



# Minneapolis Area Synod Policy and Procedures Regarding Sexual Misconduct by Rostered Ministers

November 2002

## I

### Commitment. . .Relationships. . .Responsibility

#### **Our commitment as a Church**

The Minneapolis Area Synod of the ELCA is committed to maintaining a caring Christian community free from all forms of sexual misconduct. The Church is called to create and maintain a climate of justice that insures safety and encourages persons who have been victimized by sexual harassment or abuse to disclose such experiences, to bring harassers and abusers to accountability, and to provide healing ministries for all concerned—individuals, families, congregations, and communities.

#### **The relationship between rostered ministers and congregations**

Theologically, the relationship between rostered ministers\* and congregations is based on the scriptural understanding of Call. Legally, the relationship between rostered ministers and their congregations is that of employee and employer. A congregation calls its rostered minister, determines that person's duties and responsibilities, provides day-to-day supervision, and decides if and when that person's call needs to be terminated. When a rostered minister engages in sexual misconduct, it is often members of his or her congregation who are victimized and who first learn of the misconduct.

#### **The relationship between rostered ministers and the Synod**

The relationship between rostered ministers and the Synod is ecclesiastical. The Synod has neither the resources nor the authority to supervise and control the daily activities of rostered leaders. But the Synod is responsible for administering the Church's disciplinary process. If a rostered person commits "conduct incompatible with the character of the ministerial office," the Synod can act to remove that person from the ELCA rosters. More importantly, the Synod is charged with providing pastoral care and leadership for its member congregations. Congregations look to the Synod for assistance, advice, and care when a rostered leader is suspected of sexual misconduct.

*\*Rostered ministers are pastors and deacons.*

## **The congregation's legal responsibility**

The law requires that a congregation "take reasonable action" when it becomes aware of sexual misconduct (MN Statute §604.2, see Appendix III in this document). If, for example an employee of a congregation accuses the pastor of sexual harassment, Minnesota law requires that the congregation take timely and appropriate action. The Synod can offer assistance and advice to the congregation, but it cannot fulfill the congregation's legal obligations. This policy is not intended to diminish in any way the legal and moral responsibilities of congregations.

## II

### Reporting sexual misconduct

#### **What should be reported?**

Any sexual contact between a rostered minister and a parishioner, counselee, employee, or anyone else to whom that person is not married should be reported to the Synod and/or to the person's employer, as should any unwelcome sexual advance, request for sexual favor, sexually motivated physical contact, or other verbal or physical conduct or communication of a sexual nature.

#### **Who should report sexual misconduct?**

Sexual misconduct may be reported by **anyone**—including the victim or a member of the victim's family; a member of the congregation or a concerned person(s); or a colleague of the rostered leader. The misconduct should be reported to the bishop or the bishop's representative and if possible, the conduct should be reported to the president of the congregation that employs the perpetrator. The bishop or the bishop's representative should be notified directly by phone or in person. If it is impossible to notify the bishop's office directly, a letter stating the complaint should be sent to the bishop.

#### **What happens with the victim after the misconduct is reported?**

The bishop or bishop's representative will attempt to meet with the alleged victim. If the victim wishes, an advocate may accompany the victim through the process of reporting and investigating.

State or county authorities may be notified. If the victim is a minor or a vulnerable adult, the Synod **may be required by law** to report the allegations to state or county authorities. Civil and/or criminal procedures against the alleged perpetrator may follow.

Regarding victims, it is the goal of the bishop's office to:

- ◆ Listen respectfully to allegations
- ◆ Affirm that the Church cares about them
- ◆ Refer them to an advocate
- ◆ Encourage and help pay for professional therapy
- ◆ And provide them with a copy of the Sexual Misconduct Policy

### **What happens with the allegations after the misconduct is reported?**

Upon receipt of any allegation(s) of sexual misconduct by a rostered minister, the bishop or a representative of the bishop's office will meet with the complainant to hear and evaluate the complaint, including the seriousness of the allegations and the credibility of the information shared. The bishop and his/her representative may attempt to gather corroborative information from appropriate sources such as the complainant, the victim, the accused, colleagues of the accused, other possible victims, and investigative reports obtained from civil authorities. If the bishop is convinced that the allegations are credible and sufficiently serious, the complainant will be informed of the process that includes:

1. the need for a signed, written statement, and
2. the possibility of a formal hearing.

