

## **A SEXUAL MISCONDUCT POLICY FOR THE PRESBYTERY OF KISKIMINETAS**

“As God who called you is holy, be holy yourselves in all your conduct.”

“Tend the flock of God that is your charge, not under compulsion but willingly, not for sordid gain but eagerly; do not lord it over those in your charge, but be examples to the flock.” ( 1 Peter 5:2-3)

### **I. INTRODUCTION**

**A. Policy Statement.** It is the policy of the Presbytery of Kiskiminetas that all members, officers, employees and volunteers of presbytery and its constituent churches, who refer cases to the Presbytery level, shall not engage in sexual misconduct, harassment, or abuse as defined in this policy.

**B. Scope of the Policy.** This Policy applies to the members, officers, employees, volunteers of the Presbytery of Kiskiminetas and employees and volunteers of constituent churches who refer cases to the Presbytery level.

**C. Purpose.** The Presbytery of Kiskiminetas adopts this policy on sexual misconduct for the following purposes:

1. To set and enforce standards of ethical behavior consistent with Scripture and secular law.
2. To provide procedures for inquiry and effective response to allegations of the breach of duty of emotional, spiritual, and physical care and protection of other persons which lies on all who represent the Presbytery in any way (see specific procedure section of this policy).
3. To serve as a guide for the application of powers of the Presbytery and sessions under the Form of Government and the Rules of Discipline (See Book of Order, D-1.0100).
4. To serve as a guide for prevention of sexual misconduct.
5. To demonstrate pastoral concern both for the victims of sexual misconduct and those accused of sexual misconduct.
6. To serve the peace and purity of the church.

### **D. Standards of Conduct.**

1.[Principles of Conduct.] **Basic Assumptions:**

- a. Sexual Misconduct is a violation of the role of members, officers, employees, volunteers of any kind who are called upon to exercise integrity, sensitivity, and caring in a trust relationship. It breaks the covenant to act in the best interests of parishioners, clients, co-workers, and students.
- b. Sexual Misconduct is a misuse of authority and power which breaches Christian ethical principles by misusing a trust relation to gain advantage over another for personal pleasure in an abusive, exploitive, and unjust manner. If

- the parishioner, student, client or employee initiates or invites sexual content in the relationship; it is the member's, officer's, employee's or volunteer's responsibility to maintain the appropriate role and prohibit a sexual relationship.
- c. Sexual Misconduct takes advantage of the vulnerability of children and persons who are less powerful to act for their own welfare. It is antithetical to the gospel call to work as God's servant in the struggle to bring wholeness to a broken world. It violates the mandate to protect the vulnerable from harm.
2. Alleged Victims and Their Families. The presbytery, session, and entities will seek to ensure treatment and care to the alleged victims of sexual misconduct and their families. (Information will be kept confidential, but may be requested in a court of law.) It has sometimes been the case that the victim or family is so angry and alienated from the Church that offers of help have been perceived as insincere or attempts at a cover-up. If the victim or family at first refuses, the Church should continue to offer help. Above all, the Church should not act in a self-protective manner by ignoring the victims and their families.
  3. Congregations or Employing Entity. The presbytery, session and entities should be aware of the problems a congregation or entity may experience resulting from allegations of sexual misconduct by a minister, employee, or volunteer. The allegations may polarize the congregation or organization, damage morale, and create serious internal problems.
  4. The Accused and Their Families. The presbytery shall *encourage* treatment and care for the accused and their families which shall be the responsibility of the Committee on Ministry (G-11.0501). It is important that representatives of the governing body or other entities do not make a presumption of guilt or over-react to lurid charges. Information will be kept confidential; but may be requested in a court of law. When a person is acquitted of charges, it is important for the governing body or entity to see that the acquittal is publicized as widely as possible within their power when requested to do so by the accused.
  5. The Non-Victim Accuser. In many cases, the non-victim accuser is the parent, guardian, or other advocate for a child who has been the victim of sexual misconduct. Because of the child's minority status, an adult is requested to file the action on behalf of the child. In cases where the victim is an adult, the non-victim accuser shall observe the following guidelines:
    - a. For their own protection, the non-victim accuser should have something in writing from the victim detailing the charges.
    - b. The non-victim accuser should be certain that the victim is willing to come forward to testify if an action is filed.
    - c. Some objective evidence of sexual misconduct should be available to substantiate the charges (e.g. medical test results, motel receipts, proof of repeated telephone calls, etc). Otherwise, the victim and/or the non-victim accuser could be subject to a suit filing a false charge which may damage a person's reputation and diminish his/her ability to obtain future employment. For this reason, it is not wise for staff of any governing body

or entity to be the accuser unless that person is also the victim.

