

MANUAL:

MINISTERIAL SEXUAL MISCONDUCT POLICY AND PROCEDURE



Virginia Mennonite
Conference

April 2005

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Insert: Code of Sexual Ethics for Ministers - VMC File Copy (to be signed and returned to the VMC Office)

Preface

As a denomination, Mennonite Church USA has provided two documents to help conferences and congregations deal appropriately with situations when sexual misconduct of clergy persons are reported. On May 19, 2001 the VMC chair of the Conference Council and the chair of the Faith and Life Commission co-signed the Ministerial Sexual Misconduct Policy and Procedure document that gives guidelines for determining guilt or acquittal. In 2003 a companion piece became available, *Justice Making: The Church Responds to Clergy Misconduct*, that provides procedures for implementation of the Misconduct Policy. In 2005, Virginia Mennonite Conference developed procedures that show the implementation of those policies on the Conference level, by identifying specific persons who are involved at all levels of the process.

It is important that proper procedures are followed when a complaint or an accusation is made. Biblical principles should be observed (Matthew 18:15-20). These documents establish channels for ministerial accountability in Virginia Mennonite Conference that give respect to all persons involved and reduce potential liability procedures.

In a letter dated December 10, 2003, Donald E. Showalter, Attorney at Law, wrote

I have reviewed the policy and also had one of our employment attorneys, Cathy Welsh, review it. We both conclude that it complies with applicable Virginia law.

... A person charged with misconduct can frustrate the administrative procedures by arguing procedural due process violations ... I believe that the policy that I have reviewed minimizes the opportunities for successful due process arguments.

This *Ministerial Sexual Misconduct Policy and Procedure* is offered with the prayer that God's Spirit will empower and enable our Virginia faith community, wherever we work together in the name of Jesus.

Working Copy as of April 2005.

Signed memo
from Elroy and
Joe (scanned in)

BOOK #1

Ministerial Sexual Misconduct Policy and Procedure

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Ministerial Sexual Misconduct Policy

A Minister shall not enter into Sexualized Behavior with a person with whom the Minister has a Professional Relationship. A Minister is always responsible to prevent such behavior. The Conference Sanctions Ministers who engage in such Misconduct.

Complaint Procedure

Section 1: Introduction

This procedure is a means for the conference that extends Credentials to an accused Minister to make factual determinations about Complaints of Ministerial Sexual Misconduct and to impose Sanctions when warranted. Various response may be needed, but the focus of this procedure is disciplinary. Therefore, needs for healing, recompense, repentance and forgiveness are not comprehensively addressed in this procedure.

The Conference may vary this procedure when addressing Complaints. The Conference may address several Complaints against a Minister in one proceeding, or may conduct a separate proceeding for each Complaint. The Conference may use this procedure as a guide to address Complaints of Misconduct, other than sexual Misconduct.

Clarity facilitates fact finding and discipline. Therefore, certain terms are defined in this Policy and Procedure. Defined terms generally are capitalized in the text.

Section 2: Definitions

Terms have these meanings in this Policy and Procedure:

- **Appeal Panel:** Three persons appointed by the Conference Executive to hear a Minister's appeal from a Judgment of guilt of Misconduct.
- **Charge: Verb:** Action by the Conference to formally accuse of Misconduct, based on a written Complaint. **Noun:** A formal accusation of Misconduct, brought by the Conference, based on a written Complaint.
- **Complainant:** One who alleges that a Minister engaged in Misconduct.
- **Complaint:** A written allegation of Misconduct, signed by a Complainant, including the name of the accused and, as much as possible, the date, time, location, circumstances, names of any witnesses, and other relevant information.
- **Conference:** Virginia Mennonite Conference of the Mennonite Church USA.
- **Conference Executive:** The person who holds the office of Conference Minister in the Conference.
- **Contact Person:** A Complainant's Contact Person assists a Complainant in preparing a Complaint, selecting a Personal Supporter, and reporting to governmental authorities any child abuse or other violation for which reporting is required by law. An accused Minister's Contact Person assists the Minister in selecting a Personal Supporter. Contact Persons shall not have supervisory responsibilities for the accused or have any other material responsibilities related to the accused or the Complainant.
- **Credential: Verb:** To ordain, license or commission a Minister; to accept responsibility for the continued authorization of an ordained, licensed or commissioned minister to act as a Minister. **Noun:** The recognition of ministerial authority that is granted to a Minister by a Credentialing conference. A conference that issues a Credential may transfer to another Credentialing conference responsibility for the continued grant of the Credential.
- **Evidence:** Proof presented by witnesses, documents, objects, or other means, in order to induce belief.
- **Findings of Fact:** The Investigators' factual determinations regarding a Charge of Misconduct, based on Evidence presented at a fact-finding meeting with the accused Minister, or based on the accused Minister's acknowledgment.

- **Investigators:** Three persons appointed by the Conference to investigate a Complaint by an individual and to advise whether there are Probable Grounds for the Conference to bring a Charge. If a Charge is brought, the Investigators act as fact finders.
- **Judgment:** Determination of guilt or acquittal by the Ministerial Leadership Committee, based on the Investigators' Findings of Fact.
- **Jurisdiction:** The disciplinary authority of a conference to which a Minister is accountable at the time a Complaint is filed.
- **Minister:** One who has been ordained, licensed or commissioned to act as a Minister of the Conference or as agent of an organization that the Conference acknowledges is Conference-related.
- **Ministerial Leadership Committee:** The Conference committee that Credentials and disciplines Ministers.
- **Ministerial Sexual Misconduct:** Sexualized Behavior by a Minister, involving one with whom the Minister has a Professional Relationship.
- **Misconduct:** An act or omission by a Minister that is contrary to the policies or principles of the Conference.
- **Non-disciplinary Leave of Absence:** A leave with pay, granted to a Minister by a congregation or other employer, in its discretion.
- **Overseer:** The Conference Minister, Bishop or other ordained Conference officeholder to whom a Minister is accountable for the conduct of ministry.
- **Partiality:** Being or acting with unfair bias.
- **Personal Supporter:** A Personal Supporter may be selected by a Complainant. A Personal Supporter may be selected by an accused Minister. Each Personal Supporter shall become familiar with this Policy and Procedure, and shall ensure that pastoral care and emotional, spiritual and practical support are extended. When requested, the Personal Supporter shall accompany the one supported, as observer, to meetings required by this Policy and Procedure. The Personal Supporter does not advocate to the Conference, the Ministerial Leadership Committee, the Overseer, the Investigators or the Appeal Panel. The Personal Supporter may, however, object to the Investigators or the Chair of the Ministerial Leadership Committee if the Personal Supporter believes this Policy and Procedure is not fairly administered. Personal Supporters shall not have supervisory responsibilities for the accused or have any other material responsibilities related to the accused or the Complainant.
- **Policy and Procedure:** This Ministerial Sexual Misconduct Policy and Procedure.
- **Probable Grounds:** Facts and circumstances that reasonably justify a determination that an alleged event has, more likely than not, occurred.
- **Probation:** Restrictions imposed upon a Minister for a stated period or until further notice, because of Misconduct.
- **Professional Relationship:** The relationship between a Minister and one who relates or has related to the Minister as congregant, student, counselee, employee, or in a comparable role, while the Minister was engaged in the conduct of ministry. A Professional Relationship does not include
 - A married Minister's relationship with the Minister's spouse; or
 - An unmarried Minister's dating relationship with an unmarried person with whom the Minister has had a Professional Relationship, if the Minister has clearly communicated to the person that the Minister will not provide for, and another minister should provide for, all one-to-one professional ministerial responsibilities concerning the person.
- **Prohibition from acting as a Minister in this Conference:** A Sanction that may be imposed by this Conference if it is not extending Credentials to a Minister, but the Minister's Misconduct warrants Sanction.
- **Sanction: Verb:** To discipline a Minister. Noun: Reprimand, Probation, Suspension, Withdrawal of Credentials, Prohibition from acting as a Minister in this Conference, or other disciplinary action.
- **Secure Personnel File:** The Conference's personnel file regarding a Minister's Misconduct or alleged Misconduct, maintained by the Conference, separate from general files, during the Minister's lifetime.
- **Sexualized Behavior:** Acts that show sexual interest or a choice to make the sexual dimension overt in a relationship. Sexualized Behavior may include inappropriate discussion of sexual matters, touching and other actions.

- **Suspension:** Suspension of a Minister's privileges and duties as a Minister for a stated period or until notice from the Conference.
- **Withdrawal of Credentials:** Revocation of the ordination, license or commission of a Minister, which terminates service as a Minister.

