

Policy Regarding Sexual Misconduct

PRESBYTERY OF LAKE ERIE

APPROVED 2/17/07

Approved with new Book of Order references 11/17/12

Lake Erie Presbytery will not tolerate sexual misconduct by its clergy and other Presbytery employees. Presbytery will impose just and stringent consequences in proven cases of sexual misconduct as provided by the Rules of Discipline.

1. Ministers of the Word and Sacrament in the PCUSA are servants of God and are responsible to the people entrusted to their care and accountable to the presbytery for their actions. They are expected to refrain from sexual misconduct. Lake Erie Presbytery expects all church professionals to adhere to the same code of conduct. Any reported offenses will be investigated for the purpose of discipline as provided by the Rules of Discipline (D-10.0201) and additionally may be subject to civil or criminal review according to the laws of the State. Lake Erie Presbytery will automatically notify the appropriate local, county, or state criminal agency in the event of any suspected sexual abuse involving children.
2. Sexual misconduct is a sin against God, the person who has been victimized and the community of faith. Sexual misconduct is sexual contact or sexualized behavior in ministerial, professional or employment relationships. It may range from covert and subtle harassment to overt use of physical force or intimidation, and includes physical contact as well as verbal behavior. In determining whether or not conduct is misconduct, both the impact of the challenged behavior on the victim and the intent of the accused perpetrator will be considered.
3. All ministers and employees of the Lake Erie Presbytery will observe strict standards of confidentiality, truth-telling, protection of alleged victims and the principle that a person is innocent until proven guilty.
4. A minister of the Word and Sacrament shall report to ecclesiastical and civil legal authorities knowledge of harm, or the risk of harm, related to the 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 communication as defined in G-4.0301; or (2) she or he reasonably believes that there is risk of future physical harm or abuse. This requirement is made of Ruling Elders and Deacons G-4.0302 as well.
5. Lake Erie Presbytery, through its Committee on Ministry, shall provide for spiritual support and guidance for accusers, the accused and a particular congregation when appropriate. The COM or its agents shall not be construed as legal counsel.
6. Under no circumstances when a minister is disciplined for sexual misconduct will he or she be transferred from our presbytery to another presbytery without written record of the disciplinary action being forwarded to the receiving presbytery. This notice of disciplinary action will be supplied to the receiving presbytery's Committee on Ministry when the initial request for transfer is filed.
7. The sessions of all congregations in Lake Erie Presbytery are encouraged to utilize this policy in developing and adopting their own policies.

8. An admonition to those bringing charges: it remains the duty of every church member to try (prayerfully and seriously) to bring about an adjustment or settlement of the quarrel, complaint, delinquency, or irregularity asserted, and to avoid formal proceedings under the Rules of Discipline unless, after prayerful deliberation, they are determined to be necessary to preserve the purity and purposes of the church.

DEFINITIONS

The following definitions are intended to be consistent with all authoritative interpretations of the scriptures and constitution of the PCUSA:

- Child sexual abuse is defined as any contact or interaction between a child under the age of 18 and an adult when the child is being used for the sexual stimulation of the adult person or of a third person. Sexual behavior between an adult and child is always considered forced whether or not consented to by the child.
- Mandated reporter is a person directed by law who is required to report any and all suspected incidents of child abuse, including child sexual abuse.
- Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment or pastoral care or counseling; (2) submission to or rejection of such conduct by an individual is used as a basis for an employment decision affecting the individual; or (3) such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile, or offensive environment for work, pastoral care, or counseling based on the declared judgment of the affected person.
- Sexual malfeasance is defined as sexual conduct within a ministerial or professional relationship
- Sexual misconduct is the comprehensive term used in this policy and procedures to include (1) child sexual abuse, as defined herein; (2) sexual harassment, as defined herein; (3) rape or sexual contact by force, threats or intimidation; (4) sexual conduct as defined herein, that is injurious to the physical or emotional health of another; and (5) sexual malfeasance, as defined herein.

Victims of sexual misconduct can be women, men, children, persons of the same or opposite sex as the perpetrator. The pastor, leadership and congregation can be liable if sexual misconduct is permitted to occur against employees and/or members, especially if such has been brought to the attention of the church.

Procedure Preliminary to a Disciplinary Case

Initiation of Preliminary Procedures

Procedure preliminary to a disciplinary case is initiated by submitting to the clerk of session or the stated clerk of the presbytery having jurisdiction over the member (D-3.0101) a written statement of an alleged offense, together with any supporting information. The statement shall give a clear narrative and allege facts that, if proven true, would likely result in disciplinary action. Such allegations shall be referred to an investigating committee. (D-10.0201)

Statement of Offense

The written statement may be submitted by

Accusation a person under jurisdiction of a governing body of the Presbyterian Church (U.S.A.) making an accusation against another;

Governing Body a member of a governing body receiving information from any source that an offense may have occurred which should be investigated for the purpose of discipline; or

Self-Accusation a person under jurisdiction of a governing body of the Presbyterian Church (U.S.A.) coming forward in self-accusation.

