

APPENDIX P

PREVENTION OF SEXUAL MISCONDUCT POLICY

P.1000 — INTRODUCTION

New Castle Presbytery (the Presbytery or NCP) of the Presbyterian Church (U.S.A.), in an effort to further the peace, unity and purity of the church through the prevention and remediation of sexual misconduct within the church, has developed the following policy. The structures and procedures for responding to allegations of sexual misconduct are mandated by the Book of Order, particularly at G-3.0106, G-3.0109b, and D-10.401c. The prevention of sexual misconduct policy of the Presbytery applies to all Ministers of Word and Sacrament members as well as to any Ruling Elder(s) commissioned by the Presbytery to a particular service (CRE/CREs). Others who serve the church, paid and volunteer, are usually under the jurisdiction of the session of a particular member church.

P.2000 — THE PURPOSE OF THIS APPENDIX

To define sexual misconduct by Ministers of Word and Sacrament members and CREs of the Presbytery and to describe the procedures for reporting sexual misconduct to the Presbytery.

A) Definition of Sexual Misconduct

Sexual misconduct in the ministerial relationship is an abuse of authority and power, breaching Christian ethical principles by misusing a trust relationship to gain advantage over another for personal gratification in an exploitative and unjust manner. It is the comprehensive term used in this policy to include: sexual abuse of children or adults, rape or sexual assault, sexual harassment, and viewing, storing, or transmitting pornographic material for any purpose on church property and/or with church-owned devices such as, but not limited, to computers and cellular telephones. Categories of sexual misconduct are:

- 1) **Sexual abuse:** Sexual abuse occurs whenever a person in a position of trust or authority engages in a sexual act or sexual contact with another person to whom he or she owes a professional responsibility. Such abuse shall include, but not be limited to, the following:
 - Sexual acts or sexual contact with a minor.
 - Sexual acts or sexual contact involving inducement, threat, coercion, force, violence, or intimidation of another person.

- Sexual acts or contact between a Minister of Word and Sacrament or CRE and a non-ordained person with whom the Minister of Word and Sacrament or CRE has a professional relationship. This includes consensual physical relationships. Sexual relationships even when consensual are not acceptable, whether or not pastoral care is involved. The inherent imbalance of power between a Minister of Word and Sacrament or CRE and a person who is not ordained undermines the validity of such consent.
 - Sexual acts or sexual contact with another person who is incapable of appraising the nature of the conduct or physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act or sexual contact.
 - Sexual acts or sexual contact arising from the administration to another person of a drug or intoxicant which impairs the ability of that person to appraise or control the nature of the conduct.
 - Suggesting or compelling another person to view pornography in any form.
- 2) **Child sexual abuse.** Child sexual abuse includes, but is not limited to, any contact or interaction between a child and an adult when the child is being used for the sexual stimulation of the adult person or of a third person. The behavior may or may not involve touching. Child sexual abuse between an adult and a child is always considered forced whether or not consented to by the child. Child sexual abuse is a crime in all states and must be reported to civil authorities and to the Stated Clerk of the Presbytery (the Stated Clerk). Anyone who knows or has reason to suspect that child abuse has occurred or is occurring may be a mandated reporter under the law.
- 3) **Rape or sexual assault.** Rape or sexual assault is a crime in every state and should be reported to civil authorities and to the Stated Clerk.
- 4) **Sexual harassment.** Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexually offensive nature when:
- submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or

his or her continued status in an institution in either a professional or volunteer capacity;

- submission to or rejection of such conduct by an individual is the basis for employment decisions affecting that individual; or
- such conduct has the purpose or effect of unreasonably interfering with an individual's work or volunteer performance by creating an intimidating, hostile, or offensive working environment. Sexual harassment may consist of a single intense or severe act or multiple persistent or persuasive acts.