Section 3: Standards of Proof

To address Misconduct alleged in a Complaint, these standards of proof apply:

- **Individual's Complaint.** If Misconduct is alleged in a Complaint, the Conference investigates.
- **Conference's Charge.** When the Conference decides whether to bring a Charge of Misconduct: After investigation, would a reasonable person believe that the Conference can present Evidence that the accused, more likely than not, engaged in Misconduct? If the investigation indicates the Conference can demonstrate such Probable Grounds, the Conference generally brings a Charge.
- **Fact Finding for Judgment.** After the Conference, the Complainant, and the accused Minister have been given opportunity to present Evidence at the Investigators' fact-finding meeting, the Investigators determine: Does the Evidence demonstrate that the accused Minister, more likely than not, engaged in acts of Misconduct? If such Probable Grounds are found, the Judgment of the Ministerial Leadership Committee is guilty. If such Probable Grounds are not found, the Judgment is acquittal.
- **Appeal.** If an accused Minister appeals to the Conference Executive after Judgment of guilt: Has the Minister demonstrated that there are not Probable Grounds for the Judgment?

Section 4: Suggested Timeline

| <i>Complaint</i> | <i>Normally (not necessarily) completed by:</i> |
|---|---|
| Investigation. Investigators recommend whether to Charge. | 14 days after Complaint. |
| Charge. The Ministerial Leadership Committee determines whether to Charge. | 16 days after Complaint. |
| Accused's Response. After receipt of a Charge, Minister agrees with or disputes Charge. | 21 days after Complaint. |
| Fact-Finding. Investigators conduct a fact-finding meeting. | 26 days after Complaint. |
| Fact-Finding Report. Investigators deliver Findings of Fact to Ministerial Leadership Committee. | 28 days after Complaint. |
| Judgment/Sanctions. Ministerial Leadership Committee renders Judgment of acquittal or guilt and, after a Judgment of guilt, imposes Sanctions. | 35 days after Complaint. |
| Appeal. The Minister may appeal within 10 days after being informed of the informed of the Judgment. | Note deadline for appeal. |
| Appeal Hearing. | 30 days after appeal |

Section 5: Complaint by an Individual

- A. *Report of Misconduct.* A person who believes that a Minister has engaged in Ministerial Sexual Misconduct may report that information to an Overseer, a member of the Ministerial Leadership Committee, or the Conference Executive. The recipient of the report shall inform the Chair of the Ministerial Leadership Committee.
- B. *Provide resources to Complainant.* The Chair of the Ministerial Leadership Committee shall:
1. *Give the Complainant this Policy and Procedure.*
 2. Offer a *Contact Person* to assist the Complainant in preparing a written Complaint, selecting a Personal Supporter if desired by the Complainant, and reporting to governmental authorities any child abuse or other violation for which reporting is required by law.
 3. *Review personnel files*, including any Secure Personnel File, that the Conference maintains concerning the accused Minister.
 4. *Determine whether immediate action should be taken*, as a result of Complainant's allegations, to prevent interaction between the accused and the Complainant.
- C. *Request a signed Complaint.* If a signed Complaint is not received from the Complainant, a Charge shall not be brought unless some other person signs a Complaint.
- D. *Notify Conference Executive.* The Chair of the Ministerial Leadership Committee shall inform the Conference Executive when a Complaint of Ministerial Sexual Misconduct is received.

Section 6: Jurisdiction

Jurisdiction to address a Minister's alleged Misconduct exists in:

- This Conference, if this Conference currently Credentials the Minister.
- This Conference, if the Minister is serving as an agent of an organization which this Conference acknowledges is Conference-related.
- Any other conference that Credentials the Minister.
- The conference of the congregation in which the Minister has membership or is serving.

The Conference Executive of this Conference shall inform the conference executive of any other conference that currently Credentials the accused that a Complaint of Misconduct by the accused is being investigated. The executives of the two conferences shall confer regarding which conference shall exercise Jurisdiction. Generally, but not always, conferences shall exercise Jurisdiction in the order of priority shown above. If there is disagreement or lack of clarity about which conference should take priority in exercising Jurisdiction, the conference executives shall confer with the denominational Ministerial Leadership office, and that office may recommend which conference shall exercise Jurisdiction.

The disciplinary Jurisdiction of this Conference is not limited because a secular professional Credentialing entity is investigating or has investigated an allegation of misconduct by an accused Minister.

Although this Conference may not revoke Credentials that currently are extended by another entity, if this Conference finds that a Minister is guilty of Misconduct that would warrant Sanctions, this Conference may prohibit the Minister from acting as a Minister in this Conference or impose conditions that limit how the Minister may serve in this Conference.

After this Conference determines it has Jurisdiction, Jurisdiction shall continue until the Conference determines otherwise. Jurisdiction may continue after a Minister has relinquished or lost credentials. If a Minister refuses to cooperate with the Conference pursuant to this Policy and Procedure, such refusal shall be noted in the Secure Personnel File that the Conference maintains concerning the Minister.

Section 7: Preliminary Investigation and Charge by Conference

If the Ministerial Leadership Committee receives a Complaint that alleges Misconduct by a Minister and if Jurisdiction is in this Conference, the Ministerial Leadership Committee shall appoint three Investigators (who may be members of the Ministerial Leadership Committee but not the Conference Executive), including a Chair.

Generally, the Investigators shall include one member of the same congregation as the accused Minister. Any objection about Partiality or other unfairness in the selection of Investigators shall be described in writing to the Ministerial Leadership Committee. The resulting decision of the Ministerial Leadership Committee concerning the objection shall be binding, but subject to later Appeal if the accused appeals from the Judgment after Findings of Fact are concluded. Partiality shall not be assumed because a person is a member or a leader in the Conference. The Investigators shall:

A. *Notify those who need to know.*

1. *Notify Minister.* The Investigators shall inform the accused Minister that a Complaint alleging Ministerial Sexual Misconduct has been filed and an investigation will be conducted. They shall inform the Minister of the identity of the Complainant and direct the Minister not to communicate with the Complainant about the Complaint. They shall give the Minister this Policy and Procedure, and offer a Contact Person to assist the Minister in selecting a Personal Supporter, if desired by the Minister.
2. *Notify congregational leaders.* The Investigators shall inform the chair of the governing board of the Minister's congregation (or other Conference-related employer of the Minister) and any other Ministers for the congregation that a Complaint has been received and give them this Policy and Procedure.
3. *Consider Non-disciplinary Leave of Absence and announcement to congregation.* Because of public knowledge or because of concern for the welfare of the accused, the Complainant or the congregation (or other employer), it may be advisable for the governing body of the congregation (or other employer) to grant the Minister a Non-disciplinary Leave of Absence from all responsibilities as Minister, with pay, while a Complaint is being investigated. Generally, only when a Non-disciplinary Leave of Absence is granted should the investigation be publicly announced. If an announcement is desired, the chair of the governing board of the congregation (or other employer) should consider discussing with an attorney whether an announcement such as this is appropriate: "(The named Minister) has been granted a leave of absence from all responsibilities as minister while a complaint is being investigated. The fact that a complaint is being investigated does not mean that misconduct has occurred. Conference policy requires an investigation." If the Investigators at any time believe such a Non-disciplinary Leave of Absence and announcement are necessary, they shall inform the chair of the governing board of the congregation (or other Conference-related employer).

B. *Conduct a preliminary investigation.* The Investigators shall:

1. Consult with legal and other advisors as appropriate.
2. Notify the Complainant that an investigation is occurring.
3. Have at least two Investigators present to interview the Complainant, review any Evidence, and request that the Complainant give a signed written statement if they believe additional information may be needed to substantiate any of the allegations in the Complaint.
4. Interview other persons who may have relevant information.
5. Have at least two Investigators present to conduct a preliminary interview with the accused Minister. Inform the Minister of the nature of the alleged Misconduct (but the Investigators may, in their discretion, decline to show the signed Complaint). Advise the Minister that the Investigators are willing to receive information, and any statements by the Minister may be used in disciplinary proceedings. Review any relevant Evidence offered by the accused Minister.
6. Keep accurate records of interviews, including the date, parties present, and name of the recorder.
7. Prepare a written report to the Ministerial Leadership Committee. The report shall be based, as much as feasible, on statements of witnesses with direct knowledge, rather than on secondhand sources or circumstantial Evidence. The report shall include:
 - a. Evidence, which the Investigators believe they can present, that the Minister, more likely than not, engaged in Ministerial Sexual Misconduct.

- b. Any reasons why the Investigators believe they cannot present such Evidence.
 - c. A recommendation that the Conference bring a Charge, decline to Charge, or investigate further.
8. If necessary, ask the Ministerial Leadership Committee to extend the time to conclude the Investigators' written report.

