

STATEMENT OF POLICY ON SEXUAL ETHICS RELATED TO SEXUAL MISCONDUCT IN MINISTRY

Florida-Bahamas Synod
Evangelical Lutheran Church in America

I. INTRODUCTION

Sexuality is a good gift of God. The faithful response to God who has created us male and female is our commitment to use our sexuality only in ways that glorify God.

When God's gift of sexuality is used faithfully, the Church is a safe place for all to worship, learn, work, and be helped in a manner that is free from sexual exploitation, abuse or harassment. When the Church becomes an unsafe place, the integrity of the gospel is impaired, particularly among those who are victimized.

The Florida-Bahamas Synod (this 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 this Synod intends to fulfill these commitments. This Synod recognizes that responding to allegations of sexual misconduct requires determination, sensitivity, flexibility, respect and care for all persons affected, including the victim, the rostered person, their families and friends, the congregation, this Synod, and the whole church. This policy is intended to provide a framework for guidance in dealing with these cases while preserving this Synod's discretion to treat each person and each case in a manner necessitated by differing facts, circumstances, and needs of those affected. This policy cannot be imposed as rigid law, binding this 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 pastor or rostered layperson under Chapter 20 of *Constitutions, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America*.

While these distinctions exist, this Synod is concerned about all types of sexual misconduct. A person, who is troubled about the sexual conduct of a pastor or rostered lay person, is encouraged to report any such sexual misconduct to this Synod. This includes, but is not limited to, any sexual contact between a rostered person and a congregant, counselee, employee, intern, or volunteer.

Additionally, commercial sexual exploitation is not tolerated. Sexual exploitation includes viewing pornographic videos, downloading pornography from the internet, visiting strip clubs, engaging in simulated sex by phone or computer, using escort services, participating in sex tourism.

[A Message on Commercial Sexual Exploitation](#), adopted by the Church Council, can be downloaded at elca.org by searching *commercial sexual exploitation*.

2. "**Complainant.**" As used in this Statement of Policy, "complainant" means a person who reports sexual misconduct to this 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.

It must also be noted, that any suspected sexual misconduct that involves a minor must be reported to the appropriate governmental agency as required by state laws concerning the reporting of child abuse.

3. "**Rostered Person**" or "**Rostered Leader.**" As used in this Statement of Policy, "rostered person" or "rostered leader" includes, clergy, associates in ministry, rostered lay persons, and others on the official rosters of the ELCA.

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 a rostered person serving in a call in another circumstance, or to rostered person who is presently not under call.

B. The Role of Congregations

This Synod and its member congregations have different responsibilities and thus different roles to play in preventing and responding to reports of clergy or lay rostered person sexual misconduct. Each ELCA congregation calls its rostered leaders, determines the rostered leaders' duties and responsibilities, oversees its rostered leaders' day-to-day ministry, and may, as the constitutions of this church provide, terminate its rostered leaders' call. This Synod has neither the authority nor the ability to make these 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 Office of the Bishop, which finally decides whether to terminate the rostered person's call. The congregation is also authorized to initiate disciplinary action against a rostered leader or member of the congregation. Making the church a safe place is the work of each individual congregation of this Synod as well as this Synod as a whole.

This Statement of Policy is this Synod's policy; it says little about the important role played by congregations in preventing and responding to reports of rostered leader sexual misconduct. This should not obscure the fact that congregations also have a vital role to play. This Synod strongly urges its member congregations to develop their own sexual misconduct policies and has an illustrative example of such a congregation policy for perusal

as guidance. The publication, Safe Connections: What Parishioners Can Do to Understand and Prevent Sexual Abuse is available to download at elca.org and search “Safe Connections”. This publication is a useful resource for congregations in addressing this issue.

This Synod should be consulted in all cases of suspected sexual misconduct involving rostered persons. However, this Synod may not be able to assume primary responsibility for addressing all allegations of sexual misconduct by rostered persons. For example, in the case where a rostered leader is accused of sexually harassing another employee of the congregation, civil law may require that the congregation, as employer, take timely and appropriate action; the law may prevent this Synod from interfering in the situation.

