

Greater Milwaukee Synod

Evangelical Lutheran Church in America

God's work. Our hands.



Policy for Dealing with Allegations of Sexual Misconduct Against Rostered Ministers

**Approved by the Synod Council
November 16, 2017**

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POLICY FOR DEALING WITH ALLEGATIONS OF SEXUAL MISCONDUCT AGAINST ROSTERED MINISTERS

Approved by the Synod Council, November 16, 2017

1. Introduction

The Greater Milwaukee Synod of the Evangelical Lutheran Church in America is committed to preventing sexual misconduct by rostered ministers and to responding with justice and compassion when allegations of such misconduct are made. This Policy describes how the Synod intends to fulfill these commitments.

The Synod recognizes that responding to allegations of sexual misconduct requires determination, sensitivity, flexibility, respect, and care for all persons affected—the person who reports misconduct, the rostered person, their families and friends, the congregation, the Synod, and the whole church. This Policy is intended to provide a framework for guidance in dealing with these cases while preserving the Synod’s discretion to treat each person and each case in the manner necessitated by differing facts, circumstances, and the needs of those affected.

The Synod emphasizes that, unless required by a provision of a church governing document or Wisconsin law, the practices described in this Policy are guidelines rather than binding rules. There may be circumstances where following a particular guideline would not be appropriate, and the Synod specifically reserves the right to handle allegations of misconduct on a case-by-case basis.

This Policy is subject to both law and Gospel. As required by Wisconsin law, for example, any suspected sexual contact with a child must be reported to the appropriate governmental agency. Further, this Policy will be interpreted and applied compassionately in accordance with the theological and biblical principles of the Gospel.

2. Theological Framework

Note the words of Jesus to his disciples in Matthew 20:25–26: “You know that the rulers of the Gentiles lord it over them, and their great ones are tyrants over them. It will not be so among you; but whoever wishes to be great among you must be your servant” Jesus’ words defined leadership among the people of God in terms of servanthood. Repeatedly, in parables and sayings, Jesus spoke also of stewardship. A steward is one who is given a sacred trust; one who understands clearly the responsibility to care for the gifts of another without exploitation. Ministers, as leaders in the Christian community, are to be servants and stewards engaged in caregiving ministries.

In matters of sexuality and community, these biblical invitations to servanthood and stewardship define a stance for evangelical leadership. Gospel-guided ministers are good stewards of their sexuality from God. Ministers, as stewards and servants, are called to exercise respect for the integrity of persons entrusted in their care. Responsible stewardship entails the recognition of the need for clear boundaries in the relationships of ministers with parishioners, counselees, and persons in the general public looking for spiritual leadership. Misuse of a minister's position to satisfy personal needs or desires is a serious infringement of the God-given rights of another, an abuse of the power and authority of the ministerial office, and a violation of the trust by the community of the faithful.

3. Important Definitions

The following definitions apply for purposes of this Policy:

ELCA or church. "ELCA" and the "church" refer to the Evangelical Lutheran Church in America, a nationwide church dedicated to the propagation of the Christian faith in the Lutheran tradition. Consistent with the ELCA's practice, the word "church" is in lower case letters to distinguish it from "Church" with a capital letter, which refers to the one holy, catholic and apostolic Church. The ELCA has three "expressions:" the churchwide organization headquartered in Chicago, 65 regional synods, and congregations located throughout the United States. The churchwide organization, each of the 65 synods, and most of the congregations are separate corporate entities.

The ELCA is not a hierarchical organization. The relationship between the church and its synods and congregations is one of partnership, not in the legal sense but in the ecclesiastical sense. The same is true of the relationships between the ELCA's synods and the congregations in each synod.

Synod. The "Synod" refers to the Greater Milwaukee Synod of the ELCA, one of the church's 65 synods. This Policy applies to ministers on the roster of the Synod. It does not apply to other ELCA synods.

ELCA Governing Documents. This Policy refers as appropriate to the *Constitutions, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America*, particularly but not exclusively to the provisions of Chapter 20, cited as "ELCA Chapter 20."

For convenience of reference, constitutional provisions are cited as "ELCA" followed by two sets of numbers separated by a period. The first number is the chapter number and the second is the particular provision within the chapter. For example, ELCA 20.12 defines "due process" for purposes of ELCA Chapter 20.

Bylaw provisions are cited as “ELCA” followed by three sets of numbers separated by periods: the chapter number, the constitutional provision, and the related bylaw provision. For example, ELCA 20.12.01 defines “fundamental procedural fairness” for purposes of ELCA Chapter 20.

Rostered Minister. A “rostered minister” may be either a minister of Word and Sacrament (ELCA 7.22)—often referred to as a pastor—or a minister of Word and Service (ELCA 7.52). Under ELCA 7.54.01, ministers of Word and Service are also known as deacons. This Policy refers to both types as rostered ministers or ministers.

Sexual Misconduct. “Sexual misconduct” by a rostered minister includes any conduct on sexual matters that would be grounds for discipline under ELCA Chapter 20 and the ELCA’s publication *Definitions and Guidelines for Discipline*. Sexual misconduct includes the failure of a rostered minister to lead a chaste and decent life in word and deed, including any failure to be chaste and abstinent outside of marriage and any failure to maintain chastity and fidelity within marriage. Other examples of sexual misconduct include sexual or pornographic addictive behavior, adultery, infidelity, casual sexual relationships, promiscuity, the sexual abuse of another, the misuse of a pastoral relationship for sexual activity, any other sexual conduct incompatible with the character of the ministerial office, and any other sexual conduct that would be punishable under Chapters 940, 944, or 948 of the Wisconsin Statutes.

The Synod is concerned about all types of inappropriate sexual behavior by rostered ministers, regardless of whether or how the misconduct is characterized by Wisconsin or Federal law or the ELCA’s governing documents. Wisconsin and Federal laws make distinctions among various types of sexual misconduct, such as sexual harassment, sexual abuse, and sexual assault. Similarly, ELCA Chapter 20 and the *Definitions and Guidelines for Discipline* adopted by the ELCA’s Church Council define what types of sexual misconduct can result in the discipline of a rostered minister. These distinctions should not concern a person who is troubled about the sexual conduct of a rostered minister. Any inappropriate sexual behavior should be reported to the Synod.

Reporter. A “reporter” is any person who reports alleged sexual misconduct to the Synod. The person reporting sexual misconduct is usually the victim of the alleged sexual misconduct being reported, but that is not always the case. For example, the parent of a child could report sexual misconduct against the child, in which case the child would be the victim.

4. The Importance of Standards of Conduct

Rostered ministers, like all professionals, are subject to standards of conduct. In the case of rostered ministers, these standards are established by the church. In addition, ministers are subject to the legal requirements relating to sexual misconduct established by Wisconsin law (see Point 4.2).

4.1. Church Standards

The standards of conduct required of rostered ministers are embodied in the ELCA's governing documents. Among other things, ELCA 7.22 requires that a minister of Word and Sacrament must be a person "who is diligent and faithful in the exercise of the ministry; and whose life and conduct are above reproach." ELCA 7.52 applies the same standard to a minister of Word and Service.