## **II. DEFINITIONS.**

- A. **ACCUSED:** The person against whom a claim of sexual misconduct is made.
- B. **ACCUSER:** The person reporting alleged sexual misconduct by a member, officer, employee or volunteer of the Presbytery of Kiskiminetas.
- C. **CERTIFIED OR LICENSED COUNSELOR.** A Certified or Licensed Counselor is any counselor certified or licensed in their state or certified by a national professional organization such as the American Association of Pastoral Counselors (AAPC) (Fellow or Diplomat level) or the American Association of Marriage and Family Therapists (AAMFT). A Certified or Licensed Counselor could include such state Certified or Licensed professionals as a PH.D. Psychologist (Licensed), or an M.S.W. Certified Social Worker or a M.D. Psychiatrist.
- D. **CHILD SEXUAL ABUSE:** Any physical 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 and may or may not involve touching. Sexual interaction between a child and an adult shall be considered forced whether or not consented to by the child. Child sexual abuse shall be considered sexual misconduct. (According to Pennsylvania Law)
- E. **COUNCIL:** A representative body composed of elders and ministers of the Word and Sacrament such as a session, presbytery, synod or General Assembly commission having responsibilities and powers as defined in the Book of Order. A Council may establish entities such as day care centers, conference centers, camps, or home for the aged. A governing body may have both church members and non-members as employees.
- F. **CHURCH:** Church, when spelled with the initial letter capitalized refers to the Presbyterian Church (USA). Church, when spelled with the initial letter in the lower case refers to local churches. The word congregation is used to include members and non-member participants.
- G. **EMPLOYEE:** Individuals who are hired or called to work for the church for a salary or wages.
- H. **ENTITY:** Any program or office managed by a board, committee, council or other body whose membership is elected by a governing body. Refer to GA Manual SR 47.
- I. **HIGH RISK OCCUPATIONS:** An occupation which calls for an employee to work in close contact with children, the elderly, persons who are vulnerable and less capable of protecting themselves, or persons who are wholly or partially incapacitated or physically disabled, as well as counseling clients having emotional or personal problems.
- J. **HIGH RISK VOLUNTEER:** A person whose volunteer service calls for him/her to work in close contact with children, the elderly, persons who are vulnerable and less capable of protecting themselves or persons who are wholly or partially incapacitated or physically disabled.
- K. **INQUIRY:** The term used in the Rules of Discipline to determine whether charges should be filed based upon allegations of an offense received by a governing body. Refer to D-10.0201.
- L. **INVESTIGATION:** The term generally used by police and public prosecutors

- when responding to allegations of an offense.
- M. **MANDATED REPORTER:** A person who is required to report any and all suspected incidents of child abuse, including child sexual abuse that comes to their attention. State laws vary from defining “all persons having knowledge”. Within the jurisdiction of Kiskiminetas Presbytery, all persons covered by this policy have a duty to report suspected child sexual abuse to the employing entity, supervisor, or governing body representative. All persons must comply with state and local laws regarding incidents of actual or suspected child sexual abuse and should be informed of the statutory obligations.
- N. **PERSONS COVERED:** Those covered by the Sexual Misconduct Policy include members, officers, employees and volunteers of the Presbytery of Kiskiminetas including those who are accused of sexual misconduct under circumstances in which:
1. access to the victim is related to some form of service to or appointment by governing bodies or entities of the Church, or
  2. sexual misconduct in a non-church related setting raises questions for the Church of character and effectiveness.
- O. **REASONABLE SUSPICION:** A subjective criterion that refers to a belief or opinion based on acts or circumstances that are sufficient for a prudent person to want to inquire further, to take protective action or report to authorities. Pennsylvania child abuse reporting laws include wording that indicates what degree of suspicion or knowledge gives rise to the duty to report. (Each Pastor should be aware of these laws.)
- P. **RESPONSE:** The action taken by the governing body or entity when a report of sexual misconduct is received. It includes:
1. inquiry into facts and circumstances;
  2. possible disciplinary action (administrative or judicial or both);
  3. pastoral care for victims and their families; and
  4. rehabilitation for the perpetrators and care for their families
- Q. **SECULAR AUTHORITIES:** The city, county, state or federal governmental bodies who are given the responsibility to investigate, criminally prosecute, and/or bring civil charges against individuals accused of sexual crimes against adults and children. The structure and identity of such secular authorities will vary from jurisdiction to jurisdiction but basic responsibilities to detect, deal with, and resolve such crimes and offenses will follow recognized patterns.
- R. **SECULAR LAW:** The body of municipal, state and federal laws and are often referred to collectively as civil law. Prohibited behavior addressed by this policy may result in criminal and/or civil charges filed under secular law.
- S. **SEXUAL ABUSE:** As found in the Book of Order D-10.0401. (See accuser / victim)
- T. **SEXUAL HARASSMENT:** Sexual Harassment shall be considered sexual misconduct. As defined under this sexual misconduct policy is as follows: Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when one or more of the following occur:
1. There is an explicit statement or implication that failure to submit to such

