

# APPENDIX A

## FOR INFORMATION ONLY

### **OPTIONS FOR IMPLEMENTING POLICY/PROCEDURES FOR DEALING WITH COMPLAINTS OF SEXUAL MISCONDUCT AGAINST CLERGY<sup>1</sup>**

All people are created by God in the divine image, and human sexuality is a gracious gift of God. The family of God is called to stand firmly and pastorally against all forms of abuse. Sexual abuse betrays God's creation, inflicts grievous suffering on the victims, and rends the fabric of the whole community of the people of God.

In 1989 at its first Churchwide Assembly the Evangelical Lutheran Church in America committed itself to be a "safe place for all persons" by working to eliminate sexual abuse. The assembly made it clear that this church will not tolerate any form of sexual abuse by any of its personnel. It called on each congregation and place of ministry to become such a "safe place."

In living out this understanding of the congregation as a "safe place," the role of the pastor is critical. The Evangelical Lutheran Church in America expects its ordained ministers to be diligent and faithful in the exercise of the ministry, with a life and conduct that are above reproach (ELCA 7.22). Because of the nature of the pastoral office and the dynamics of trust, confidentiality, intimacy and power that characterize a pastor's relationship with those she/he serves, sexual abuse can result in profound damage to individuals, to congregations, and to the church's ability to proclaim the Word of God's grace.

Thus, ordained ministers are subject to discipline for "conduct incompatible with the character of the ministerial office" (ELCA 20.21.01.b). Specifically, "in all matters of morality and personal ethics, this church expects its ordained ministers to be exemplary in conduct" (Definition and Guidelines for Discipline). In sexual matters, the following are the expectations of clergy: "The biblical understanding which this church affirms is that the normative setting for sexual intercourse is marriage. In keeping with this understanding, chastity before marriage and fidelity within marriage are the norm. Adultery, promiscuity, the sexual abuse of another, or the misuse of counseling relationships for sexual favors constitute conduct that is incompatible with the charter of the ministerial office" (Definition and Guidelines for Discipline).

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<sup>1</sup>Rostered persons in the ELCA include ordained clergy and associates in ministry. At this time, there are no uniform discipline procedures for associates in ministry. If the 1993 Churchwide Assembly accepts the recommendations of the Study of Ministry, references in this document to clergy will apply to associates in ministry as well.

To deal with complaints of sexual misconduct against non-rostered synod staff, synods ought to examine the procedures in this document (especially steps 1-4, 8, 9) and develop appropriate personnel policies in each synod.

For complaints against non-rostered employees of congregations, steps 1-4, 8, 9, can be used by congregations. Congregations may wish to consult the synod for advice.

As all pastors are rostered in individual synods, matters of potential discipline are the responsibility of synods. The bishop of each synod bears the responsibility for overseeing and administering the work of the synod and providing pastoral care and leadership for the synod's congregations and ordained ministers. The bishop's responsibilities include upholding the standards of conduct for ordained ministers in the synod and overseeing the ELCA's disciplinary process

within the synod. As the synod's pastor, the bishop also works to restore health and wholeness to all whose lives—individual and communal—have been affected by sexual misconduct by clergy.

In keeping with ELCA polity, the 1989 Churchwide Assembly called upon each synod to create policies and procedures to empower victims to report incidents of sexual abuse, provide healing for victims, and safeguard the rights of those accused. Since that time, several synods have developed such policies. All synods are now called upon to review existing policies and to develop new policies to deal compassionately and justly with allegations of sexual misconduct, and to establish an inviting and hospitable atmosphere for hearing complaints of sexual abuse by clergy.

The following recommendations build on the deepening experience in synods as this church strives to deal justly and pastorally with matters related to sexual abuse by clergy.

- \* **The material in bold type** is offered to synods for guidance regarding essential elements of policy and procedure as each synod works to develop policies that reflect its specific circumstances and particular contexts for ministry.

State laws may significantly affect the shaping of synod policy, with significant differences from state to state about the definition of child sexual abuse, who are mandatory reporters of child sexual abuse, definitions of sexual offenses such as sexual exploitation by a counselor. It is therefore essential that each synod investigate its own state's laws on the many kinds of sexual offenses, and that the state laws be written specifically into the synod's policy and procedures.

- \* The material that is in regular type is offered as suggestions and options to be considered and adapted as appropriate by any synod in its own particular policy.

These essential elements are set forth as a sequence of steps that would normally be followed in responding to a specific complaint. In applying any policy to a specific situation, some deviation in sequence may be appropriate.

## **Step 1**

### **Adequate Preparation**

**A synod is in the best position to receive and process a complaint if it is ready to do that. Being prepared to receive a complaint implies that the synod has policy and procedures in place and that a synod has established an inviting and hospitable atmosphere for hearing complaints of sexual abuse by clergy. In addition to an ongoing educational effort about sexual abuse, a synod needs to provide clear and well publicized information to congregations and related agencies, and institutions on how the synod will respond—and who, within the synod structure, should be contacted. Adequate preparation also implies an effort of theological reflection about sexual abuse in the church.**

Synods need to provide clear and well-publicized information to congregations and related agencies and institutions on how the synod will respond—and who, within the synod structure, should be contacted.

A fully developed educational strategy is developed elsewhere. Some options for providing a hospitable atmosphere may include:

- Informing all congregations of the synod of the church's perspective and the synod's policy and procedures, with a careful explanation of how they work. This may be done best at a plenary meeting of a synod assembly, with added workshops to answer questions and provide further information.
- Informing groups in the synod such as the Women of the ELCA, the Lutheran Youth Organization, Lutheran Men in Mission, the Lutheran social service agencies and camps.
- Creating special groups for receiving an initial complaint. There are several creative examples in synods:

The Minneapolis Synod and Saint Paul Area Synod employ an Ombudsteam of trained professionals (therapists, chaplains, sexual assault counselors, pastors) to receive complaints and make recommendations to synod staff.