### **The allegations are put in writing**

In most cases the complainant will be asked to sign a statement containing a summary of his/her allegations. Signing a statement is beneficial to both the individual and the Synod. The process of reviewing the information in print may help the individual confront and deal with a difficult series of events. From the standpoint of the Synod, the process of preparing and signing a statement helps highlight the serious nature of the process and those provide for the accuracy and completeness of the information. The Synod ordinarily will not undertake further proceedings until allegations have been substantiated in written form.

To the extent possible, confidentiality will be honored throughout the process. The statement is not intended to be made available to anyone other than the bishop and bishop's staff and the Synod's attorney. The statement may be subject to involuntary disclosure through a court order or other legal process.

## **How does the accused become aware of the complaint against him/her?**

The bishop provides the rostered minister with information on the complaints made against her/him, provides her/him with the opportunity for an initial response to those complaints, describes the action the Synod intends to take in this case, discusses options, including a psychological assessment if appropriate, makes recommendations to the rostered minister, and helps to arrange for her/his pastoral care for her/him. The bishop may request that the accused not contact possible complainant(s) or engage in retaliation of any kind against the complainant(s).

Regarding the accused, it is the goal of the bishop's office to:

- ◆ **Arrange for pastoral care**
- ◆ **Advise the rostered minister of allegations, process and support**
- ◆ **Present the allegations without bias**
- ◆ **Follow due process of the ELCA disciplinary procedure**
- ◆ **Provide them with a copy of the Synod's Sexual Misconduct Policy**
- ◆ **Request psychological assessment when appropriate**
- ◆ **Outline potential consequences to the behavior**
- ◆ **Encourage professional therapy**

Regarding the accused's spouse and family, it is the goal of the bishop's office to:

- ◆ **Inform them of the allegations**
- ◆ **Offer to arrange pastoral care through an area pastor**
- ◆ **Review possible consequences of the behavior**
- ◆ **Provide them with a copy of the Synod's Sexual Misconduct Policy**

## **The bishop may convene a consultation or advisory panel**

When appointed at the request of the synodical bishop, a consultation or advisory panel (see Appendix II for a description of these panels) advises the bishop as to whether or not the bishop should bring charges through the Church's discipline process. The consultation or advisory panel may recommend that the pastor resign from the current call or from the clergy roster. Whenever possible, a consultation panel or an advisory panel will try to resolve the issue through recommendations that are pastoral and therapeutic and that if accepted by all concerned, will eliminate the necessity for proceedings before a discipline hearing committee.

## **When a formal discipline hearing is necessary**

If the bishop chooses not to use the consultation or advisory panel, or if the consultation or advisory panel is appointed but fails to resolve the situation, then the bishop must decide whether to file charges against the accused pastor and thereby initiate the disciplinary process.

If the bishop decides to do so the bishop and one other person will meet with the accused rostered minister to identify charges and explain what action is being sought. The accused pastor will be informed of the ELCA's disciplinary process. The Synod's attorney will draft charges. In compliance with ELCA Constitution §20.21.23, the charges must be specific and in writing.

### III

## Healthy disclosure

The congregation will be informed if there is evidence of a rostered person's sexual misconduct. It is healthier for a congregation to deal with the matter openly. Allegations of sexual misconduct are particularly susceptible to rumors and distortions which, over a period of time, could destroy a congregation. The Synod has found that disclosure of the problem is the first step in the healing process leading to the congregation's future health and wellbeing.

The Synod also discloses the misconduct in order to fulfill its mission of reaching out to those who need love, healing and reconciliation. Disclosure may also help prevent future abuse within the congregation and the community.

Finally, disclosure helps protect both the Synod and the congregation from potential legal liability for the actions of a rostered person involved in sexual misconduct. The Synod will work with the lay leadership and congregation council in determining the most appropriate means of disclosure.

Regarding the congregation, it is the goal of the bishop's office to:

- ◆ Inform the congregation of the allegations
- ◆ Request a meeting with the council
- ◆ If invited by the council, draft a letter to be distributed to each member of the congregation
- ◆ Seek the council's invitation to meet with the congregation
- ◆ Share the policy guidelines at the congregational meeting
- ◆ Seek interim pastoral care where needed
- ◆ Update council and congregation regularly
- ◆ Encourage other victims to come forward
- ◆ Provide ongoing care and healing support for the congregation, its staff and future staff.

