

SEXUAL MISCONDUCT & ABUSE - POLICY AND PROCEDURES

We believe and proclaim that all people are created by God. God values all human life and intends that everyone—men, women and children—have worth and dignity in all relationships.

We further believe in justice for all persons. Sexual misconduct is an abuse of power and trust, therefore, unjust. Scripture asserts that religious leadership involves a covenant relationship that presumes the trustworthy exercise of power in behalf of those in our care. A betrayal of this trust is more than just a personal tragedy for the victim. It reflects a tragic breakdown in the character of the abuser that seriously threatens not only those immediately affected but the well-being of the church itself.

For too long, incidents of sexual misconduct have been glossed over, rationalized, or subverted for "the good of the Church." The Presbytery of Albany here proclaims that, the "good of the Church" can never be served by overlooking an abuse of power and trust, that sexual misconduct is wrong. We further declare that charges of misconduct must be dealt with promptly, fairly, and with compassion for both the alleged injured party and the alleged perpetrator.

The purpose of this policy is to make clear the Presbytery's position on sexual misconduct and abuse and to establish the procedures to be followed in investigating and resolving instances where misconduct is alleged to have occurred. The General Assembly Policy and Procedures on Sexual Misconduct has encouraged and informed this policy.

I. THE POLICY STATEMENT

Sexual misconduct, defined as including sexual harassment and abuse, whether of a child or adult, is a violation of the principles set forth in Scripture and is never permissible. This policy applies to all clergy members of Albany Presbytery and all employees, officers, or staff (whether paid or volunteer) of Albany Presbytery. This policy recognizes that victims of sexual misconduct may include church members and their children, church employees, ministers, and other persons regardless of church membership or association. It is the policy of this Presbytery that charges of sexual misconduct be treated with the seriousness they deserve and be dealt with promptly and fairly for the benefit of all parties concerned. In keeping with American law and tradition, the presumption of innocence regarding the accused must be respected.

It is against the policy of the Presbytery of Albany, and illegal under state and federal law, for any clergy member of the Presbytery or any employee, officer, or staff member (whether paid or volunteer) of the Presbytery to engage in any form of sexual misconduct, including sexual harassment and abuse as defined by this policy.

The Presbytery of Albany is committed to providing a workplace and a church that are free from this unlawful conduct. The adoption and enforcement of the provisions of this policy are in keeping with this commitment.

II. Definition of Terms

A. What is "sexual harassment?"

Sexual harassment is a form of sex discrimination. This policy applies to all employees and members of the Presbytery of Albany, both paid and volunteer. 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 employment;
2. submission to or rejection of such conduct by an individual is used as a component of the basis for employment decisions affecting the individual;

3. such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.
4. Examples of sexual harassment include, but are not limited to the following, when such acts or behavior come within one of the above definitions:
 - a) either explicitly or implicitly conditioning any term of employment (i.e. continued employment, wages, pay raise, evaluation, advancement, assigned duties, assigned shifts, etc.) on the provision of sexual favors;
 - b) touching or grabbing a sexual part of an employee's body;
 - c) touching or grabbing any part of an employee's body after that person has indicated, or it is known, that such physical contact is unwelcome;
 - d) continuing to ask an employee to socialize on or off-duty when that person has indicated that she/he is not interested;
 - e) displaying or transmitting sexually suggestive pictures, objects, cartoons, posters, etc.
 - f) continuing to write sexually suggestive notes or letters if it is known or should be known that the person does not welcome such behavior;
 - g) referring to or calling a person a name with sexual connotations if it is known or should be known that the person does not welcome such behavior;
 - h) telling sexually suggestive jokes or using sexually vulgar or explicit language;
 - i) derogatory or provoking remarks about or relating to an employee's sex or sexual orientation;
 - j) harassing acts or behavior directed against a person on the basis of his/her sex or sexual orientation;
 - k) off-duty conduct which falls within the above definition and affects the work environment.

In addition, retaliation of any kind against a person for having filed or supported a complaint of sexual harassment (i.e. ostracizing the person, pressuring the person to drop or not support the complaint, adversely altering that person's job duties or work environment, etc.) is also against the law and a violation of this policy.