Under ELCA 20.21.01 and 20.22.01, rostered ministers are subject to discipline for "conduct incompatible with the character of the ministerial office." The *Definitions and Guidelines for Discipline* adopted by the ELCA's Church Council describe various types of behavior that are considered to be such incompatible conduct. With regard to sexual matters, a rostered minister "is to lead a chaste and decent life in word and deed." As part of this expectation, "chastity and abstinence are required outside of marriage . . . and chastity and fidelity are required within marriage" Conduct incompatible with the ministerial office specifically includes: "Adultery, infidelity, casual sexual relationships, promiscuity, the sexual abuse of another or the misuse of [pastoral or ministry] relationships for sexual activity"

The necessity for standards of conduct should be apparent. A rostered minister serving in a parish has a high degree of involvement in the personal lives of the members of the congregation served. The minister often deals with people who are in crisis situations, or who are otherwise vulnerable and in need of help. As a human being, the minister may be attracted to members of the congregation, or may observe that some members of the congregation are attracted to him or her. As a professional, however, the minister may not act on any such attraction or otherwise become sexually involved with members of the congregation. To do so constitutes an abuse of the minister's role as a professional, and substitutes a personal agenda for the needs of the people the minister is called to serve.

Members of a congregation look to their ministers as their spiritual leaders. Leadership inevitably connotes power, and a minister usually exercises a degree of power over members of the congregation that may not always be perceived or understood. This power is heightened when a member of the congregation comes to the minister for counseling or spiritual help. A person in such a situation is vulnerable. A minister who takes advantage of this vulnerability and initiates or permits a sexual relationship is not acting professionally. Rather, this conduct falls

short of the professional standards members of the congregation expect of the minister and deprives the member of a safe refuge in a time of need.

A non-marital sexual relationship that does not grow out of a counseling relationship is similarly unacceptable. The minister's position of power makes a member of the congregation vulnerable to manipulation and coercion. Even if a member thinks he or she has consented to a sexual relationship, the relationship may not be truly consensual. In order to be truly consensual, a sexual relationship must be based on full awareness and free and mutual choice. When two people do not have equal power in a relationship, one may be subject to manipulation and coercion. Thus, a member who believes a sexual relationship with a minister is consensual may later realize that it was not and feel abused and victimized.

All of the foregoing factors underscore the need for a disciplinary process within the church to deal with allegations of sexual misconduct. Rostered ministers, like members of any profession, must be subject to discipline if they have not adhered to the professional standards they are expected to follow. It is important in this regard to distinguish the concept of forgiveness from the concept of discipline. As a church body, the Synod must forgive and does forgive all who have sinned and who repent of their sin. A rostered minister involved in sexual misconduct may receive this forgiveness like anyone else.

A minister whose sin has been forgiven does not automatically avoid the consequences of actions constituting professional misconduct, however. A minister who has not met or who is unable to meet the standards of conduct expected of rostered ministers may not be able to continue in his or her present call or may not be permitted to continue in the rostered ministry. The purpose of the ELCA's disciplinary procedures is to evaluate these and similar issues in a way that protects both the integrity of the church and the rights of the individual minister.

4.2. Legal Requirements

Wisconsin law also imposes legal requirements on rostered ministers and their employers in the circumstances briefly described below. The following definitions apply for purposes of this Point 4.2:

- “Abuse” and “child abuse” include but are not limited to sexual intercourse or sexual contact with a child. Wis. Stat. § 48.01(1)(b).
- A “child” is anyone under the age of 18. *Id.* § 48.02(2).
- A “member of the clergy” is defined as a “spiritual adviser of any religion, whether the adviser is termed priest, rabbi, minister of the gospel, pastor, reverend or any other official designation.” *Id.* §§ 48.981(1)(cx), 765.002(1).

This definition covers both ministers of Word and Sacrament and ministers of Word and Service.

4.2.1. Child Abuse Reporting

A member of the clergy is required to report to the appropriate public agency if he or she has reasonable cause to believe that a child seen in the course of professional duties has either been abused or has been threatened with abuse and that abuse of the child will likely occur. Wis. Stat. § 48.981(2)(bm)1. The reporting requirement also applies if the member of the clergy has reasonable cause to believe that another member of the clergy has abused a child or threatened a child with abuse. *Id.* § 48.981(2)(bm)2. The statute does describe a limited exception to these reporting requirements, however. A member of the clergy is not required to report child abuse information:

[T]hat he or she receives solely through confidential information made to him or her privately or in a confessional setting if he or she is authorized to hear or is accustomed to hearing such communications and, under the discipline, tenets, or traditions of his or her religion, has a duty or is expected to keep those communications secret. Those disciplines, tenets, or traditions need not be in writing.

Id. § 48.981(2)(bm)3.

ELCA 7.45 states the confidentiality requirement applicable to ministers of Word and Sacrament as follows:

In keeping with the historic discipline and practice of the Lutheran church and to be true to a sacred trust inherent in the nature of the pastoral office, no minister of Word and Sacrament of this church shall divulge any confidential information received in the course of the care of souls or otherwise in a professional capacity, nor testify concerning conduct observed by the minister of Word and Sacrament while working in a pastoral capacity, except with the express permission of the person who has given confidential information to the minister of Word and Sacrament, or if the person intends great harm to self or others.

A minister who becomes aware of child abuse should obtain legal counsel to determine an appropriate course of action. Children are vulnerable and easily

victimized, and in most cases a report will likely be required. This is especially true if abuse is likely to occur again. Note that the confidentiality requirement of ELCA 7.45 does not apply “if the person intends great harm to self or others,” a phrase that covers future child abuse. Moreover, a person who reports child abuse in good faith is statutorily entitled to “immunity from any liability, civil or criminal, that results by reason of that action.” Wis. Stat. § 48.981(4).

4.2.2. Civil Liability for Sexual Exploitation of a Child by a Member of the Clergy

Any person who suffered an injury as a result of sexual contact by a member of the clergy that occurred while the person was under the age of 18 may bring an action against the member of the clergy for all damages caused by the sexual contact. Wis. Stat. § 895.442(2)(a). The person injured may also bring an action against the religious organization that employed the clergy member if the clergy member’s supervisor knew or should have known that the clergy member had previously had sexual contact with a person under the age of 18 and (i) failed to make the required report and (ii) failed to exercise ordinary care to prevent similar incidents from occurring. *Id.* § 895.442(2)(b).

Two other points bear mention for purposes of a legal action brought under Section 895.442. First, consent to the sexual contact is not an issue. *Id.* § 895.442(3). Second, the time in which the lawsuit must be filed is potentially lengthy. The action is not time barred if it is commenced before the injured person reaches the age of 35. *Id.* §§ 895.442(4), 893.587.

4.2.3. Civil Liability for Sexual Exploitation by a Therapist

Section 895.441(2)(a) of the Wisconsin Statutes provides for civil liability for sexual contact arising out of a counseling situation:

Any person who suffers, directly or indirectly, a physical, mental or emotional injury caused by, resulting from or arising out of sexual contact with a therapist who is rendering or has rendered to that person psychotherapy, counseling or other assessment or treatment of or involving any mental or emotional illness, symptom or condition has a civil cause of action against the psychotherapist for all damages resulting from, arising out of or caused by that sexual contact.