Referral to Investigating Committee

Upon receipt of a written statement of an alleged offense, the clerk of session or the stated clerk of presbytery, without undertaking further inquiry, shall then report to the governing body only that an offense has been alleged without naming the accused or the nature of the alleged offense, and refer the statement immediately to an investigating committee.

Accusation from Other Governing Body

When a member is accused of an offense by a written statement presented to a governing body other than the one having jurisdiction over the member, it shall be the duty of the clerk of that session or the stated clerk of that presbytery to submit the written statement to the clerk of session or the stated clerk of the presbytery having jurisdiction over the member. The involved governing bodies shall proceed cooperatively with judicial process.

Transfer Prohibited

A session shall not grant a certificate of transfer to a member, nor shall a presbytery grant a certificate of transfer to a minister, while an inquiry or charges are pending. The reasons for not granting transfer may be communicated by the clerk of session or the stated clerk of the presbytery to the appropriate persons.

Administrative Leave

When a written statement of an alleged offense of sexual abuse toward any person under the age of eighteen, or who it is alleged lacked the mental capacity to consent, has been received against a minister of the Word and Sacrament, the stated clerk receiving the allegation shall immediately communicate the allegation to the permanent judicial

commission. The moderator of the permanent judicial commission shall within three days designate two members, who may be from the roster of former members of the permanent judicial commission, to determine whether the accused shall be placed on a paid administrative leave during the resolution of the matter. The cost of such shall be borne by the employing entity whenever possible or be shared by the presbytery as necessary. While administrative leave is in effect, a minister or other employee may not perform any pastoral, administrative, educational, or supervisory duties, and may not officiate at any functions such as Baptism, funerals, or weddings.

The designated members of the permanent judicial commission, after giving the accused the opportunity to be heard, shall determine whether the risk to the congregation and to potential victims of abuse, when considered in light of the nature and probable truth of the allegations, requires administrative leave or other restrictions upon the minister's service. Such administrative leave or restrictions will continue until resolution of the matter in one of the ways prescribed in the Rules of Discipline or the leave or restrictions are altered or removed by the designated members of the commission.

If the designated members of the commission determine that no administrative leave or restriction is required, the investigating committee appointed to investigate the allegations shall be free at any point in its investigation to present additional evidence to the designated members supporting the imposition of administrative leave or other restrictions.

2. INVESTIGATION

Investigating Committee

An inquiry shall be made by an investigating committee designated by the governing body having jurisdiction over the member to determine whether charges should be filed.

Membership

A pool of qualified individuals will be designated by the Presbytery Moderator to renewable three years terms, a class of three to be selected each year from a list of persons recommended by the Committee on Ministry. The number of persons suggested by the COM must be at least one greater than the total number of vacancies to be filled. The Committee on Ministry should arrange for training of members of the pool on a regular basis. When written charges are filed, the Moderator of Presbytery shall choose from the pool three to five members of an investigating committee. The Presbytery Executive, Stated Clerk, Moderator, Vice-Moderator, members of the Permanent Judicial Commission, or Presbytery employee shall not be members of the Investigating Committee). Many talents and qualifications might be considered in compiling both the pool and the investigative committee. However, if charges are filed, the investigating committee must appoint one or more of its members to be the prosecuting committee. Therefore, experienced Presbyterian attorneys should be considered. . It is inappropriate for a member of the Investigating Committee to serve if she or he is a member of the

same church or is related in some on-going fashion to either the alleged victim or the accused. The Stated Clerk must be consulted by the Moderator about the appointment of the investigating committee since only the Stated Clerk definitely knows the identities of those involved.

Expenses

The expenses of an investigating committee shall normally be paid by the governing body having designated it. If, however, the written statement results from information presented to a governing body other than the one having jurisdiction over a member, the governing body within whose bounds the alleged offense occurred shall pay for the expenses of investigating within its bounds.

Investigating Committee Responsibilities

The investigating committee shall

provide the accused with a copy of the statement of alleged offense described in D-10.0101;

provide the person making the accusation with a statement of the investigating committee's procedures;

make a thorough inquiry into the facts and circumstances of the alleged offense;

examine all relevant papers, documents, and records available to it;

ascertain all available witnesses and inquire of them;

determine, in accordance with G-3.0101 and D-2.0203b, whether there are probable grounds or cause to believe that an offense was committed by the accused;

decide whether the charge(s) 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;

initiate, if it deems appropriate, alternative forms of resolution, ordinarily after the investigation has been completed, probable cause has been determined, but before the charges have been filed. The purpose of alternative forms of resolution will be to determine if agreement can be reached between all parties involved concerning any charges which may be filed.

