



Montana Synod

Policy on Sexual Misconduct

February 23, 2007
(Renewed by Montana Synod Council)

MONTANA SYNOD OF THE EVANGELICAL LUTHERAN CHURCH IN AMERICA

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

I. INTRODUCTION

The Montana 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 describes how the Synod intends to fulfill these commitments. The Synod recognizes that responding to allegations of sexual misconduct requires determination, sensitivity, flexibility, and respect for all persons affected, including the victim, the rostered person, their families and friends, the congregation, the synod, and the whole church. This policy is intended to provide a framework for guidance in dealing with these cases while preserving the synod's discretion to treat each person and each case in the manner necessitated by differing facts, circumstances, and needs of those affected. This policy cannot be imposed as rigid law, binding the synod and others to its dictates; it must be interpreted and applied compassionately in accordance with the theological and biblical principles of the Gospel.

A. Definitions

1. "**Sexual Misconduct.**" Federal and state law 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 minister or rostered layperson under Chapter 20 of *Constitutions, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America*. These distinctions should not concern a person who is troubled about the sexual conduct of a minister.

"Sexual Misconduct" is sexual activity in which the minister engages in any sexual or romantic behavior* with a parishioner, client, employee, co-worker, volunteer, or any person other than the minister's spouse.

"Sexual Harassment" is any intentional or unintentional verbal or physical sexual advance that is unwelcome and personally offensive to its recipients. It is sexual conduct which creates an offensive, hostile or intimidating environment in the church, workplace, school or public service. It may include verbal abuse, sexist jokes, sexual innuendo, gender bias, unwelcome physical contact, demanding sexual favors with implied or overt threats or physical assault.

*It may be permissible for a single minister 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 minister/spouse relationship, it must be understood that dating a parishioner changes the nature of a continuing pastoral relationship with this person, thus changing his or her place in the congregation. In pursuing such a relationship, the single minister must seek accountability by publicly acknowledging the relationship, (for example, to Synod staff, cluster dean, congregational leaders, council members, colleagues, etc.) and remaining open to advice and counsel. Both minister and parishioner are protected by eliminating the secrecy which often characterizes coercive and manipulative relationships. It should be noted that the parishioner may need pastoral care from someone else.

"Sexual Abuse" is sexual conduct, including criminal conduct, which includes any sexual contact (not limited to sexual intercourse) between a rostered person and anyone with whom the rostered person

has a professional/pastoral relationship. While this policy addresses sexual abuse, it should be noted that any kind of abuse is unacceptable behavior.

“Sexual exploitation” is inappropriate sexual conversation, dating or suggestions of sexual involvement by the rostered person, and/or sexual or romantic contact between ministers and parishioners, clients, or counselees.

The Synod is concerned about all types of sexual misconduct by these persons, 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 persons should be reported to the Synod, including, but not limited to, any sexual contact between the minister and a congregant, counselee, employee, or volunteer. Any suspected sexual contact with a minor must be reported to the appropriate governmental agency as required by state laws concerning reporting of child abuse.

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 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, as employer, take timely and appropriate action; the law may prevent the Synod from interfering in the situation. Nevertheless, the synod should be 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 Statement of Policy will assume that the complainant is also the victim of the alleged sexual misconduct, but that may not always be the case.

3. "Rostered Person." As used in this Statement of Policy, “rostered person,” "pastor," and "clergy" include 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.

4. “Minister.” The term “minister” covers pastors, associates in ministry, deaconesses and diaconal ministers. From time to time, the Bishop may authorize the appointment of a lay pastoral associate (LPA) to function in a pastoral role. The terms of this policy could apply in such a situation.

B. The Role of Congregations

The Synod and its member congregations have different responsibilities and different roles to play in preventing and responding to reports of ministerial sexual misconduct. Each ELCA congregation calls its own pastor and/or other rostered leader, determines its minister's duties and responsibilities, supervises its minister's day-to-day ministry. The Synod has neither the authority nor the ability to make those decisions for a congregation. In accordance with the *Constitutions, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America*, it is the congregation, in consultation with the Synod, that finally decides whether to terminate the rostered person's call. Obviously, then, the Church cannot be a safe place unless every one of its member congregations shares its commitment to preventing ministerial sexual misconduct.