C. *Decline to Charge or bring a Charge.*

Upon receipt of the report of the Investigators, the Chair of the Ministerial Leadership Committee shall convene the Committee. The Committee shall seek counsel as it deems appropriate from any other conference that is involved with the alleged Misconduct and shall seek counsel from leaders in the congregation in which the accused is a member. The Committee shall decline to Charge, bring a Charge, or authorize further investigation.

1. *Decline to Charge.* If the Ministerial Leadership Committee does not believe that the Conference can present Probable Grounds to support any allegation of Misconduct, the Chair of the Ministerial Leadership Committee shall decline to Charge and shall:
 - a. Inform the Minister in writing.
 - b. Inform the Complainant.
 - c. Deliver the file to the Conference Executive, who shall maintain it as a Secure Personnel File.
 - d. After conferring with the Minister, make appropriate reports to those involved.
2. *Bring a Charge.* If the Ministerial Leadership Committee believes that the Conference can present Evidence that the Minister, more likely than not, engaged in Ministerial Sexual Misconduct, the Chair shall:
 - a. *File a Charge with the Conference Executive, setting forth:*
 - (1) The name of the Minister
 - (2) The name of the Complainant.
 - (3) The alleged Ministerial Sexual Misconduct.
 - (4) Sufficient information about date, time, place and circumstance to specifically inform of each incident complained of. (Describe multiple incidents of alleged Misconduct in separately numbered paragraphs, so that the accused may respond to each paragraph.)
 - (5) Direction that within five days of the Minister's receipt of the Charge, the Minister shall deliver to the Chair of the Investigators a signed statement, responding to each numbered allegation in the Complaint, stating
 - i. That the Minister agrees with the allegation, or
 - ii. That the Minister disputes the allegation and setting forth all the reasons the Minister disagrees, as well as the Minister's full account of each disputed incident that is alleged in the Charge.
 - (6) Notice that the Investigators will schedule a fact-finding meeting at which the Minister will have opportunity to respond in person to the Charge; and notice to the Minister that if the Minister believes the Complainant or any other person should be present at the fact-finding meeting, the Minister shall in writing identify such person and state why presence is desired.
 - (7) Direction that the Minister shall not communicate with the Complainant about the Charge.
 - (8) Any additional information the Committee believes should be given to the Minister before the meeting.
 - (9) The signature of at least one of the Investigators.
 - b. *Deliver the Charge to the Minister.* If personal delivery is not practical, the Minister's written receipt may be obtained, or the Charge may be mailed to the Minister's last known address by certified mail, return receipt requested.
 - c. *Inform the Complainant.* Inform the Complainant that a Charge has been filed by the Conference and a fact-finding meeting with the Minister will be held.
3. *Investigate further.* Upon receipt of the report of the Investigators, the Chair of the Ministerial Leadership Committee may authorize such additional investigation as the Chair deems appropriate for a period up to 30 days,

before deciding whether to bring a Charge or decline to Charge. However, if another proceeding, such as a court proceeding, is commenced or anticipated, the Ministerial Leadership Committee may delay further action, pending the outcome of the other proceeding.

4. *Long-ago Misconduct.* A Charge of Misconduct may be brought for acts that allegedly occurred many years before. Reliability of memory and availability of witnesses and Evidence should be taken into account when deciding whether to Charge. In some such cases, the Ministerial Leadership Committee may decide that a less formal means than that described in this procedure is appropriate to address the alleged Misconduct.
5. *Previously-disciplined Misconduct.* A Charge shall not be brought concerning Misconduct which an accused Minister demonstrates the Minister fully and accurately disclosed as part of a prior disciplinary proceeding by a conference that had Jurisdiction. The Findings of Fact and the Judgment in an earlier disciplinary proceeding may, however, be considered, if relevant to a current Charge by this Conference. Relevancy may include prior Misconduct of the type described in a current Complaint

Section 8: Fact Finding

- A. *Conduct a fact-finding meeting.* After a Charge is brought, the Investigators shall schedule a fact-finding meeting concerning the Charge and request that the Minister attend. The Investigators may ask to attend witnesses whose testimony may be needed to establish Probable Grounds. The Investigators may or may not request that the Complainant attend and testify, depending on whether they believe the Complainant's testimony will be needed to establish Probable Grounds. The Complainant cannot be required to attend or testify. The Investigators shall designate one of their number to moderate the meeting. They shall be alert to differences of power and persuasive abilities among those who attend. They shall keep order and not allow any participant to act inappropriately. This meeting is not governed by judicial rules of evidence or procedure. Any participant may ask for a brief recess to consult with a lawyer or other advisor. The Investigators shall:
 1. *Read or otherwise identify the Charge.*
 2. *Receive any preliminary response from the Minister.*
 3. *Offer Evidence of Misconduct.* If the Minister has not in writing agreed with any particular allegation in the Charge, Evidence shall be offered concerning such allegation. Generally, Evidence should be offered by the testimony of witnesses with direct knowledge, rather than second-hand reports or circumstantial Evidence. On occasion, it may be necessary to present testimony by written, video or audio recordings. Such secondary means should be used with caution, however, because the lack of direct communication may leave doubts about whether the Evidence demonstrates Probable Grounds.
 - a. The Personal Supporters for the Complainant and the accused may be present.
 - b. The Investigators shall endeavor to create a safe environment for witnesses to testify. The Investigators shall permit the accused to respond. The Investigators shall be the only ones who question witnesses, but shall give the Complainant, the accused, and the Personal Supporters opportunity to give the Investigators questions that any of them believe the Investigators should ask (but are not obligated to ask).
 - c. Generally, character witnesses as to good or bad character shall not be permitted.
 4. *Hear any objections about unfairness.* If the Complainant, the accused or a Personal Supporter believes the proceedings are not being conducted fairly, they may state the objection, and the Investigators shall decide the merits of the objection.
 5. *Propose Findings of Fact.* If the Minister disagrees with any proposed Findings of Fact, the Minister immediately shall inform the Investigators of all the reasons why the Minister disagrees. If the Investigators and the Minister do not agree on the facts, the Investigators may, nevertheless, find that there are Probable Grounds to support the Investigators' Findings of Fact.
 6. *Make Findings of Fact.* The Investigators shall make unanimous, numbered, written Findings of Fact and shall give the Minister a copy signed by the Investigators.
- B. *Deliver Findings of Fact.* The Investigators shall give the Chair of the Ministerial Leadership Committee the Investigators' signed Findings of Fact concerning each incident of Misconduct alleged in the Charge, and any written statement of the Minister that confirms or challenges any of the Findings of Fact.

- C. *Deliver File.* The Investigators shall give the Chair of the Ministerial Leadership Committee their file, including the Complaint, Charge, Findings of Fact, any Minister's response, and any Evidence.

Section 9: Judgment and Sanctions.

The Ministerial Leadership Committee shall:

- A. *Determine a Judgment* of guilt or acquittal of Misconduct, or refer the matter back to the Investigators for further Findings of Fact and further reporting to the Committee.
- B. *Inform Minister of any Sanctions.* Promptly after a Minister is found guilty of Misconduct, the Ministerial Leadership Committee shall inform the Minister in writing of Sanctions imposed by the Committee, including, the form of each Sanction, whether the Sanction continues for a stated period or until further notice, when and how the Minister shall report concerning compliance, and any other requirements imposed by the Committee.
- C. *Monitor Compliance with Sanctions.*
1. At such times and in such manner as the Ministerial Leadership Committee prescribes, the Minister shall report to the Chair of the Committee regarding compliance with the Sanctions and what relevant actions the Minister has taken.
 2. The Chair shall promptly inform the Ministerial Leadership Committee if it appears that the Minister is not in full compliance. The Committee may require the Minister to appear before the Committee at any time and may impose additional sanctions if it finds that the Minister is not in full compliance.
- D. *Make appropriate announcement* to those involved, including the Complainant. If the Minister is acquitted of Misconduct the Committee, in its sole discretion, and depending on the circumstances, may affirm and support, or recommend how congregational leaders may affirm and support, the continued ministry of the Minister.
- E. *Report to the Conference Executive the Judgment and any Sanctions.*

Section 10: Appeal

An accused Minister may appeal to the Conference Executive from a Judgment of guilt. Because the focus of this procedure is ministerial discipline, not redress for wronged individuals, no other appeal shall be made by any person concerning any action under this Policy and Procedure. Upon request of an appealing Minister, the Conference Executive shall decide whether to delay the imposition of any Sanction, pending outcome of the appeal.