The Southwestern Minnesota Synod has created a First Response Team of both laity and clergy whose only purpose is to hear a complaint and refer it to the appropriate synod staff member.

- Identifying and publicizing the names of individuals in your synod or nearby area with special expertise in dealing with sexual abuse. These resource people may conduct workshops, provide adult forums or serve as consultants to your synod processes.
- Scheduling an Awareness Sunday to highlight possible abuses, healing, and prevention in the congregations. Adult forums, Sunday School classes, prayers of the church, special bulletin inserts, sermons on the topic, special services of healing for individuals or communities, public announcements of whom to contact, could all be used.
- Giving the topic priority from appropriate synod committees, such as family life, education, youth, social ministry, inclusiveness, vocations committees. The synod newsletter can provide announcements from all these groups as well as reminders about whom to contact with a complaint.

## **Step 2**

### **Initial Contact—First Response**

**Each bishop designates a qualified person (who may be the bishop) to hear fully and promptly the complainant's story, to assure the complainant that this church takes sexual abuse by clergy seriously, to provide information about the synodical procedure and to respond with pastoral concern to the complainant.**

The following options may be useful suggestions for your synod's procedures.

## **Appointment of a designated person**

Each synod needs at least one designated person qualified to be the case manager for complaints of sexual abuse by clergy and authorized to provide oversight of the handling of a complaint from start to finish. This coordinated case management ensures that conditions are in place for fair, consistent, timely and appropriate responses to complaints.

Who should be designated? There are many possibilities. Some of these include:

- the bishop may prefer to handle all such complaints
- an assistant to the bishop may be designated

In synods without staff other than the bishop, or with few available resources, other options may be useful:

- a trained person from a near-by synod, such as a synod assistant, may be borrowed to deal with sexual abuse complaints.
- a therapist or other professional in the field of sexual abuse may be designated as the synod's contact person and case manager.

What does “qualified” mean? Once again, several possibilities exist at the present time.

- Some bishops and synod staff have received a baptism by fire. Sharing their experiences with others can be a source of learning for the church. Asking the advice and experience of these resource persons is already common. The church affirms with gratitude this way of learning.
- The ecumenical Center for the Prevention of Sexual and Domestic Violence, Seattle, Washington, offers many training sessions specifically related to sexual abuse by clergy.
- The training at many rape crisis centers and battered women's shelters may provide a local foundation for the awareness and skills needed. In some areas, state, county, and municipal agencies may provide training sessions specific to the dynamics of sexual abuse.
- In some areas, training for advocates in cases of clergy sexual misconduct may bring together secular and religious professionals to provide basic information and skill-building. The Minnesota Council of Churches is an example.
- The ELCA General Counsel and the Commission for Women may provide assistance upon request.
- A synod, group of synods, or a region, may wish to design a special training program for its unique concerns.

## **Hear the Complainant's Story**

The bishop or her/his designated representative should understand the dynamics of sexual abuse, the healing needs of victims, and the process for investigation/discipline. It is important that synods avoid revictimization of the complainant, keep to a minimum the number of times a victim needs to repeat her/his story, and carry out the interview process in a way that lessens fear and anxiety. It is important that complainants not feel blamed,

shamed, or punished by representatives of the church. More than one meeting may be necessary to establish the trust and rapport necessary for a full and frank discussion of the allegations and their implications.

Hearing the complainant's story is both the first step in pastoral care and also the first step in an investigation. It is helpful to assess the complainant's emotional state at a first meeting. Some have never disclosed to anyone before, or only to one other person. The readiness of these individuals to share fully may be very different from those who have been in therapy for some time before disclosing to a representative of the church.

The initial response is full attention. When the complainant is comfortable with the idea, detailed notes on the story should be taken. It is important that there be an accurate recording of the reported information. Detailed notes can be useful both for respectful pastoral care of each individual and for accuracy in potential discipline proceedings. When there are multiple complainants, it can be confusing if notes are not available. These records should include, as is possible,:

- a description of the sexual behavior(s) involved, as specifically as possible;
- the status or position of the pastor involved (e.g., pastor of a congregation, youth minister, pastoral counselor);
- the date(s) of the behavior(s) alleged;
- the status of the complainant at the time of the incident(s) (e.g., member of the congregation, employee of the congregation, member of youth group; whether the complainant was in counseling with the pastor in question when the sexual activity took place);
- the age of the complainant at the time of the incident(s) described;
- the consequences or aftermath for the complainant (e.g., leaving the congregation, spiritual and emotional crises, therapy);
- information about others who may have experienced similar abuse or may have witnessed the alleged abuse.

It is useful to invite complainants to initial these notes when the interview is over, to signal an agreement that the notes represent a fair and complete account of the information that has been given.

If the complainant is a minor, or was a minor at the time of the sexual abuse: Many states mandate reporting on the part of certain professionals. In some states clergy are exempt from mandatory reporting. Write that state requirement into your policy, including the specific agency to which the report must be submitted.

The church's call to care for victims has strong implications. Almost all professionals in the field of child sexual abuse are convinced that reporting complaints of child sexual abuse is a strong ethical obligation. Individuals and organizations like churches are helpless to stop child sexual abuse without using protective services. While there may be doubt in some communities about the ability of these agencies to perform perfectly in every case, that does not alleviate the moral responsibility to report. It is important to clarify the value of reporting the incident(s) before receiving a report from a minor.

(It may be important to get to know the professionals in the social service agencies in each synod as part of the education and training of staff.)

It is extremely important to inform the complainant of the intention to report to a state agency. It may also be important to encourage and empower the complainant to make the report themselves. If the complainant can make this report, this is ideal. However, it may be extremely difficult for a child victim or a family member of a child victim to report themselves. They may actually wish that someone else would report—after all, they have disclosed to you, and by doing so they asked for help.