## Appendix I

### **The importance of standards of conduct in ministry**

Rostered ministers serving in parishes or in specialized ministries are highly involved in the personal lives of their parishioners and people they serve. Pastors and deacons in ministry often deal with people who are in crisis situations or are otherwise vulnerable and in need of help. Members of congregations look to their rostered leaders as their spiritual leaders. Leadership inevitably connotes power. Rostered ministers may not perceive or understand the degree of power held in relationship to their congregational and community members. This power is heightened when persons come to them for counseling or spiritual help.

The power of the ministerial office contains the authority and symbols derived from God. Such symbolic authority not only gives rostered ministers power but also establishes the expectation that people may come to them without fear of exploitation or abuse. As professionals, rostered ministers should not become sexually involved with congregation members, counselees or employees of the congregation. To do so often constitutes an abuse of the power inherent in their role and substitutes personal gratification for the needs of the people served. The power of the office makes it very difficult for a rostered minister and parishioners or people they serve to be in a relationship of equality.

The Office of Ministry implies trust. The relationship between rostered ministers and those they serve has similarities to the relationship between counselors and counselees. Minnesota Statute Chapter §604.2 strictly proscribes sexual contact of any kind between counselors and counselees. Because §604.2 may be read broadly to include most clergy and most congregants, rostered ministers should not date members of their congregations. By virtue of the rostered minister's position, the one being dated would be highly vulnerable to manipulation, coercion, and victimization. Full awareness and free and mutual choice without any fear or coercion is necessary to a truly consensual relationship.

## Appendix II

Under ELCA Constitution 20.21.04, 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 by consultation.

1. When requested by the synodical bishop, a consultation panel consisting of five persons (three ordained ministers and two lay persons) appointed from the members of the

Consultation Committee of the synod by the synodical bishop or, at the request of the synodical bishop, by the Synod Council's Executive Committee or other committee authorized to do so by the Synod Council, shall assist the synodical bishop in efforts to resolve a situation by consultation.

2. When requested by the synodical bishop, an advisory panel consisting of five persons (three ordained ministers and two lay persons) appointed by the synodical bishop shall assist the synodical bishop in efforts to resolve a situation by consultation.

## Appendix III

### **Minnesota Law**

The state of Minnesota addresses sexual misconduct by clergy both through statutory law (the statutes enacted by the legislature) and through case law (the law made by judges in deciding cases). Under the law, sexual contact between a pastor and a member of his or her congregation can constitute a criminal offence (for which the pastor can be fined and/or imprisoned) and a civil wrong (for which the pastor can be forced to pay money damages). Of particular concern to clergy is Minnesota Statute Chapter §604.2, which states:

### **MINNESOTA STATUTE 604.20**

#### **ACTION FOR SEXUAL EXPLOITATION; PSYCHOTHERAPISTS**

604.20 DEFINITIONS.

#### **Subdivision 1.General.**

The definitions in this section apply to sections 604.20 to 604.205.

#### **Subdivision 2.Emotionally dependent.**

"Emotionally dependent" means that the nature of the patient's or former patient's emotional condition and the nature of the treatment provided by the psychotherapist are such that the psychotherapist knows or has reason to believe that the patient or former patient is unable to withhold consent to sexual contact by the psychotherapist.

#### **Subdivision 3.Former patient.**

"Former patient" means a person who was given psychotherapy within two years prior to sexual contact with the psychotherapist.

**Subdivision 4. Patient.**

"Patient" means a person who seeks or obtains psychotherapy.

**Subdivision 5. Psychotherapist.**

"Psychotherapist" means a physician, psychologist, nurse, chemical dependency counselor, social worker, member of the clergy, marriage and family therapist, mental health service provider, licensed professional counselor, or other person, whether or not licensed by the state, who performs or purports to perform psychotherapy.

**Subdivision 6. Psychotherapy.**

"Psychotherapy" means the professional treatment, assessment, or counseling of a mental or emotional illness, symptom, or condition.