- A. *Notice of appeal.* The Minister shall give written notice of any appeal to the Conference Executive within ten days after the Minister is informed of the Judgment by the Ministerial Leadership Committee. The notice of appeal shall be signed by the Minister and state all grounds for appeal.
- B. *Grounds for appeal.* The Minister in writing shall state facts and reasons that demonstrate why there are not Probable Grounds for each Finding of Fact that the Minister challenges, and why there are not Probable Grounds for the Judgment of guilt.
- C. *Appointment of Appeal Panel.* Upon receipt of an appeal, the Conference Executive shall appoint an Appeal Panel consisting of three persons, including a chair. The Conference Executive may be a member of and may chair the panel. No member of the panel shall be an Investigator, a member of the Ministerial Leadership Committee, a member of the same congregation as the Minister, or have any relationship that materially affects impartiality.
- D. *The Appeal Panel shall:*
1. *Give the Minister and the Investigators notice* of the date, time and location of the appeal
 2. *Convene* as designated, and
 - a. *Read or otherwise identify the notice of appeal*
 - b. *Allow the Minister to explain* why the Minister believes there are not Probable Grounds to support the Judgment of guilt.
 - c. *Have one or more of the Investigators review* the Charge, the Evidence supporting the Findings of Fact, and the Judgment.

- d. *Deliberate in private* and decide by consensus (but in the absence of consensus, by majority vote).
- e. *Affirm the Judgment*, unless the Minister has demonstrated that there are not Probable Grounds. Generally, the Appeal Panel shall defer to factual determinations made by the Investigators and shall focus on whether the Findings of Fact support the Judgment and Sanctions. However, if the Appeal Panel determines that there are not Probable Grounds or that the Sanctions are not reasonable, the Appeal Panel may modify the Judgment or the Sanctions, as appropriate, or may refer factual questions to the Investigators so that the Investigators may receive additional Evidence at a meeting with the Minister and provide additional Findings of Fact to the Appeal Panel. The Appeal Panel shall inform the Minister and the Investigators of the time and location of a subsequent appeal hearing to address any such new or changed Findings of Fact
- f. *Give written notice* of the Appeal Panel's decision to the Minister and the Conference Executive. Give appropriate notice to others involved, including the Complainant.
- g. *Give minutes of the appeal hearing* to the Ministerial Leadership Committee or to the Conference Executive responsible for holding ministerial files, to be added to the Minister's Secure Personnel File.

Section 11: Credentialing a Sanctioned Minister

- A. After indefinite Suspension. After credentials have been suspended indefinitely, a Minister may apply to the Ministerial Leadership Committee for re-instatement.
 - 1. With the application the Minister shall, in writing, address
 - a. Whether the Minister acknowledges the accuracy of the Findings of Fact and the Judgment
 - b. Whether the Minister has repented of the Misconduct;
 - c. How the Minister has, as a result, altered beliefs, behavior or both;
 - d. Whether the Minister has cooperated fully with the Investigators and the Ministerial Leadership Committee; &
 - e. Any other relevant information.
 - 2. The Ministerial Leadership Committee may require other information and shall determine whether the contents of the application are satisfactory.
 - 3. Reinstatement shall occur only if the Ministerial Leadership Committee, in its discretion, deems reinstatement appropriate.
- B. After Withdrawal of Credentials. Credentialing shall occur only through a new licensing or ordination process after the Minister has submitted an application to the Ministerial Leadership Committee, addressing the matters set forth in Section 11:A:1 (above).
- C. After other Sanctions. The Minister shall be subject to any Sanctions as long as the Ministerial Leadership Committee has determined Sanctions shall be effective. The Committee may modify or extend Sanctions as the Committee deems appropriate

Section 12: Forms Supplement

Illustrative forms, which are not a part of this Policy and Procedure, have been prepared. The forms may be adapted for particular circumstances. Sample copies of these forms can be found in Book #3 (Implementation in Virginia Mennonite Conference) of this manual.

Section 13: Adoption of this Policy and Procedure

This Policy and Procedure was adopted by Virginia Mennonite Conference on May 19, 2001 with Virginia Mennonite Conference Council Action 01:13.

BOOK #2

Justice Making: The Church Responds to Clergy Misconduct

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Section 1: Introduction

A Mennonite Polity for Ministerial Leadership guides the work of conferences in granting credentials, and describes appropriate behavior for pastors. The Polity recognizes the complimentary roles of conference and congregation, the former in granting credentials, the latter as the employer responsible for job descriptions, hiring and termination. Both conferences and congregations have had to deal with the trauma of clergy misconduct. The church learned from experience and so, policies and procedures were adopted to deal with this issue.

In 2000, a new procedural document, *Ministerial Sexual Misconduct Policy and Procedure* ("Misconduct Procedure") was adopted by the denomination to replace the earlier document Guidelines for Discipline. However, unlike the earlier document, the Misconduct Procedure focused solely on a procedure for determining guilt or acquittal. This companion piece addresses support, accountability, discipline (at times referred to as sanction or sanctions), and other issues not addressed fully in the Misconduct Procedure.

This companion piece complements the Misconduct Procedure by giving direction and counsel to Ministerial Leadership Committees and congregations as they deal with misconduct issues. Its goal is to provide justice-making for everyone concerned.

Section 2: Why special policies and procedures are needed

Matthew 18:15-20 illustrates ways that an aggrieved person may be heard within the church. Depending on circumstances, some complaints against a credentialed leader may be raised and resolved with the relative informality of the procedure described in Matthew 18.

Sometimes, however, a minister is accused of misconduct that calls into question the ability of the minister to lead with integrity. Then the Ministerial Leadership Committee that credentials the accused must learn the facts and take action, if warranted.

The action of a Ministerial Leadership Committee is guided by the policy adopted by the denomination, namely:

Ministerial Sexual Misconduct Policy: A minister shall not enter into sexualized behavior with a person with whom the minister has a professional relationship. A minister is always responsible to prevent such behavior. The conference sanctions (disciplines) ministers who engage in such misconduct.

A further suggested Code of Sexual Ethics for Ministers is shown in Attachment #1 of this Book.

A serious offense occurs when a minister engages in sexualized behavior with one with whom the minister has a professional relationship. This offense is more than just a sexual offense. A minister's credentials confer authority and access. Persons seek the counsel of ministers in times of stress or crisis. A minister who engages in sexualized behavior within a professional relationship abuses the minister's power and access. Examples of actions that a minister must avoid are shown in Attachment 2.

A complainant should not be expected to go alone to an accused minister to complain of sexual misconduct, since the alleged misconduct also involves an abuse of power. A complainant who proceeds alone or without a more formal procedure could be at risk of further abuse. In Matthew 25:31-46, the church is commissioned to hear cries of the powerless. The church is called to hear complainants in a setting that affords safety.

The church also must provide accused ministers with a safe place for facts to be determined when an allegation is made. Justice and compassion are due both a complainant and an accused. The church has struggled especially with fact finding about complaints of ministerial sexual misconduct. Therefore the Misconduct Procedure provides for these steps to address a complaint: (See Procedure document for more detail.)

- *Investigation* and report to Ministerial Leadership Committee.
- *Ministerial Leadership Committee may bring charge of misconduct.*
- *Response by accused.*

- *Fact-finding meeting* conducted by Ministerial Leadership Committee's investigators.
- *Fact-finding report* to Ministerial Leadership Committee.
- *Judgment* by Ministerial Leadership Committee.
- *Sanctions/Disciplines* (if guilty) by Ministerial Leadership Committee.

Because the Misconduct Procedure addresses complaints against ministers, it may need to be adapted for complaints against other leaders (see below). In all cases, those who are responsible for fact-finding must determine whether the accused is serving an organization with a grievance procedure or some other procedure that must or could be followed to respond to a complaint.

Use of the Misconduct Procedure is not limited, however, to complaints that allege sexual misconduct. The Misconduct Procedure may provide a helpful framework for any complaint of ministerial misconduct that may be too complex to resolve through the more informal steps described in Matthew 18.

When a complaint of misconduct is raised, the church must resist the temptation to avoid negative publicity. Confronting an accused minister with a complaint and with disciplinary action, when warranted, is a pastoral act of the church. If wrongdoing has occurred, confronting it may avoid a recurrence. Confronting wrongdoing also allows for the possibility of repentance and God's healing gift, both for the guilty as well as any possible victims. In working for God's justice the church shares God's grace.

Section 3: Definitions (See Book #1: Misconduct Policy for fuller list of definitions)

Finding: A determination of whether it is more likely than not that a pastor engaged in alleged misconduct. This factual determination is the basis for the Ministerial Leadership Committee's determination of guilt or acquittal of the accused.

Support person: A person appointed by the Ministerial Leadership Committee, in consultation with the complainant or the accused, to make sure that person understands the process and is kept informed and treated fairly in the process. The support person is not an advocate to argue on behalf of anyone.

Accountability group: A group formed by the Ministerial Leadership Committee to walk with a person found guilty of misconduct, monitoring compliance with disciplines.