- conduct may have a negative effect on an individual's employment.
2. Submission to or rejection of such conduct by an individual is used as the basis for decisions affecting such individual's employment.
  3. Such conduct has the purpose or effect of interfering with an individual's work performance by creating an intimidating, hostile, or offensive working environment.
- U. **SEXUAL MISCONDUCT:** The comprehensive term used in this policy to include:
1. Physical sexual contact within a ministerial, professional, or employment relationship;
  2. Sexual conduct that is injurious to the physical or emotional health of another individual such as offensive, obscene, or suggestive language, unacceptable visual contact, seductive behavior, unwelcome touching or fondling;
  3. Rape or sexual contact by force, threat, or intimidation.
  4. Sexual harassment or child sexual abuse as defined above.
- V. **VICTIM:** The person alleged to have been injured or victimized by sexual misconduct as defined above.
- W. **VOLUNTEER:** Those who perform work for or provide services to the governing bodies and entities of the Presbytery of Kiskiminetas and receive no benefits or remuneration. For purposes of this policy volunteers are treated the same as employees. Liabilities of the governing body or entity are the same for volunteers as for employees.

### III. PREVENTATIVE ACTIONS

- A. **IMPLEMENTATION.** The Presbytery of Kiskiminetas urges all its sessions and related entities and campus ministry boards to establish policies, procedures, and practices related to sexual misconduct. Sessions and entities of the Presbytery are to take appropriate steps to inform Councils, members, employees, and high-risk volunteers of the Church's standard of conduct and the Presbytery's procedures for effective response when receiving a report of sexual misconduct. All Councils, members, employees and high-risk volunteers of the Presbytery are reminded of their duty to cooperate with secular authorities in the investigation and prosecution of violations of law.

In part, the structures and procedures for responding to allegations of sexual misconduct are mandated by the Book of Order and the Presbytery Manual of Administrative Procedures, such as the role of the Committee on Ministry and the Investigating Committee. (See also the procedure which follows.) When child sexual abuse or other misconduct that violates criminal laws is alleged, the secular authorities will immediately take control of the investigation and disposition of charges against the accused. All members, officers, employees, or volunteers of the Presbytery and its entities must cooperate with secular authorities in any secular investigation of sexual misconduct. The Presbytery has a duty to make its own inquiry and enforces disciplinary procedures if warranted when it can be done without interfering with the secular authority.

Response to complaints of sexual misconduct against or by members,

officers, employees, or volunteers within the Presbytery will be governed by the Council's or entity's existing policy, realizing that the policies of such boards and entities may also be governed by the policy of a higher judicatory. The same allegations may also result in charges filed against a church member or minister under the Rules of Discipline, and may lead to temporary or permanent removal from membership, office, employment, or volunteer service.

All pastors, commissioned ruling elders, employees, and high-risk volunteers of the Presbytery shall make a reasonable effort to further their knowledge concerning the issues relating to sexual misconduct as they relate to the victim and the accused. Such attempts may include continuing education courses or a variety of reading materials relating to the subject. The Committee on Administration of the Presbytery will inform pastors, employees, high-risk volunteers and clerks of session of educational and informative opportunities related to the issues of sexual misconduct, offered locally and nationally. The resource center of the Presbytery will have available updated quality literature, videos and other educational resources relating to the issues of sexual misconduct.

- B. **LIABILITY AND INSURANCE.** The Presbytery can be held liable for harm caused by sexual misconduct of a member, officer, employee, or volunteer based on a number of legal theories including negligent hiring and supervision. Presbytery, Sessions, and entities must take such potential liability into consideration when establishing hiring and supervisory practices.