Significantly, the term “therapist” as used in this statute is defined to include a member of the clergy. Wis. Stat. § 895.441(1)(e). Consent is not an issue unless the

sexual contact occurred more than six months after the end of the psychotherapy, counseling, assessment, or treatment. *Id.* § 895.441(2).

A lawsuit under Section 895.441 must ordinarily be brought within three years after the cause of action accrued. If, however, the injured person is not able to file suit because of the effects of the sexual contact or because of threats, instructions, or statements from the therapist, the three-year limitation may be extended by up to 15 years. *Id.* §§ 895.441(4), 893.585(2).

4.2.4. Criminal Liability

A rostered minister's failure to adhere to appropriate standards of sexual conduct may also lead to criminal liability under Wisconsin law. Section 940.22(2) of the Wisconsin Statutes provides that a therapist—defined to include a member of the clergy—who “intentionally has sexual contact with a patient or client during any ongoing therapist-patient or therapist-client relationship, regardless of whether it occurs during any treatment, consultation, interview or examination, is guilty of a Class F felony.” A Class F felony is punishable by a fine of up to \$25,000 or imprisonment for up to 12 years and 6 months, or both. Wis. Stat. § 895.50. Consent to the sexual contact is not an issue. *Id.* § 940.22(2).

4.2.5. Requirement to Ask About Reporting

A rostered minister who is counseling a person who was the victim of sexual contact by a therapist may need to make a report of the sexual contact. Section 940.22(3) of the Wisconsin Statutes requires a therapist—defined to include a member of the clergy—who has reasonable cause to suspect that a client seen in the course of professional duties is a victim of sexual contact by another therapist to ask the client if he or she wants an official report to be made. The therapist is required to explain to the client that the report need not identify the client as the victim.

A client who wants a report made must provide the therapist with a written consent, which must specify whether the client's identity is to be included. Within 30 days after receiving the consent, the therapist is required to make a report of the suspected sexual contact to the Wisconsin Department of Health and Social Services if the reporter believes the subject of the report is licensed by the State of Wisconsin or, in all other cases, to the district attorney of the county where, in the reporter's opinion, the sexual contact is likely to have taken place. The report must contain only information that is necessary to identify the reporter and the subject and to express the suspicion that sexual contact has occurred in violation of Wisconsin law. Unless the client has consented in writing, the report may not contain information as to the client's identity.

A therapist who intentionally fails to make a required report may be found guilty of a Class A misdemeanor, which is punishable by a fine up to \$10,000 or imprisonment for up to nine months, or both. Wis. Stat. § 939.51. While the employees of the Synod would not ordinarily be considered to be “therapists” for purposes of Section 940.22(3), in keeping with the spirit of the law, persons making allegations of sexual misconduct by rostered ministers may be asked if they want a report to be made.

4.2.6. Sexual Harassment

The Wisconsin Fair Employment Act applies to all employers in Wisconsin that have at least one employee. Wis. Stat. § 111.32(6)(a). The Act forbids employers from discriminating against employees and applicants for employment based on numerous categories, including sex. Discrimination based on sex includes engaging in or permitting sexual harassment. *Id.* § 111.36(b)–(br).

Sexual harassment might be considered sexual misconduct as defined in Point 3 above depending on the particular circumstances. This Policy applies only to rostered ministers, so sexual harassment carried out by an employee of a congregation who is not a rostered minister must be dealt with by the congregation. In addition, the Synod would not have any legal liability under the Act for sexual harassment engaged in by an employee of a congregation, whether or not he or she is a rostered minister. In any event, as noted in Point 3, anyone troubled by inappropriate sexual behavior by a rostered minister is encouraged to report the behavior to the Synod for appropriate follow-up action.

5. Differing Roles of the Synod and Congregations

The Synod and its member congregations have different responsibilities and roles in preventing and responding to reports of sexual misconduct by rostered ministers. These roles and responsibilities are reviewed briefly here.

5.1. Role of the Synod

5.1.1. Education and Preparation

The Synod does not tolerate sexual misconduct by any rostered ministers over whom it has disciplinary jurisdiction under ELCA Chapter 20.

The Synod will act to prevent to sexual misconduct and to respond to allegations of sexual misconduct (see Points 5.1.2 and 6 through 8 below). The Synod will make its position on this issue clear:

- In educational opportunities the Synod provides;

- By the way in which the Synod responds to reports of sexual misconduct by rostered ministers;
- In discussions with seminarians and others who seek to serve within the Synod; and
- In public and private statements on the subject.

The Synod intends to provide or promote ongoing educational opportunities regarding the issue of sexual misconduct for rostered ministers, congregations, and others. Education will focus on such subjects as prevention of sexual misconduct and the impact of such misconduct on victims, their families, and the congregations affected. The Synod expects its rostered ministers and congregations to take advantage of these opportunities, as well as appropriate in-person educational programs offered by others, at least once every three years.

In addition, the bishop and the members of the Synod staff will themselves take advantage of appropriate educational opportunities. A list of upcoming educational events will be maintained on the Synod's website (www.milwaukee-synod.org).

The Synod's preventive efforts are intended to complement similar efforts that have been or will be made by the Synod's member congregations, by the ELCA churchwide organization, by ELCA seminaries, and by other entities affiliated with the ELCA.

5.1.2. When an Allegation Has Been Received

When an allegation of sexual misconduct has been received, the Synod's role is essentially twofold. First, the Synod's bishop is responsible for seeing that pastoral care and leadership is provided to the Synod's congregations and rostered ministers. Reports of sexual misconduct invariably create an acute need for such care and leadership. Second, the bishop is principally responsible for the initiation and administration of the disciplinary process established by ELCA Chapter 20.

In every sexual misconduct case, the bishop and the Synod staff will attempt to arrange for the pastoral care of the victim of the misconduct, the victim's family, the accused rostered minister, the rostered minister's family, members of the rostered minister's present or former congregation, the rostered minister's colleagues, and others. Neither the bishop nor a member of the bishop's staff will function as a pastor, counselor, advocate, attorney, or other caregiver to any of these individuals.

The Synod will not ignore reports of sexual misconduct, will act upon substantiated allegations, and will disclose the results of its investigation and any significant developments relating to the investigation. This is not to say that the Synod will treat

every case exactly the same. Sexual misconduct varies greatly by type, by degree, and by its effect on those involved. The Synod will attempt to respond appropriately to each case while not tolerating any misconduct discovered to exist.

The ultimate responsibility of the bishop and the Synod staff is to the Synod, not to any individual within the Synod. If there is a conflict between the Synod's interests and the interests of someone else, the bishop, the Synod staff, and the Synod Council are obligated to act in the best interests of the Synod. In some cases, the Synod's actions may be inconsistent with the wishes of the reporter, the accused rostered minister, or the affected congregation.

Every report of sexual misconduct by a rostered minister involves unique people and unique circumstances. This Policy describes the general approach the Synod will follow in responding to such reports. It will not be appropriate or even possible for the Synod to follow this approach in every case. The Synod has and reserves the right to depart from this Policy as circumstances may dictate.