C. Role of this Synod

This Synod's role is essentially twofold. First, the bishop is responsible for providing pastoral care and leadership to this Synod's congregations and rostered persons. Reports of sexual misconduct by a rostered leader invariably creates an acute need for such care and leadership. Second, rostered leaders who commit sexual misconduct may be disciplined - that is, they may be suspended or removed from the roster of the ELCA. The bishop is primarily responsible for overseeing the preliminary or consultation stage of the disciplinary process and, usually, the bishop initiates the formal stage of the disciplinary process, if necessary.

It is understood that every report of sexual misconduct by rostered persons involves unique individuals and unique circumstances. This Statement of Policy describes the general approach that this Synod will follow in responding to reports of rostered leader sexual misconduct. It will not be appropriate or even possible for this Synod to follow this approach in every case. This Synod reserves the right to depart from this Statement of Policy at any time and for any reason as deemed best in the particular circumstance.

When this Synod through the Office of the Bishop provides pastoral care and leadership in the wake of sexual misconduct by a rostered person, it is performing acts of ministry. The freedom of this 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 this Synod's freedom to decide who will be on its clergy roster or its lay rosters, and of the freedom of each congregation to call those who will provide its ministry of Word and Sacrament, or Word and Service. Nothing in this Statement of Policy is intended to diminish these freedoms in any respect or to create any legal rights or responsibilities under civil law.

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, the members of the rostered person's congregation, the rostered person's colleagues, and others. However, the bishop and the bishop's staff do not themselves function as a pastor, counselor, advocate, attorney, or other caregiver to any of these individuals. The ultimate responsibility of the bishop and his or her staff is to this Synod as a whole rather than to any one individual.

II. SYNOD POLICY

An ELCA Strategy for Responding to Sexual Abuse in the Church (Nov. 1992) recommended that nine elements be include in any synodical policy regarding clergy sexual misconduct and applies as well to sexual misconduct of lay rostered persons. This Synod has decided to incorporate those nine elements as follows:

A. Adequate Preparation

This Synod is committed to preventing sexual misconduct by rostered leaders in the following ways:

First, this Synod will not tolerate sexual misconduct by rostered leaders. This Synod will make that clear in preventive educational opportunities that it provides, in the manner in which it responds to reports of rostered person sexual misconduct, in discussions that it has with seminarians and candidates who seek to become rostered in this church, and in its public and private statements regarding this issue. This Synod will attempt to respond appropriately to each situation.

Second, this Synod intends to provide or promote ongoing preventive educational opportunities regarding sexual misconduct by rostered leaders for clergy, lay rostered persons, congregations, and others. Those efforts will focus on such subjects as prevention of sexual misconduct, the impact of such misconduct on its victims, and how congregations can help to make churches safe places. This Synod strongly urges its pastors, lay rostered leaders and congregations to seek and take advantage of appropriate educational programs and opportunities that may be offered by this Synod or others.

Additionally, the bishop and the bishop's staff will continue to take advantage of educational opportunities that are available to them. This Synod recognizes that society generally and churches particularly have much to learn about sexual misconduct by rostered persons. As this Synod's understanding of these problems change, its educational efforts and policies may change as well.

This Synod's preventive efforts are intended to complement similar efforts by this Synod's member congregations, by the churchwide organization, by ELCA seminaries, and by other entities affiliated with the ELCA.

B. Initial Contact - First Response

Even the best preventive measures cannot completely eliminate sexual misconduct by rostered persons. This Synod must always be prepared to respond to reports of misconduct. The more open this Synod is to receiving such reports, the more often rostered leader sexual misconduct will be reported and possibly prevented.

