

# SEXUAL MISCONDUCT RESPONSE

FOR PASTORS AND DEACONS

ALASKA SYNOD, ELCA

## PREFACE

To be a pastor or deacon is to be entrusted with a sacred responsibility, “to care for the church of God which was obtained with the blood of his own Son.” Not only is the office a position of great trust and responsibility, it is also, by virtue of the trust persons place in the office and the person of pastor or deacon, a position of great authority and power over others. Each congregation should have their own policy that explains expectations of behavior among lay members and employees. This policy is specifically for the rostered leaders (pastors and deacons) of the Alaska Synod.

It is unthinkable that anyone would violate that trust and power for the sake of personal gratification, and yet the experience of the church is that it does happen. Persons in pastoral roles may betray the trust placed in them by misusing power in many ways. These guidelines deal with specific abuse of power by those who engage in sexual advances toward or contact with those for whose spiritual welfare the rostered leader is responsible. Any sexual misconduct is damaging and will in no way be tolerated by this synod. The harm is increased many times when the sexual misconduct comes from a person to whom the victim has every right to look to for guidance, protection, and care. When persons are injured by the actions of its servants and representatives, the local congregation, other clergy, and the whole church and its mission are also compromised.

The bishop of this synod of the ELCA is constitutionally charged with the function of ecclesiastical oversight relative to pastors and deacons of this synod, on behalf of the church. While they are ordained or consecrated as Lutheran ministers by the whole church they are called by a particular congregation or ministry site to serve in that place and are primarily accountable to that congregation or ministry. However, with this responsibility, the bishop initiates and is responsible for the implementation of this policy.

This policy and brochures on Clergy Sexual Misconduct will be available to council leaders, congregations and rostered leaders. A Synod Response Team will be available as first-responders to hear allegations and work with those who have experienced clergy sexual misconduct or know of an incident involving others.

## DEFINITIONS

**Sexual misconduct** by rostered persons is any inappropriate sexual behavior of the rostered person, whether it occurs within a pastoral relationship or outside a pastoral relationship.

Sexual misconduct encompasses a range of behavior used to obtain sexual gratification against another's will or at the expense of another.

Sexual misconduct includes sexual harassment, sexual assault, and any conduct of a sexual nature that is without consent, or has the effect of threatening or intimidating the person against whom such conduct is directed.

Generally sexual misconduct involving a rostered leader can constitute any of the following acts:

- Intentional touching without consent;
- Exposing his or her genitals under circumstances likely to cause affront or alarm;
- Having sexual contact in the presence of a third person or persons under circumstances likely to cause affront or alarm;
- Having sexual intercourse in a public place in the presence of a third person;
- Soliciting or requesting another person to engage in sexual conduct under circumstances in which the solicitor knows that the requests or solicitation is likely to cause affront or alarm;
- Forcing a victim to touch, directly or through clothing, another person's genitals, breast, groin, thighs or buttocks;
- Vaginal or anal intercourse with someone other than their spouse or their partner;
- Fellatio or cunnilingus with someone other than their spouse or their partner;
- Sexual penetration with an object without consent.

**Harassment** in a workplace, or other professional or social situation, involves the making of unwanted sexual advances or obscene remarks.

It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Harassment does not have to be of a sexual nature, however, and can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.

Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although the law doesn't prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted).

The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

**Sexual abuse**, also referred to as molestation or sexual assault, is usually undesired sexual behavior by one person upon another with perpetrators using force, making threats, or taking advantage of victims not able to give consent. The term also includes the behaviors listed above by an adult or older adolescent towards a child. The use of a child, or other individuals younger than the age of consent, for sexual stimulation is referred to as child sexual abuse, sexual abuse of a minor, or statutory rape.

**Sexual exploitation** is when one person takes advantage of sexuality and attractiveness of another person for personal gain or profit. It is the abuse of a position of vulnerability, differential power, or trust for sexual purposes. Sexual exploitation is inappropriate sexual conversation, dating or suggestion of sexual involvement by a rostered person, and/or sexual or romantic contact\* between rostered persons and parishioners, clients, or counselee.

Alaska law defines **vulnerable adults** as a person 18 years of age or older who, because of incapacity, mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, fraud, confinement, or disappearance, is unable to meet the person's own needs or to seek help without assistance. [Alaska Adult Protective Services]

(\* Qualification: It may be possible for a single rostered person to enter into a romantic relationship with a single parishioner, but issues of power, risk, and accountability must be honestly addressed before the relationship begins. As in the pastor/spouse relationship, it must be understood that dating a parishioner terminates the possibility of a continuing pastoral relationship with this person, thus changing his or her place in the congregation. In pursuing such a relationship, the single rostered person must seek accountability by publicly acknowledging the relationship (for example to congregational leaders, mutual ministry personnel, council members, colleagues, conference deans, or synod staff), and remaining open to advice and counsel. Both the rostered person and parishioner are then protected by eliminating the secrecy that often characterizes coercive and manipulative relationships.)