**Subdivision 7. Sexual contact.**

"Sexual contact" means any of the following, whether or not occurring with the consent of a patient or former patient:

sexual intercourse, cunnilingus, fellatio, anal intercourse or any intrusion, however slight, into the genital or anal openings of the patient's or former patient's body by any part of the psychotherapist's body or by any object used by the psychotherapist for this purpose, or any intrusion, however slight, into the genital or anal openings of the psychotherapist's body by any part of the patient's or former patient's body or by any object used by the patient or former patient for this purpose, if agreed to by the psychotherapist;

kissing of, or the intentional touching by the psychotherapist of the patient's or former patient's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts;

kissing of, or the intentional touching by the patient or former patient of the psychotherapist's genital area, groin, inner thigh, buttocks, or breast or of the clothing covering any of these body parts if the psychotherapist agrees to the kissing or intentional touching.

"Sexual contact" includes requests by the psychotherapist for conduct described in clauses (1) to (3).

"Sexual contact" does not include conduct described in clause (1) or (2) that is a part of standard medical treatment of a patient.

#### **Subdivision 8. Therapeutic deception.**

"Therapeutic deception" means a representation by a psychotherapist that sexual contact with the psychotherapist is consistent with or part of the patient's or former patient's treatment.

#### **604.201 CAUSE OF ACTION FOR SEXUAL EXPLOITATION.**

A cause of action against a psychotherapist for sexual exploitation exists for a patient or former patient for injury caused by sexual contact with the psychotherapist, if the sexual contact occurred:

    during the period the patient was receiving psychotherapy from the psychotherapist;  
    or

    after the period the patient received psychotherapy from the psychotherapist if (a) the former patient was emotionally dependent on the psychotherapist; or (b) the sexual contact occurred by means of therapeutic deception.

The patient or former patient may recover damages from a psychotherapist who is found liable for sexual exploitation. It is not a defense to the action that sexual contact with a patient occurred outside a therapy or treatment session or that it occurred off the premises regularly used by the psychotherapist for therapy or treatment sessions.

#### **604.202 LIABILITY OF EMPLOYER.**

(a) An employer of a psychotherapist may be liable under section 604.201 if:

    the employer fails or refuses to take reasonable action when the employer knows or has reason to know that the psychotherapist engaged in sexual contact with the plaintiff or any other patient or former patient of the psychotherapist; or

    the employer fails or refuses to make inquiries of an employer or former employer, whose name and address have been disclosed to the employer and who employed the psychotherapist as a psychotherapist within the last five years, concerning the occurrence of sexual contacts by the psychotherapist with patients or former patients of the psychotherapist.

(b) An employer or former employer of a psychotherapist may be liable under section 604.201 if the employer or former employer:

knows of the occurrence of sexual contact by the psychotherapist with patients or former patients of the psychotherapist;

receives a specific written request by another employer or prospective employer of the psychotherapist, engaged in the business of psychotherapy, concerning the existence or nature of the sexual contact; and

fails or refuses to disclose the occurrence of the sexual contacts.

(c) An employer or former employer may be liable under section 604.201 only to the extent that the failure or refusal to take any action required by paragraph (a) or (b) was a proximate and actual cause of any damages sustained.

(d) No cause of action arises, nor may a licensing board in this state take disciplinary action, against a psychotherapist's employer or former employer who in good faith complies with this section.

#### **604.203 SCOPE OF DISCOVERY.**

In an action for sexual exploitation, evidence of the plaintiff's sexual history is not subject to discovery except when the plaintiff claims damage to sexual functioning; or

the defendant requests a hearing prior to conducting discovery and makes an offer of proof of the relevancy of the history; and

the court finds that the history is relevant and that the probative value of the history outweighs its prejudicial effect.

The court shall allow the discovery only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is subject to discovery.

#### **604.204 ADMISSION OF EVIDENCE.**

In an action for sexual exploitation, evidence of the plaintiff's sexual history is not admissible except when:

the defendant requests a hearing prior to trial and makes an offer of proof of the relevancy of the history; and

the court finds that the history is relevant and that the probative value of the history outweighs its prejudicial effect.

The court shall allow the admission only of specific information or examples of the plaintiff's conduct that are determined by the court to be relevant. The court's order shall detail the information or conduct that is admissible and no other such evidence may be introduced.

Violation of the terms of the order may be grounds for a new trial.

#### **604.205 LIMITATION PERIOD.**

An action for sexual exploitation shall be commenced within five years after the cause of action arises.