This may not be comfortable for individuals who have not had experience doing so. Some examples of ways to approach this conversation include:

- “I am required by law (or the ethics of my profession) to report this to the authorities. I would prefer you to do that. Here is the phone number and the name of a social worker I know and trust. I will make a follow-up call to discharge my responsibility.”
- “We want you to be safe, but we cannot make that happen by ourselves. We need help from the agencies that have the power to make this stop.”

After the call to the authorities, a second call needs to be made back to the complainant. “I have made the call. State law says that within 24 hours, there will be an investigation opened. I’m here for you.”

### **Clarify the Church’s Position on Sexual Abuse**

The person hearing the complaint states the stance of the church on matters of sexual abuse, assures the complainant that the concern has been heard and that there will be an investigation into the complaint.

The most important concerns here are pastoral. It may be extremely important to say:

- We take your complaint very seriously.
- I am sorry to hear what you have been through.
- We are sorry that you have this story to tell.

Avoid making statements that assume motives, suggest action, or imply a conclusion or verdict on your part without the benefit of an investigation. Avoid saying things like this:

- I’m sure she/he meant no harm.
- Surely you misinterpreted.
- That kind of behavior was acceptable in the old days so we have to make allowances.
- She/he has needs too.
- Can’t you forgive and forget?
- What did you do to bring this on?
- It takes two to tango.

These kinds of statements will be taken to mean that the church's stance is to identify with the pastor in question and not with the complainant. And while the church's stance includes care and responsibility toward alleged abusers (see step 4 below), this is not the time to express them.

### **Provide information to the complainant about synodical procedure**

The bishop or designated staff informs complainants about:

- the synodical process for dealing with matters of sexual misconduct by clergy.
  - It helps to have a written outline of the procedure to give to the complainant as well as to go through the process orally.
- information on issues relating to confidentiality and its limits.
  - If designated staff hear the report, they need to be clear that they will report the substance of the complaint to the bishop.
  - Anyone hearing a complaint may find it advisable to be clear that they will not release the complainant's identity to the pastor in question, the congregation, the media, or anyone else (unless there is a minor involved, see above).
  - In cases with multiple complainants, some may wish to be put in touch with other complainants. Usually legal staff will discourage this until after a disciplinary process is done or the pastor in question resigns from the roster. After this point, always explain the circumstances carefully and ask permission of each complainant before putting them in touch with each other.
- projected timeline for dealing with this specific complaint. Two slightly separate points need to be considered here:
  - the approximate dates or schedule for activities related to the procedure;
  - a commitment to keep the complainant informed on a regular basis. (For instance, promptly after each step of the process; on a weekly basis, etc.)

Encourage people to ask any questions they have now, or at any later time.

### **Express pastoral concern for the needs of the complainant**

The bishop or designated staff responds with pastoral concern to the wants/needs of the complainant and discusses options.

“What do you want to have happen?” may be a useful question. Listen carefully to the response, as it may guide subsequent steps. On the other hand, complainants may not always know right away just what they want. Sometimes they are not familiar enough with the church to know what options might be possible. Asking at more than one point in the process may be helpful. Asking clarifying questions can help a complainant to formulate their wants and needs. It is particularly important to give people permission to know they have a right to wants and needs in the church's processes, for there will also be parts of the process when people are constrained.

You may wish to suggest options that the complainant has not thought of before. Some complainants are in shock because they have only recently realized what happened to them; others do not understand the specific ways the church works.

Some needs of complainants which require pastoral concern include:

- a desire to know that the church cares about them
- a desire that someone from the church apologizes or expresses regret about what has happened to them
- a desire that the pastor stop doing what she or he is doing to members
- a desire to prevent others from being victimized as they were
- a desire to confront the sexually abusive pastor and explain just exactly what damage the complainant experienced
- a desire to heal from the sexual abuse experienced, possibly including therapy
- a desire to have therapy costs reimbursed or shared by the church
- a desire to see justice done
- a desire to see established policies and procedures be implemented, or implemented in a fair and consistent way
- a desire to have the abusive pastor educated, punished, or removed from the ministry
- a desire to find a representative of the church who understands and will act
- a desire for spiritual healing; answering of spiritual or theological questions or crises that have resulted from the abuse
- a desire that the promises of the gospel be kept, and/or that sin be acknowledged and repented
- a desire for revenge
- and many others

Complainants' desires are not always realistic. It is frequent for complainants to say that they do not want the offending pastor removed from the ministry. You may have to inform them, gently, that this is up to the bishop to decide after a full investigation.

### **Step 3**

#### **Initial Investigation of the Complaint**

**The bishop (together with such individuals as the bishop designates) engages in an initial review of the complaint to determine what additional investigation is necessary, whether there may be additional complainants, how the complaining witness's story can be best documented, whether state law may have implications for the process, whether other synods need to be involved, how the complainant's story may be corroborated, whether immediate intervention with the pastor in question is necessary, and like matters. At the**

**same time the bishop should determine how to provide for the pastoral care and the needs of the complainant. A complainant has a right to an advocate of her/his choosing at all meetings.**

The following issues may be important considerations at an early stage in the process, depending on the scope and severity of the complaint:

### **Initial issues for decision and action**

**Immediate action.** Many complaints concern behavior in the past, even long ago. This may change as more people become aware of the stance of the church and the way to make complaints.

If the behavior is current, a plan for immediate intervention may be required to interrupt the abusive behavior. Sometimes this may involve a legal action (such as reporting the sexual abuse of a minor to the authorities), or an immediate temporary suspension of the pastor by the bishop.

**Jurisdiction.** The bishop of the synod where the pastor in question is currently rostered has jurisdiction over the handling of the case. Complications may arise where either or both the complainant and the pastor in question have moved from synod to synod in the time since the alleged abuse occurred. In cases where more than one synod is involved, it is assumed that there will be free and full cooperation with the bishop who has jurisdiction. It is also assumed that there will be assistance with costs and with pastoral care.

In cases where more than one synod is involved, it is important to ascertain jurisdiction for dealing with the complaint and to make necessary contact with the bishops of all synods involved in order to determine responsibilities, share information, and provide for coordination of efforts.