Section 4: Support: During and After the Process

When misconduct is alleged, families, congregations, and others may need support. Leaders of the conference and congregation should insure that assistance and support are provided. Do not assume that assistance is not needed if not asked for. Congregations particularly, may not ask for the assistance they need.

Complainant & Family: Take steps to insure that practical, emotional counseling and pastoral support is available. A special support group might be formed to meet with the complainant while maintaining appropriate confidentiality. If persons who otherwise would provide pastoral care cannot do so, offer alternative pastoral support. Encourage personal counseling or therapy when that may be helpful. Assist in identifying competent counseling resources and obtaining financial assistance for counseling when needed. Listen to the spouse and family, and provide the love and compassion of the church.

Accused & Family: While the reaction of the accused and the accused's family may vary greatly, it is important that supports be offered. If an accused denies the charges, the family may rally in denial as well. In such cases support may be refused. Or the family may turn against the accused, in which case supports for all may be needed. Whatever the response, appropriate steps should be taken to offer support systems for the accused and their family. This might include counseling resources, support groups, etc. Those involved should know that they are not abandoned by the church, even if they refuse help.

The Congregation: The conference should assist a congregation in providing pastoral leadership and care when a minister is accused of misconduct. While a complaint is being investigated, it may be advisable for the governing body

of the congregation (or other employer) to grant the accused a non-disciplinary leave of absence from all responsibilities as minister, without prejudice and with pay. This is particularly true if the allegations are of a sexual nature.

A representative of the conference should explain to the congregation how the Misconduct Procedure is used to conduct an investigation, determine facts, impose disciplines when warranted, and permit appeal by the accused. It is important to keep the congregation informed of the relevant facts, in order to help preclude rumors.

After a determination of guilt or acquittal has been made, a conference representative should meet with the leadership bodies of the congregation (and in most cases, with the congregation) to listen to concerns and to describe next steps. Some individuals may support a guilty minister and call for Christian forgiveness so that life promptly can move on. Others may support a complainant and call for condemnation. Many may be angry because of what the congregation is experiencing. In this environment, conference representatives are called to exercise good judgment, and encourage others to do likewise. Outside facilitators, beyond the conference may also be helpful, since conference can also be seen as part of the issue.

The effects of clergy misconduct on a congregation are deep and far-reaching. It is important that the conference provides appropriate ongoing care for a congregation, and recognizes the role that an "after-pastor" plays. Use of an intentional interim, and care in placing the next pastor, are important in the ongoing healing of a congregation following a case of clergy misconduct.

Section 5: Addressing Judgments

A. If the Judgment is Acquittal

If a minister is acquitted of misconduct, the Ministerial Leadership Committee must recognize its responsibility to explain its action, and continue to offer support to all parties. The complainant, accused, and congregation should all be informed of the action taken, along with reasonable explanation. Ongoing support for the accused pastor and for the congregation may be necessary in order for fruitful ministry to be restored. Sensitivity to feelings, and ongoing communication with the complainant are also important.

B. If the Judgment is Guilty

If a minister is found guilty of misconduct, the credentialing conference may discipline by reprimand, probation, suspension of privileges and duties, withdrawal of credentials, or other disciplinary action. These actions are described below. Before the Ministerial Leadership Committee imposes disciplines, a representative of the committee may need to consult with the congregation or other employer of the accused, since such disciplines may affect continuing employment. However, job continuation should not be a deciding factor in discipline.

1. *Reprimand.* Reprimand is a serious reproof of a minister. It follows a judgment of guilt of wrongdoing and the Ministerial Leadership Committee's determination that the minister has accepted responsibility for the violation. The committee will need to determine if a reprimand is made public.
2. *Probation.* When the Ministerial Leadership Committee imposes probation, it identifies specific expectations and time limits. The committee may revise these expectations and time limits during the probationary period. During the probationary period, the committee may require restitution and may require the minister to undergo counseling, therapy, supervision and accountability to a group. Because of a conference minister's broader responsibilities, a conference minister or other conference overseer shall not serve on an accountability group to which the minister is responsible. Before probation is terminated, the Ministerial Leadership Committee shall review the minister's compliance and evaluate whether any other action should be taken regarding the minister's credentials or service.

When a conference Ministerial Leadership Committee has placed a minister on probation, the conference shall note such action in the ministerial registration records of the individual. The notation shall be "ordained probationary" or "OPR." This notation shall be removed only if the Ministerial Leadership Committee specifically authorizes.

3. *Suspension.* Credentials may be suspended if the Ministerial Leadership Committee determines that a minister has not taken appropriate responsibility for wrongdoing or believes that the minister should make restitution or take other action before functioning as a minister. During suspension, a minister may be required to participate in

counseling, therapy, accountability to a group, and professional psychological assessment. When the committee deems it appropriate, suspension shall not end until the committee has received reports that the committee deems satisfactory from a counselor or therapist and from an accountability group. Suspension causes the ministerial credential to be inactive and a minister is not "ordained in good standing" while a suspension is in effect.

Only when the Ministerial Leadership Committee informs a minister that a period of suspension has ended may the minister again function as a credentialed minister.

During suspension, a minister shall be granted a leave of absence from all ministerial positions. While suspended, a minister shall not engage in any ministerial action representing any congregation or the broader Mennonite Church. The minister shall not preach, teach, lead events such as baptism, serve the Lord's supper or provide pastoral care while suspended.

Suspension shall not last longer than two years. At the conclusion of suspension, credentials shall be reinstated or withdrawn by the Ministerial Leadership Committee.

When the Ministerial Leadership Committee has suspended a minister, the committee shall note such action on the ministerial registration records of the individual. The notation shall be "ordained suspended" or "OSU." This notation shall be removed only if the Ministerial Leadership Committee specifically authorizes.

4. *Withdrawal of credentials.* The Ministerial Leadership Committee may withdraw credentials if it determines that a guilty individual is not suitable to function as a minister. Such withdrawal requires termination of ministerial employment. If the minister had a role in the broader church beyond the conference, the committee shall describe what are acceptable and unacceptable activities and responsibilities for the individual in the future.

A minister whose credentials are withdrawn shall not engage in any ministerial actions involving a local congregation or the broader church. Such an individual shall not preach, teach, lead in events such as baptism or the Lord's supper or provide pastoral care. Such an individual continues to be subject to the authority of the Ministerial Leadership Committee.

When ministerial credentials are withdrawn, such action shall be noted on the ministerial registration records of the individual. The notation shall be "ordained/withdrawn" or "OWI." This notation shall never be removed from the ministerial registration record of the individual. Only a new ordination could grant ministerial credentials to a person from whom ministerial credentials have been withdrawn.

5. *Prohibition from acting as a minister in the conference.* If the credentials of a guilty minister were not granted or authorized by the conference of the Ministerial Leadership Committee, the committee may, nevertheless, prohibit the minister from engaging in any ministerial activities within the conference. This could be the case if credentials are held by another denomination or credentialing body.
6. *Other disciplinary action.* When appropriate, the Ministerial Leadership Committee may impose disciplines not described above. In such cases, the committee shall explain to the minister why a particular discipline was chosen.

Section 6: Accountability

If a minister is found guilty of misconduct, the conference generally should appoint an Accountability Committee. This committee should carry the ongoing task of monitoring compliance with the terms as laid out by the Ministerial Leadership Committee, to which it is responsible. Some of the possible requirements might be:

Psychological evaluation. Choose a therapist or counselor to meet with the minister, provide a psychological evaluation, and advise the accountability committee. Obtain the minister's written consent to meet with this professional and authorize release to the accountability committee of all past and future evaluation and therapy reports. Reflect on whether the professional's advice is consistent with the church's disciplinary goals.

Rehabilitation. Rehabilitation may include treatment, steps to prevent relapse, relationship to the congregation, and (in some cases) relationship to complainants.

Restitution. Restitution to the victims might include payment for counseling, written statements, etc. This should be agreed upon in conversation with the victim, whether individuals or congregations.

Costs. Determine how the church's costs for legal counsel, psychological evaluation and therapy shall be handled. The Accountability Committee should meet with the minister at least monthly to monitor the minister's compliance with discipline and to further understand the ongoing rehabilitation. The Accountability Committee should make periodic reports to the Ministerial Leadership Committee and make a final report stating whether and on what terms the Accountability Committee believes the minister is capable of effectively representing the church.

