

REPORT AND RESPONSE PROCEDURE FOR SEXUAL MISCONDUCT ALLEGATIONS

I. Policy Statement

It is the policy of the Presbytery of San José (hereafter referred to as Presbytery) that all employees, members and volunteers of the Presbytery, and related agencies, shall maintain the integrity of ministerial employment and professional relationships at all times. Sexual misconduct is a violation of the principles set forth in Scripture and is never permissible. This policy lists the approved procedure for reporting and response on behalf of the Presbytery when allegations of sexual misconduct are brought to its attention.

The Presbytery adopts this policy on Report and Response Procedure for Sexual Misconduct Allegations for use of all Ministers, employees and volunteers under its jurisdiction. Its purpose is as follows:

- A. To set standards of ethical behavior consistent with Scripture and secular law, and to establish a process for the enforcement of those standards;
- B. To provide procedures for inquiry and effective response to allegations of sexual misconduct as defined in Policy EC-2.
- C. To serve as a guide for the application of the powers of Presbytery under the Form of Government and the Rules of Discipline of the Presbyterian Church (U.S.A.).
- D. To establish personnel employment practices and forms for the administration of appropriate employer/employee relationships within the Presbytery and related agencies;
- E. To demonstrate pastoral concern to all parties affected by any alleged incidence of sexual misconduct.
- F. To insure that the Presbytery will not act in a self-protective manner by ignoring the victim(s) and their families.

II. Procedure

Allegations of sexual misconduct are made in a variety of ways. It is important that officers, employees, and persons highly visible to church members and visitors understand how allegations of incidents are to be processed.

- A. Anyone who learns of alleged sexual misconduct shall take the allegations seriously and confidentially, and shall report them as promptly as possible. Any incident of suspected sexual abuse of a minor shall immediately be reported to Child Protective Services, the police or sheriff, and/or the District Attorney.
- B. Alleged sexual misconduct may be reported to any of the following:
 - 1. a PC(USA) Minister of Word and Sacrament;

2. an elder currently serving on session;
 3. a member of the Committee on Ministry;
 4. the Executive Presbyter;
 5. the Stated Clerk of Presbytery.
 6. any mandated reporter (see Policy EC-2, Appendix A, p.3)
- C. C. An accusation may be filed by completing Form 26 or 27, Rules of Discipline, Appendix A (Attached) as appropriate. The report shall immediately be delivered to the Stated Clerk of the Presbytery. There is no statute of limitation in cases of sexual misconduct.

III. Responsibilities

A. Presbytery Judicial Response

1. Immediately upon receipt of Form 26 or 27 the Stated Clerk shall inform the Executive Presbyter and COM Chair, and these three shall appoint an Investigating Committee (I.C.) as stipulated in the Rules of Discipline.
2. The I.C. must promptly begin its inquiry into the allegations, having received orientation by the Stated Clerk, as delay may cause further harm to all parties involved. The I.C. will conduct a thorough investigation.
3. Administrative leave for the accused shall be evaluated, and recommended when appropriate by the I.C. to the Stated Clerk, Executive Presbyter and Chair of COM, who together will determine and take the appropriate action. In cases of alleged offense of sexual abuse toward any person under the age of 18, or who it is alleged lacked the mental capacity to consent.
4. Thereafter, the Presbytery shall proceed according to the Rules of Discipline.

B. Stated Clerk Responsibilities:

1. The Stated Clerk shall receive reports of alleged sexual misconduct and immediately inform Executive Presbyter and COM chair.
2. The Stated Clerk shall work together with the COM Chair and Executive Presbyter to fulfill the initial report procedures, presbytery judicial response and presbytery pastoral responsibilities.
3. The Stated Clerk shall provide orientation for the IC.

C. Executive Presbyter Responsibilities:

1. The Executive Presbyter shall receive reports of alleged sexual misconduct and immediately inform the Stated Clerk and COM chair.
2. The Executive Presbyter shall work together with the COM Chair and the Stated Clerk to fulfill the initial report procedures, presbytery judicial response and presbytery pastoral responsibilities.

IV. ATTACHMENTS

1. Definitions
2. Form 26
3. Form 27

Definitions

Child Sexual Abuse includes, but is not limited to:

- A. any sexual contact or sexual interaction between a child (under the age of eighteen years) and an adult;
- B. any use of a child for the sexual stimulation of an adult, a third person, or the child;
- C. any risqué jokes, innuendo, unacceptable visual contact, unwelcome casual touch, unwelcome and inappropriate hugs and kisses, and sexually suggestive pictures between an adult and a child, as deemed inappropriate by any reasonable adult.

Sexual Abuse is sexual misconduct in the context of a clear breach of professional trust and/ or misuse of the power, stature, influence, or authority of the clerical office or other leadership position. In the professional context, mutual expressions of affection do not abrogate the abusiveness of the relationship, for true consensuality may be considered, by definition, impossible between a professional and a person in that professional's care.

Sexual Harassment means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

- A. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or their continued status in the Presbytery; or,
- B. submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individuals; or,
- C. such conduct has the purpose or the effect of unreasonably interfering with an individual's work performance by creating an intimidating, hostile, or offensive working environment based on the declared judgment of the affected individual. Lack of intent to harass is no defense.
- D. Mutual consent is not possible when one party is a clergy/ professional lay leader in a pastoral, counseling, employer or leadership position within the church, related organization, or sponsored activity in which the other party is a parishioner, member, counselee, employee; or, when one of the parties is a child.

