advocate present before responding to the allegations. If the accused wants an advocate present, the meeting should be adjourned and rescheduled for a time in the immediate future when the advocate can be present. If the accused does not participate in the process in a timely manner, the bishop and/or investigators can still proceed with the investigation.

The bishop will also:

- assure the accused that, while the synod does not tolerate sexual misconduct, the synod will give any rostered person who denies an allegation of sexual misconduct a full and fair opportunity to contest it;
- explain the synod's process for responding to reports of sexual misconduct and provide a copy of this Statement of Policy;
- answer the accused's questions about the policies and procedures of the synod;
- express care and concern for the accused and the family of the accused;
- prohibit the accused from having any contact with the complainant and/or victim, either directly or indirectly, except as authorized by the synod;
- caution the accused against engaging in or causing any reprisal, intimidation or retaliation of any kind; and
- advise that the accused shall not divulge the name(s) of any alleged victim(s), complainant(s) or any other person(s) who he or she believes might be responsible for levying the allegations except that he or she may divulge such names to an attorney, consultant or advocate who has been engaged to advise, assist or defend the accused in the matter. The accused shall be advised that violations of these provisions may result in their inclusion in this or a separate disciplinary action.

If the bishop determines that, after hearing the accused's response, and consultation with appropriate resource person(s) there is no basis for the allegations, the bishop shall inform the accused and the complainant(s) of this decision, and the investigation shall be terminated.

If the bishop determines that there continues to be a basis for the allegations made by the complainant(s), the bishop shall advise the accused of this decision. Depending upon the circumstances, the bishop may ask the accused to agree voluntarily 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 may also ask the congregation to place the accused on involuntary leave of absence, or the bishop may temporarily suspend the rostered person without prejudice. When the evidence and the allegations, if proven, would warrant the disciplinary action, the bishop shall inform the accused that a thorough investigation will be conducted, that the accused may face a discipline committee hearing resulting in his or her removal from the roster and that resignation from the roster is an alternative he or she may wish to consider.

The accused shall not be considered for a new call or be called/appointed to an Interim ministry position until there has been a final resolution to all allegations

The bishop will appoint a contact person within the synod. That contact person (who will not be the bishop but may be a person on the synod staff) will keep in regular contact with the accused regarding the process. The contact person shall not comment on the evidence or likely outcome.

The bishop or the contact person will discuss with the accused his or her needs for pastoral care or professional counseling, as well as the care of the accused's family. If the accused requests, the bishop or contact person will help to put the accused in touch with the people who can provide such care or counseling. Under no circumstances will any employee of the synod function as advocate, pastor, or care-provider to the accused or the family of the accused.

If the accused resigns from the synod roster with or without admitting guilt, the investigative and disciplinary process will cease and applicable actions regarding disclosure and pastoral care set forth below shall be initiated.

E. Consultation or Advisory Panel

For assistance in making 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 in Sections 20.21.04 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 (Nov. 20, 1995). Both of these documents are available from the synod.

Essentially, a consultation or advisory panel is a small group of clergy and lay people who 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 investigator, and/or others. In cases where discipline is not recommended, the panel may work for pastoral or therapeutic resolution to the matter which is acceptable to all concerned. The panel will advise the bishop as to whether it believes the disciplinary process should be initiated.

F. Disciplinary Hearing

Disciplinary proceedings are the process by which the ELCA determines if an accused rostered person is guilty of 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 person 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 (Dec. 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.

For purposes of this policy, when the bishop determines that charges against the accused are to be brought before a discipline committee hearing, the bishop is the “accuser” who is responsible for initiating the proceedings against the accused by filing written charges setting forth the alleged offenses – e.g. “the sexual abuse of another” – and the alleged facts supporting the charge. A committee of twelve people is appointed to hold a hearing on the charges. The hearing resembles a court trial. The bishop or person(s) designated by 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. A bishop generally will not initiate formal disciplinary proceedings unless the complainant agrees to testify against the accused. The governing documents of the ELCA provide certain rights for the accuser, the accused, and the complaining witnesses.

The hearing described in the preceding paragraph is the usual process for hearing 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 of the accused 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 discipline 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 (1) private censure and admonition, (2) suspension from the roster of the ELCA for a designated period of time or until the rostered person complies with specified conditions, or (3) removal from the roster.

G. Appeal

Any appeal of the bishop’s decision or the decision of the discipline hearing committee is to be presented to the churchwide committee on appeals, according to the process outline in the appropriate bylaw of the Constitution, Bylaws and Continuing Resolutions of the Evangelical Lutheran Church in America. An appeal may be brought by the accused, the complainant or the bishop.

H. Disclosure

Although disclosure can increase the short-term pain caused by 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, 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:

The bishop shall be responsible for the disclosure process.

The bishop shall inform the accused of the charges that are about to be filed and may offer the accused the opportunity to respond to the charges in writing before the charges are filed with the ELCA. The bishop may, in consultation with others, give consideration to the accused's response before reaching a decision on what, if any, charges he or she will file.

Disclosure of sexual misconduct by a rostered person will be made to the council or representative governing body of the accused's congregation, agency or institution, and then to the full membership of the accused's present congregation, as well as to the members of the accused's family, and to pastors within the synod. In some situations, wider disclosure to previous congregations may be made as well.

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 the bishop. At the informational meeting where disclosure is made, this policy encourages the use of a neutral facilitator to lead discussion.

Disclosure will be made when:

1. The bishop has initiated disciplinary proceedings against the accused;
2. The accused admits to committing sexual misconduct;
3. The accused resigns his or her call or from the roster of the ELCA after being accused of sexual misconduct;
4. The accused is placed on leave of absence or temporarily suspended in response to an allegation of sexual misconduct;
5. The accused is suspended or removed from the roster as a result of formal disciplinary proceedings.

Disclosure may be made at other times in the process, at the bishop's discretion.

If disclosure has been made to the congregation, then disclosure will also be made to all rostered people serving this congregation after the end of the accused's term of call.

To protect the privacy of those harmed by the misconduct, only the following will be disclosed:

1. The fact that the rostered person has been accused of committing sexual misconduct;

2. That the accused has admitted or denied the misconduct;
3. Of decisions and actions reached by the bishop, the Consultation or Advisory Panel and/or the Disciplinary Proceedings;
4. Whether or not the accused has resigned;
5. The gender of the complainant;
6. Whether the complainant was an adult or a minor at the time of the misconduct; and
7. Whether the complainant was a member of the rostered person's congregation or a person to whom the rostered person was providing pastoral care.

Disclosure should never include the name of the complainant or facts from which she or he could readily be identified. If the rostered person has denied the allegations, that fact will also be disclosed.

People who believe that they have been harmed (directly or indirectly) by the accused may contact the leaders of the congregation, the synod, or others who have agreed to be available to those people.

I. Follow-up

The synod will work with congregations and others to help ensure that care and support are available to those harmed by the sexual misconduct of rostered people in the church setting. As noted above, the synod cannot provide this care itself, but will assist the primary and secondary victims of sexual misconduct to find resource people and materials that might help them on their journey to healing.

In accordance with Section II.B of this policy, the following names and addresses are provided for complainants' initial contact. This information is current as of September 1, 2007.

The Rev. Wayne N. Miller, Bishop
Metropolitan Chicago Synod, ELCA
1420 West Dickens Avenue
Chicago, Illinois 60614-3004
(773) 248-0021
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If Bishop Miller is not available, please feel free to contact:

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