

Policy 99 - 001 Statement of Policy Regarding Sexual Misconduct by Members of the Clergy and Rostered Laypersons Not Employed by the Synod

Adopted by the Synod Council January 29, 1999 (SC99.1.27)

I. INTRODUCTION

The Sierra Pacific 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 is intended to provide guidance in dealing with allegations or admissions of sexual misconduct by clergy and laypersons rostered, but not employed, by the Synod. This Statement of Policy is not intended as a description of the congregational response to sexual misconduct.

The Synod recognizes that responding to allegations of sexual misconduct requires determination, sensitivity, flexibility, and respect for all persons affected, including the complainant, the rostered person, their families and friends, the congregation, the Synod, and the whole church. This policy is intended to provide guidance in dealing with these cases while preserving the Synod's discretion to treat each person and each case in accordance with the Synod's understanding of the differing facts, circumstances, and needs of those affected.

The theological basis for this Statement of Policy is the Word of God as expressed in the Scriptures of the Old and New Testaments, the Ecumenical Creeds of the Church, the confessional writings in the Book of Concord, and other expressions of its faith and religious doctrine, including the Confession of Faith expressed in Chapter 2 of the ELCA Constitution and Chapter 4 of the Synod Constitution. This Statement of Policy is intended solely for the internal use of the Synod in performing its functions as a religious body. It is not a contract, agreement, promise, or undertaking by the Synod to do or refrain from doing anything. It is not intended that the policy described in the statement be imposed as rigid law, binding the Synod or others; rather, the policy must be interpreted and applied compassionately in accordance with the theological and biblical principles of the Gospel. Any actions or decisions by the Synod in connection with the statement are to be undertaken in the Synod's sole discretion, in accordance with the theology and ecclesiology of the ELCA, and in the exercise of the Synod's constitutional rights as a religious body.

A. Definitions

1. "Sexual Misconduct." This policy is intended to address those types of sexual misconduct that may lead to discipline of a rostered person under Chapter 20 of *Constitution, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America*. It is not a civil law document and does not make legal distinctions or use terms that may have specialized legal definitions such as "sexual harassment," "sexual abuse," or "sexual assault."
2. "Complainant." As used in this Statement of Policy, "complainant" means a person who complains of alleged sexual misconduct to the Synod or who is involved in the events or occurrences giving rise to the complaint.
3. "Rostered Person." As used in this Statement of Policy, "rostered person" includes 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 complaints of clergy sexual misconduct. Each ELCA congregation calls its own pastors, establishes the pastor's duties and responsibilities, determines and pays the pastor's salary and other compensation, is responsible for its pastor's ministry, and can decide whether to terminate its pastor's call. Each congregation also functions as the sole employer of pastors under call to the congregation. Since congregations, not the Synod, employ pastors under call to a congregation, the Synod has neither the authority nor the ability to make decisions for a congregation. The same principles apply to other rostered persons who work in congregations.

C. 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 rostered persons. Reports of sexual misconduct invariably create an acute need for such care and leadership. Second, rostered persons 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 or consultation stage of the disciplinary process and may initiate the formal stage of the disciplinary process.

Every report of sexual misconduct involves unique circumstances. This Statement of Policy merely describes the general approach that the Synod follows as a matter of policy in responding to complaints of sexual misconduct by rostered persons. 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.

When the Synod provides pastoral care and leadership under this policy in the wake of alleged 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 affected 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 of the freedom of each congregation to decide who will preach and teach from its pulpit or will serve in its ministry as a layperson. Nothing in this Statement of Policy is intended to diminish these freedoms in any respect or to create any legal rights or responsibilities.

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 a complainant, accused or someone else, the bishop and the bishop's staff are obligated under this policy and the ELCA Church law 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 does not tolerate sexual misconduct. The Synod will make this clear in educational opportunities, in the manner in which it responds to complaints of sexual misconduct, in discussions it

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

The Synod intends to provide ongoing educational opportunities regarding sexual misconduct for rostered persons, congregations, and others. Those efforts will focus on such subjects as the dynamics of sexual misconduct and the impact of such misconduct on complainants. The Synod strongly urges its rostered persons and congregations to take advantage of these educational opportunities, as well as appropriate educational programs offered by others.

The Synod recognizes that society generally and churches particularly have much to learn about sexual misconduct. 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. The Synod must always be prepared to respond to complaints of alleged misconduct. The more open it is to receiving such complaints, the more often sexual misconduct will be reported, and thereby deterred.

Anyone who knows or suspects that a rostered person may have been involved in sexual misconduct should report that knowledge or suspicion to the bishop or designated assistant to the bishop. The names, addresses, and telephone numbers of the bishop and his or her designated assistants are attached to this Statement of Policy. A current list of these persons may be obtained from the Synod office.

A contact may be made with the bishop or designated bishop's assistant by mail, by telephone, 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 complaint of sexual misconduct until the complainant identifies herself or himself and the rostered person involved in the misconduct.

The bishop or designated bishop's assistant contacted by the complainant may: (1) assure the complainant that the Synod does not tolerate sexual misconduct and takes seriously all complaints of such misconduct; (2) explain the Synod's process for responding to complaints 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 person involved in 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 bishop's designated assistant may also offer to provide the complainant with a list of advocates who are available to provide support and to help interpret the Synod's policies and procedures. The complainant will be invited to contact an advocate and to be accompanied by that advocate through the reporting, investigative, and, if necessary, disciplinary processes. If the complainant requests, the Synod will contact an advocate for her or him.

The complainant is welcome to use an advocate who does not appear on the list – such as a friend or family member – or to decline to use an advocate.