Section 7: Communication

Since the church confers authority by credentialing ministers, it is also important that the church give appropriate information when discipline takes place. The Ministerial Leadership Committee shall be the sole entity responsible to give notice:

- A. To the accused, in writing by personal delivery, (if personal delivery is not possible then by certified mail, return receipt requested) informing of a judgment of guilt or acquittal, and of any disciplines, whether disciplines apply for a stated period or until further notice, when and how the minister shall report regarding compliance, and any other requirements imposed by the committee;
- B. To the complainant, in writing by personal delivery (unless the complainant has waived the right of personal delivery, whereupon notice shall be given by certified mail, return receipt requested), informing of a judgment of guilt or acquittal;
- C. To the congregation (or other employer) in writing to the leadership board, and by arranging for a representative of the Ministerial Leadership Committee to meet with the congregation promptly after the accused and the complainant have been informed;
- D. To the Ministerial Leadership Office of Mennonite Church USA and/or Mennonite Church Canada, in case of guilt when disciplines have been imposed, by letter so stating, including a description of the nature of the misconduct. This should be in addition to the appropriate notation in the database.
- E. To the broader church and public in a manner consistent with the "Meetinghouse Guidelines for Reporting Sexual Misconduct and Other Sensitive News Stories" developed by the editors of Mennonite periodicals. The Ministerial Leadership Committee should be thoroughly familiar with these Guidelines. The following should also be kept in mind.
 - 1. Endeavor to protect the identity of the complainant, when requested
 - 2. Public statements should not be made to the congregation or the media unless specifically approved by an authorized representative of the Ministerial Leadership Committee
 - 3. Discourage parties directly involved from participating in media interviews.
 - 4. Limit disclosure of the details of alleged or determined misconduct, and report instead the findings of acquittal or guilt, including when guilty the nature of the misconduct.

Section 8: Forgiveness and restoration to fellowship are goals.

Forgiveness and restoration to the fellowship of the church are always goals. Restoration to a ministerial leadership office in the church calls for additional discernment and does not necessarily follow confession and forgiveness. Furthermore, forgiveness will not always lead to a minister's restored fellowship in the congregation where misconduct occurred.

Restoration to a position of leadership should only be considered after a person has complied with the terms of their accountability plan. Even then, restoration should not be assumed or guaranteed. Only if the Ministerial Leadership Committee has some assurance that behaviors will not be repeated should restoration to leadership be considered.

If restoration to a leadership position is allowed, the Ministerial Leadership Committee may wish to set up additional accountability and support structures for a time in order to help the person's reentry into ministry, and to provide safeguards for all involved. These should be reviewed on a regular basis, and may be continued as needed and appropriate.

Section 9: Record Keeping

Any actions taken in regards to discipline, and restoration, should be recorded in a minister's permanent file and noted in the database. While forgiveness and restoration are the goals, those actions do not negate the misconduct having taken place. If restored to ministry, a minister should disclose such disciplinary actions to any future employer. This is important for the ongoing integrity and accountability of all persons involved.

In addition, a Secure Personnel File related to a specific case of misconduct should be assembled and kept in a secure place, either in the Conference office, the office of the Conference lawyer, or at the Ministerial Leadership Offices of Mennonite Church USA or Canada. This file should contain all relevant documents related to the investigation and judgment of the case and should be kept separate from general files. This file should be kept at least during the minister's lifetime and can only be accessed by request of a conference Ministerial Leadership Committee, or designated representative, if the case is reopened or if the minister involved faces other allegations of misconduct. Any other copies of information or documents not considered relevant should be destroyed.

Section 10: Non-Sexual Misconduct

Misconduct can be alleged for other than sexual behaviors. *A Mennonite Polity for Ministerial Leadership* lists numerous other items that could be grounds for misconduct charges (Pg. 125). Since complainants in these cases may not be directly involved in the misconduct, it may be necessary to modify the procedures outlined in the Misconduct Procedure. A possible procedure is outlined below, recognizing that each case may provide different needs.

- A. *Investigation* and report to Ministerial Leadership Committee. Either the Ministerial Leadership Committee or an appointed group will determine if there is enough evidence to bring a formal charge.
- B. *A Charge* of misconduct may be brought by the Ministerial Leadership Committee. This charge should be specific and reference documents of the church that prohibit such actions. The charge should be presented to the accused in writing.
- C. *Response* by accused, in writing.
- D. *Fact-finding* conducted by Ministerial Leadership Committee or their appointed investigators. It is important to have clear documentation and rationale for the decisions made.
- E. *Fact-finding report* to Ministerial Leadership Committee.
- F. *Judgment* by Ministerial Leadership Committee of either guilt or acquittal.
- G. *Sanctions/Disciplines* (if guilty) by Ministerial Leadership Committee.

In all this process, notification procedures and safeguards for fairness noted in the Misconduct Procedure should be followed as appropriate.

Section 11: Non-Credentialed Leaders

We know that other leaders in the church are also capable of misconduct. Anyone in a position of authority, such as a SS teacher, deacon, or elder can misuse power to abuse someone. The procedures of Matthew 18 may serve to address certain issues, but when the misconduct involves misuse of power, such procedures may only serve to re-victimize the offended.

The process outlined here, and in the Misconduct Procedure document, can guide a congregation in dealing with such a case. However, most congregations will not have the experience or expertise to handle such cases on their own, and should call on conference representatives or other qualified outside persons to help in the process. Obviously it is important to follow clear procedures. While disciplines may be different for non-credentialed persons, clear guidelines for behavior and safeguards for potential victims must be in effect, particularly if the offense is of a sexual nature. If sexual abuse against children is involved, the church has a moral obligation, and possibly a legal obligation, to inform the proper authorities.

Section 12: Prevention

While it will be impossible to prevent all cases of misconduct, the church is becoming increasingly aware of steps to lessen the possibility of it occurring. Such steps are also important to lessen the likelihood of liability when such cases do occur.

- A. *Policies and Procedures:* Just as it is important for denominations and conferences to have policies and procedures in place for dealing with misconduct, so congregations are increasingly realizing the importance of policies and procedures related to abuse issues. These serve as clear guidelines for staff and volunteers, and inform people of what to do if abuse is suspected.
- B. *Assessment and Hiring:* It is becoming far more common for congregations and conferences to require screening processes. This is true for pastors, other hired staff, and even volunteers, particularly those working with children. These screening processes can include interviews, references, criminal record checks, and fingerprinting
- C. *Training and Education:* All pastors should have some training regarding the issues of clergy misconduct. Some insurance companies are calling for such training, for all staff and volunteers, before they will issue liability insurance to cover misconduct or abuse. Likewise congregations will do well to be informed of the issues of abuse and systematically offer education to their members. Insurance companies and organizations listed in the bibliography are good sources of materials for education.

Section 13: Bibliography and Resources

While this is not an exhaustive list, the resources cited here have been helpful in preparing this document, or are helpful resources for dealing with issues raised.

A. Resources

Center for the Prevention of Sexual and Domestic Violence (CPSDV), 2400 North 45th St., Suite 10, Seattle, WA
www.cpsdv.org

Ed Kauffman, Conference Minister, Central Plains Mennonite Conference, Freeman, SD. Ed has training from CPSDV to lead workshops on prevention of clergy misconduct, and is knowledgeable about other resources available.

Interfaith Sexual Trauma Institute, St. Johns Abbey and University, Collegeville, MN 56321 www.osb.org/isti

Ministerial Leadership Offices, Mennonite Church USA and Mennonite Church Canada The denominational leadership offices have resources and can direct you to persons or material related to issues of abuse.

Numerous Insurance Companies, such as Guide One, offer materials related to abuse. Check with your liability carrier for information.

The Alban Institute, Suite 1250 west, 7315 Wisconsin Ave., Bethesda, MD 20814-3211 www.Alban.org

B. Books & Periodicals

Cooper-White, Pamela *The Cry of Tamar: Violence Against Women and The Church's Response* Fortress Press, Minneapolis, MN

Fortune, Rev. Dr. Marie, ed. *Journal of Religion and Abuse*, Haworth Press, Binghamton, NY

Hammar, Richard R, Steven W. Klipowicz and James F. Cobble, Jr. *Reducing the Risk of Child Sexual Abuse in Your Church* Christian Ministry Resources, Matthews, NC 1993 Available in book, video and audiocassette.

Hopkins, Nancy Myer and Mark Laaser, ed. *Restoring the Soul of a Church* Alban Institute, Bethesda, MD 1995 A comprehensive look at issues surrounding clergy misconduct

Mennonite Central Committee has produced several packets of material related to issues of abuse and misconduct. Contact your regional office or the national office for more information.