When the complainant resides or reports in another synod than the pastor in question, there are choices. Some synods prefer to pass the complainant along immediately to the synod with jurisdiction. Others may be willing to listen to the complainant's story and provide for the pastoral care needs of the complainant. In this case it needs to be explained promptly that all this information needs to be passed along immediately to the synod with jurisdiction over the pastor in question.

The involvement of several synods may be of particular concern with regard to money and the costs of the case involved. No single item so stands out among the variations between synods as the different resources of money and people which are available. It is essential that there be fairness in sharing the costs associated with a particular complaint, and that bishops negotiate the sharing of costs with each other in a fair and equitable manner.

**State Law.** In cases where the victim is (was) a child at the time of the abuse, comply with state law in the reporting of the allegation to the proper civil authority in the state in which the offense occurred.

**Legal Counsel.** Depending upon the severity of the complaint, consult with legal counsel.

## Further investigation

Further investigation will be needed in most instances. The following should be considered:

Seeking additional information. Allow sufficient time for an efficient investigation. (Within five business days is reasonable for an investigation to begin.) Staff have to balance, on the one hand, the need for a thorough investigation, which may take time, with the need of the complainant for a response.

In some cases with many complainants, investigators may be overwhelmed by the number and scope of the abusive behaviors. All victims do not have to be complainants in order for the bishop to act decisively and fairly. Bishops need enough evidence to have reason to move to the next step (a conversation with the pastor in question). Bishops differ in the cautiousness and thoroughness with which they prepare for a conversation with the pastor in question. Especially where there are multiple complainants, it may be unnecessary to document every possible complaining witness.

The specifics of the complaint provide statements of alleged fact that may allow an investigation to find corroborating information. If the complaint asserts that sexual contact occurred in a motel, for instance, there may be records available which can cast light upon the complaint.

Determine other sources of information to verify, corroborate or disprove the allegation. Sources and trails for additional information may be virtually infinite. The facts as they are alleged suggest the best lines of investigation and discovery. Follow the clues provided by the complainant and consult the synod lawyer.

This may include seeking information from other people:

- the complainant may have some basis for identifying other possible victims;
- former bishops who previously presided over synods where the pastor in question has served, including bishops of predecessor church bodies;
- subsequent pastors of the congregation where the abuse occurred may have heard of something that bears on the previous pastor's conduct;
- should pastoral confidentiality be invoked, the investigator may ask the pastor to request those members with such specific knowledge to contact immediately the bishop with jurisdiction;
- in multiple staff situations, other staff who served with the pastor in question may know of others with similar experiences;
- synod staff from the time of the abuse may sometimes know other members of the congregation with whom to inquire.

In each case decisions about trust and confidentiality are of the highest importance. The highly confidential nature of the inquiry should always be stressed.

Decisions about the presentation of evidence need to be made. If the unfolding investigation suggests that the complaint is trustworthy and that the process may involve a decision about a disciplinary process, how the evidence is to be preserved and presented may require decisions.

Some synods require a sworn affidavit. An affidavit is a written statement of the facts signed and sworn to by the complainant before a notary public. Others require only a written and signed statement in the complainant's own words. Here are some considerations on either side of the case:

**Affidavit(s).** If the bishop believes the allegations are credible, secure an affidavit from the initial complainant and, subsequently, from all others who come forth with allegations of abuse. Explain the limited use of the affidavit to the complainant. Clarify that there may be a hearing as part of the discipline process and seek agreement of the victim(s) to testify.

Signing an affidavit documenting allegations of sexual misconduct is beneficial to both the individual and to the synod. From the standpoint of the individual, the process of reviewing the allegation in print may help her/him confront and deal with a difficult series of events. From the standpoint of the synod, the process of preparing and signing an affidavit helps highlight the serious nature of the process and thus provides for the accuracy and completeness of the information. The existence of one or more affidavits is beneficial in the defense of any claim that an accused pastor might assert in civil court that the synod had somehow acted inappropriately in taking disciplinary action.

The affidavit is not intended to be made available to anyone other than the synod's attorney, the bishop and the bishop's staff. The ELCA's disciplinary procedures, unlike civil litigation, do not provide for pretrial discovery, so the affidavit itself will not ordinarily be presented to either the consultation or advisory panel or the Committee on Discipline. The affidavit will not be voluntarily disclosed to the pastor, the pastor's attorney, or the pastor's congregation. The affidavit is subject to involuntary disclosure only through a court order or other legal process. However, information contained in the affidavits will be used to confront the accused. Names will not be disclosed.

A written statement is less formal. It should contain the same information as an affidavit—that is, the basic information about the who, where, when and what of the allegations. A written statement is not notarized (that is, sealed by someone authorized to administer oaths).

Both an affidavit and a written statement can be composed with sensitivity and care for the process and feelings of the complainant.

### **Ongoing Care of the Complainant(s)**

If the bishop did not meet with the complainant during the first interview, arrangements for such a meeting should be made so that the bishop can express personal and pastoral concern, under-score the church's sentiments on matters of sexual abuse, and answer any other questions.

Staff should stay in regular contact with the victim, keeping her/him informed of the progress of the case. Make sure to follow through with the contacts promised in the initial conversation. Help the complainant to understand what possibilities exist for him/her at this and at future stages of the process.

Develop a plan for synod assistance (possibly including treatment and counseling) for complainant(s) and their families.

Families of complainants may also be in distress. Like complainants, they may respond in a variety of ways.

- They can be in various stages of denial or of blame for the complainant.
- They may themselves feel wounded—for instance, spouses of complainants may feel betrayed.
- They may have suffered from the consequences of the abuse because of the impact on the complainant, without knowing the cause of the behavior or feelings of the complainant.
- Any of these family members may feel shamed because of myths and misunderstandings around sexual abuse.
- Like complainants themselves, many may feel loss of faith, loss of connectedness to the church.