B. What is Sexual Abuse?

Sexual Abuse is any offense involving sexual conduct in relation to:

1. Any person under the age of eighteen years or anyone over the age of eighteen years without mental capacity to consent {D-10.0401b. (1)} or
 2. Any person when the conduct includes force, threat, coercion, intimidation, or misuse of office or position {D-10.0401b. (2)}.
3. Examples of sexual abuse include any and all of the following behavior:
- a) punishing or threatening to punish a person for rejecting sexual attention, requests, and/or demands;
 - b) coercing, or attempting to coerce, a person into a sexual and/or dating relationship;
 - c) the use of spiritual or appointed authority to coerce or the attempt to coerce, persuade, or mislead a person to enter into sexual behavior;

- d) basing employment, promotion, pay increases, or training opportunities on a person's acceptance or rejection of sexual advances;
- e) utilizing a position of trust to engage in sexual contact, with or without consent, involving a person who is subject to the implicit trust relationship which the position conveys (e.g., ministers, pastoral counselors, youth leaders, church school teachers, child care workers, etc.);
- f) any sexual contact by force, threat or physical intimidation including but not limited to rape or attempted rape.

C. What is Child Sexual Abuse?

Child Sexual Abuse includes any and all of the following behaviors, whether carried out either on or off duty:

- 1. any inappropriate sexual interaction between an adult and a child, whether verbal or physical;
- 2. any sexual contact by force, threat, or physical intimidation, including but not limited to rape or attempted rape;
- 3. any contact or interaction between a child and an adult when the child is being used for the sexual stimulation of the adult person or a third party.

III. Procedures for the Presbytery and Member Churches

A. PRESBYTERY RESPONSIBILITIES

It is the responsibility of the Presbytery to:

- 1. insist that Presbytery officers, staff, and clergy members of Presbytery set a personal example by not engaging in sexual misconduct in any form;
- 2. explain, through the Presbytery's Committee on Ministry, that sexual misconduct will not be tolerated. Presbytery will regularly conduct training and educational events and activities for both clergy and lay people, organized and supervised by the Committee on Ministry. Such an event is mandatory for minister members of Presbytery at least once every five years.
- 3. take action to address all sexual misconduct by:
 - a) encouraging the reporting of all accusations;
 - b) following up with a person who reported sexual misconduct to insure that the behavior has stopped, and that she/he has not experienced any retaliation or reprisal;
 - c) providing procedures to address sexual misconduct reports or accusations including, but not limited to, the procedures outlined in this policy.
 - d) providing for effective reference checking of ministers received into the Presbytery and all persons employed by the Presbytery, including but not limited to a sexual misconduct employment questionnaire and release form (see Exhibits A & B attached).

4. protect anyone who reports an instance of sexual misconduct from any and all forms of retaliation.

B. SESSION RESPONSIBILITIES & RESOURCES

Each session in the Presbytery of Albany is responsible for providing a sexual misconduct-free work environment for its employees, and policies and procedures to enforce the investigation and prosecution of allegations of sexual harassment and abuse on the part of its congregation. It shall be the responsibility of the session to:

1. inform all employees and volunteers, especially those who work with children or youth, of the Presbytery Policy on Sexual Misconduct and provide them with a copy;
2. appoint two contact persons in the congregation, a woman and a man, to whom an allegedly injured party may go as an alternative to calling the General Presbyter. It shall be the contact persons' chief responsibility to explain the policy to the reporter, and to inform the General Presbyter.
3. recognize the importance of and maintain confidentiality regarding both the accuser and accused. It shall be the contact person's responsibility to ascertain what is appropriate confidentiality in discussion with the General Presbyter and advise the reporter accordingly. It may be appropriate at some point for the Session to inform the congregation of the situation and the parties involved. This, too, should be done in consultation with the General Presbyter.

The session is strongly advised to adopt its own Sexual Misconduct Policy, and is requested to file a copy of it with the Stated Clerk of the Presbytery.

C. REPORTING PROCEDURES

Reports of sexual misconduct will occur in a variety of ways. Because an individual church or the Presbytery cannot control to whom the accuser of sexual misconduct will first speak, it is important that all church leaders and employees understand how reports of incidents are to be channeled to the proper person. Reports of sexual misconduct should never be taken lightly or disregarded and allowed to circulate without concern for the integrity and reputation of the accuser, the accused, and of the Church. Reports should be dealt with as matters of highest confidentiality both before and after they have been submitted to appropriate authorities.

All persons covered by this policy have a particular duty to report suspected child sexual abuse and shall report the incident to civil or criminal authorities as required by local or state law. All persons should be educated by their local church and must comply with state and local laws regarding incidents of actual or suspected child sexual abuse.

The importance of properly reporting allegations of sexual misconduct cannot be overemphasized. Attempts to resolve accusations informally at the lowest organizational level, while understandable, can often result in inappropriate responses, which may make matters worse. Accordingly, the following reporting procedures are to be followed.