Swagman, Beth *Preventing Child Abuse: A Guide for Churches* CRC Publications, Grand Rapids, MI 1997 A practical guide from the Christian Reformed Church

Attachment #1: Sample Code of Sexual Ethics for Ministers

1. Ministers are representatives of God and the church, and as such are to be agents of healing and redemption. They are aware that a minister's sexual exploitation or abuse is an abuse of trust, an abuse of power and an abuse of the authority of a pastoral position. They accept their responsibility to define and maintain appropriate boundaries within their ministerial relationships.
2. Ministers are aware that their personal relationships and lives must also reflect healthy morals and sexuality. Spouse or child abuse, use of pornography, or other forms of immorality may also lead to discipline.
3. Ministers are aware that discipline for sexual misconduct and immorality involves both their ministerial credentials and their vocational status.
4. Ministers are aware of and willing to abide by church policies and disciplinary procedures to address sexual misconduct.
5. Ministers accept responsibility to call each other to account and to exercise biblical responsibility to confront colleagues concerning perceptions of inappropriate sexual relationships.
6. Ministers are aware of their calling as servants of God under the lordship of Jesus Christ, and from that they accept their responsibility for and accountability to people entrusted to their care.
7. Ministers accept the obligation to disclose information regarding previous sexual misconduct for which they have been called to account prior to formal candidacy for a new ministry position.

As a minister of Jesus Christ and as a representative of the church within its office of ministry, I accept and subscribe to these affirmations.

Printed Name of Minister: _____
Signature: _____ Date: _____

Printed Name of Witness: _____
Signature: _____ Date: _____

Printed Name of Witness: _____
Signature: _____ Date: _____

For a boarder treatment of Ethics in Ministry, refer to *A Mennonite Polity for Ministerial Leadership*, Section V., page 106ff.

Attachment #2: Definition: Sexualized behavior

In 1995 the General Conference Mennonite Church and the Mennonite Church adopted a *Confession of Faith in a Mennonite Perspective*. In 1996 those denominations also published *A Mennonite Polity for Ministerial Leadership*. Refer to those documents for a description of the church's current ethical guidelines regarding sexuality.

A minister who engages in sexualized behavior within a professional relationship abuses the minister's power and authority. Within a professional relationship, a minister shall not permit sexualized behavior that includes actions such as the following.

- Unusual attention from a minister, including such things as gifts, frequent social telephone calls, letters, private visits or the maintenance of a special "spiritualized" partnership.
- Flirtatious propositions, talk or innuendo.
- Graphic or degrading comments about another person's appearance, dress or anatomy.
- Display of sexually suggestive objects or pictures.
- Sexual jokes or offensive gestures.
- Intrusive sexual or other questions about the person's personal life.
- Explicit descriptions of a minister's own sexual experiences.
- Abuse of familiarities or diminutives such as "honey," "baby" or "dear."
- Inappropriate or unwanted physical contact such as touching, hugging, pinching, patting or kissing.
- Whistling or catcalls.
- Leering.

BOOK #3

Implementation of the *Ministerial Sexual Misconduct Policy and Procedure* in Virginia Mennonite Conference

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Suggested Timeline

This procedure follows the timelines as listed in Book #1: Ministerial Sexual Misconduct Policy and Procedure. It is also shown below for reference.

| <i>Complaint</i> | <i>Normally (not necessarily) completed by:</i> |
|---|---|
| Investigation. Investigators recommend whether to Charge. | 14 days after Complaint. |
| Charge. The Ministerial Leadership Committee determines whether to Charge. | 16 days after Complaint. |
| Accused's Response. After receipt of a Charge, Minister agrees with or disputes Charge. | 21 days after Complaint. |
| Fact-Finding. Investigators conduct a fact-finding meeting. | 26 days after Complaint. |
| Fact-Finding Report. Investigators deliver Findings of Fact to Ministerial Leadership Committee. | 28 days after Complaint. |
| Judgment/Sanctions. Ministerial Leadership Committee renders Judgment of acquittal or guilt and, after a Judgment of guilt, imposes Sanctions. | 35 days after Complaint. |
| Appeal. The Minister may appeal within 10 days after being informed of the informed of the Judgment. | Note deadline for appeal. |
| Appeal Hearing. | 30 days after appeal |

Section 1: Complaint

1. If a person wishes to make a complaint, they must:
 - a. Report the complaint to their bishop/overseer, a member of the Faith and Life Commission (FLC) Officers, or the Conference Minister.
 - b. Sign and submit an official complaint (see *attachment #1*).
2. The notified person (usually the bishop/overseer) must notify the Conference Minister and the FLC Officers
3. The chair of the FLC Officers must:
 - a. Give this compiled manual to the complainant.
 - b. Offer a contact person to the complainant to assist in filing a complaint, selecting a personal supporter, and reporting to government authorities any violation required by law.
 - c. Review the personal file of the accused minister.
 - d. Determine whether immediate action is needed to prevent interaction between the complainant and the accused minister.

Section 2: Preliminary Investigation (completed 14 days after the complaint is filed)

1. The FLC Officers shall appoint a three-person investigation team, including a Chair. Generally, one member of the minister's congregation should be on the team. The Conference Minister may not be on this investigation team.
2. The Investigation Team shall:
 - a. Notify:
 - the accused minister that a complaint was received (see *attachment #2*).
 - the congregational leaders that a complaint was received (see *attachment #3*).
 - b. Consider non-disciplinary leave of absence and an announcement to the congregation.
 - c. Investigate:
 - Document throughout the entire process (copy all forms submitted, all meetings, etc.)
 - Consult with legal advisors (as needed).
 - Notify the complainant that the investigation has begun.
 - Two investigators must interview the complainant.
 - Interview other persons who have relevant information.
 - Two investigators must interview the accused minister.
 - Prepare a written report for the FLC Officers (see *attachment #4*).

Section 3: Charge (completed 16 days after the complaint is filed)

1. Charge
 - a. The FLC Officers will review the investigation report.
 - b. If there is insufficient evidence to substantiate a claim, the FLC Officers will:
 - Inform the accused minister (see *attachment #5*).
 - Inform the complainant (see *attachment #5*).
 - Return the minister's personal file to VMCC offices.
 - Make reports to those involved after conferring with the minister.
 - c. If there is sufficient evidence to substantiate a claim, the FLC Officers will:
 - File a charge with the Conference Minister (see *attachment #6*).
 - (If possible) Personally deliver the charge to the accused minister.
 - Inform the complainant.
 - Make reports to those involved after conferring with the minister.

Section 4: Accused's Response (completed 21 days after the complaint is filed)

1. After the charge is received by the accused minister, the minister must respond to the charge, either agreeing with or disputing the charge (see *attachment #7*).

Section 5: Fact-Finding Meeting (completed 26 days after the complaint is filed)

1. The investigators must hold a fact-finding meeting attended by the accused minister, any witnesses who can help to establish probable grounds for the complaint, and the complainant (as necessary - but cannot be required to attend, should they refuse). They shall:
 - a. Read the charge.
 - b. Receive preliminary response from the accused minister.
 - c. Offer the evidence of misconduct. These may include:
 - Witnesses
 - Audio/videotapes
 - Written dispositions
 - d. Hear any objections about unfairness.
 - e. Propose the findings of fact.
 - f. Make the findings of fact (*attachment #8*).
 - Give the accused minister a signed copy of the findings.
 - The accused minister may contest or agree with the findings (*attachment #9*).

Section 6: Fact-Finding Report (completed 28 days after the complaint is filed)

1. The investigators will deliver the signed findings of fact to the Chair of the FLC Officers, including the minister's signed response to the findings (*attachment #10*).
2. The investigators will give the Chair of the FLC Officers their file, including all documentation from the process.

Section 7: Judgment/Sanctions (completed 35 days after the complaint is filed)

The FLC Officers shall:

1. Determine a judgment of guilt or acquittal, or refer the case back to the investigators, should there be a need for more findings of fact (*attachment #11*).
2. Inform the minister of any sanctions (*attachment #11*).
3. Monitor compliance with sanctions.
4. Make announcements to those involved, including the complainant.
5. Report the Judgment/Sanctions to the Conference Minister.

Section 8: Appeal (completed within 10 days of being informed of the judgment)

1. The minister must file a signed written appeal with the Conference Minister within 10 days of being informed of the judgment (*attachment #12*). The appeal must state all grounds for appeal.
2. The Conference Minister will appoint a three-person appeal panel. The Conference Minister may serve on the panel. No investigator, FLC Officer, or member of the congregation may be on the panel.

Section 9: Appeal Hearing (completed 30 days after appeal is filed)

The panel shall

1. Give the minister and the investigators notice of the appeal hearing date, time, and location.
2. Convene as designated.
 - a. Read the notice of appeal.
 - b. Allow the minister to explain the appeal.
 - c. Have one or more investigators review the charge, the evidence, and the judgment.
 - d. Deliberate in private and decide by consensus.
 - e. Affirm the judgment, unless the minister has demonstrated there are not probable grounds.
 - f. Give written notice of the appeal panel's decision to
 - the minister
 - the Conference Minister
 - (verbally) the complainant
 - g. Give minutes of the hearing to
 - the VMCC office (for the personnel file)

Attachment #1

COMPLAINT FORM CONCERNING MINISTERIAL MISCONDUCT

A person who believes that a minister has engaged in ministerial sexual misconduct may inform a Conference Overseer/Bishop, a member of the Faith and Life Commission Officers, or the Conference Minister.