Sexual harassment may include, but is not limited to:

- sexually oriented jokes or humor
- sexually demeaning comments
- verbal suggestions of sexual involvement or sexual activity
- questions or comments about sexual behavior
- unwelcome or inappropriate physical contact
- graphic or degrading comments about an individual's physical appearance
- express or implied sexual advances or propositions
- display of sexually suggestive objects or pictures
- repeated requests for social engagements after an individual refuses

B) Policy on Sexual Misconduct

- 1) Sexual misconduct is never permissible. It is a violation of the principles set forth in Scripture as well as of ministerial, pastoral, employment, and professional relationships. Sexual misconduct by Ministers of Word and Sacrament and CREs violates the ordination vows of the Presbyterian Church (U.S.A.) and Presbytery's Code of Ethics for Minister of Word and Sacrament Members and Other Church Professionals (Appendix G of THE MANUAL).
- 2) All Ministers of Word and Sacrament members and all CREs of the Presbytery shall attend a seminar on the issues of prevention of sexual misconduct offered by the Presbytery, or another source satisfactory to the Committee on Ministers & Congregations (COMC), within 18 months of the adoption of this policy. All candidates and inquirers of the Presbytery shall attend a seminar offered by the Presbytery, or another source satisfactory to the Committee on Preparation for Missional Ministry, on the issues of

prevention of sexual misconduct. All Ministers of Word and Sacrament received by the Presbytery from another Presbytery and all CREs upon commissioning shall attend a seminar on the issues of prevention of sexual misconduct offered by the Presbytery, or another source satisfactory to the COMC, within one (1) year of their reception or commissioning.

- 3) Failure to attend such a seminar within one (1) year after a Minister of Word and Sacrament is received by the Presbytery or within eighteen (18) months after adoption of this policy in the case of an existing Minister of Word and Sacrament member or CREs, shall result in a Minister of Word and Sacrament member or CRE being placed automatically on unpaid administrative leave until that Minister of Word and Sacrament member or CRE has attended such a seminar. It is further specified that a reminder letter for compliance with the policy shall be sent by U.S. first-class mail by the Stated Clerk to any Minister of Word and Sacrament member or CRE who has not attended the required seminar: a) within the first twelve (12) months after adoption of the policy in the case of an existing Minister of Word and Sacrament member or CRE, or b) within six (6) months of the date of reception in the case of a Minister of Word and Sacrament received by the Presbytery subsequent to adoption of the policy. If the Minister of Word and Sacrament member or CRE does not comply with the policy, the unpaid leave shall be applied automatically, requiring no further action by the Presbytery.
- 4) Every three years thereafter, all Ministers of Word and Sacrament members and CREs of the Presbytery shall also attend refresher training on the subject of prevention of clergy sexual misconduct. Such training will be offered at several locations across the Presbytery, or may be taken through another source satisfactory to the COMC.
- 5) Whereas this policy addresses sexual misconduct by Minister of Word and Sacrament members and CREs, each congregation and organization in NCP is responsible for developing a policy consistent with this document for church professionals, officers, members, non-member employees, and volunteers.

P.3000 — RESPONSIBILITIES AND ROLES OF THE PRESBYTERY IN POLICY IMPLEMENTATION

A) Availability of Policies and Procedures

- 1) All Minister of Word and Sacrament members and CREs of the Presbytery shall be given a copy of the policy and be required to sign an acknowledgment of receipt.
- 2) This document shall also be available on the Presbytery's web site and shall be available to all church members and to the public.
- 3) Presbytery employees shall receive this document as a supplement to the New Castle Presbytery Personnel Policies (Appendix Q of THE MANUAL).
- 4) This policy will be sent to every clerk of session annually.

B) Management of Allegations of Sexual Misconduct

- 1) **Resource Documents** - The responsibilities, structures and procedures for responding to allegations of sexual misconduct are described in part by the Book of Order and in part by THE MANUAL. Attention is drawn to G-3.0307 and M-5.301(c) for the authority and functions of the COMC and to D-10.0200 for the functions of an investigating committee.
- 2) **Liability and Insurance** - The Presbytery and its congregations shall periodically obtain from their insurance agents confirmation that their liability insurance policies cover sexual misconduct liability for their programs and activities.
- 3) **Record Keeping** - The Presbytery will include in every personnel file, including those for Minister of Word and Sacrament members, the application for employment, any employment questionnaires, reference responses, and other documents related to this policy. This includes, in the case of continuing and prospective Minister of Word and Sacrament members, a signed receipt for receiving the sexual misconduct policy, as well as documentation on attendance at the prevention education seminar.

C) Pre-Employment Screening for Prospective Incoming Ministers of Word and Sacrament

- 1) **Reference Checks** - Pre-employment screening includes specific questions related to previous complaints of sexual misconduct. The Presbytery reviews sexual misconduct information in the Personal Information Form of the Presbyterian Church (U.S.A.) when interviewing persons seeking calls for service as Minister of Word and Sacrament.