The Presbytery shall regularly inform its liability insurance carriers of the activities and programs they operate or sponsor and of the duties and responsibilities of members, officers, employees and volunteers. The standard insurance policy must be enhanced by endorsements to cover specific exposures such as camps, or day-care operations, shelters, ministries that may take ministers, staff members or volunteers outside the boundaries of the Presbytery, church related trips, other outreach programs, or Presbytery supported programs.

The Presbytery shall attempt to obtain an endorsement to its general liability insurance policy specifically covering sexual abuse and molestation. Such coverage shall provide for legal defense expenses and judgments in civil suits brought against the Presbytery or its entities, officers, directors, employees, or volunteers.

C. **EMPLOYMENT PRACTICES.**

1. **Recording Keeping.** The Presbytery shall maintain a personnel file on every pastoral candidate, minister, employee or high-risk volunteer, when possible. The file should contain the application for employment applications for volunteer service, any employment questionnaires, volunteer recruitment questionnaires, reference responses, and other documents related to this policy. This file will be maintained by the

responsible entity.

2. Prescreening Applicants. The Presbytery shall adhere to stringent hiring/recruiting practices. If an applicant is unknown to the governing body/employer/volunteer recruiter, the governing body/employer recruiter shall confirm the applicant's identity.

Part of the pre-employment/volunteer recruitment screening shall include specific inquiries relating to discovering previous complaints of sexual misconduct. All persons seeking ministerial calls, employment in non-ordained positions, or appointment as a high-risk volunteer in the Presbytery shall complete an Employee/ Volunteer Questionnaire (Exhibit A). The questionnaire will be kept in the applicant's personnel file. The Presbytery will use appropriate resources, as recommended by the insurance carrier of the Presbytery, to conduct a criminal and sexual abuse background check on all teaching elders seeking membership in the Presbytery; on all ruling elders being considered to serve as Commissioned Ruling Elders or as executive and programmatic staff of the Presbytery; and on all those considered to serve as paid or volunteer staff for youth activities sponsored by the Presbytery.

3. References. The Council/employer/volunteer recruiter shall contact references for prospective ministers, commissioned ruling elders, employees, or high-risk volunteers, where possible. A written record of conversations or correspondence with references should be kept in the ministers/employees/high-risk volunteer's personnel file. See exhibit b for a sample of the reference form to be used.

The governing body/employer/volunteer recruiter shall assume responsibility for previous employer reference checks.

Persons, Councils or entities authorized to give a reference within the Presbytery are obligated to give truthful information regarding allegations, inquiries, and administrative or disciplinary action related to sexual misconduct of the applicant. The response, however, must be limited to information contained within the written summary prepared as part of the response team or governing body report.

If false or misleading information is given or relevant information is withheld, and there is reasonable belief that the applicant had knowledge of the deception or conspired with the deceiver, or at the time of employment/recruitment, the applicant may be eliminated for consideration, or removed from office/call/employment/volunteer service.

4. Pastoral Nominees. Employment practices for pastoral positions in the Presbytery shall adhere to the guidelines set forth in this policy. Further, all nominees for pastoral positions in the Presbytery are required to complete an Employment/Volunteer Questionnaire (Exhibit A), and a Form

for implementing Policy of Sexual Misconduct, Acknowledgement of Receipt (Exhibit C). It is the responsibility of the Committee on Ministry to be sure these forms are completed, and to review and dispose of allegations brought forward during pre-screening. It is further the responsibility of the Committee on Ministry to complete an Employment Reference (Exhibit B) on all candidates.

All pastors shall complete an "Acknowledgement of Receipt" of this policy and this shall be kept in the Presbytery personnel file.

- D. DISTRIBUTION. Copies of this policy shall be distributed to all Councils and entities of the Presbytery of Kiskiminetas and shall be distributed to all pastors, pastoral nominees, commissioned ruling elders, clerks of session, employees and high-risk volunteers, and be available to all church members. It is intended for use by pastors, church members, church officers, employees, and volunteers. The policy shall be made available to persons who claim to be victims of sexual misconduct and their families. The policy will be available to those serving on an Investigating Committee, Committee on Ministry, or response team.

\*\*\*Upon receipt of this policy, all pastors, pastoral nominees, commissioned ruling elders, and clerks of session shall acknowledge that it has been received, read and understood. (Exhibit C). This acknowledgement shall be kept in the appropriate file.