When making a plan for pastoral care of complainants, the needs of these family members should not be overlooked.

The complainant has the right to the presence of an advocate, whom the complainant may choose. Advocates provide support and assist the victim in bringing the full story of the alleged abuse forward. The advocate assists the victim to understand her/his rights within the synodical process and provide a supportive presence to the victim when meeting with committees and others involved in the process.

It is important to inform a complainant of the right to an advocate of one's own choice—a friend, a therapist or counselor, a pastor, a paraprofessional in the field of sexual violence, or a specially trained advocate in sexual abuse issues in the church.

Some areas have provided training for advocates through a statewide council of churches (such as the Minnesota Council of Churches). This is an option which the ELCA wishes to support and encourage throughout the many areas of the church. Bishops may wish to inquire of their ecumenical counterparts about willingness to join together to provide training and support of advocates in cases of clergy sexual misconduct.

## **Step 4**

### **Conversation with the Pastor**

**The bishop provides the pastor with information on the complaint(s) made against her/him, provides her/him with the opportunity for an initial response to those complaint(s), describes the synod policy and procedure, informs the pastor of the action the synod will be taking in this case, discusses options and if appropriate, makes recommendations to the pastor, and provides for her/him pastoral care needs. In appropriate cases the bishop should also clarify that the pastor in question is to have no contact with possible complainants and is not to engage in or cause reprisal or retaliation of any kind against the complainant(s).**

**During this part of the process, it is important to provide continuing care of the complainant. Inform complainant(s) of the results of the meeting with the pastor in question and of the next steps in the process.**

### **Before a conversation with the pastor careful preparation is required**

Depending on the evidence, the bishop may indicate her/his intent to bring charges against the pastor (see Step 6 below) or bring another recommendation for action; or the bishop may view this session as an additional step in the information-gathering process, leaving a decision about charges until after the conversation with the pastor in question.

Consider the following issues:

- Who, if anyone, besides the bishop, should be present?
  - Some bishops prefer to be accompanied by other staff, such as the person who did the primary investigation to date. Others prefer to be alone, believing that this creates a more pastoral atmosphere.
  - If a bishop chooses to meet the pastor alone, it is important for the bishop to emphasize at the beginning of the meeting that this is not a time of confessional privilege. Any admissions by the pastor do not bind the bishop from appropriate disciplinary action.
- When and where should the conversation take place?
  - Many bishops prefer to have this conversation with the pastor in question after a complaint has been well investigated and documented. This option may take a little longer, for it depends on the complainant(s) being ready for the complaint to be recorded. However, it may best protect everyone involved, for it insures that the synod has acted in the most responsible fashion.
  - Ensuring privacy for this conversation is the most important factor in determining where it occurs: the bishop's office, the pastor's office, or in some third place, depending on convenience and local circumstances.
- What information will be shared with the pastor who has been accused of sexual abuse? How will the pledges of confidentiality made to the complainant(s)/victim(s) be upheld?
  - Many variables may come into play here. A conversation with the synod's lawyer about the specifics of the individual case is desirable. Pledges of confidentiality to the complainant(s) need to continue to be honored.
- Is there a need for assessment and diagnosis of the pastor in question by a psychotherapist expert in dealing with sexual abusers?
  - In some cases, bishops may wish to insist upon such an assessment in order to supply the bishop with additional essential information that will inform her/his future actions.
- What action, if any, will be brought at this time? What is the purpose and the desired outcome of the meeting?
  - A bishop need not have made a decision about action before this conversation, or before a therapist's diagnosis. In some other cases, the bishop may be certain before this step.
- How will pastoral care be provided for the pastor in question?

The bishop's recommendations, graded according to the seriousness of the offense and the outcome of the assessment (if applicable), may include such actions as:

- Therapy without leave (at bishop's discretion);
- Letter of reprimand (at bishop's discretion);
- Education (at bishop's discretion);
- Resignation from the roster (mandatory);
- Resignation from call (mandatory);
- Leave of absence with therapy (mandatory).

**During the conversation with the pastor, the following elements should be considered:**

- Presentation of the complaint.  
Present the allegation—that is, the description of the alleged sexual behaviors—and ask if the pastor did in fact engage in these specific behaviors.
  - The pastor may respond: Yes, I did those behaviors.
  - This may be acknowledged to be a confession of guilt or responsibility.
  - This may not be acknowledged as a confession of guilt or responsibility. Depending on the nature of the complaint, the pastor's further response may be, in effect, "So what? We were both consenting adults" or variations on this theme.

In cases where the pastor acknowledges the abuse—proceed to Step 6 or 7 below.

- The pastor may respond: No, I did not do those behaviors.
- Some pastors also engage in threats of counterattacks or of suits against the synod or possible complainants, in bluster or bluff at this point.
- Description of Synod Process.  
Depending upon the nature of the complaints and the amount of evidence, some or all of the following may apply:
  - Inform the pastor in question of the bishop's decision concerning assessment and diagnosis by professionals trained in dealing with sexual abuse.
  - Describe the process used by the synod in dealing with matters relating to sexual misconduct, including the pastor's rights in such circumstances.
  - Clarify the pastor's options for response to these allegations.
  - Clarify implications of pastor's options (e.g., severance pay, if any).

The bishop should also clarify that the alleged accuser is to have no contact with any possible complainant(s) and is not to engage in or to cause reprisal or retaliation of any kind against the victim(s).

Some pastors have indeed organized their congregations against complainants and synods. Some have engaged in or caused acts of retaliation against complainants—for

example, shunning or ostracizing them; shaming, blaming or name-calling; threats of bodily harm and even death.

This step is extremely important to the safety of the complainant(s).

- Pastoral care for the pastor in question.

The bishop's involvement in the discipline process makes it impossible for the bishop to provide adequate pastoral care to the pastor in question. Therefore, a discussion of the possibilities for pastoral care for the pastor and his/her spouse/family is in order here.

Particular concern for the pastor's spouse and family is called for. Sometimes a pastor's spouse learns of the behavior for the first time because of a formal complaint.