The Synod's freedom to decide for itself how God has called it to minister to those harmed by sexual misconduct is a precious one that the First Amendment protects from governmental interference. The same is true of the Synod's freedom to decide who will be on its roster, and of the freedom of each congregation to decide who will serve as its minister(s). Nothing in this Policy waives or diminishes these freedoms in any respect or creates any rights or responsibilities other than those already imposed by civil law.

5.2. Role of Congregations

The fact that this Policy is issued by the Synod primarily to describe its procedures for dealing with allegations of sexual misconduct should not obscure the vital role of congregations in such matters. For example, each ELCA congregation:

- Governs itself and exercises control over its internal practices and policies and the use of its property;
- Carries out its mission and ministry to the community;
- Elects its leadership, and employs and supervises its own staff;
- Calls its own rostered ministers, determines their specific duties and responsibilities, and sets their salaries and benefits.

The Synod has neither the authority nor the ability to carry out these actions for a particular congregation.

Congregations should follow their own policies for the prevention of sexual abuse. The publication *Safe Connections: What Parishioners Can Do to Understand and Prevent Clergy Sexual Abuse* (available at www.ELCA.org) is a useful resource in this regard. Such policies may be especially helpful for dealing with allegations made against congregational employees who are not rostered, whether or not their duties are ministerial in nature. The responsibility for dealing with such employees falls on the congregation, not the Synod.

In some cases, the Synod may not be able to assume primary responsibility for addressing all allegations of sexual misconduct against a rostered minister. For example, if a rostered minister who is under call to a congregation is accused of sexually harassing another employee of the congregation, civil law may require that the congregation, as the employer, take timely and appropriate action to deal with the situation.

A rostered minister called to a congregation is the employee of that congregation. He or she is not an employee of the Synod. While the call may be terminated as a result of the disciplinary process, the congregation itself may also terminate the call in accordance with the procedures specified in ELCA Chapter 7 and the comparable provisions of the congregation's own constitution. Such procedures require the involvement of the Synod's bishop, and the Synod must be consulted in all cases involving rostered ministers.

6. Initial Contact

Even the best preventive measures cannot completely eliminate sexual misconduct by rostered ministers. The Synod will take seriously any reports of such sexual misconduct, and will act upon substantiated allegations, including reporting alleged criminal conduct to the appropriate authorities.

The Synod is committed to responding with care and sympathy to reporters of sexual misconduct by rostered ministers, treating them as likely victims of sexual abuse. This is not a matter of "taking sides," but is rather a matter of recognizing that they have suffered pain and trauma and showing the compassion the church should show to all people who suffer.

Crucial to the Synod's response is an initial posture of taking seriously allegations of sexual misconduct by a rostered minister. Data indicates that individuals with first-hand information about intimate and painful events are probably sharing truth, particularly when they are willing to document their allegations in writing (see Point 7). A particular person may have difficulty recalling every detail because of the passage of time or the pain caused by the memories being relived. Nonetheless, no justification exists for simply ignoring or denigrating such allegations or the persons who make them. They must be dealt with responsibly and compassionately.

Therefore, in responding to allegations of sexual misconduct, the Synod tries to avoid re-victimizing the people making the allegations by a cruel and insensitive church process. Rather, reporters are assured that the process will not move forward in ways that call on them to be involved beyond their ability or willingness to cooperate, even if this means no action is taken. The Synod also seeks to protect the reporters from ill-informed congregational and public reaction that may seek to place the blame for misconduct on victims rather than perpetrators. Finally, the Synod attempts to arrange for help in dealing with the personal issues relating to alleged ministerial misconduct that are brought to the surface, including counseling and spiritual support. The congregation's insurance carrier may be willing to pay for counseling and, in any event, should be notified by the congregation when allegations are brought to the congregation's attention.

Anyone who knows or suspects that a rostered minister may have been involved in sexual misconduct should report that knowledge or suspicion to the bishop or an assistant to the bishop. The names, addresses, and telephone numbers of the bishop and the assistants are posted and will be maintained on the Synod website (www.milwaukeeesynod.org).

If a reporter is uncomfortable about contacting the bishop or an assistant to the bishop, then the reporter should contact one of the other people listed on the website. Those people—who may include men and women, ministers and laypersons, Lutherans and non-Lutherans—have agreed to be available to receive reports of sexual misconduct from individuals who are uncomfortable contacting the bishop directly. Nonetheless, it must be stressed that these people are acting on behalf of the Synod, and any information they are given will be shared with the bishop (unless it is the bishop who is being accused of sexual misconduct, in which case the presiding bishop of the ELCA will be contacted).

A contact may be made with the bishop or other authorized person by mail, by telephone, by email, or in person. The reporter need not disclose his or her identity when first contacting the Synod. The reporter may ask questions anonymously about how the Synod would respond to a particular complaint of misconduct. Note, however, that there is little the Synod can do about an anonymous report of sexual misconduct. For the Synod to proceed, it will need to know the identities of the reporter and the accused rostered minister.

The bishop or other person contacted by the reporter will:

- Assure the reporter that the Synod does not tolerate sexual misconduct and takes seriously all reports of such misconduct;

- Explain the Synod’s process for responding to reports of sexual misconduct and offer to provide a copy of this Policy;
- Answer the reporter’s questions about the Policy and the Synod’s procedures for dealing with allegations of sexual misconduct;
- Express care and concern for the reporter; and
- If the reporter is anonymous, encourage the reporter to disclose his or her identify and the identity of the rostered minister alleged to have engaged in misconduct.

7. The Synod’s Initial Response

After a report of alleged sexual misconduct committed by a rostered minister has been received from an identified reporter, the bishop or bishop’s representative will interview the reporter in person or, if that is not possible, by telephone. The bishop’s representative may be the Synod attorney or a member of the Synod staff.

The interview may continue through a series of meetings, calls, and correspondence. The reporter will be asked to provide as much detailed information about the alleged sexual misconduct as he or she is willing to share. It is generally assumed for purposes of this Policy that the reporter is claiming first-hand knowledge of the alleged misconduct. The Synod must evaluate the seriousness of the allegations and the credibility of the information presented in order to determine the appropriate course of action. More than one meeting may be necessary to establish the degree of trust and rapport necessary for a full and frank discussion of the allegations and their implications.

The Synod will not proceed with the actions described below unless and until the bishop is satisfied that the allegations seem credible. In this context, allegations may be deemed credible if a reasonable person would believe under all the facts and circumstances that the allegations merit further review by a consultation or advisory panel. Under this standard, the bishop may or may not personally believe the allegations are truthful. At this early stage, the bishop’s personal belief may not be relevant, particularly since the allegations will not yet have been discussed with the minister concerned.

The bishop or bishop’s representative will also ask the reporter what he or she is seeking in coming forward and whether the reporter is prepared to participate in the disciplinary process if necessary. The reporter should be given a copy of this Policy if a copy was not previously provided.

Assuming the bishop is convinced that the allegations seem credible, the reporter making the allegations will be asked to meet with the Synod's attorney. A number of important purposes are served by such a meeting. Each person making allegations should understand the nature and steps involved in the ELCA's disciplinary procedures, including the possibility of a hearing, and the attorney should explain these procedures and answer any questions that may be asked. The attorney will want to hear the reporter's information and will evaluate the reporter's credibility and the plausibility of the reporter's information. The attorney will also want to know whether the reporter is committed to cooperating in any further investigation and possible disciplinary procedures. At this early stage, the reporter need not have finally decided to testify if a hearing is held, but the reporter does need to make a commitment to signing an affidavit or sworn declaration, as discussed in the next paragraph, in order for further actions to take place. The attorney will explain that the attorney's role is to represent the Synod, not the reporter, and that the reporter's role is to be a witness, providing accurate information about the alleged misconduct.