1. A victim of sexual misconduct may be a church member, church employee, or the minister herself or himself. The injured party is encouraged to contact one of the following if she/he has been or is being subjected to any form of sexual misconduct:\

- a) The General Presbyter
 - b) The Chair of the Committee on Ministry
 - c) The Sexual Misconduct Contact Persons of the local church, appointed by the Session. These will be a woman and a man to whom the accuser may go instead of directly to the General Presbyter. It shall be the contact person's chief responsibility to explain the policy and to inform the General Presbyter of the accusation.
 - d) Should the alleged offender be a church staff member other than the pastor, the pastor as head of staff should be informed.
 - e) Should the alleged offender be the General Presbyter, the Chair of the Presbytery Personnel Committee is assigned the role of the General Presbyter wherever this role appears in this policy.
2. Allegations received from a third party, but as yet unsubstantiated by the presumed injured party, are to receive a prompt inquiry either by the General Presbyter in consultation with the Chairperson of the Committee on Ministry. The accused shall be informed of the allegations.
 3. A formal accusation by an alleged injured party will initiate a disciplinary case which will be handled as stipulated by the Rules of Discipline D-10.000 and following. This process is briefly identified in Section F.
 4. Reprisals as a result of reporting allegations are forbidden and, should such occur, could lead to disciplinary process.
 5. The reporting of false allegations as a vindictive act is also subject to disciplinary process if the person reporting is subject to Presbyterian discipline.

D. RESPONSE TEAM PROCEDURES

1. The creation of a Response Team to carry out pastoral but not investigative functions shall be offered to the allegedly injured party by the General Presbyter as soon as an allegation is made.
2. The General Presbyter shall appoint a Response Team of 2-4 members with special concern and sensitivity to sexual misconduct issues. There should be at least one woman and one man on the team. Training will be provided as needed. If the General Presbyter is the alleged offender or is unable to act, the chair of the Presbytery Personnel Committee should assume the role of the General Presbyter.
3. A Response Team may not function as an Investigating Committee and the pool of persons identified in D.2 (above) shall not serve on Investigating Committees during the time they are members of this pool.
4. If there is more than one Response Team involved in the same misconduct process, the Teams shall not communicate directly with one another unless specifically requested to do so by the General Presbyter.
5. Response Teams may be assigned one or more of the following functions:

- a) To listen to and assist injured parties.

When a Response Team is asked to contact an injured party, it shall do so within five days of its notification to listen, to present procedural options, and to counsel with the person until a course of action is determined upon. The Response Team shall assist as needed in facilitating the use of Presbyterian polity.

- b) To consult with alleged offenders.

On the day that a Response Team meets with an injured party, the General Presbyter or the Chair of the Committee on Ministry will communicate with the alleged offender to inform her/him of the allegations, and to discuss possible responses and next steps. When so desired, a Response Team will be appointed to consult with the accused. Such a Response Team will provide pastoral support to the alleged offender and/or family members.

- c) To offer support to families or congregations which have been injured by sexual misconduct and/or allegations of same.

When a Response Team is asked to provide support to families or congregations who have been injured by sexual misconduct or allegations of same, its role shall be one exclusively of support and it shall refrain from offering any counsel relating to disciplinary procedures.

- d) To evaluate third-party allegations;

When a Response Team is asked to evaluate third-party allegations, and it determines there is a need to contact the alleged injured party, it shall follow the procedure in a. above. If a formal inquiry is needed, this is to be done by a Special Disciplinary Committee and not a Response Team.

- e) To see that the required reporting of any child abuse or other criminal behavior is provided to the appropriate authorities.

E. PROCEDURES FOR NON-DISCIPLINARY CASES

It is expected that all allegations involving Sexual Abuse will lead to the creation of an Investigating Committee as provided for in the Rules of Discipline. (See F Below)

In instances where the initial allegations relate to sexual harassment exclusively, the following procedures may be followed unless or until it becomes clear that an Investigating Committee is needed.

1. A Response Team will be selected to hear the party or parties bringing the report of sexual harassment. The same Response Team will then meet with the alleged offender and communicate the allegations.
2. If the Response Team is able to achieve a resolution of the report which is satisfactory to all parties, it shall report this to the General Presbyter. The General Presbyter and/or the Response Team shall follow-up with subsequent reviews after one month and six months.