## 1. REPORTING PROCEDURES

### A. Who may report?

Anyone who knows or suspects sexual misconduct by a rostered person.

### B. Who should be notified?

i. Notify the bishop's office directly, either by phone or in person. If it is not possible to notify directly, send a signed letter stating the complaint to the bishop's office.

Anonymous information can be received, but not processed.

Alaska Synod ELCA

1847 W. Northern Lights Blvd. #2 Anchorage, AK 99517-3343

(907) 272-8899 FAX: (907) 274-3141

ii. If the allegations are against the Synodical bishop, notify:

The Office of the Bishop

Evangelical Lutheran Church in America

8765 W. Higgins Road Chicago, IL 60631-2730 (800) 638-3522

iii. When the allegation involves a person who is under the age of 18, or a vulnerable adult, the allegation should also be reported to The Office of Children's Services at 1-800-478-4444 toll free statewide; Adult Protective Services at 1-800-478-9996 toll free statewide; or the local Police Department or Alaska State Troopers.

iv. When physical force is used, or there is an active safety concern for the victim, the allegation should be reported to the Alaska State Troopers or the local Police Department for legal protection and referral.

## 2. INQUIRY OF THE COMPLAINT

Any complaint(s) alleging sexual misconduct (as defined in this policy) shall be brought to the immediate attention of the synodical bishop (or his/her representative), who will take immediate action to protect all parties involved. The bishop or designee and one other appropriate person appointed by the Alaska Synod Executive Committee (Several people in the Alaska Synod and in the rest of Region 1 have received specialized training in this area.), hereinafter called the Inquiry Team, will initiate the following process immediately upon being informed of an allegation:

A. Meet with the complainant(s) to verify and clarify the nature and extent of the allegations, and to receive the names of other people who may be involved. It is important for the complainant(s) to be as specific as possible. The complainant(s) has the right to be accompanied by a person of his/her own choosing at all meetings.

B. Inform the complainant(s) of the process, including the intention of confidentiality if it is possible. This will include a written outline of the process. Assure the complainant(s) that this church does not tolerate any sexual misconduct.

C. Encourage the complainant(s) to document the allegation in a detailed written and signed, or taped statement. This will hereinafter be referred to as the "complaint".

D. Review the complaint in conversation with the complainant(s).

E. Request permission from the complainant(s) to use the complaint and his/her name in discussion with the accused; if permission is not granted the bishop may share the allegations with the accused while protecting the confidentiality of the complainant(s).

F. The complainant(s), and with the complainant's permission, the family of the complainant(s), will be informed of pastoral care available to them. A synod liaison and/or advocate will be offered in consultation with the complainant(s), to maintain regular and frequent contact with the complainant(s).

The primary duties of the synod liaison will be to answer questions about and interpret the process.

An advocate is assigned solely for the complainant. Their role is for support and assistance to the complainant and has no official or unofficial relationship to the synod.

### **3. CONVERSATION WITH THE PASTOR OR DEACON (accused)**

A. After preliminary investigation the bishop and one member of the Inquiry Team shall meet with the accused to present him/her with an oral summary of the formal written allegations and hear the response. This conversation is not under the protection of the confessional because it is initiated by the bishop. The pastor may choose to respond in writing.

B. At this time, the accused is provided a written description of the synod process and assured that they are considered innocent until there is either an admission or determination of responsibility.

C. The accused and the family of the accused will be informed of pastoral care available to them and appropriate arrangements will be made. In addition, a synod liaison and/or advocate will be made available in consultation with the accused.

D. When the accused admits in substantive part to the truth of the complaint(s), among options available to the bishop are:

- i. therapy without leave;
- ii. arrangements for psychosexual evaluation;
- iii. letter of reprimand;
- iv. education;
- v. temporary suspension from the call pursuant to ELCA 20.21.23;
- vi. leave of absence with therapy;
- vii. resignation from the call;
- viii. resignation from the roster of the ELCA;
- ix. require a letter of apology to the victim(s), congregation, and others as appropriate, other pastoral options such as severance pay, if any, and/or any synodical or churchwide assistance that may be available should be discussed. (Rules Governing Disciplinary Proceedings against an Ordained Minister or Congregation of the ELCA. C.2)

The Bishop shall clarify that the accused or any member of his/her family is to have no contact with the complainant(s), and is not to engage in reprisal or retaliation of any kind against them.

If it is deemed necessary that the accused leave the call, it shall be made clear that the accused is to have no further professional contact with the members of the congregation and/or employees of the ministry site.

E. If the accused **denies** the allegations in the complaint(s), the bishop will evaluate the information in hand and decide whether to:

- i. continue further investigation into the allegations;
- ii. convene the **Advisory Panel**;
- iii. proceed directly to formal written charges and use of the **Discipline Committee**;
- iv. temporarily suspend the accused pursuant to ELCA 20.21.23;
- v. report to police or State Troopers; or
- vi. drop the case.