Examples of sexual harassment include, but are not limited to:

1. Verbal: sexual innuendoes, risqué jokes, sexually suggestive or insulting questions, comments, or sounds, jokes or teasing of a sexual nature, sexual propositions or threats, continuing to make sexual advances or comments or otherwise expressing personal interest after being informed that the interest is unwelcome, sexual remarks regarding clothing, body, or love life, or any type of subtle pressure for sexual activity.
2. Visual: sexually suggestive or gender derogatory objects, pictures, computer software, posters, or letters; leering, whistling, or obscene or sexually suggestive gestures.
3. Physical: unwanted physical contact, including touching, pinching, brushing the body, impeding or blocking movement, sexual intercourse or assault.

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4. Encouraging attitudes or patterns of verbal, visual, or physical conduct (may or may not be obviously directed at a particular person) which may be reasonably perceived as tending to legitimize, rationalize, or make light of unwanted sexual advances.

Sexual Misconduct is a comprehensive term used in this policy to include, but is not limited to:

- A. child sexual abuse as previously defined;
- B. rape or sexual contact by force, threat, or intimidation;
- C. sexual malfeasance- as breach of trust by a religious leader, resulting from a relationship and/or sexual contact within a ministerial or professional or leadership relationship;
- D. production, accessing or distribution of pornography as defined by actions or policy statements of the General Assembly, Presbyterian Church (U.S.A.); or viewing pornography on church computers or on church premises.

Employee or Volunteer (member or non-member) is any person hired or volunteering to work for the Presbytery or related organization within the jurisdiction of the Presbytery.

Mutual Consent is not possible when one party is a clergy/ professional lay leader in a pastoral, counseling, employer or leadership position within the church, related organization, or sponsored activity in which the other party is a parishioner, member, counselee, employee; or when one of the parties is a child.

Mandated Reporting: Mandatory reporters of child and elder abuse and neglect in California include “clergy members” and “custodian of records of a clergy member” (in the PCUSA this refers to clerks of session).

The constitution of The Presbyterian Church (USA) requires that Ministers of Word and Sacrament, Elders, and Deacons report to ecclesiastical and civil legal authorities knowledge of harm, or risk of harm, related to physical abuse, neglect, and/or sexual molestation or abuse of a minor or an adult who lacks mental capacity when (1) such information is gained outside of a confidential (for clergy)/privileged (for elders and deacons) communication; or (2) she or he reasonably believes that there is risk of future physical harm or abuse.

Relevant Sections of California Penal Code 11165, 11166 and 15600

“A mandated reporter shall make a report to an agency (police or sheriff’s department, welfare department, Child Protective Services, Adult Protective Services) whenever the mandated reporter, in his or her professional capacity or within the scope of his or her employment, has knowledge of or observes a child whom the mandated reporter knows or reasonably suspects has been the victim of child abuse or neglect. The mandated reporter shall make an initial report to the agency immediately or as soon as practicably possible by telephone and the mandated reporter shall prepare and send, fax, or electronically transmit a written follow up report thereof within 36 hours of receiving the information concerning the incident.”

“Any mandated reporter who fails to report an incident of known or reasonably suspected child abuse or neglect as required by this section is guilty of a misdemeanor punishable by up to six months confinement in a county jail or by a fine of one thousand dollars (\$1,000) or by both that imprisonment and fine.”

The Welfare and Institutions Code section 15600 and the following sections provide for mandatory reporting of abuse of older adults age 65 and over and of dependent adults ages 18-64. The law defines a “dependent adult” as someone ages 18-64 who has physical or mental limitations which restrict his/her ability to carry out normal activities or to protect his/her rights, including those whose abilities have diminished with age.*

The current abuse reporting law applies to both older and dependent adults.

“Any mandated reporter, in his/her professional capacity, who has observed or has knowledge of an incident that reasonably appears to be abuse, or is told by the older or dependent adult that he/she has been abused, or reasonably suspects abuse must report the known or suspected abuse by telephone immediately, and by written report within two working days as described below.”

“If the known or suspected abuse is alleged to have occurred in a long term care facility such as a skilled nursing facility or a residential care facility, the abuse must be reported to the Long Term Care Ombudsman Program or the police. If the abuse occurred anywhere else, the report must be made to Adult Protective Services or the police.”

“Any person reporting abuse under this law is immune from civil or criminal liability, unless that person acted in bad faith or with malicious purpose.”

“However, failure to report physical abuse of an older or dependent adult is a misdemeanor punishable by not more than six months in county jail or by a fine of not more than \$1,000, or both. Willful failure to report serious abuse, where the abuse results in death or great bodily injury, may be punishable by up to one year in county jail, or a fine of up to \$5,000, or both.”

FORM NO. 26

ACCUSATION BY INDIVIDUAL AS STATEMENT OF OFFENSE

To: _____ (clerk of session or stated clerk of presbytery)

From: _____ (name of person or persons making accusation)

I, _____, under the jurisdiction of the _____

(name of session of congregation or presbytery), accuse _____

(name of person accused) of committing the offense of _____

contrary to Holy Scripture and the *Constitution of the Presbyterian Church (U.S.A.)* and I submit the following information in support of said accusation:

The said _____ (name of accused) did, on or about

_____ (date), _____

_____ (insert a narrative

and alleged facts believed to support the accusation).

Date

Signature of Accuser

FORM NO. 27

ACCUSATION BY A MEMBER OF A GOVERNING BODY AS STATEMENT OF OFFENSE

To: _____ (clerk of session or stated clerk of presbytery)

From: _____ (name of person or persons making accusation)

I, _____, a member of the _____ (name of session of congregation or presbytery), accuse _____ (name of person accused) of committing the offense of _____ contrary to Holy Scripture and the Constitution of the Presbyterian Church (U.S.A.) and I submit the following information in support of said accusation:

The said _____ (name of accused) did, on or about _____ (date), _____

_____ (insert a narrative and alleged facts believed to support the accusation).

Date

Signature of Accuser