- 1 Any mediation shall be completed within 120 days unless a continuance is allowed by the session or permanent judicial commission.
- 2 The investigating committee shall report any settlement agreement to the session or permanent judicial commission for its approval.

- 3 The session or permanent judicial commission shall convene to receive the settlement agreement; vote to approve it by at least two-thirds of the members eligible to vote; make a record of its proceedings according to the provisions of D-11.0601d, including the name of the accused, the substance of the accusation or charge, and censure; and transmit its decision to the clerk of session or the stated clerk, who shall report it according to the provisions of D-11.0701.
- 4 All parties shall be provided an advocate throughout settlement negotiations.
- 5 If a settlement satisfactory to all parties involved in the mediation is not reached, the investigating committee shall proceed to the filing of charges.

report to the governing body having jurisdiction over the accused only whether or not it will file charges; and

if charges are to be filed, prepare and file them in accordance with the provisions of D-10.0401-.0404, and designate one or more persons (to be known as the prosecuting committee) from among its membership to prosecute the case.

Rights of the Person Accused

The investigating committee shall inform the person making the accusation of the right to be accompanied by an advocate at each and every conference between the person making the accusation and the investigating committee, the prosecuting committee, and the session or permanent judicial commission. The role of the advocate is to provide support and consultation.

If the statement of accusation is submitted on behalf of another person who is alleged to have been harmed by the offense, the investigating committee shall notify that person of the right to be accompanied by an advocate at each and every conference with the investigating committee, the prosecuting committee, and the session or permanent judicial commission.

At the beginning of each and every conference with an investigating committee or any of its members, the person against whom an allegation has been made shall be informed by the investigating committee or its members of the right to remain silent, to be represented by counsel, and, if charges are later filed, to have counsel appointed if unable to secure counsel. (D-11.0301- .0302)

Petition for Review of Investigative Procedures

During the course of the investigation, the person against whom an allegation has been made may petition the permanent judicial commission to review procedures of the investigating committee. Proper subjects for such a petition shall be limited to whether the committee has followed a proper trail of evidence, whether the evidence being considered is properly in the hands of the investigating committee, and whether the committee has examined relevant evidence proposed by the accused.

The review of the petition shall be done in a hearing conducted by the two members of the commission designated according to D-5.0101, at which both parties may be present and represented by counsel. The hearing shall be conducted within thirty days of receipt of the petition. Decisions shall be communicated to both parties within fifteen days of the hearing.

The results of the review shall be communicated to the moderator of the commission and will inform the review of charges in D-10.0405.

3. Communicate Determination

Communicate Determination

If the investigating committee initiates an alternative form of resolution, it shall notify the governing body through its clerk of session or stated clerk.

If Charges Are to Be Filed

If the investigating committee has decided to file charges, it shall promptly inform the accused in writing of the charges it will make, including a summary of the facts it expects to prove at trial to support those charges. It shall ask the accused if that person wishes to plead guilty to the charges to avoid full trial and indicate the censure it will recommend to the session or permanent judicial commission.

If an alternative form of resolution is proposed

If the investigating committee and the accused agree on an alternative form of resolution, the proposed settlement agreement shall be reported to the permanent judicial commission for its approval as provided in D-10.0202i. The proposal shall enumerate the charges to be filed by the investigating committee if the settlement is rejected, consistent with the authoritative interpretation of the 2004 General Assembly (Minutes, 2004, Part I, pp. 81, 299).

Petition for Review

If no charges are filed, the investigating committee shall file a written report of that fact alone with the clerk of session or stated clerk of the presbytery, and notify the person who submitted the written statement.

Within 30 days of receipt of the report, that person may petition the session or the permanent judicial commission to review the decision of the investigating committee not to file charges. The petition shall allege those instances in which the investigating committee has not fulfilled the duties specified in D-10.0202.

The investigating committee shall submit a written response to the facts alleged in the petition.

The designated members of the permanent judicial commission shall consider the petition and the response, giving attention to the duties specified in D-10.0202 and to the question

of whether the principles of church discipline will be preserved by the decision of the investigating committee not to file charges. The decision of the designated members of the commission upon the petition and response shall be rendered within ninety days.

If they sustain the petition, a new investigating committee shall be appointed by the session or presbytery.

If once again no charges are filed, the matter is concluded.

If charges are filed, consideration shall be given to the possibility of reference. (D-4.0000)

Disposition of Records

If no charges are filed, the disposition of the investigating committee's records shall be in accordance with session or presbytery policy.

4. Charges

Time Limit

No charges shall be filed later than three years from the time of the commission of the alleged offense, nor later than one year from the date the investigating committee was formed, whichever occurs first, except as noted below.