If you report misconduct, the Conference will offer a person, acceptable to you, to assist you in preparing this complaint and, if you so desire, in selecting an individual to provide personal support to you.

This form may be used to submit a complaint. *Attach additional sheets, as needed.*

1. Your name (complainant): _____
2. Your address: _____
3. Your phone numbers: _____
4. Name of the accused minister: _____
5. Describe each incident of misconduct (and please give information about date, time, place and circumstances).

6. Identify any witnesses or persons who can corroborate any of the incidents.

7. Identify any written material or other physical evidence of misconduct.

8. Provide any additional information that you believe is relevant.

Signature of complainant: _____

Date: _____

Attachment #2

NOTICE TO MINISTER THAT COMPLAINT WAS RECEIVED

Minister: _____
Address: _____

By this notice we inform you that a complaint alleging ministerial sexual misconduct by you has been filed with the Virginia Mennonite Conference by _____ the complainant. This complaint will be addressed according to the Conference's Ministerial Sexual Misconduct Policy and Procedure, of which we enclose a copy.

Do not communicate with the complainant about the complaint.

The Conference has appointed _____, _____, and me to investigate the complaint and recommend whether a charge of misconduct should be brought by the Conference.

We recognize that this will be a difficult time for you. We urge you to call _____, a contact person (phone: _____) who is willing to assist you in selecting an individual who can offer personal support to you during this time. We have informed the contact person that we have received a complaint of ministerial sexual misconduct, but we have not otherwise informed the contact person about the complaint. We urge you to call the contact person to discuss selecting a personal supporter or to inform the contact person that you have made other arrangements for personal support.

We will contact you during our investigation.

Sincerely,

Chair of Investigators

Attachment #3

NOTICE TO CONGREGATIONAL LEADERS THAT COMPLAINT WAS RECEIVED

TO: _____, Chair of the Governing Board
_____, Minister *[other than the accused]*

By this letter we inform you that the Conference has received a complaint alleging ministerial sexual misconduct by _____ . We enclose the Conference's *Ministerial Sexual Misconduct Policy and Procedure*. Pursuant to that policy, the Conference has appointed _____, _____, and me as investigators.

Because our investigation is not complete, we urge that you not share this information at this time beyond those few leaders who need to know because of their responsibilities.

[Alternate for preceding paragraph: Although our investigation is not complete, we suggest that you grant the accused minister a non-disciplinary leave of absence, with pay. We suggest that you consider discussing with an attorney whether an announcement such as this is appropriate: " _____ has been granted a leave of absence from all responsibilities as minister while a complaint is being investigated. The fact that a complaint is being investigated does not mean that misconduct has occurred. Conference policy requires an investigation."]

I will contact you in the near future to discuss whether you have relevant information about the complaint. If I do not reach you within the next two days, please call me.

Sincerely,

Chair of Investigators

Attachment #4

INVESTIGATORS' REPORT TO THE FAITH AND LIFE COMMISSION OFFICERS REGARDING COMPLAINT

We have been appointed to investigate allegations of ministerial sexual misconduct by _____.

After investigation, we believe that the Conference:

- Cannot present evidence that the accused minister, more likely than not, engaged in Ministerial Sexual Misconduct.
- Can present evidence that the accused minister, more likely than not, engaged in Ministerial Sexual Misconduct.

We recommend:

- That the Conference decline to bring a Charge.
- That the Conference bring a Charge.

We have summarized and attached the allegations of Misconduct (*each identified by a separate number*). For each allegation we have identified the Probable Grounds of Misconduct that we believe the Conference can present or we have stated why we believe Conference cannot present Probable Grounds.

Signed by the Investigators:

Dated: _____

NOTICE THAT CONFERENCE DECLINES TO CHARGE

A Complaint alleging Ministerial Sexual Misconduct was filed against _____ by _____ . The Conference appointed three Investigators to investigate the allegations.

Based on that investigation, the Faith and Life Commission Officers have not found that the Conference can present Probable Grounds to support the allegations of Misconduct. Accordingly, the Conference, at this time, declines to bring a Charge.

Dated: _____
Chair of Faith and Life Commission Officers

SAMPLE COPY
SAMPLE COPY
SAMPLE COPY

Attachment #6

CHARGE OF MISCONDUCT

Virginia Mennonite Conference brings this charge of Ministerial Sexual Misconduct.

- 1. The accused Minister is: _____
- 2. The Complainant is: _____
- 3. The nature of the alleged Misconduct is: _____

4. In the attached addendum, each allegation is identified by numbered paragraph and described with date, time, place and circumstances.

5. Within five days of receipt of this Charge, the accused Minister is directed to complete, sign and deliver to the Chair of the Faith and Life Commission Officers the enclosed "Minister's Response to Charge" form, responding to each numbered allegation, stating (a) that the Minister agrees with the allegation, or (b) that the Minister disputes the allegation and setting forth (1) all the reasons the Minister disagrees, (2) the Minister's full account of each disputed incident, (3) the names of any persons who the Minister believes have relevant information and should attend a fact-finding meeting regarding the Charge and (4) why the testimony of each such person is needed.

- 6. The accused Minister is hereby notified that:
 - o The Minister shall attend a fact-finding meeting with the Investigators on _____ at _____ m. at _____ when the Minister will have opportunity to respond to this Charge.
 - o The Minister shall not communicate with the Complainant about the Charge.
 - o Any information shared by the Minister may be used in disciplinary proceedings.

Dated: _____

Chair of Faith and Life Commission Officers

MINISTER'S RESPONSE TO CHARGE

I have reviewed the Charge of Misconduct dated _____, which has been filed with Virginia Mennonite Conference, against me. I agree with all matters as set forth in the Charge, except as noted below. Regarding each allegation that I dispute I have set forth all the reasons I disagree and I have set forth the full account of each alleged incident that I dispute. *(Specifically refer to each numbered paragraph that you dispute. Attach additional sheets as needed.)*

SAMPLE COPY

SAMPLE COPY

At the fact-finding meeting concerning the Charge, I believe that the presence of these persons is necessary for the reasons stated here:

SAMPLE COPY

Dated: _____

Minister

FINDINGS OF FACT

Accused Minister: _____
(Each allegation or act of misconduct is separately numbered below)

1.

SAMPLE COPY

SAMPLE COPY

Signed by the Investigators:

SAMPLE COPY

Dated: _____

MINISTER'S RESPONSE TO INVESTIGATORS' FINDINGS OF FACT

I have reviewed the Findings of Fact dated _____, concerning a Charge of Misconduct that Virginia Mennonite Conference has filed against me. I agree with the Findings of Fact, except as noted below. *(Specifically refer to each numbered finding that you dispute. Attach additional sheets, as needed.)*

SAMPLE COPY

SAMPLE COPY

SAMPLE COPY

Dated: _____

Minister _____

Attachment #10

INVESTIGATORS' REPORT TO FAITH AND LIFE COMMISSION OFFICERS
AND TO ACCUSED MINISTER REGARDING FINDINGS OF FACT

Regarding Charge of Misconduct by _____ (accused Minister).

Attached are the unanimous Findings of Fact of the Investigators.

- We are giving the Faith and Life Commission Officers the accused Minister's response.
- The accused Minister did not provide a written response.

We are delivering our file in this matter to the Chair of the Faith and Life Commission Officers.

Signed by the Investigators:

Dated: _____

NOTICE TO ACCUSED MINISTER OF
FAITH AND LIFE COMMISSION OFFICERS' JUDGMENT

Accused Minister: _____

After reviewing the Investigators' Findings of Fact, the Faith and Life Commission Officers have determined that you are

- Acquitted
- Guilty

of these acts of Misconduct that were charged:

(If applicable) As a result of the finding of guilt, we impose sanction(s) as follows:

If you choose to appeal the judgment or any sanction, you must file your written appeal with
_____, the Conference Executive, within ten days of your receipt of this notice.

Date: _____ Signed: _____

MINISTER'S APPEAL OF JUDGMENT OF GUILT

I appeal from the Ministerial Leadership Committee's Judgment of guilt concerning the charge of Misconduct that was filed against me. I set forth below all the reasons why I believe there are not Probable Grounds (1) for each of the Investigators' Findings of Fact that I dispute and (2) for the Judgment of guilt.

SAMPLE COPY

SAMPLE COPY

SAMPLE COPY

Dated: _____

Minister _____