Assuming the attorney is convinced of the plausibility of the information being presented and the reporter is willing to cooperate, the reporter will be asked to sign a statement—either an affidavit or a sworn declaration—summarizing the information presented. Signing a statement documenting allegations of sexual misconduct is beneficial to both the reporter and the Synod. From the standpoint of the reporter, the process of reviewing the information “in print” may help him or her confront and deal with a difficult series of events. From the standpoint of the Synod, the preparation of a statement helps highlight the serious nature of the process and facilitates the provision of accurate and complete information. The Synod will ordinarily not undertake further proceedings unless and until allegations have been substantiated in a statement signed by the reporter.

The statement itself is not intended to be made available to anyone other than the Synod's attorney, the bishop, an assistant to the bishop if necessary, and, if permission is given by the reporter signing the statement, members of the Synod's Executive Committee. The ELCA's disciplinary procedures, unlike the procedures involved in civil litigation, do not provide for pretrial discovery, so the statement itself will not ordinarily be presented to the consultation or advisory panel or to the discipline hearing committee. Nor will the statement be voluntarily disclosed to the rostered minister, the minister's attorney, or the minister's congregation. The statement would be subject to involuntary disclosure only through a court order or other legal process, which the Synod would likely contest.

In all meetings with Synod personnel, the reporter may be accompanied by a friend, family member, support person, or advocate of her or his choice. The reporter may contact an advocate and may be accompanied by that advocate through the reporting, investigative, and, if necessary, disciplinary processes. Under no

circumstances will any employee of the Synod function as the reporter's advocate. At the reporter's request, however, the Synod will contact an advocate to provide assistance to the reporter. The bishop or other person contacted by the reporter may also offer to provide a list of advocates who are available to provide support and to help interpret the Synod's policies and procedures. This list may include advocates who are affiliated with the ELCA and advocates who are not. The reporter is welcome to use an advocate who does not appear on the Synod's list—such as a friend or family member—or to decline to use an advocate.

The bishop or bishop's representative will discuss with the reporter how the reporter feels about the possibility that his or her identity may become known to the accused minister or others. Insofar as possible, the Synod will respect the wishes of the reporter regarding confidentiality. At some point, however, the Synod may be required by civil law or by the ELCA's governing documents to disclose the identity of the reporter. Also, the reporter's identity may be revealed by others or become known despite the best efforts of the Synod to protect it. The Synod therefore cannot guarantee confidentiality.

The bishop or bishop's representative will also discuss with the reporter his or her needs for pastoral care and may suggest professional counseling. If the reporter requests, the bishop or bishop's representative will help put the reporter in contact with persons who can provide pastoral care or professional counseling to the complainant pursuant to such terms as they may determine between themselves. No employee of the Synod can function as the reporter's pastor, therapist, or counselor.

The bishop or bishop's representative will appoint a contact person for the reporter. That contact person—who may be the bishop, the bishop's representative, or the Synod attorney—will inform the reporter of significant developments. The contact person will also be available to respond to the reporter's questions and concerns about the process.

If the bishop or the bishop's representative learns that a child or vulnerable adult may have been neglected or physically or sexually abused, the bishop or bishop's designee is legally required to report that information to law enforcement authorities. The bishop or the bishop's representative may also urge and assist the reporter to file a report with the authorities. If possible, the reporter will be notified when the Synod reports to law enforcement authorities.

8. Additional Investigation

Depending on the nature of the information presented by the first reporter, further investigation may be undertaken prior to the actions described below. The Synod's experience has been that a rostered minister involved in an improper relationship

with one person may well have been involved with others. Further, the existence of such relationships may be readily apparent.

The extent of any further investigation is a difficult issue that must be carefully considered on a case-by-case basis. On the one hand, if the bishop finally determines that the case should proceed to a consultation or advisory panel and/or a formal hearing, it is important that the allegations dealt with be as comprehensive as reasonably appropriate. If information is readily available that would support the inclusion of additional allegations, those allegations should be included at the outset of the process. Failing to include additional allegations could lead to an amendment of formal charges at a later point in the proceedings, which would involve delay, or to beginning the process all over again, which would involve further delay and unnecessary disruption. On the other hand, any further investigation must be handled with care and discretion to avoid premature or inappropriate disclosure of the matter.

It is also important that the investigation be as thorough as warranted under the circumstances. To the extent appropriate, people who may have information relevant to the allegations should be questioned. Thus, if it becomes apparent that a number of persons may have been the victims of sexual misconduct, the Synod will attempt to contact them to the extent appropriate, in each case holding meetings and requesting signed statements as described in Point 7 above.

The investigation at this stage need not be exhaustive. The focus should be on obtaining information that bears on the plausibility of the allegations and the credibility of the reporter(s). A more extensive investigation at this stage would likely lead to unwarranted delay in the resolution of the allegations. It would be inappropriate to question all of the rostered minister's colleagues and associates or all members of the congregation council, for example, simply in the interest of conducting an exhaustive investigation because they may neither know nor be in a position to know anything about the allegations being made. Should disciplinary procedures prove necessary, further investigation can be undertaken based on information then available.

The bishop will ordinarily not meet with the accused rostered minister until after the investigation has been completed and the matter has been reviewed by the Executive Committee (see Point 9) if the bishop decides a review by the Executive Committee is appropriate. While the delayed notification to the minister might initially seem "unfair," it is consistent with ELCA disciplinary procedure and common sense. ELCA 20.21.04 provides that the bishop should meet with the rostered minister only in cases where "there are indications that a cause for discipline may exist . . ." The bishop will not finally make this determination until after the meeting with the Executive Committee referred to in Point 9 for the reasons there discussed. A

rostered minister who has not been involved in misconduct has nothing to fear from a short delay in learning of the allegations. On the other hand, a minister who has been involved in sexual misconduct and who learns of the allegations may attempt to impede the investigation. In such a situation, the minister would be in a position to threaten reporters or other witnesses or misrepresent the situation to members of the minister's congregation. The Synod has learned through experience that the best course of action is not to meet with the accused minister (see Point 10) until the investigation has been completed and the bishop has determined how to proceed.

9. Meeting with the Executive Committee

The Synod recognizes that bringing allegations of sexual misconduct against a rostered minister is an extremely serious matter. Such allegations, whether or not finally determined to be true, potentially affect the lives of countless people. Certainly the reporters of the allegations may encounter disruption and difficulty, particularly if they are active in the congregation of the accused minister, and the Synod must be sensitive to their situation. At the same time, the Synod is sensitive to the disruption the allegations will likely bring to the accused minister and the minister's family and congregation.

In order to provide for additional careful consideration of the allegations prior to invocation of further proceedings, the bishop and sometimes the Synod's attorney may review the entire matter with the Synod's Executive Committee before undertaking any further actions. The members of the Executive Committee are not employed by the bishop and will be able to offer an independent perspective.