Sometimes a pastor's spouse may indeed have been aware of the behavior and suffered in silence for a long time. These are both traumatic for the pastor's spouse. Special care must be taken that the spouse and family are not forgotten.

Appropriate, timely concern should be accorded the pastor's spouse, who may be considered a "secondary victim"—that is, another to whom ripple out the harmful effects of sexual abuse. In some instances it may be helpful to appoint an advocate for her/him to keep her/him apprised of the process and to listen to the needs and concerns related to the complaint. These needs and concerns may include finances, the effect on the children, the spouse's relationship to the congregation, the possibility of counseling, the media coverage, and similar points.

- After the conversation with the pastor in question.

During this part of the process, it is important to provide continuing care of the complainant. Informing complainant(s) of the pastor's response to the complaints, and of the next steps in the process is crucial.

Depending on the desired outcome of the meeting, it may also be useful to think about the implications of the next step for dealing with the media and for others (e.g., the congregation) who have a close connection to the pastor in question.

## **Step 5**

### **Assess the Information**

**The bishop determines a fair and equitable response to the complaint, which may include: no further action; further investigation; convening a consultation or advisory panel; proceeding directly to written charges and a hearing before a discipline hearing committee. The bishop may also need to decide whether temporary suspension pursuant to ELCA 20.21.23 and 20.21.24 is in order.**

Often the substance of this step is settled during Step 4, the conversation with the pastor in question. If it is not, however, further deliberation or action may be needed.

### **Determine Next Steps**

In cases where the accused does not admit to the alleged behavior, the bishop (with designee) evaluates the information in hand and decides whether to:

- Drop the case;
- Continue further investigation into the allegations;
- Convene the advisory panel; or
- Proceed directly to written charges and use of the discipline committee.

The bishop determines the need for temporary suspension pursuant to ELCA 20.21.23 and 20.21.24.

Provide Information to Participants. Inform both complainant(s) and the pastor in question of the decision that has been made and the timeline anticipated.

Disclosure. Determine what disclosure or involvement of other parties is appropriate at this point in the process, within the context of the healing process. (See Step 8 below.) It may be useful to alert, for instance, the president of the congregation council that a complaint of a serious nature against the pastor in question has been received, though no further details are shared at this time.

In cases where there is a good deal of uncertainty, such as concern about the credibility of the witnesses or close to an equal balance of evidence on either side, bishops may wish to proceed to Step 6.

## **Step 6**

### **Consultation or Advisory Panel**

**The bishop has the discretion to convene a consultation or advisory panel to assist her/him in bringing a just and appropriate resolution to the complaint. When appointed at the request of the synodical bishop, a consultation or advisory panel advises the bishop as to whether or not the bishop should bring charges. The consultation or advisory panel may recommend that the ordained minister resign from the current call or from the clergy roster. Whenever possible, a consultation panel or advisory panel shall endeavor to resolve the controversy through recommendations that are pastoral and therapeutic and that if accepted by the parties and others concerned, will eliminate the necessity for proceedings before a discipline hearing committee.**

[Since a consultation or advisory panel is described in ELCA Bylaws and Rules Governing Disciplinary Proceedings, the following description of the role of such panels can be used in a synod's policy statement with or without modification.]

Appointment of a panel is not required; it is done at the option of the bishop. Since the purpose of a panel is to assist the bishop, a panel together with the bishop must address how this can best be done in any particular case. Flexibility is a key word in describing the work of a panel.

- Each synod has a twelve member Consultation Committee elected by the Synod Assembly.
- The bishop, or the Synod's Executive Committee at the bishop's request, may appoint a five member consultation panel consisting of two lay persons and three clergy.

- Members of an advisory panel must be members of ELCA congregations, whether of this or another synod.
- Members of either panel shall refrain from discussing matters considered by a panel except as required to discharge the duties of the panel.

The function of either type of panel is identical, with the single exception of the unusual case where written charges are brought by an authorized group other than the bishop. (In this latter case, only a consultation panel may recommend to the bishop that some or all of the charges be dismissed; upon such recommendation the bishop may dismiss some or all of the charges.)

It is important to understand that a panel does not conduct a formal hearing. Accordingly, none of the due process requirements that apply before a discipline hearing committee (discussed in the next section) are applicable to the work of a panel. The options for its work are many:

- A panel may meet with both complainant(s) and pastor in question either at the same time or separately.
- A panel may meet with a pastor in question, but not complainant(s), or with the complainant(s), but not the pastor in question.
- A panel may meet with neither the pastor in question nor the complainant(s), but rather with other witnesses or with experts to formulate recommendations that might resolve the matter without resort to the filing of written charges that commence the formal proceeding.

One type of situation where a panel has proved particularly useful is where there is one complainant whose allegations are being denied by the pastor in question. The judgment of a panel on the question of who is to be believed can be particularly helpful to a bishop confronted by such a case.

Any individual—complainant(s), pastor in question or others—who appears before a panel may be accompanied by a spouse, friend, relative, advocate, or representative. Such accompanying person does not participate in any discussion with a panel.

A pastor in question may decline to appear before a panel. If she/he does appear, members of a panel may not testify in subsequent proceedings before a discipline hearing committee as to statements made by her/him. But, evidence, witnesses, or testimony identified as a result of statements made by the pastor in question may be used by the accuser in subsequent proceedings before a discipline hearing committee.

