

Nebraska Synod of the
Evangelical Lutheran Church in America

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

September 10, 1997

I. INTRODUCTION

The Nebraska 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 biblical and theological 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.

These distinctions should not concern a person who is troubled about the sexual conduct of a pastor or rostered layperson. 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 rostered person and a congregant, counselee, employee, or volunteer.

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*. 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 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.

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” includes ordained ministers and rostered lay persons 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 reports of sexual misconduct by rostered persons. Each ELCA congregation calls its own pastor and rostered lay persons, determines their duties and responsibilities, supervises their day-to-day ministry, and decides whether to terminate their call. The Synod has neither the authority nor the ability to make those 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 rostered persons.

This Statement of Policy is the Synod’s, and therefore it says little about the important role played by congregations in preventing and responding to reports of sexual misconduct by rostered persons. 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. This is a useful resource for congregations in 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 all rostered persons. Reports of sexual misconduct invariably create an acute need for such care and leadership. Second, pastors and rostered lay 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 for initiating the formal stage of the disciplinary process.

Every report of 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 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.

When the Synod provides pastoral care and leadership in the wake of 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 harmed by sexual misconduct is a precious one that is constitutionally protected from governmental interference. The same is true of the Synod's freedom to decide who will be on its roster, and of the freedom of each congregation to decide who will serve as its pastors and rostered lay persons. 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 or her staff will attempt to provide pastoral care to the victim of the misconduct, the victim's family, the rostered person who committed the misconduct, the rostered person's family, members of the congregation(s) served presently and/or formerly by the rostered persons, 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 interests and what is in the interests of someone else, the bishop and the bishop's staff are obligated 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 sexual misconduct by rostered persons. This Synod has decided to incorporate those nine elements as follows:

A. Adequate Preparation

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

First, the Synod will not tolerate sexual misconduct by rostered persons. The Synod will make that 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, and in its public and private statements regarding this issue.

Second, the Synod intends to provide ongoing educational opportunities regarding sexual misconduct for pastors, rostered lay persons, congregations, and others. Those efforts will focus on such subjects as the dynamics of sexual misconduct and the impact of such misconduct on its victims. The Synod strongly urges its pastors, rostered lay persons, 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 sexual misconduct. As the Synod's understanding of this problem changes, its 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.

B. Initial Contact – First Response

Even the best preventative measures cannot completely eliminate sexual misconduct by rostered persons. The Synod must always be prepared to respond to reports of misconduct. The more open it is to receiving such reports, the more often sexual misconduct will be reported.

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 an assistant to the bishop. The names, addresses, and telephone numbers of the bishop and his or her assistants are attached to this Statement of Policy. If a complainant is uncomfortable about contacting the bishop or an assistant to the bishop, then the complainant should contact one of the other people listed in the attachment. Those people – who include men and women, clergy and lay persons – 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 bishop of the ELCA will be contacted.) The bishop, assistants to the bishop and first contact persons shall help interpret the Synod's policies and procedures.

A contact may be made with the bishop or other authorized person 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 report of sexual misconduct until the complainant identifies herself or himself and the rostered person involved in the misconduct.

The bishop or other person contacted by the complainant will (1) assure the complainant that the Synod does not tolerate sexual misconduct and takes seriously all reports of such misconduct; (2) explain the Synod's process for responding to reports of sexual misconduct and offer to provide a copy of this Statement of Policy; (3) answer the complainant's questions about the policies and procedures of the Synod; (4) express care and concern for the complainant; (5)

when the complainant is anonymous, encourage the complainant to identify herself or himself and the rostered 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 other person contacted by the complainant may also offer to provide the complainant with a list of advocates who are available to provide support. 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 sexual misconduct has been received from an identified complainant, the bishop and/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. Also, in unusual circumstances, the fact that the bishop or bishop's designee 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 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 may 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 and/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 rostered person would 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 rostered person, those who served as assistants to former bishops of the rostered person, persons who succeeded the rostered person at congregations that he or she served, persons who served on the same staff at congregations that he or she served, persons who presently serve on the same staff, respected members of congregations that he or she served, respected members of the congregation that he or she now serves; or (4) persons identified by the complainant, or friends, family members, pastors or counselors of the complainant.

This preliminary investigation will be conducted as quickly 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 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 investigations.

D. Conversation with the Accused Rostered Person

The bishop will usually meet with the rostered person 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 rostered person is aware of the complainant's report or when the rostered person may pose an immediate danger to members of the congregation he or she serves – the bishop or bishop's designee may meet with the rostered person immediately after or perhaps even before meeting with the complainant. If the bishop must meet alone with the rostered person, 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 rostered person with information regarding the complaint and ask him or her to respond. The bishop may ask the rostered person to reduce his or her response to writing. The bishop will also (1) assure him or her 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, his or her family, and the affected congregation; (5) strongly discourage the rostered person from having any contact with the complainant, either directly or indirectly; (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 him or her in finding an advocate. He or she may decline to use an advocate.

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

The bishop or bishop's designee will discuss with the rostered person his or her needs for pastoral care or professional counseling, as well as the care of his or her family. If requested, the bishop or bishop's designee 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, pastor, or counselor to the rostered person or his or her family.

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

E. Assess the Information

After meeting with the rostered person, 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 psychodiagnostic evaluation; requesting the congregation currently served by the rostered person to take some action; convening a consultation or advisory panel; or initiating the formal disciplinary process.

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* (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 persons who are asked to recommend a course of action to the bishop. Before making the recommendations, the panel may interview the complainant, the rostered person, 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 rostered person's denial of the report 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

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 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 ...* (January, 1994) to include "adultery, promiscuity, the sexual abuse of another, or the misuse of counseling relationships for sexual favors." *Definitions and Guidelines* is available from the Synod.

To briefly summarize the disciplinary process, generally, the bishop 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., "the sexual abuse of another" – and the alleged facts supporting the charge – e.g., the name of the person(s) that the rostered person is alleged to have abused and the date(s), place(s), time(s), and other circumstances of the alleged abuse(s). 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 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 the 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 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 confirmed sexual misconduct by rostered persons. 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 by the same rostered person, 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 sexual misconduct will be made to the leadership of the congregation, the members of the congregation currently served by the rostered person, the members of his or her 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 the rostered person (1) admits to committing sexual misconduct; (2) resigns his or her call or from the roster of the ELCA after being accused of sexual misconduct; (3) is placed on leave of absence or temporarily suspended in response to an allegation of sexual misconduct; (4) is suspended or removed from the roster as a result of formal disciplinary proceedings; or (5) has secular legal proceedings (civil or criminal) initiated against him or her.
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 the bishop.

4. To protect the privacy of those harmed by 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) whether the complainant was an adult or a minor at the time of the misconduct, and (3) whether the complainant was a member of the congregation currently served by the rostered person or a person to whom he or she 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.

5. Persons who believe that they have been harmed (directly or indirectly) by the rostered person 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 the primary and secondary victims of sexual misconduct to find resource persons and materials that might help them on their journey to healing.