Anyone who knows or suspects that a rostered person is or may have been involved in sexual misconduct should report that knowledge or suspicion to the bishop or an assistant to

the bishop. If a complainant is uncomfortable about contacting the bishop or an assistant to the bishop, then the complainant is encouraged to contact one of the other people listed in this Synod's *Keeping the Church a Safe and Sacred Place for All* brochure. Those listed have agreed to be available to receive reports of sexual misconduct from complainants who may feel uncomfortable contacting the bishop or an assistant directly. However, it must be noted that these persons listed in the First Contact brochure are acting on behalf of this Synod and the bishop, 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 in person, or by telephone, mail or other electronic communication. The complainant need not identify herself or himself when she or he first contacts this Synod. The complainant may anonymously ask questions about how this Synod would respond to a particular complaint of misconduct. However, this Synod can do little about a report of sexual misconduct until the complainant agrees to identify herself or himself, and, the rostered person involved in the misconduct.

The bishop or other person contacted by the complainant will: (1) attempt to assure the complainant that this Synod does not tolerate sexual misconduct and takes seriously all reports of such misconduct; (2) explain this 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 this 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 this Synod's personnel, the complainant may be accompanied by a friend, family member, or other 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 persons who are available to provide such support and to help interpret this Synod's policies and procedures. This list may include persons who are affiliated with the ELCA and persons who are not. The complainant may contact a support person or advocate from this list, or another of his or her choice, and may be accompanied by that support person or advocate through the reporting, investigative, and, if necessary, disciplinary processes. The complainant is welcome to use a support person such as a friend or family member, or to decline to use a support person.

After a report of sexual misconduct by a rostered person 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. With the approval of the complainant, the bishop or bishop's designee may desire to include another person in the interview to help assure accuracy of hearing. 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 place the information in written form or to sign a written summary statement prepared by this Synod after the interview. The bishop or bishop's designee will also normally 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 the 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, this Synod will respect the wishes of the complainant regarding confidentiality. However, at some point, this Synod may be required by civil law or by the governing documents of the ELCA to disclose the identity of the complainant. Also, the identity of the complainant may become known despite the best efforts of this Synod to protect it. This Synod cannot guarantee confidentiality to a complainant.

If the bishop or bishop's designee learns that a child may have been neglected or physically or sexually abused, the bishop or bishop's designee is legally required to report that information to law enforcement authorities.

The bishop or bishop's designee will discuss with the complainant her or his needs for pastoral care and may suggest 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 should an employee of this Synod function as the complainant's advocate, pastor, or counselor.

The bishop or bishop's designee will inform the complainant of significant developments and 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 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, but is not limited to: (1) further discussions with the complainant; (2) a review of the records of this Synod, another ELCA synod, the churchwide expression of the ELCA, or an entity affiliated with the ELCA; (3) interviews of former bishops of the rostered person, those who served as assistants to former bishops of the rostered person, pastors or other rostered leaders who succeeded the rostered person in question at congregations that he or she served, other rostered leaders who presently serve on the same staff with the rostered person being investigated, respected members of congregations that the rostered person served, members of the congregation that the rostered person 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 is possible under the circumstances. All of those contacted will be asked to keep the contact in strictest confidence.

If a criminal investigation, or other official investigation by law enforcement authorities, is underway, this Synod may be required to postpone its own investigation pending the outcome of the civil inquiry, investigation or prosecution. However, a final determination in a civil or criminal legal proceeding does not necessarily dictate the direction or outcome of the church's disciplinary process related to similar or the same allegations.

D. Conversation with the Rostered Person

The bishop will usually meet with the accused rostered person after the preliminary investigation is concluded, often in the company of another person designated by the bishop. In some cases, such as when the rostered person is aware of the complainant's report or when the rostered person is deemed to pose an immediate danger to members of his or her congregation, the bishop or bishop's designee may meet with the accused rostered person immediately after, or perhaps even before, meeting with the complainant. If the bishop must meet alone with the rostered person, then the bishop will clarify that the meeting is not confidential, and that the bishop may disclose anything that he or she is told.

