

# Legal Issues

## Clergy Sexual Misconduct



Evangelical Lutheran Church in America  
God's work. Our hands.

## Responding to Claims of Clergy Sexual Misconduct

Although the number of clergy sexual misconduct incidents in the ELCA is not great, and they rarely involve minors, the pain and turmoil such conduct engenders can be detrimental to ministry for months, sometimes years, to come. In addressing these situations, there are several key principles that have guided synod bishops' response to allegations of clergy sexual misconduct.

*"Restoring Trust" is based on a paper presented by the Rev. Peter Rogness, when he served as bishop of the Greater Milwaukee Synod.*

### **Care of victims is paramount**

This church seeks to provide pastoral care for victims in their healing and attempts to avoid re-victimizing, during the church's adjudication process, those who have been wounded.

The church strives to protect victims from being blamed by others for the pastor's misconduct by always explaining that it is the clergyperson's responsibility to maintain proper boundaries in their relationships with parishioners. The victims of the misconduct control the information they share with us, and which we need in order to take action. Even when that makes our jobs more difficult, we try to respect their wishes.

### **People must know their local congregation is a safe place**

There is far more at stake in responding appropriately to allegations of clergy sexual misconduct than just one case in one place. Every member of every congregation must have confidence that their congregation is a safe place. If confidence is to be maintained, the public must know that misconduct in the pastoral office is not tolerated.

This means that no allegations will be ignored and no actual misconduct will be kept secret. In order for congregations to be places of care for the weak and broken, our clergy must be ones to whom the most vulnerable can safely turn to receive the love of God.

### **The integrity of the public office of ministry is at stake**

It may surprise the public to know that nowhere is there stronger support for a firm response to clergy misconduct than among the clergy themselves. The vast majority of clergy is faithful and trustworthy, and they know their own reputations are damaged when clergy misconduct holds the public's attention.

When a pastor has been disciplined for misconduct, or resigns following allegations of misconduct, the overwhelming response of other clergy is both deep sadness and strong support for the action taken. They understand that the integrity of the pastoral office is at stake.

### **The church follows fair procedures**

This church tries to care for and protect the person claiming to have suffered abuse, as well as the congregation. At the same time, no formal disciplinary action can proceed on the basis of flimsy or anonymous accusations. The church's adjudication process requires written charges and, if necessary, the presentation of evidence at a hearing. A member of the clergy who disputes the allegations may get a hearing before a panel of persons elected by the synod and churchwide assemblies. There is an appeal process in which the hearing panel's decision may be subject to review. A member of the clergy accused of misconduct may choose to resign from the clergy roster at any time, thereby bringing an end to the process.

### **Disclosure is made to congregations**

When a pastor has been accused and removed, or when a discipline process is entered into, the congregation is informed of both the nature of the allegations and the nature of the process. When a pastor resigns from the clergy roster rather than disputing the charges, disclosure is made to congregational members. Such disclosure is done for at least three reasons:

1. Congregations need to know of matters that affect their life so directly. Accurate information is the best way to dispel rumors, doubt and uncertainty.
2. Only through disclosure can the church invite healing – for victims both known and unknown – and for members of the congregation who experience the pain of betrayal. Cover-ups are like toxic dumps, with poison seeping out for years afterward, making healing very difficult.
3. Disclosure makes it clear to all that the church does not condone or minimize the misconduct of its clergy. Even years later, if a pastor removed for misconduct seeks reinstatement to the clergy roster – a very rare occurrence – full disclosure is made.

Secrecy destroys trust. Disclosure, even when unpleasant (and it often is) is the healthier action. Yes, the truth often does hurt, but it is preferable to the lie.

Many continue to work hard so the public ministry of the church can be regarded as safe, compassionate, and entitled to trust.

### **Disciplinary Proceedings**

The Evangelical Lutheran Church in America (ELCA) has a process for the discipline of clergy and rostered laypersons. The disciplinary process is set forth in Chapter 20 of the ELCA Constitution and Bylaws, and in *Rules Governing Disciplinary Proceedings Against an Ordained Minister, a Rostered Layperson, or a Congregation of the Evangelical Lutheran Church in America*. The booklet *Definitions and Guidelines for Discipline ... Ordained Ministers, Associates in Ministry, Members of the Deaconess Community, and Diaconal Ministers, Congregations* sets forth the types of conduct that may lead to discipline.

The disciplinary process can be characterized as a continuum or line that begins at one end when there are indications that a cause for discipline may exist. This line is terminated at any point if the pastor or other rostered individual chooses to resign, or is otherwise removed, from the church's roster. Absent a resignation or other resolution of the matter, the time line may continue until there is a decision of a discipline hearing committee (DHC) or, if appealed, a decision of the ELCA Committee on Appeals. At approximately the midpoint of this line, an important event may occur — the filing of written charges, usually by the synodical bishop, although four other groups are also authorized by the governing documents to file formal written charges against a rostered person.