- 2) The Connectional Presbyter is responsible for making reference checks through the appropriate PC(USA) council executives (synod, presbytery) or other authorized persons to ascertain whether a prospective Minister of Word and Sacrament member has any history of sexual misconduct. The Connectional Presbyter will report to the COMC either that there was no reported sexual misconduct, or that the COMC should inquire into reported sexual misconduct. A written record of conversations and correspondence with those providing references will be kept in the Minister of Word and Sacrament's/employee's permanent personnel file.
- 3) References on behalf of the Presbytery as provided by the Connectional Presbyter or the COL shall contain truthful information regarding complaints, inquiries, and administrative or disciplinary action related to sexual misconduct by an applicant. Applicants shall be given an opportunity to correct or respond to information regarding sexual misconduct obtained from a reference check.
- 4) **Background Checks** - Pre-employment screening for prospective incoming Ministers of Word and Sacrament shall also include a mandatory Criminal History Background Check performed by a private investigative firm able to access the misdemeanor and felony conviction records of courts in the United States. The criminal background check will be based on the last seven years' residential history of the applicant.

As part of the COMC's clearance process, all prospective incoming clergy shall be required to sign a written consent and release form authorizing the Criminal History Background Check. The COMC will provide all prospective incoming clergy with a written disclosure that a criminal record background report will be requested. Only the Connectional Presbyter shall order and review the criminal record background reports. The discovery of a criminal conviction will not automatically exclude a person from entry into the Presbytery and work in its congregations. The use the Presbytery makes of the criminal record background report will be determined on a case by case basis. The Connectional Presbyter and the COMC will counsel with both the prospective Minister of Word and Sacrament and the calling congregation where appropriate. At the same time, the COMC will take with full seriousness the failure of any incoming prospective Minister of Word and Sacrament to volunteer critically important information regarding his or her criminal history.

The Connectional Presbyter shall ensure the confidentiality and appropriate retention of criminal record background reports.

A prospective Minister of Word and Sacrament who claims that the information in the background report is inaccurate, false or incomplete shall have the right to dispute it with the investigative firm.

The Presbytery will follow all the steps set forth in the Federal Fair Credit Reporting Act.

D) Education

New Castle Presbytery has a commitment to offer, provide resources for, and to publicize educational opportunities to prevent sexual misconduct in the church. Presbytery staff, Sexual Misconduct Response Team members, as described in Section E of this Appendix, and all persons and committees working with the issue, including local congregations, will be encouraged to utilize the resources and attend sexual misconduct prevention seminars.

E) Maintenance of Sexual Misconduct Response Team

A Presbytery Sexual Misconduct Response Team (The TEAM) shall be maintained. The purpose of the TEAM is to assure that an expeditious, professional, objective, effective, and caring response is made by the Presbytery to charges of sexual misconduct. The TEAM will not investigate an allegation or in any way usurp the roles of NCP staff or committees (including investigating committees). The TEAM will confine its activities to:

- 1) Coordinating a process that addresses the specific needs of the alleged victims and their families, those accused and their families, an affected congregation, and the Presbytery;
- 2) Assigning advocates, if requested by the alleged victims, the accused, family members, or an involved congregation;
- 3) Recommending, providing, and participating in education regarding sexual misconduct, its consequences, and its prevention.

Members of the TEAM and any individual participating in the work of the TEAM shall sign a pledge of confidentiality, copies of which shall be furnished to the chair of the TEAM, and the Connectional Presbyter.

P.4000 — POLICY ON RESPONSE TO ALLEGATIONS OF SEXUAL MISCONDUCT BY MINISTER OF WORD AND SACRAMENT OR CRE

- A) Known or suspected sexual misconduct by a Minister of Word and Sacrament-member or CRE shall be reported in writing to the Stated Clerk and to civil authorities where required.
- B) Sexual abuse involving children, and allegations of rape, sexual assault or other misconduct that violates criminal law shall be reported to civil authorities and to the Stated Clerk.
- C) In the event that an alleged incident of sexual harassment comes to the attention of a clerk of session, the moderator of the Sexual Misconduct Response Team, the moderator of the COMC, or the Stated Clerk of the Presbytery, any two of these four will contact the accuser/victim and discuss the following alternatives:
 - 1) At the session or employing agency level: referring the matter to the church session and/or personnel committee for their consideration and action.
 - 2) At the COMC level: requesting an intervention by the TEAM or other COMC representatives with whichever parties they see fit to contact.
 - 3) At the Presbytery level: proceeding directly to the judicial process defined in the Rules of Discipline of the Book of Order. Out of this conversation each participant shall determine the appropriate level of intervention and offer that view to the others.
- D) Ministers of Word and Sacrament and CREs are subject to inquiry and discipline under the *Rules of Discipline*. A final report, including any charges filed, and actions taken shall be made by the Stated Clerk to the Presbytery. A copy of the report will be filed in the permanent personnel file of the accused.
- E) A written complaint to the Stated Clerk alleging sexual misconduct by a Minister of Word and Sacrament member or CRE of the Presbytery will subject that Minister of Word and Sacrament or CRE to the NCP policy set forth in Appendix S of THE MANUAL. The provisions of D-10.0106 apply in cases of sexual misconduct involving a child.
- F) A Minister of Word and Sacrament or CRE may make a written confession of misconduct to the Stated Clerk without a victim's complaint. The Clerk will proceed under the Rules of Discipline.