After a complaint of sexual misconduct has been received from an identified complainant, the bishop and/or bishop's designated assistant will interview the complainant. This interview may occur through a combination of meetings, telephone calls, and/or correspondence. The bishop or bishop's designated assistant may 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 designated assistant may 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 bishop or bishop's designated assistant may discuss with the complainant how she or he feels about the possibility that her or his identity may become known to persons other than the accused. 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 or procedures of the ELCA to disclose the identity of the complainant. Also, in certain circumstances, the fact that the bishop or bishop's designated assistant 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 designated assistant learns that a child or vulnerable adult may have been neglected or physically or sexually abused, the bishop or bishop's designated assistant may in certain instances 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 designated assistant will discuss with the complainant her or his needs for pastoral care or professional counseling. If the complainant requests, the bishop or bishop's designated assistant 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.

The bishop or bishop's designated assistant will appoint a contact person within the Synod. That contact person (who may be the bishop or bishop's designated assistant) will keep in regular contact with the complainant and 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 or bishop's designated assistant will carefully review the information provided by the complainant. If the complaint appears credible and involves sexual misconduct for which the rostered person might be disciplined, the bishop or bishop's designated assistant may conduct a preliminary investigation to determine whether information either supporting or contradicting the report exists.

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 rostered person 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 Rostered Person

The bishop will usually meet with the rostered person before the preliminary investigation begins. The bishop should be accompanied by the bishop's designated assistant or another person. At the meeting, the bishop will clarify that the meeting and any communications regarding the complaint are not confidential, and that the bishop may disclose anything that he or she is told.

At their meeting, the bishop will provide the rostered person with information regarding the complaint and ask the rostered person to respond. The bishop may ask the rostered person to reduce his or her response to writing. The bishop will also: (1) assure the rostered person 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; (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 rostered person's questions about the policies and procedures of the Synod; (4) express care and concern for the rostered person, the rostered person's family, and the affected congregation; (5) strongly discourage the rostered person from having any contact with the complainant, either directly or indirectly; and (6) invite the rostered person to contact an advocate and to be accompanied by that advocate through the investigative, and, if necessary, disciplinary processes. If the rostered person requests, the Synod will assist the rostered person in finding an advocate. The rostered person may decline to use an advocate.

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

The bishop or bishop's designated assistant will appoint a contact person within the Synod. That contact person (who may be the bishop or bishop's designated assistant) will keep in regular contact with the rostered person and will also be available to respond to the rostered person's questions and concerns about the process.

E. Assess the Information

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

F. Consultation or Advisory Panel

Complaints of sexual misconduct always present a bishop with difficult decisions. To assist him or her in making these 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 the Constitution and Bylaws of the ELCA and in the *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, as amended from time to time.

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 rostered person, the bishop, the bishop's designated assistant, 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.

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 "one person's word against another's" – that is, a situation in which both the complainant's report and the rostered person's denial of the complaint appear credible, and no one but the complainant and the rostered person can know for certain who is being truthful. The consensus of a panel may be the best indicator of who to believe.

G. Formal Hearing

The bishop cannot force a pastor to resign either from his or her call or from the clergy roster. Only the congregation, acting under its constitutional authority, may terminate a pastor's call. Only a discipline hearing committee can remove the pastor from the clergy roster. The same principles generally apply to other rostered persons.

Disciplinary proceedings are the process by which the ELCA determines if a rostered person is guilty of the charges and, if so, what the penalty should be. The process is governed by the Constitution and Bylaws of the ELCA and by the Rules Governing Disciplinary Proceedings, as amended from time to time.

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 Ministers* (Dec. 5, 1993) 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, usually the bishop will initiate the proceedings against a rostered person by filing written charges setting forth the offense that the rostered person is accused of committing – e.g., sexual misconduct – and the alleged facts supporting the charge – e.g., the name of the person involved in the rostered person's misconduct and the date, place, time, and other circumstances of the alleged misconduct. 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 rostered person 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 rostered person. The governing documents of the ELCA provide for certain rights for the complainant and the accused.

The hearing described in the preceding paragraph is the usual process for hearing the written charges. There is an alternative process described in the *ELCA Bylaws* 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 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 private censure and admonition, suspension from the roster of the ELCA for a designated period of time or until the rostered person complies with specified conditions, or removal from the roster. The discipline hearing committee's decision is generally made about four months after charges are filed.

H. Disclosure

Except in unusual circumstances, the Synod will disclose all serious allegations of sexual misconduct. 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 sexual misconduct will be made to the leadership of the rostered person's congregation, the members of the rostered person's present congregation, the members of the rostered person's family, and other rostered persons within the Synod. In some situations, wider disclosure to previous congregations or even to the news media may be made as well.
2. Disclosure will be made when:
 - (1) the rostered person admits to committing sexual misconduct;
 - (2) the rostered person resigns his or her call or from the clergy roster of the ELCA after being accused of sexual misconduct;
 - (3) the rostered person is placed on leave of absence or temporarily suspended in response to an allegation of sexual misconduct;
 - (4) the rostered person 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 rostered person.
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:
 - (1) the fact that the rostered person has been accused of, admitted to, resigned, or been 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 rostered person's congregation or a person to whom the rostered person was providing pastoral care. Disclosure usually does not 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.

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 sexual misconduct. As noted above, the Synod cannot provide this care itself, but it will assist complainants in finding resource persons and materials that might help them on their journey to healing.

LIST OF PERSONS DESIGNATED TO RECEIVE COMPLAINTS OF SEXUAL MISCONDUCT BY MEMBERS OF THE CLERGY AND ROSTERED LAYPERSONS IN THE SIERRA PACIFIC SYNOD

- **BISHOP**
THE REV. MARK W. HOLMERUD
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