Prior to the filing of written charges, the process is very informal; it begins with consultation aimed at resolving the matter without resorting to discipline. How the process works at this stage is largely within the discretion of the synodical bishop and is often guided by synodical policies. The emphasis is pastoral and efforts are usually made to find a resolution of the controversy that would not involve a hearing before a DHC. At this stage, the synodical bishop has the option of convening a five member panel to assist the bishop by gathering and evaluating the evidence or by making recommendations to resolve the issues presented.

Upon the filing of written charges with the secretary of the church, the process becomes very formal. There are specific rules that must be faithfully followed. Many of these rules are designed to insure numerous rights that are intended to protect the accused individual and the complainant. Once this formal discipline process has begun, the procedural and due process provisions of the ELCA Constitution and Bylaws must be observed.

When the ELCA secretary receives written charges, a DHC is convened. A DHC consists of a hearing officer who serves as the non-voting chair, six members of the synod's Committee on Discipline (previously elected at the Synod Assembly), and six members chosen from the 36 member churchwide Committee on Discipline (previously elected at the Churchwide Assembly). A hearing is held before this DHC at which time the accuser, who signed and filed the written charges presents witnesses and other evidence in support of the charges. The accused may cross-examine the accuser's witnesses, as well as present additional witnesses and evidence. Both accuser and accused may be represented by attorneys or non-lawyer advocates.

After the hearing is concluded, the DHC deliberates to decide what it has found to be the relevant facts, i.e., what it believes to be the truth of the matter, and based upon the facts it has found, what discipline should be imposed, if any. If discipline is imposed, it can range from private censure and admonition, to suspension for a designated period or until there is satisfactory evidence of repentance and amendment, or to removal from the roster of the ELCA. The DHC cannot award damages or impose monetary penalties. Where the DHC determines that no discipline shall be imposed, the individual is entitled to reimbursement for reasonable attorney fees and other expenses related to the defense of the charges.

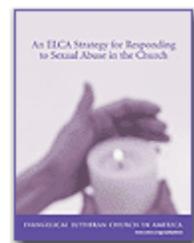
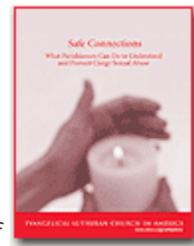
Either party can appeal a decision of a DHC to the 12 member Committee on Appeals that has been previously elected by the Churchwide Assembly. A decision by the Committee on Appeals is final.

The following resources are the key documents for a more detailed study of the ELCA disciplinary process:

- [\*\*Constitutions, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America\*\*](#) is distributed every two years to each ELCA congregation by the ELCA Secretary. Printed copies may be ordered from Augsburg Fortress, Code #23-952601 or 23-952603 (without binder).
- [\*\*Definitions and Guidelines for Discipline\*\*](#) is a booklet which has been distributed to all rostered persons. Printed copies may be obtained from the ELCA Office of the Secretary.
- The document entitled "*Rules Governing Disciplinary Proceedings Against an Ordained Minister, a Rostered Layperson, or a Congregation of the Evangelical Lutheran Church in America*" is approved by the Church Council. Copies of the current version of the rules dated April 11, 2005, may be obtained from the Office of the ELCA Secretary.
- [\*\*Vision and Expectations: Ordained Ministers in Evangelical Lutheran Church in America\*\*](#) is approved by the Church Council.
- [\*\*Vision and Expectations: Associates in Ministry, Diaconesses, and Diaconal Ministers in the Evangelical Lutheran Church in America\*\*](#) is approved by the Church Council and applies to Associates in Ministry, Diaconal Ministers, and Diaconesses.

#### ELCA Resources

- [\*\*Safe Connections: What Parishioners Can Do to Understand and Prevent Clergy Sexual Abuse\*\*](#)  
Healthy relationships of trust and respect between laity and clergy are essential for carrying out the mission of the church. This resource can assist in creating and maintaining strong, creative, and healthy relationships of integrity and safety, for the sake of our common ministry to the gospel of Christ Jesus and to the people of God.
- [\*\*Healing in Congregations After Clergy Sexual Abuse: A Resource to Assist Synodical Leaders and Local Congregations\*\*](#)  
This resource is offered to synodical bishops and their staffs, to other clergy and lay leaders, interims and "after pastors," including those who will provide on-site leadership for a period of time in congregations after the incidence of clergy sexual abuse.
- [\*\*An ELCA Strategy for Responding to Sexual Abuse in the Church\*\*](#)  
A resource of shared learning of synods, seminaries, congregations, colleges, social ministry organizations and the churchwide expression.



- **Background Checks**

Please contact your synod office/ congregation or insurance carrier for a reference(s).

### **ELCA Education and Training Resources**

- [FaithandWisdom.org](http://FaithandWisdom.org) — A database of lifelong learning opportunities for people of faith

### **Additional Education and Training Resources**

- [Faith Trust Institute](#) — Working together to end sexual and domestic violence
- [Creating Safe Churches: Addressing Sexual Misconduct](#) — Presbyterian Church (USA)
- [Safeguarding God's Children](#) — The Episcopal Church (discounted rate for ELCA training)
- [Safe Sanctuaries](#) — United Methodist Church (sample policies and how to create your own)
- [The General Commission on the Status and Role of Women](#) — United Methodist Church

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