This Statement of Policy is the Synod's; it says little about the important role played by congregations in preventing and responding to reports of clergy sexual misconduct. This should not obscure the fact that congregations also have a vital role to play. The Synod strongly urges its member congregations to develop their own sexual misconduct policies. The publication, *Safe Connections: What Parishioners Can Do To Understand and Prevent Clergy Sexual Abuse* is available from the ELCA

Division for Ministry and from Augsburg Fortress, Publishers, Order Code 69-8110. The Synod recommends this publication as a useful resource for congregations addressing this issue.

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 ministerial sexual misconduct invariably create an acute need for such care and leadership. Second, ministers 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 for initiating the formal stage of the disciplinary process. When the bishop provides pastoral care and leadership in the wake of ministerial sexual misconduct, he or she is truly engaged in the Synod's ministry.

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

In every sexual misconduct case, the bishop and his or her staff will attempt to provide for the pastoral care of the victim of the misconduct, the victim's family, the minister who committed the misconduct, the minister's family, members of the minister's present and former congregation(s), the minister's colleagues, and others. However, the bishop and the bishop's staff do not themselves function as a pastor, counselor, advocate, attorney, or other care giver to any of these individuals. 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 interest 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. In unusual circumstances, the fact that the bishop and bishop's staff are responsible to the Synod may require that they act contrary to the wishes of the complainant.

The freedom of the 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 Synod's freedom to decide who will be on its clergy roster, and of the freedom of each congregation to decide who will preach and teach from its pulpit. Nothing in this Statement of Policy is intended to diminish these freedoms in any respect or to create any rights or responsibilities under civil law.

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 ministerial sexual misconduct. This Synod has decided to incorporate those nine elements as follows:

A. Adequate Preparation

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

First, the Synod will not tolerate ministerial sexual misconduct. The Synod will make that clear in educational opportunities that it provides, in the manner in which it responds to reports of clergy sexual

misconduct, in discussions that it has with seminarians and others who seek to join its rosters, and in its public and private statements regarding this issue.

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

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 ministerial sexual misconduct. As the Synod's understanding of this problem changes, this Statement of Policy and educational efforts may change as well.

These preventative 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, as well as ecumenical partners.

B. Initial Contact -- First Response

Even the best preventative measures cannot completely eliminate ministerial 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 ministerial sexual misconduct will be reported, and, perhaps, prevented.

Anyone who knows or suspects that a pastor or other rostered person or minister 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 should contact one of the other people listed in the attachment. Those people -- who may include men and women, clergy and laypersons, Lutherans and non-Lutherans -- have agreed to be available to receive reports of sexual misconduct from complainants who are uncomfortable contacting the bishop directly. However, it must be stressed that these people are acting on behalf of the Synod, and any 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 contact may be made with the bishop or other authorized person by mail, by telephone, by email, or in person. The complainant need not identify herself or himself when she or he first contacts the Synod. The complainant may ask questions anonymously 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 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 minister 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 other person contacted by the

complainant 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. This list may include advocates who are affiliated with the ELCA and advocates who are not. 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 report of ministerial sexual misconduct has been received from an identified complainant, the bishop or bishop's designee 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 bishop or bishop's designee 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 bishop or bishop's designee 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 bishop or bishop's designee 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. 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 designee learns that a child or vulnerable adult may have been neglected or physically or sexually abused, the bishop or bishop's designee 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 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 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 designee will appoint a contact person within the Synod. That contact person (who may be the bishop or bishop's designee) 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.

C. Initial Investigation of the Complaint

After interviewing the complainant, the bishop or bishop's designee will carefully review the information provided by the complainant. If the report appears credible and involves sexual misconduct for which the perpetrator might be disciplined, the bishop or bishop's designee may conduct a preliminary investigation to determine whether information either supporting or contradicting the report exists. This preliminary 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; or (3) interviews of former bishops of the minister, those who served as assistants to former bishops of the pastor, ministers who succeeded the minister at congregations that he or she served, ministers who served

on the same staff with the minister at congregations that he or she served, ministers who presently serve on the same staff with the minister, respected members of congregations that the minister served, respected members of the congregation that the minister now serves; or (4) persons identified by the complainant, or friends, family members, ministers, or counselors of the complainant.