In those situations where civil proceedings have commenced, the investigating committee may request of its permanent judicial commission or session and receive an extension of its time for filing charges of up to six months from the conclusion of any investigation or resulting trial undertaken by civil authorities. The investigating committee shall maintain contact with civil authorities to determine when such civil proceedings have concluded.

For instances of sexual abuse of another person, the three year time limit shall not apply. Charges may be brought regardless of the date on which an offense is alleged to have occurred.

Sexual abuse of another person is any offense involving sexual conduct in relation to

any person under the age of eighteen years or anyone over the age of eighteen years without the mental capacity to consent; or

any person when the conduct includes force, threat, coercion, intimidation, or misuse of office or position.

Prosecution of Case

If charges are filed, the prosecuting committee shall prosecute the case and represent the church during any appeals. (D-10.0202i)

- Parties All disciplinary cases shall be filed and prosecuted by a governing body through an investigating committee and a prosecuting committee in the name of the Presbyterian Church (U.S.A.). The prosecuting committee is the representative of the church and, as such, has all of the rights of the appropriate governing body in the case.
- Only Two Parties The only parties in a disciplinary case are the prosecuting governing body and the accused.

Form of Charge

Each charge shall allege only one offense. (D-2.0203b)

- Several Together Several charges against the same person may be filed with the governing body at the same time.
- Details of the Charge Each charge shall be numbered and set forth the conduct that constituted the offense. Each charge shall state (as far as possible) the time, place, and circumstances of the commission of the alleged conduct. Each charge shall also be accompanied by a list of the names and addresses of the witnesses for the prosecution and a description of the records and documents to be cited for its support.
- Tried Together Several charges against the same person may, in the discretion of the session or permanent judicial commission, be tried together.

Filing of Charge

Every charge shall be prepared in writing and filed with the clerk of session or stated clerk of the presbytery.

- Session Upon receipt of a charge, the clerk of a session shall present the charge to the session at its next meeting. The session shall determine whether it will try the case or refer it to the presbytery. (D-4.0000)
- Presbytery Upon receipt of a charge, the stated clerk of the presbytery shall immediately forward it to the moderator or clerk of the permanent judicial commission of that presbytery.

Pretrial Conference

The session or permanent judicial commission, which is to try the case, shall hold a pretrial conference not later than thirty days after receipt of the charge(s).

- Time and Place The moderator and clerk of the session or of the permanent judicial commission shall notify the accused, the counsel for the accused, if any, and the prosecuting committee of the time and place of the pretrial conference, and shall furnish the accused with a copy of the charge(s).
- Those Present At the time set for the pretrial conference, the moderator and clerk of session or of the permanent judicial commission, the prosecuting committee, the accused, counsel for the accused, if any, and other appropriate persons at the discretion of the moderator and clerk shall ordinarily be present. The moderator shall

read the charges to the accused;
inform the accused of the right to counsel (D-11.0301);

furnish the accused with the names and addresses of all the witnesses then known, and a description of the records and documents that may be offered to support each charge;

determine with the accused and the prosecuting committee those charges that are not in dispute and discuss alternatives to a full trial;

review any reports of petitions for review of the work of the investigating committee, hear any additional challenges to the appropriateness of charges, taking preliminary actions to dismiss some or all of the charges, dismiss the case, or permit amendments to the charges. Such preliminary determinations shall be reviewed by the session or permanent judicial commission in accord with D-11.0402c.

schedule a trial to be held no sooner than thirty days following the pretrial conference, or, if all parties agree on those facts contained in the charges that are true and on a recommended degree of censure, schedule a censure hearing;

order all parties to appear.

Nothing More

Nothing more shall be done at that meeting.

Witnesses Disclosed

The accused shall provide a list of anticipated witnesses, including addresses, to the clerk of session or permanent judicial commission and the prosecuting committee at least twenty days prior to the trial date. The prosecuting committee and the accused shall each provide the session or permanent judicial commission and the other party with an updated list of witnesses no less than ten days prior to the trial date.

FORM NO. 26
**ACCUSATION BY INDIVIDUAL
AS STATEMENT OF OFFENSE, D-10.0102a**

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, D-10.0102b

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

FORM NO. 28
SELF-ACCUSATION BY A MEMBER
AS STATEMENT OF OFFENSE, D-10.0102c

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

From: _____ (name of person making self-accusation)

I, being under the jurisdiction of the _____ (session of congregation, presbytery) state that I am guilty of the offense of _____ contrary to Holy Scripture and the Constitution of the Presbyterian Church (U.S.A.). I submit the following information in support of my self-accusation:

I, _____, did on _____ (date)
_____ (insert a narrative of information to substantiate self-accusation).