The review conducted by the Executive Committee may depend on the particular circumstances of the case. In cases that the bishop intends to refer to a consultation or advisory panel, the review by the Executive Committee will likely be limited. As explained in Point 12, the consultation or advisory panel will review the situation and make a recommendation to the bishop. In cases where the bishop intends to issue charges to be heard by a discipline hearing committee without review by a consultation or advisory panel, the review by the Executive Committee will likely be more thorough. In such cases, the Executive Committee may agree with the bishop's decision, advise that disciplinary action is not appropriate, or suggest that the matter be referred to a consultation or advisory panel.

10. Meeting with the Rostered Minister

The bishop will usually meet with the accused rostered minister after the steps described in Points 7 through 9 have been concluded. The bishop will normally be accompanied by a member of the Synod staff or Executive Committee. In rare cases—such as when the rostered minister is aware of the report or when the minister may pose an immediate danger to members of his or her congregation—the

bishop may meet with the rostered minister immediately after or perhaps even before meeting with the reporter.

Regardless of when the meeting is held, the bishop will clarify that the meeting is not confidential, and that the bishop may disclose anything said during the meeting. The bishop will provide the rostered minister with information regarding the allegations—except the statement(s) signed by the reporter(s)—and ask for a response. The bishop may ask the minister to respond in writing. The bishop will also:

- Assure the minister that, while the Synod does not tolerate sexual misconduct, the Synod will give provide a full and fair opportunity for the minister to contest any allegations that are denied;
- Explain the Synod’s process for responding to reports of sexual misconduct and provide copies of ELCA Chapter 20 and this Policy;
- Answer the rostered minister’s questions about the policies and procedures of the Synod;
- Express care and concern for the rostered minister, and his or family and congregation;
- Strongly discourage the rostered minister from having any contact with the reporter, either directly or indirectly; and
- Invite the rostered minister to contact an advocate and to be accompanied by that advocate through the investigative, and, if necessary, disciplinary processes. Upon request, the Synod will assist the minister in finding an advocate. The minister may decline to use an advocate.

When appropriate, the bishop may, in the bishop’s discretion:

- Ask the rostered minister to resign from his or her call or to resign from the roster of the ELCA. The bishop cannot force the rostered minister to submit a resignation. In most cases, only a discipline hearing committee can remove the rostered minister from the roster involuntarily.
- Allow the rostered minister to agree voluntarily to certain restrictions upon his or her ministry until the investigation or disciplinary proceedings are concluded. If the minister refuses, the bishop may ask the congregation council to impose appropriate restrictions.

- Allow the rostered minister to take a leave of absence—with or without pay—until any further investigatory or disciplinary proceedings are concluded.
- Ask the congregation to place the rostered minister on an involuntary leave of absence.
- Temporarily suspend the rostered minister without prejudice.
- Convene a formal disciplinary proceeding before a hearing committee to remove the rostered minister from the roster involuntarily.

The minister's resignation from his or her current position is an important consequence even in those cases where resignation from the roster is not requested. A minister who acknowledges an inappropriate sexual relationship has broken the covenant of trust with the congregation being served. The Synod's experience has been that the minister's future in ministry, if any, lies elsewhere.

The minister must think carefully about an appropriate course of action. If the bishop will refrain from initiating disciplinary proceedings only if the minister resigns from the ELCA roster as well as from the minister's current call, the minister must be ready to explore new career alternatives. In cases where resignation from the current call is the only immediate consequence, the minister will still face a temporary disruption in his or her career. Further, the minister will not be available for another call unless and until the bishop, with the advice of the Executive Committee, is satisfied that another call may be appropriate. There is no guarantee that another call will be extended even if the minister becomes available for another call.

The bishop will discuss with the rostered minister his or her needs for pastoral care or professional counseling, as well as the care of the rostered minister's family. If the rostered minister requests, the bishop will help to put the rostered minister in contact with persons who can provide such care or counseling pursuant to such terms as they may determine between themselves. Under no circumstances will any employee of the Synod or a member of the Synod Council function as advocate, pastor, or counselor to the rostered minister or the rostered minister's family.

The bishop will appoint a contact person within the Synod. That contact person (who may be the bishop or the bishop's representative) will inform the rostered minister of significant developments. That contact person will also be available to respond to the rostered minister's questions and concerns about the process.

11. Assessing the Information Following the Meeting with the Rostered Minister

After meeting with the rostered minister, the bishop will again review the information provided by the reporter(s), discovered during additional investigation, and given by the rostered minister. The bishop may also may consult with the Executive Committee, members of the Synod staff, and the Synod attorney. The bishop will then decide upon a course of action, keeping in mind that changed circumstances may require changes in direction as the matter progresses.

Among the options available to the bishop would be the following:

- Taking no further action at this time;
- Pursuing further investigation;
- Requesting the rostered minister to undergo a psycho-diagnostic evaluation;
- Seeking a resolution by consulting directly with the parties;
- Requesting the rostered minister's congregation to take some action;
- Convening a consultation or advisory panel; and
- Initiating the formal disciplinary process.

The last two of these options are discussed further below. Depending upon the circumstances, additional options may be considered as well, including inviting the rostered minister to resign from the call, from the ELCA roster, or both.

At the conclusion of the meeting, the minister will be advised that a reasonable period of time is available for consultation with the minister's family and other advisers so the minister can determine a course of action. What is "reasonable" may vary according to individual circumstances, but typically a week should be the outside limit. Recognizing that the minister is being presented with a difficult choice, the Synod tries to be as supportive as appropriate under the circumstances. At the same time, the Synod must be aware that a minister may attempt to use delay to solidify his or her position with the congregation or even to continue abusive relationships of which the Synod is not aware. Therefore, an attempt by the minister to delay a decision unreasonably will generally result in the initiation of disciplinary proceedings.

If the minister decides to resign, the Synod will make disclosure to the congregation as outlined in Point 14 and will work with the congregation council to resolve other

issues, which in some cases may include the development of appropriate severance arrangements as a way to deal compassionately with the minister and the minister's family during a time of transition. The Synod will also consult with the congregational leadership to set the time for the ending of the minister's active ministry in that congregation.

To the extent feasible under the circumstances, the Synod may also attempt to work with the minister and the minister's family to facilitate their transition. The Synod will make clear its concern for the emotional and spiritual health of the minister and the minister's family and its willingness to assist in securing treatment and counseling as needed and desired. The Synod will encourage the minister and the minister's family to face the offending behavior directly while seeking healthier lives.

If the minister refuses to follow the course of action recommended by the bishop, the Synod will either convene a consultation or advisory panel as outlined in Point 12 or begin disciplinary proceedings as outlined in Point 13.

12. Consultation or Advisory Panel

Under ELCA 20.21.04 and 20.22.04, the bishop may seek the assistance of a consultation or advisory panel in an attempt to resolve a potential disciplinary situation. The bishop has discretion to determine whether a panel will be convened. While such discretion is exercised based on the individual circumstances of each case, cases where there are compelling reasons for the minister's removal from the ELCA roster are likely to bypass consultation and be sent directly to discipline. The consultation process is more likely to be used in the more difficult cases where, for whatever reason, the appropriate outcome is not necessarily clear.