- G) The Presbytery will respect the rights of all parties involved: accusers, victims, accused, and an involved congregation. These rights include:
- 1) To be heard and taken seriously. From the time that sexual misconduct is reported, all persons involved shall receive immediate attention and serious consideration from those representing the Presbytery. A reasonable attempt to identify and to locate the victim(s) will be made in the case of self-accusal.
 - 2) To be informed about church procedures with regard to the accusation. One member of the TEAM will be the Presbytery contact for each party involved.
 - 3) To obtain legal advice.
 - 4) To be offered an advocate trained by the TEAM. While NCP proceeds to deal with the accusation, the Presbytery has the responsibility to provide each party involved moral support from an individual made available to him, her or them.
 - 5) To be assured that justice will be pursued through the procedures set forth in the Book of Order and this Policy.
 - 6) To become engaged in work toward healing and reconciliation.
- H) The Presbytery shall design a plan for provision of counseling or reimbursement of counseling fees for the victim(s). As appropriate, victim's (or victims') fees may be met by one or more of the Presbytery, the victim's (or victims') insurance, the perpetrator, and the congregation or its insurance. Such fees will be supplied for a reasonable period of time, up to a maximum of one year.

P.5000 — GLOSSARY OF TERMS USED IN THIS APPENDIX

- **Accused** is the person against whom a claim of sexual misconduct is being made.
- **Accuser/victim** is the person claiming knowledge of sexual misconduct by a person covered by this policy. The victim is the person alleged to have been subjected to sexual misconduct by a person covered under this policy. The accuser may or may not have been the victim of the alleged sexual misconduct.

- **Advocate** is a person trained by the TEAM in the issues of sexual misconduct and to provide support, and emotional and physical presence, to either the alleged victim(s) and their family, the accused, family members of the accused, or the congregation involved in a sexual misconduct case. The advocate also provides clarification of the investigative process of the church and the judicial process of the church to the person(s) with whom they work. The role of an advocate is not to speak for the party for whom they advocate, but to inform that party of their rights within the investigative process. The advocate shall not give advice regarding civil legal matters. When requested by the party for whom they advocate, the advocate may accompany that person to meetings of Presbytery entities when that party is testifying.
- **Mandated Reporter** is a person described by the laws of the State of Delaware and/or Maryland as one who is required to report any and all suspected incidents of child abuse, including child sexual abuse, that come to his or her attention. It is noted that state laws may vary from defining "all persons having knowledge" as mandated reporters to specifying a very limited list of professions whose members are required to report child abuse. The policies of the Presbyterian Church (U.S.A.) require all Ruling Elders, deacons and Ministers of Word and Sacrament to serve as "Mandated Reporters" and report all suspected incidents.
- **Ruling Elder Commissioned for Pastoral Service (CRE)** is a Ruling Elder of the Presbyterian Church (U.S.A.) who under the provisions of G.21001 of the Book of Order has been commissioned to limited pastoral service by the Presbytery. As with Ministers of Word and Sacrament, those serving as CREs are bound by G-4.0301 to maintain a relationship of trust and confidentiality and to hold in confidence all information revealed to them in the course of providing care and all information relating to the exercise of such care.
- **Minister of Word and Sacrament, also known as a teaching elder or pastor**, is defined in the Book of Order, G-2.0501.
- **Minister of Word and Sacrament Member** is a teaching elder or pastor who has been received into the membership of the Presbytery. This includes a Minister of Word and Sacrament whose credentials are held simultaneously by another denomination (such as a "Formula of Agreement" denomination) but who serves within the bounds of the Presbytery.

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