#### IV. PROCEDURE FOR SEXUAL MISCONDUCT CASES

A. Introduction. Reports of sexual misconduct may occur in a variety of ways. Because a particular church or Presbytery cannot control to whom the alleged victim, accused, or accuser of sexual misconduct will first speak, it is important that all members, officers, employees, and volunteers of the Presbytery of Kiskiminetas are aware of how reports of incidents are to be channeled to the proper persons and procedures.

B. Initiation. Preliminary procedure in the case of sexual misconduct may be initiated if:

1. A person under jurisdiction of the Presbytery of Kiskiminetas, Presbyterian Church (USA) undertakes to sustain an accusation as provided in D-10.0102A.
2. The Presbytery of Kiskiminetas receives information upon which it has reason to believe that an offense may have occurred which should be investigated for the purpose of discipline provided in D-10.0102B.
3. A person comes forward in self-accusation; D-10.0103.
4. A person requests an inquiry for vindication as provided in D-9.0101.

C. Preliminary procedures in a case of sexual misconduct are:

1. When any member, officer, employee, or volunteer of Kiskiminetas

Presbytery receives information upon which he/she has reason to believe that an offense may have occurred, that member, officer, employer, or volunteer shall contact the General Presbyter, the Stated Clerk, or the Moderator of the Presbytery. When possible, the member, officer, employee or volunteer shall contact two or more of the above parties. Name and telephone numbers of these persons shall be made available by the Presbytery

2. Written complaint of sexual misconduct (See Exhibit D) shall be filed with the Stated Clerk of Presbytery, who shall give the accuser a copy of this sexual misconduct policy and procedure, and shall explain this policy and procedure to the accuser.
3. Without undertaking further inquiry, the stated clerk shall then report to the Presbytery only that an offense has been alleged without naming the alleged offender, or the nature of the alleged offense, and refer the statement immediately to a Special Investigating Committee appointed by the Moderator as follows:
  - a. The Special Investigating Committee shall proceed in compliance with the Rules of Discipline of the Book of Order. D-10.0201.
  - b. The report of the Investigating Committee should be completed within 30 to 60 days.
  - c. A support person shall provide pastoral care for the accused and their family. Information shared with this person is to be kept confidential, but may be requested by a court of law. The support person will follow the accused through the process until the conclusion of the case and beyond, if necessary, the only role of this support person is to minister to and provide pastoral care for the accused and their families, using whatever gifts are available to them.
  - d. A support person shall provide pastoral care for the alleged victim and their family. Information shared with this person is to be kept confidential, but may be requested by a court of law. The support person will be one person appointed by and from the committee on Ministry. The support person will follow the alleged victim through the process until the conclusion of the case and beyond, if necessary. The only role of this support person is to minister to and provide pastoral care for alleged victim and their family using whatever gifts are available to them.
4. When the accused is not under the jurisdiction of the Kiskiminetas Presbytery, without undertaking further inquiry, the Stated Clerk shall then report to the Presbytery only that an offense has been alleged without naming the alleged offender, or the nature of the alleged offense, and refer the statement immediately to an Investigating Committee designated by the moderator or vice-moderator as follows:
  - a. In most cases, the report of the Investigating Committee should be

completed within 30 to 60 days. The Investigating Committee shall:

- make a thorough inquiry into the facts and circumstances of the alleged offense;
- examine all relevant papers, documents, and records available to it;
- determine whether there are probable grounds or cause to believe that an offense was committed by the accused;
- decide whether there are probable grounds or cause to believe that an offense was committed by the accused;
- decide whether charges filed on the basis of the papers, documents, records, testimony, or other evidence can reasonably be proved, having due regard for the character, availability, and credibility of the witnesses and evidence available;
- before each and every conference with the accused the investigating committee shall inform the accused of the right to remain silent and to be represented by counsel.
- report to the Presbytery Cabinet on the Investigating Committee's recommendations as to whether the employee or volunteer shall be removed from employment or volunteer service, and/or reported to secular authorities.

b. A support person shall provide pastoral care for the accused and their family. Information shared with this person is to be kept confidential, but may be requested by a court of law. The support person shall be one person appointed by and from the Committee on Ministry. The support person will follow the accused through the process until the conclusion of the case and beyond, if necessary. The only role of this support person is to minister to and provide pastoral care for the accused and their family using whatever gifts are available to them.

c. A support person shall provide pastoral care for the alleged victim and their family. Information shared with this person is to be kept confidential, but may be requested by a court of law. The support person will follow the alleged victim through the process until conclusion of the case and beyond, if necessary. The only role of this support person is to minister to and provide pastoral care for the alleged victim and their family using whatever gifts are available to them.