Upon deciding to follow the consultation process, the bishop also has discretion to determine whether a consultation or an advisory panel will consider the case. Both types of panels are composed of five members, three ministers of Word and Sacrament and two laypersons. The only significant difference is that the members of a consultation panel are selected from the Synod's Consultation Committee.

The role of a consultation or advisory panel is to listen and advise. If possible, the panel will seek to resolve the controversy through recommendations that are pastoral and therapeutic and that will eliminate the need for disciplinary proceedings if they are accepted by all concerned. The panel's advice is rendered in a report to the bishop, which is ordinarily expected to be in writing. Members of the panel are not permitted to discuss matters considered by the panel except as required to discharge the panel's duties.

The members of an appointed panel will be provided the information necessary for consideration of a particular matter. The information will ordinarily include a

memorandum from the bishop summarizing the nature of the allegations that have been made. The memorandum is not considered to be the statement of formal charges discussed in Point 13.1 and will not necessarily identify the reporter(s) by name.

The panel is expected to meet with the bishop and the minister and may also meet with the reporter(s). Reasonable advance notice (which need not be in writing) will be provided to any person who is to attend a particular meeting. A consultation or advisory panel does not conduct a hearing and the due process requirements that apply before a discipline hearing committee do not apply before a panel. A panel may, therefore, be flexible in its meetings and should consider the concerns of the reporter(s) and the minister. While in some cases it may be appropriate to meet with the reporter(s) and the minister at the same time and place, in most cases these meetings will be conducted separately. As noted in Point 13.3, if the case proceeds to a formal disciplinary hearing, the minister and the minister's representative will have the right to confront and cross-examine all witnesses.

A minister who is the subject of allegations considered by a consultation or advisory panel has discretion whether to appear before the panel and whether to speak or remain silent at any meeting attended. The minister's refusal to attend a meeting or his or her silence during a meeting will not be permitted to delay the work of the panel. The panel may determine such a refusal to be a waiver of the minister's right to attend and be heard.

At any meeting of a consultation or advisory panel, the minister may be accompanied by a representative who may, but need not, be an attorney. Any statements made to the panel by the minister or the minister's representative may be introduced in evidence if subsequent proceedings are held before a discipline hearing committee. Also, if requested by the bishop, members of the panel may assist, as representatives of the accuser, in the presentation of the accuser's case and the examination of witnesses before a subsequent discipline hearing committee.

In order to facilitate a pastoral resolution, the Synod prefers that attorneys not participate in meetings of a consultation or advisory panel. Because the role of the panel is advisory, the exclusion of attorneys will not prejudice the rights of either the bishop or the minister. Further, the participation of attorneys could turn a meeting of the panel into an adversarial rather than a consultative proceeding. The bishop will ordinarily not be represented by an attorney at meetings of a consultation or advisory panel unless the minister involved is so represented.

Because the purpose of a consultation or advisory panel is to assist the bishop in efforts to resolve the matter through consultation, the panel's advice is never binding on the bishop. The bishop has sole discretion to decide whether or not to bring charges or to pursue some other method of resolving the matter.

Once the consultation or advisory committee has given its final report to the bishop, the bishop will ordinarily meet again with the minister to inform the minister of the bishop's conclusion and to review the options available. If the bishop has determined, with or without conditions, that the matter can be resolved without resort to disciplinary proceedings and the minister is agreeable to and abides by any conditions specified, then no further proceedings would be necessary. On the other hand, if the bishop requests the minister's resignation from his or her current call and/or from the ELCA roster and the minister refuses to resign, or if the minister does not agree to any other conditions specified by the bishop in lieu of resignation, then the case will ordinarily proceed to disciplinary proceedings as summarized in Point 13 below.

13. Disciplinary Proceedings

The discussion in this Point 13 is not intended to supplant the procedures in ELCA Chapter 20. A copy of Chapter 20 may be provided with this Policy and is also available on the ELCA's website (www.elca.org). Certain aspects of the disciplinary procedures bear emphasis, however, as discussed below.

13.1. Preparation and Service of Charges

The first step in the disciplinary process is the preparation and service of formal charges. Under ELCA 20.21.03 and 20.22.03, charges against a minister that could lead to discipline must be specific and in writing and must be signed by a person or persons qualified to be an "accuser." As a practical matter, disciplinary charges alleging sexual misconduct are likely to be signed by the bishop rather than other qualified accusers, so in this Policy it is assumed that the bishop is the accuser.

Once charges have been prepared, they must be served on the accused minister, or, if the minister has an attorney or other representative who agrees to admit service, on the attorney or representative. The disciplinary process continues as outlined below unless the minister decides to resign from the ELCA roster. A minister's resignation from the roster terminates any disciplinary action pending or that might otherwise be brought.

13.2. Suspension

ELCA 20.21.23 and 20.22.06 permit the bishop to suspend a minister during disciplinary proceedings. Suspension is permitted if it becomes apparent to the bishop that the minister cannot conduct his or her office effectively in the congregation being served because of local conditions or that local conditions may be adversely affected by the minister's continued service. A suspension is without prejudice to the accused minister, who is to continue to receive salary and benefits during the suspension.

The Synod recognizes that the pendency of disciplinary proceedings would make normal ministry in the congregational setting difficult if not impossible. The accused minister is likely to be distracted and unable or unwilling to attend to his or her normal duties. The congregation is likely to be divided between members who support the minister and members who do not. In order to reduce the likelihood of permanent harm to the congregation, the bishop will ordinarily suspend the accused minister from service during the pendency of disciplinary proceedings. Any decision to suspend, however, will be made on a case-by-case basis.

13.3. Disciplinary Hearing

The ELCA has made a concerted effort to provide procedural and substantive rights—referred to as “due process”—so that disciplinary hearings will be fair proceedings, not “kangaroo courts.” Under ELCA 20.12 and 20.12.01, the due process rights include the right of the accused to be given specific written notice of the charges, the right to a public or private hearing before a twelve-person discipline 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 accompanied by a representative (who may, but need not be, an attorney), the right to a written decision of the discipline hearing committee, and the right to be treated with fundamental procedural fairness.

The hearing is presided over by a member of the ELCA’s Committee on Hearing Officers, all of whom are elected by the ELCA’s Church Council. The presiding bishop of the church selects one of these hearing officers to serve as a non-voting chair of the committee.

The composition of the discipline hearing committee is noteworthy. The Synod (like the other synods of the ELCA) has a Committee on Discipline elected by the Synod Assembly. The ELCA also has a Committee on Discipline elected by the ELCA’s Churchwide Assembly. Both committees include ministers and laypersons. The twelve-person discipline hearing committee appointed to hear any particular case consists of six members from the Synod’s Committee on Discipline selected by the Synod’s Executive Committee and six members from the ELCA’s Committee on Discipline. The accused minister has the right to select two of the six members from the ELCA’s Committee on Discipline; the remainder are selected by the Executive Committee of the ELCA’s Church Council.

Thus, half of the committee’s appointed 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 promotes a fair and impartial determination of the matter based on the evidence.