At this meeting, the bishop will provide the rostered person with information regarding the complaint and ask the rostered person to respond. The bishop may ask that the rostered person to place his or her response in written form. The bishop will also: (1) assure the rostered person, that while this Synod does not tolerate sexual misconduct, this Synod will give any rostered person who denies an allegation of sexual misconduct a full and fair opportunity to contest it; (2) explain this Synod's process for responding to reports of sexual misconduct and provide a copy of the Statement of Policy; (3) answer the rostered person's questions about the policies and procedures of this 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, unless the contact is initiated or requested by the complainant; and (6) invite the rostered person to contact a support person or advocate and to be accompanied by that support person or advocate through the investigative, and, if necessary, disciplinary processes. If the rostered person desires, this Synod will assist the rostered person in finding a support person or advocate. The rostered person may also decline to use a support person or advocate.

Depending upon the circumstances, the bishop may ask the rostered person to voluntarily agree to certain restrictions upon his or her ministry until the investigation and/or disciplinary proceedings are concluded. If the rostered person 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 the rostered person 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. In appropriate cases, the bishop may also ask the rostered person to resign his or her call or resign from the roster of the ELCA. The bishop cannot force the rostered person to resign. In most cases, only a discipline hearing committee can remove the rostered person from the roster.

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 the rostered person's family. If the rostered person requests, 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 this Synod function as advocate, pastor, or counselor to the rostered person or the rostered person's family.

The bishop or bishop's designee will inform the accused rostered person of significant developments and also 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, 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: taking no further action; pursuing 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

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 this 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 accused rostered person, the bishop, the bishop's designee, and 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 whom to believe.

G. Formal Hearing

Disciplinary proceeding is the process by which the ELCA determines if a rostered person should be suspended, removed from its roster or otherwise disciplined. The process is governed by Chapter 20 of the *Constitution, Bylaws and Continuing Resolutions of the ELCA* and by the *Rules Governing Disciplinary Proceedings*. This chapter of the Constitution also describes in part causes for which a rostered person shall be subject to discipline.

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, detailing the alleged facts supporting the charge, and describing the circumstances of the alleged sexual misconduct. A committee of twelve persons –six from a panel pre-elected by this Synod and six from a panel pre-elected by the Churchwide Assembly -- is convened to hold a hearing on the charges. The hearing resembles a court trial with an appointed hearing officer presiding. 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 witnesses.

There is an alternative discipline process, described in ELCA Bylaws 20.23.01 through 20.23.09, which shall apply 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. An appeals process is also provided in the ELCA bylaws.

H. Disclosure

Except in unusual circumstances, this Synod will disclose all serious allegations of clergy or lay roster person sexual misconduct. Although disclosure can increase the short term pain caused by sexual misconduct by a rostered person, 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 such disclosure will be made will vary from case to case. In general, though, this Synod will abide by the following guidelines:

1. Disclosure of sexual misconduct by a rostered person will be made to the leadership of the rostered person's congregation, the members of the rostered person's present congregation, and as deemed appropriate, to other congregations where the rostered person has served, to other rostered leaders within the conference or this Synod. In some situations, wider disclosure to previous ministry settings of the rostered leader or even to the news media may be made as well.

2. In most cases, 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 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 ELCA roster as a result of formal disciplinary proceedings; or (5) secular legal proceedings (civil or criminal) are initiated against the rostered person. Other circumstances may give cause for disclosure, as well.

3. This Synod intends to work closely with the congregational leaders regarding appropriate disclosure to the members of the congregation. The victim's concerns regarding disclosure will be considered. The actual announcement to the membership of the congregation will usually be made by one or more of the congregational leaders or by the bishop.

4. To protect the privacy of those alleged to have been 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 sometimes, (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 should never include the name of the complainant or facts that will readily identify the complainant to others. 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, this Synod, or others who have agreed to be available to those persons.

I. Follow-up

This Synod will work with congregations and others to help ensure that care and support are available to those harmed by sexual misconduct by rostered persons. As noted above, this Synod cannot directly provide this care, but it will assist the primary and secondary victims of sexual misconduct to find human and material resources that might help them on their journey towards healing.

This Synod will assist the congregation in dealing with the pain and disruption caused by rostered leader sexual misconduct and will help the congregation continue in its mission and ministry for the sake of the Gospel.

(This policy supersedes all previous statements of policy.)

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