#### **4. ADVISORY PANEL**

The Advisory Panel is appointed pursuant to 20.21.04b of the ELCA Constitution and Bylaws. A team of five (5) people shall be appointed as the Advisory Panel. There shall be two (2) lay persons and three (3) clergy. It is recommended that there be a relative balance of male and female members.

The Advisory Panel is charged with determining the truth of the complaint(s) and shall recommend action to the bishop as follows:

A. If the allegations are not substantiated by the Advisory Panel, the investigation will cease and every effort will be made to exonerate the accused without vilifying the complainant(s) and/or alleged victim(s). A record of the process and its conclusion will be provided for the rostered person and may be included in his/her personnel file. A public statement of exoneration by the bishop may be made if the rostered person so chooses. The bishop and Advisory Panel shall respond with care and concern to the complainant(s) and to the congregation or agency as appropriate.

B. If the allegations are substantiated by the Advisory Panel, the Advisory Panel will recommend that the bishop and one other appropriate member of the Inquiry Team shall meet with the accused and proceed with one or more of the steps listed in 3.D.

#### **5. DISCIPLINE COMMITTEE**

Upon the recommendation of the Advisory Panel the Discipline Committee shall be convened pursuant to Chapter 20 of the ELCA Constitution and Bylaws.

#### **6. APPEAL PROCESS**

The appeal process shall be followed as outlined in the ELCA Constitution and Bylaws (Chapter 20). A rostered person may appeal the Discipline Committee's determination to the Committee on Appeals.

#### **7. RESPONSES TO VICTIM, OFFENDER, CONGREGATION, COMMUNITY**

Responses to persons aggrieved by sexual abuse, and to alleged offenders must be guided by what is appropriate, just, compassionate, and conducive to healing.

It is the policy of the synod staff to recommend to victims and their immediate family options for supportive help as is available, including a liaison and/or advocate, trained professionals and treatment resources specifically knowledgeable in sexual harassment

and abuse.

A team of trained persons may be offered by the synod staff to serve the congregation in resolving the trauma and conflicts present and nurturing health where alleged abuse has occurred. This team may meet with the congregational staff and the rostered person (s) or interim person, with the supervision of synod staff. The expense for this care will be borne by the congregation.

The synodical bishop may see that professional and pastoral care is available to the alleged offender (at cost to the offender).

## **8. DISCLOSURE OF INFORMATION**

A. Disclosure of information will be made to those who need to know, including the congregation and/or agency staff and board. Experience has shown that as painful as disclosure is initially, healing and trust in the congregation or agency is better realized with appropriate and caring disclosure based on the following:

i. If the Inquiry Team finds evidence for the complaint(s), and if the accused admits to the complaint(s), the bishop shall consult with the leadership of the congregation or agency, i.e., the church council or board as to appropriateness, manner, and extent of disclosure of information to the membership or staff.

ii. If the accused does not admit to the complaint(s) and the discipline is enacted, the leadership of the congregation or agency, i.e., the church council or board, shall be informed of the process. The extent and manner of disclosure to the congregation or staff will be determined in consultation with the leadership of the congregation or agency.

B. The congregation or agency shall be advised of resources to aid the healing process among their members and/or staff.

C. It should be noted that the public media may become involved. Appropriate advance planning for handling requests for information must be discussed with the leadership of the congregation or agency. Disclosure of information must always be viewed with the primary concern of being for the protection and anonymity of the complainant(s).

## **9. CHURCH POLICY GUIDING THIS PROCESS**

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



Policy at any time and for any reason.

When the Alaska Synod provides pastoral care and leadership in the wake of clergy sexual misconduct, it is performing acts of ministry. The freedom of the Alaska Synod to decide for itself how God has called it to minister to those harmed by sexual misconduct is a precious one that is constitutionally protected from governmental interference. The same is true of the freedom each Alaska Synod congregation has 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.

In every sexual misconduct case, the bishop and his/her staff will attempt to provide pastoral care to the victim of the misconduct, the victim's family, the pastor or deacon who committed the misconduct, the pastor's or deacon's family, the members of the pastor's or deacon's congregation or ministry site, the pastor's or deacon's colleagues, and others.

However, the bishop and the bishop's staff cannot themselves function as a pastor, 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 Alaska Synod, and not to the individual within the Alaska Synod. If a conflict arises between what is in the Alaska Synod's interests and what is in the interest of someone else, the bishop and the bishop's staff are obligated to act in the Alaska Synod's behalf.

## 10. EDUCATION

Any policy is ineffective without general knowledge of it by all persons who must use it or may be affected by it. Therefore, this synod intends to establish an on-going education process designed to inform pastors and other rostered persons, lay staff, church councils, congregations, and individual parishioners of the importance of this issue, and to give direction and support in resolving problems. It is the synod's intention that this educational effort be a force in preventing such sexual offenses.

In addition, special care and concern will be given to the spiritual wellbeing of the rostered persons of this synod. Boundaries Workshops will be offered with attendance recorded in each rostered leader's synod file. Time will be set aside each year for rostered people to gather for Bible Study, reflection, prayer, collegiality, and other educational endeavors leading to spiritual renewal.