The right of the accused minister to remain silent also warrants special mention. The right to remain silent means in effect that the accuser bears the burden of proof. In other words, the bishop—assuming the bishop is the accuser—must prove that the minister committed one or more of the offenses charged in order for the minister to be subject to discipline. Even if the minister offers no evidence, he or she will not be subject to discipline unless the bishop proves one or more of the offenses charged was committed. The minister does not have to prove anything.

Following completion of the hearing, the hearing committee must render a written decision determining whether or not the accused minister committed one or more of the offenses charged, and, if so, what the discipline should be. The decision is made by a majority vote of the members who were present at the hearing and is based on a preponderance of the evidence presented at the hearing. If the committee finds the accused did not commit any of the offenses, it must dismiss the charges.

If the committee determines that discipline is warranted, it decides what the discipline should be. Except as provided in Point 13.4 below, the possible disciplinary actions that may be imposed are (i) private censure and admonition by the bishop, (ii) suspension from service as a minister for a designated period or until there is satisfactory evidence of repentance and amendment, or (iii) removal from the ELCA's roster of ministers.

13.4. Process for Limited Discipline

As an alternative to the hearing process summarized in Point 13.3, ELCA 20.23.01 to 20.23.09 describe a process that is invoked when the written charges specify that the accuser will not seek the minister's removal from the roster or suspension for a period exceeding three months. In such cases, the proceedings are conducted before a hearing committee of six members of the Synod's Committee on Discipline with less formality and without all of the procedural requirements of the full hearing process. The six members of the hearing committee are appointed by the Synod's Executive Committee. The hearing committee decides whether the charges are true and, if so, what discipline should be imposed within the limits specified in the written charges.

13.5. Appeal

ELCA 20.60 et seq. allow for disciplinary matters to be appealed to the ELCA's Committee on Appeals. The grounds for appeal include abuse of discretion, failure to follow due process, new evidence, and an insufficient record of the proceedings before the discipline hearing committee. If it decides to reverse or set aside a decision of the discipline hearing committee, the Committee on Appeals may return the matter to the discipline hearing committee for further proceedings or render its own decision, depending on the nature of the appeal.

14. Disclosure

Except in unusual circumstances, the Synod will disclose all serious allegations of rostered minister sexual misconduct. As discussed further in Point 14.2 below, experience has demonstrated that disclosure speeds the healing of the primary and secondary victims of the misconduct, empowers unknown victims to come forward and seek help, protects others from being victimized by the same rostered minister, starts the congregation on the path to new health, and demonstrates the Synod's commitment to deal openly and honestly with the problem.

14.1. How Disclosure Is Made

While decisions about disclosure will depend upon the individual circumstances, typically disclosure of actual or alleged sexual misconduct will be made to the leadership of the rostered minister's congregation, the members of the rostered minister's present congregation, the synod(s) where the rostered minister previously served, and to other rostered ministers within the Synod.

In most cases disclosure will be made when:

- A rostered minister admits to committing sexual misconduct;
- A rostered minister resigns from his or her call or from the roster of the ELCA after being accused of sexual misconduct;
- A rostered minister is placed on leave of absence or temporarily suspended in response to an allegation of sexual misconduct;
- A rostered minister is suspended or removed from the roster as a result of formal disciplinary proceedings; or
- Secular legal proceedings (civil or criminal) are initiated against a rostered minister.

The Synod intends to work closely with congregational leaders regarding disclosure made within a congregation, and to consider the concerns of reporters and victims of sexual misconduct. The disclosure would normally be made in a letter from the bishop and may be followed up by a meeting with interested members of the congregation concerned. To protect the privacy of those harmed by misconduct, the disclosure is normally limited to:

- The fact that the rostered minister was accused of sexual misconduct, and admitted or denied the allegations;

- Whether a hearing has been or will be held, and, if a hearing has been held, the result of the hearing;
- The gender of the alleged victim of the misconduct, and whether he or she was an adult or minor when the misconduct occurred; and, if appropriate,
- Whether the reporter or victim was a member of the minister's congregation or a person to whom the minister was providing pastoral care.

Disclosure should never include the name(s) of the reporter(s) or victim(s) of misconduct or facts from which their identities could be readily determined.

Persons who believe that they have been harmed (directly or indirectly) by the rostered minister will be invited to contact the leaders of the congregation, the Synod, or others who have agreed to be available to those persons.

14.2. Rationale for Disclosure

The Synod understands that the issue of disclosure may be controversial. Many people believe disclosure of allegations of sexual misconduct is not appropriate. A minister who decides to resign from the ELCA roster rather than face disciplinary proceedings would likely prefer that the information leading to the resignation not be made known. Many well-intentioned parishioners would agree.

People are generally reluctant to confront the problem of alleged sexual misconduct by ministers, regardless of whether the allegations are admitted or disputed. This is especially true when their own minister is the subject of the allegations. It is usually difficult for parishioners to believe that their own minister could be involved in activities so inconsistent with their perception of the ministerial role. As a result, many parishioners deny there is a problem. Such denial seems particularly justified if the minister has been successful in ministry.

Further, even if they are willing to acknowledge that there might have been sexual misconduct, many other parishioners instinctively shift responsibility for the problem from the perpetrator to the victims. It is so difficult to believe that their minister could become sexually involved that any sexual involvement that is implicitly acknowledged must not, they reason, have been the minister's fault. Persons who have been sexually involved with their minister may be characterized as having been seductive, emotionally unbalanced, or vindictive rather than characterized as victims. In this view, the minister escapes responsibility for unprofessional conduct and should be forgiven and permitted to continue to serve in the parish where there has been such effective and successful ministry. Of course, one or more of the foregoing rationales may be actively fostered by the accused minister in an effort to avoid responsibility for his or her actions.

The Synod believes the reactions described above are dangerous for the health and well-being of any congregation whose minister has been involved in sexual misconduct. As discussed in Point 4, a minister involved in sexual activities outside of marriage has fallen short of the professional standards established by the ELCA and, depending on the circumstances, may even have violated Wisconsin law. Blaming the victims for the minister's misconduct ignores the imbalance in power between the minister and parishioners, particularly persons who sought help for spiritual or emotional problems. Simple "forgiveness" fails to deal with the consequences of professional misconduct. Lack of disclosure may pose a danger to others in the future.

At least three important reasons justify appropriate disclosure of the problem of sexual misconduct by a rostered minister to a congregation when the minister has either resigned to avoid disciplinary proceedings or who faces such proceedings. First, the Synod has 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 minister 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, the Synod has found, is the first step in the healing process that must take place for the congregation's health and well-being in the future.

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. The bishop is responsible for overseeing and administering the work of the Synod and providing pastoral care and leadership to all congregations in the Synod. This responsibility necessarily includes reaching out to persons 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 minister. 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.

Finally, disclosure may also be required to help protect both the Synod and the congregation from potential legal liability for the actions of a minister 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 minister 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.

15. Follow-up

The Synod will work with congregations and others to help arrange for care and support for those harmed by sexual misconduct by rostered ministers. As noted above, Synod personnel cannot provide this individual care themselves, but the Synod will assist the primary and secondary victims of sexual misconduct to find resource persons and materials that might help them on their journey to healing. The Synod will assist the congregation in dealing with the pain and disruption caused by a rostered minister's misconduct and will help the congregation continue in its mission and ministry for the sake of the Gospel.