## **Step 7**

### **Formal Hearing**

**The formal proceedings before a discipline hearing committee are commenced when written charges are filed, usually by the bishop. The charges set forth the offense of which the accused is alleged to be guilty with specifications stating what the accused is alleged to have done, which, if true, constitute an instance of the offense. The discipline hearing**

**committee composed of a non-voting chair or hearing officer and twelve voting members, six from the synod discipline committee, and six from the churchwide discipline committee, then holds a formal hearing on the charges at which the testimony of witnesses and other evidence is presented by the accuser and the accused. The witness(es) for the accuser will normally include the complainant(s). This proceeding is to be conducted to assure due process, as defined, and due protection for the accused, other parties including the complainant(s), and this church.**

Formal proceedings before a discipline hearing committee are governed by Chapter 20 of the ELCA Constitution and Bylaws and Rules Governing Disciplinary Proceedings adopted under ELCA Bylaw 20.21.16. While the following is a summary of those provisions, individuals involved in a disciplinary proceeding will need to refer to the documents themselves. Since the same process is applicable in all synods, the following discussion is recommended for inclusion without modification in a synod's policy statement.

Formal proceedings of discipline begin when the bishop files written charges. The charges set forth the offense of which the accused is alleged to be guilty with specifications stating what the accused is alleged to have done, which, if true, constitute an instance of the offense.

The discipline hearing committee is composed of:

- six individuals from the synod (three clergy and three lay) who have been elected to this committee by the Synod Assembly, and
- six individuals (three lay and three clergy) appointed by the Executive Committee of the Church Council of the ELCA from the group of twenty-one individuals elected by the Churchwide Assembly.
- The accused will have the privilege of selecting two of the six who are to be appointed from the pool of twenty-one.
- A hearing officer will be appointed by the Presiding Bishop of the ELCA from the six member churchwide Committee of Hearing Officers elected by the Church Council. The hearing officer serves as the non-voting chair of the committee.

Thus, half of the committee's voting members are from outside the synod, and the half who are from within the synod are elected by the Synod Assembly, not appointed by the bishop or a committee that might be perceived to be close to the bishop. This procedure helps protect against a biased hearing committee and therefore promotes a fair and impartial determination of the matter based on the evidence.

Because of the practical requirements involved in determining the membership for a particular discipline hearing committee, it normally takes four to six weeks between the time charges are filed and the date the committee is constituted.

Once constituted, the committee has sixty days to hold a hearing, reach its decision, and render its written report. Members of the committee shall refrain from discussing matters considered by the committee except as required to discharge the duties of the committee.

The hearing that is held before the committee is closed to the public, unless both the accused pastor and the accuser bishop agree to a public hearing.

The accused pastor and the accuser bishop may have two representatives who may, but need not, be attorneys to assist in the presentation of the case. The accused pastor may also be accompanied by a limited number of family members and close friends, as determined by the discipline hearing committee. Complainant(s) may be accompanied by an advocate. None of these accompanying individuals may participate in the proceedings.

The complainant(s) will be called as witness(es) to testify under oath first to questioning by the bishop's representative and then to cross-examination by the accused pastor's representative.

The accused pastor may either testify or not. If the accused pastor does testify, she/he can be cross-examined by the bishop's representative. Either party may also introduce other kinds of evidence.

The burden of proof is upon the accuser bishop to prove by preponderance of the evidence presented that the accused pastor committed the offense(s) contained in the charges.

The ELCA has made a concerted effort to provide certain defined procedural and substantive rights—referred to as “due process”—so that disciplinary hearings will be fair proceedings. The due process rights include:

- the right of the accused to be given written notice of the charges against her/him,
- the right to a hearing before an impartial discipline hearing committee,
- the right to testify or remain silent,
- the right to call witnesses and introduce documentary evidence,
- the right to confront and cross-examine all witnesses in support of the charges,
- the right to be represented by counsel.

Following completion of the hearing, the committee must determine whether or not the accused committed one or more of the offenses charged, and, if so, what the discipline should be. Decisions of the committee are based on a preponderance of the evidence presented at the hearing and are made by a majority vote of the members present and voting.

- If the committee finds the accused did not commit any of the offenses, it must dismiss the charges.
- If the committee finds the accused did commit one or more of the offenses charged, it must decide upon appropriate disciplinary action. The possible disciplinary actions which may be imposed against an ordained minister are:
  1. private censure and admonition by the accuser bishop;
  2. suspension from service as an ordained minister for a designated period or until there is satisfactory evidence of repentance and amendment; or
  3. removal from the ordained ministry of the ELCA.
- Within the sixty day period the committee must prepare a written decision to reflect its findings of fact, and its determination of which disciplinary penalty is to be imposed.

Either the accused pastor, or the accuser bishop may, within thirty days of receipt of the committee's written decision, appeal to the churchwide Committee on Appeals, a twelve member committee elected by the Churchwide Assembly. The circumstances under which the churchwide Committee on Appeals may reverse or modify the decision of the discipline hearing committee, and the consequences thereof, are set forth in a bylaw.

## **Step 8**

### **Disclosure**

**The synod supports and enhances the process of healing for individuals, the congregation and the community through the appropriate disclosure of information. Except in the most unusual circumstances, disclosure is always necessary. Disclosure needs to be made to those who need to know, including the congregation. Experience has demonstrated that where disclosure is made to the congregation served by the pastor in question, the healing within that congregation is better realized, even though the initial trauma may be greater. Disclosure should never involve revealing the identity of the complainant(s) or of facts that would make the complainant(s) readily identifiable.**

**What needs to be decided is how much is disclosed and when. This decision needs to be tailored to the needs of the individuals and organizations most affected. When there is admission of guilt, resignation from the congregation or the clergy roster, temporary suspension, or a finding of guilty in a discipline proceeding, then disclosure is essential to the healing process of all parties—the complainant(s), congregation and accused pastor.**

### **The Case for Disclosure**

Disclosure needs to be made to those who need to know, including the congregation. Experience has demonstrated that where disclosure is made to the congregation served by the pastor in question, the healing within that congregation is better realized, even though the initial trauma accompanying disclosure may be greater.

At least three important reasons justify appropriate disclosure of the problem of clergy sexual misconduct to a congregation whose pastor has either resigned to avoid disciplinary proceedings or who faces such proceedings.