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 minister 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 Minister

The bishop will usually meet with the minister after the preliminary investigation is concluded. The bishop should be accompanied by the bishop's designee or another person. In some cases -- such as when the minister is aware of the complainant's report or when the minister may pose an immediate danger to members of his or her congregation -- the bishop or bishop's designee may meet with the minister immediately after or perhaps even before meeting with the complainant. If the bishop meets alone with the minister, 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 will provide the minister with information regarding the complaint and ask the minister to respond. The bishop may ask the minister to reduce his or her response to writing. The bishop will also (1) assure the minister that, while the Synod does not tolerate sexual misconduct, the Synod will give any minister 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 minister's questions about the policies and procedures of the Synod; (4) express care and concern for the minister, the minister's family, and the affected congregation; (5) strongly discourage the minister from having any contact with the complainant, either directly or indirectly; and (6) invite the minister to contact an advocate and to be accompanied by that advocate through the investigative, and, if necessary, disciplinary processes. If the minister requests, the Synod will assist the minister in finding an advocate. The minister may decline to use an advocate.

Depending upon the circumstances, the bishop may ask the minister 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 minister refuses, the bishop may ask the congregation to impose the restrictions upon the minister. The bishop may also ask the minister to take a leave of absence -- either with or without pay -- until the investigation and/or disciplinary proceedings are concluded. If the minister refuses, the bishop may ask the congregation to place the minister on involuntary leave of absence, or, in extreme circumstances, the bishop may temporarily suspend the minister without prejudice.

In appropriate cases, the bishop may ask the minister to resign his or her call or resign from the roster of the ELCA. The bishop cannot force the minister to submit a resignation. In most cases, only a discipline hearing committee can remove the minister from the clergy roster involuntarily.

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

The bishop or bishop's designee will appoint a contact person within the Synod. That contact person (who may be the bishop or bishop's designee) will keep in regular contact with the minister and will inform the minister of significant developments. That contact person will also be available to respond to the minister's questions and concerns about the process.

E. Assess the Information

After meeting with the minister, the bishop will carefully review the information provided by the complainant, discovered during the preliminary investigation, and provided by the minister. 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 minister to undergo a psycho-diagnostic evaluation; requesting the minister'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 as well.

F. Consultation or Advisory Panel

Reports 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 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 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 minister, 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 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 minister's denial of the report appear credible, and there is no corroborating evidence supporting either version. Numerous other reasons may also cause the bishop to call for a consultation or advisory panel.

G. Formal Hearing

Disciplinary proceedings are the process by which the ELCA determines if a 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 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 "[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.

To briefly summarize the disciplinary process, generally the bishop as “accuser” will initiate the proceedings against a minister, the “accused,” by filing written charges setting forth the offense that the minister is accused of committing -- e.g., "the sexual abuse of another" -- and the alleged facts supporting the charge -- e.g., the name of the person that the minister 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 minister 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 minister. 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 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 minister 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 ministerial sexual misconduct. Although disclosure can increase the short term pain caused by ministerial 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 by the same minister, 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:

1. Disclosure of ministerial sexual misconduct will be made to the leadership of the minister’s congregation, to the members of the minister’s present congregation, to synods where the minister was previously rostered, and to other ministers within the Cluster 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 (1) the minister admits to committing sexual misconduct; (2) the minister resigns his or her call or from the roster of the ELCA after being accused of sexual misconduct; (3) the minister is placed on leave of absence or temporarily suspended in response to an allegation of sexual misconduct; (4) the minister is suspended or removed from the roster as a result of formal disciplinary proceedings; or (5) secular legal proceedings (civil or criminal) are initiated against the 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 be made usually 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 minister 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 sometimes (4) whether the complainant was a member of the minister's congregation or a person to whom the minister 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 minister has denied the allegations, that fact will also be disclosed.

5. Persons who believe that they have been harmed (directly or indirectly) by the minister 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 ministerial 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 minister's misconduct and will help the congregation continue in its mission and ministry for the sake of the Gospel.

REPORTING SEXUAL MISCONDUCT BY MINISTERS OF THE MONTANA SYNOD OF THE ELCA

You may contact one of the following:

The Rev. Jessica Crist, Bishop
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