3. If the Response Team is unable to achieve a resolution of the report which is satisfactory to all parties, or if it believes further action is needed to assure no further misconduct will take place, it shall consult with the General Presbyter as to whether the Committee on Ministry, a church session, or some other party needs to be involved to accomplish this objective.
4. A church session and/or the Committee on Ministry may be requested to admonish a person who has engaged in sexual misconduct and to monitor future behavior. If such behavior is repetitive, the monitoring group in consultation with a professional counselor may require psychotherapy. The monitoring group may also determine whether a formal disciplinary process should be recommended to the Presbytery.

F. PROCEDURES FOR DISCIPLINARY CASES

A formal accusation of an alleged Sexual Misconduct offense will initiate a disciplinary case which will be handled as stipulated by the Rule of Discipline, Chapter X. What follows is a simplified outline and should not be used in place of the Book of Order.

1. An individual submits a written statement of the alleged offense along with supporting information to the Clerk of Session or Stated Clerk (D-10.0101).
2. The Stated Clerk reports to the Presbytery that an offense has been alleged and of the necessity to appoint an Investigating Committee (D-10.0103). A rule enacted by Albany Presbytery in January 1995 (Minutes of Albany Presbytery, page 42) provides for the appointment of an Investigating Committee between Presbytery meetings.
3. The Investigating Committee inquires into the alleged offense and determines if charges should be filed (D-10.0200 and following).
4. If charges are filed, the Investigating Committee designates a prosecuting committee. (D-10.0202i).
5. If the Investigating Committee has decided to file charges, it informs the accused and asks if the person wishes to plead guilty. It indicates the censure it will recommend. (D-10.0302)
6. The charge is submitted in writing to the Stated Clerk who forwards it to the clerk of the Permanent Judicial Commission (D-10.040).
7. The Permanent Judicial Commission conducts a pre-trial conference. (D-10.0405).
8. The trial is conducted by the Permanent Judicial Commission (D-11). If the person is found guilty, the possible outcomes are rebuke, temporary exclusion from exercise of ordained office or membership, or removal from ordained office or membership.

G. PROCEDURES FOR ADMINISTRATIVE LEAVE

Administrative leave for an accused member of Presbytery may commence

1. as soon as an allegation is made
2. when charges have been filed
3. at the request of the Pastor, Session, or COM**
4. at the request of the Session of the accused
5. at the request of the General Presbyter and/or COM Chair

During the first three months of administrative leave, full compensation will continue to be paid by the church. While it is desirable that the investigation be completed and the situation resolved within a three-month period, continued administrative leave, up to one year, is negotiable.

**In the event that all three are in agreement, the administrative leave may begin immediately and simply be reported to the congregation and the Presbytery. In cases where there is not agreement among the three parties, the Committee on Ministry is charged with making a recommendation to the Presbytery and the Presbytery shall decide after having heard from the pastor, the session, and its committee.

H. FOLLOW-UP WITH CONGREGATIONS

The Presbytery acknowledges that special care may be needed for congregations following the departure of an alleged sexual offender. Church members and staff will likely face issues of betrayal, hurt, anger, loss, confusion, etc. The Committee on Ministry is urged to arrange for interim pastoral leadership and/or other professionals who are skilled in caring for congregations that have experienced such injuries.

EXHIBIT A – Page 2
PRESBYTERY OF ALBANY EMPLOYMENT QUESTIONNAIRE

RELEASE

The information I have provided on this questionnaire is accurate to the best of my knowledge and may be verified by the employing entity. I hereby authorize Albany Presbytery to make any and all contacts necessary to verify my prior employment history and to inquire concerning any prior arrest or criminal records or any judicial proceedings involving me as a defendant. By means of this release I also authorize any previous employer and any law enforcement agencies or judicial authorities to release any and all requested information to Albany Presbytery.

I have read this release and understand fully that the information obtained may be used to deny me employment or any other type of position from the employing entity. I also agree that I will hold harmless the employing entity, as well as any prior employer, law enforcement authority, or judicial authority from any and all claims, liabilities, and cause of action for the release or the use of any information.

Signature _____ Date _____

Witness _____ Date _____

Witness _____ Date _____

EXHIBIT B
PRESBYTERY OF ALBANY
ACKNOWLEDGEMENT OF RECEIPT

I hereby acknowledge that I received on _____(date) a copy of the Presbytery of Albany Sexual Misconduct Policy and Procedures, that I have read the policy, understand its meaning, and agree to conduct myself in accordance with the policy.

Signature _____ Date _____

Please complete Exhibits A and B, sign and return to:

Albany Presbytery
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Troy, NY 12180
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Adopted by Presbytery 12/02/03
COM 9.1.05