- First, synods have found through experience that it is easier for a congregation to deal with a matter, no matter how unpleasant, if it is confronted openly rather than shrouded in secrecy. The truth is always better than lies or rumors. A pastor who in fact has been involved in sexual misconduct cannot necessarily be relied upon to be truthful in dealing with the congregation council or congregation, and, without intervention from the synod, the entire matter may not be confronted and resolved. Allegations of sexual misconduct are particularly susceptible to rumors and distortions that, over a period of time, could destroy a congregation. Disclosure of the problem, synods have found, is the first step in the healing process that must take place for the congregation's health and well-being in the future.
- Second, disclosure is also necessary if the synod is to fulfill its mission as a church body to reach out to people who need the love, healing, and reconciliation that are the heart of the gospel of Jesus Christ. Under the synod's constitution, the bishop is to oversee and

administer the work of the synod and provide pastoral care and leadership to all congregations in the synod. This responsibility necessarily includes reaching out to individuals who have been victims of sexual misconduct but who have not confronted and dealt with the problem. This responsibility further includes reaching out to parishioners whose lives have been disrupted by the sudden and apparently inexplicable resignation of their pastor. All these people need ministry that the synod is able to provide. Disclosure may also help to prevent future abuse within the congregation and the community.

- Third, disclosure may also be required to help protect both the synod and the congregation from potential legal liability for the actions of a pastor involved in sexual misconduct. As the problem of clergy sexual misconduct is increasingly recognized and dealt with, there is likely to be increased litigation as victims seek legal redress for the pain and hurt they have suffered. Neither the synod nor a congregation whose pastor is the subject of allegations of sexual misconduct can prudently ignore potential legal liability problems, and the first step in confronting such problems is disclosure.

### **Developing a plan for appropriate disclosure**

Decisions as to how allegations or admissions of sexual misconduct by a pastor should be disclosed to the congregation must be made on a case-by-case basis. As a general rule, however, the synod will work with the lay leadership and council of the congregation involved in order to determine the most appropriate means of disclosure. Experience has shown the usefulness of sending letters to the membership, holding congregational meetings and educational forums, and involving professional counselors.

Disclosure should not reveal by name the identity of the victim(s), unless a victim has specifically requested that she/he be identified. Likewise, care should be taken to avoid the disclosure of facts that are likely to reveal the identity of the victim(s).

Disclosure of other information should be accurate and as factual as possible.

- Information on what, in our church's understanding, constitutes sexual misconduct and how the pastor's action violates this church's expectations of its ordained ministers should be provided.
- Where a pastor has resigned without admitting guilt, and before a formal hearing, the disclosure should refer to the allegations of his/her conduct, but should also state that the pastor denied the allegations if that be the case.
- It is appropriate to describe the conduct of which the pastor is accused, or which she/he has admitted. This includes identifying whether the victim(s) are minors or adults and whether the alleged behavior is heterosexual or homosexual.
- Information should be given as to how members of the congregation can obtain assistance if needed. Names of several contact persons, and how contact with them is to be made, should be provided.
- The congregation should be informed of steps that the synod has taken to provide care for the victim(s), for the pastor in question, and their families.

Disclosure is also appropriately made to pastors in the same conference. Under some instances, disclosure may appropriately be made to all clergy in the synod.

More difficult issues may be involved in deciding whether disclosure should be made to congregations previously served by the pastor in question. If such disclosures involve a congregation of another synod, the bishop of that synod will be consulted, and the concurrence of that bishop is required as to disclosures to congregations of that synod.

Disclosure will ordinarily not be made to either the secular or church media. However, the synod office should be prepared to answer inquiries from the media, since experience dictates that inquiries may be made by the media.

In no event should the synod make any disclosures until it decides that the appropriate time for disclosure has arrived.

## **Step 9**

### **Follow-up**

**The synod should plan and implement long-range follow-up efforts with respect to each case, so that all those affected—individuals, congregations, and the broader community—may experience grace, peace, and healing following this time of crisis.**

The synod should develop a plan for follow-up after the immediate crisis has passed. Consideration should be given to questions of how healing can be enhanced for the pastor and her/his family, the victim and the victim's family, the congregation(s) involved, the new pastor, the synod, and the community.

Such a plan may include:

- assistance with counseling for victims;
- Professional counseling for congregation or groups within the congregation, or in congregations with multiple staff, for other members of the staff;
- Severance/medical benefits for pastor, as determined;
- Pastoral care for others involved in the process, including the synod bishop, synod staff, and synod council.

Continued care for the concerns and well-being of the congregation as it struggles with many changes after disclosure of sexual misconduct may be crucial for its long-term health. Creative options are being devised to facilitate the healing processes of congregations. Some examples include:

- Simultaneous cottage meetings held in several homes of congregation members may help people to express their doubts, anger, fears, concerns in a context which is small and trusting. Having facilitators present who understand the position of the church and the healing processes after sexual abuse may help ensure a positive foundation for the congregation's later work. The Metropolitan Chicago Synod has used this approach.
- A series of forums in the weeks following disclosure is a model other synods have used. Such meetings with a pastoral care specialist might occur on Sunday evening or on week nights. This model allows people to surface their concerns over a period of time.

It may be important to ask complainants to evaluate the process. What went best? What did not work so well? What do you hope will be different for future complainants? Evaluate these responses in order to determine revisions and amendments needed in your synod's procedure.

Interim pastors or other staff who follow may be crucial in the healing of a congregation.

A plan for their care may also be needed.

- Some synods, such as the Greater Milwaukee Synod, have formed a support group for those pastors who follow pastors who engaged in sexual misconduct. In other areas, after-pastors groups have included pastors from more than one synod.
- In some areas, other professionals are becoming experienced in guiding a congregation's healing. These groups frequently complement the role of the interim or following ordained person, and will ordinarily consult freely with the new minister.
- Lutheran social service agencies in each area may be important resources for the grieving and healing of congregations.

Individuals involved in the many levels of anguish and suffering occasioned by sexual misconduct in the church need to be assured that the synod, as one agency of the church, has not abandoned or deserted them after the crisis or formal process has ended.