

Presbytery of the James

SEXUAL MISCONDUCT/HARASSMENT POLICY



Approved June 14, 2016

**Presbytery of the James
Presbyterian Church (U.S.A.)**

Regarding Sexual Misconduct/*Harassment Policy*

I. Introduction

A. Policy Statement

It is the policy of the Presbytery of the James, Presbyterian Church (U.S.A.) (the "Presbytery") that all church members, church officers, non-member employees, and volunteers serving within its jurisdiction are to view one another as parts of the Body of Christ and members one of another. This oneness means that all relationships in Christ's church are to be modeled and ordered using the self-giving love of Jesus Christ as the ideal and example.

As Christians, caring for one another in the spirit of our Lord precludes the objectification, victimization and oppression of sexuality expressed in ways that are inappropriate, coercive or degrading. It is only by outdoing one another in showing honor to one another that the Christian community may maintain the integrity of the ministerial, employment, and professional relationships at all times.

Sexual misconduct is not only a violation of the principles set forth in Scripture, but also is a violation of the ministerial, employment, and professional relationships and is never permissible.

B. Purpose

The purpose of this policy on sexual misconduct is:

To set and enforce standards of ethical behavior reflective of Scripture and consonant with secular law.

To serve and advance the peace and purity of the Church.

To develop procedures for the enforcement of these policies, fully consistent with the appropriate Rules of Discipline of the *Book of Order*, and ensure the confidentiality of issues and individuals as may be necessary.

To promote the understanding of what sexual misconduct is and what the Presbytery expects of those covered by this policy.

To attempt to prevent the occurrence of sexual misconduct to the greatest extent possible and to assure a prompt and reasoned response should it be alleged or reported.

To demonstrate pastoral concern for the alleged victims and their families and for those accused of the sexual misconduct and their families.

C. Scope of Policy

As defined below under the term "Persons Covered," this policy only applies to those situations in which the Presbytery of the James has jurisdiction over at least one of the individuals involved in allegations of sexual misconduct, as defined herein. For example, this policy does not apply to situation involving allegations of sexual misconduct involving only the ruling elders, members, employees, or visitors of a church. While such situations may be governed by the Rules of Discipline in the *Book of Order* and/or by the sexual misconduct policies approved at the time by the Session of the church in question, the jurisdiction of the Presbytery may not cover such individuals to invoke this policy.

Each church belonging to the Presbytery is required to adopt their own sexual misconduct policy to protect their congregation, employees, and visitors.

Any questions as to whether this policy on sexual misconduct applies should be directed to _____.

II. Definitions

A. Accused

is the term for the person against whom a claim of sexual misconduct is made.

B. Accuser

is the term for the person claiming knowledge of sexual misconduct by a person covered by this policy. The accuser may be someone other than the *alleged* victim of alleged sexual misconduct.

C. Child Sexual Abuse

includes, but is not limited to, any unlawful contact or interaction between a child and an adult where the child is being used for the sexual stimulation of the adult or some third person. The prohibited behavior does not necessarily require touching. Sexual activity between a child and an adult shall always be considered as forced since the child is deemed not legally capable of consenting. The presbytery intends to follow Virginia Code § 1-204 which defines a child as anyone under eighteen years of age.

D. Church

when spelled with the initial letter capitalized (*Church*) refers to the Presbyterian Church (U.S.A.). Church when spelled with the initial letter in lowercase (*church*) refers to local congregations. The word congregation is used loosely for members and participants.

E. Employee

is the comprehensive term used to cover all individuals hired or called to work for the Church, a Council, a local member church or any other institution or entity formally related to the Church or one of its Constituent Bodies, who are paid a salary or wages for their services.

F. Entity

is any congregation, program or office managed by a board, committee, council, or other body whose membership is elected by a Council. See *Manual of the General Assembly*, Standing Rule 47. 418.

G. Council

is a representative body composed of ruling and teaching elders; these are sessions, presbyteries, synods, and the General Assembly. A Council may establish entities such as day care centers, conference centers,

camp, or homes for the aged. A Council may have both church members and non-members as employees.

H. High Risk Occupations

are those which call for a person to work in close contact with those who are vulnerable and less capable of protecting themselves, such as children, the elderly, the incapacitated, or those receiving counseling. (Pastoral care of four sessions or less shall not be deemed as counseling.)

I. Inquiry

is the term used in the Rules of Discipline to determine whether charges should be filed based upon allegations received by a Council that an offense has occurred. [See Book of Order D- 10.0200]

J. Investigation/Investigating

is the term used in the *Rules of Discipline* regarding the investigation of allegations of an offense received by a Council.

K. Mandated Reporter

is a person required to report by civil law any and all suspected incidents of child abuse, including child sexual abuse. Virginia law exempts certain persons from its mandatory reporting requirements, including regular ministers, priests, rabbis or imams or duly accredited practitioners of any religious organization or denomination usually referred to as a church. In implementing the procedures of this policy, however, the Presbytery shall ensure adherence to the requirements under the *Code of Virginia* and the *Book of Order* G-4.03 as amended at the time of the alleged incident. The pertinent rules of the *Book of Order* G-4.03 on mandatory reporting states as follows:

"Any member of this church engaged in ordered ministry and any certified Christian educator employed by this church or its congregations, shall report to ecclesiastical and civil legal authorities knowledge of harm, or the risk of harm, related to the physical abuse, neglect, and/or sexual molestation or abuse of a minor or an adult who lacks mental capacity when (1) such information is gained outside of a confidential communication as defined in G-4.0301, (2) she or he is not bound by an obligation of privileged communication under law, or (3) she or he reasonably believes that there is risk of future physical harm or abuse." (G-4.0302)

Further,

"In the exercise of pastoral care, teaching elders (also called ministers of the Word and Sacrament) and ruling elders who have been commissioned by a presbytery to limited pastoral service (G-2.10), shall maintain a relationship of trust and confidentiality, and shall hold in confidence all information revealed to them in the course of providing care and all information relating to the exercise of such care.

When the person whose confidences are at issue gives express consent to reveal confidential information, then a teaching elder or a ruling elder commissioned to pastoral service may, but cannot be compelled to, reveal confidential information.

A teaching elder or a ruling elder commissioned to pastoral service may reveal confidential information when she or he reasonably believes that there is risk of imminent bodily harm to any person." (G-4.0301).

All others who are aware of or suspect an incident of child abuse must report that suspicion or knowledge to the appropriate civil authorities and to that person designated by the Presbytery in the promulgation of those Rules and Procedures developed by COM to carry this Policy into effect.

L. Persons Covered

by this policy include church members, church officers, teaching elders, and non-members who are employees volunteers under the supervision of the Presbytery, or volunteers involved in an activity sponsored by or affiliated with the Presbytery including Camp Hanover. Those included shall include those accused of sexual misconduct under circumstances in which (1) access to the alleged victim is related to some form of service to or appointment by the presbytery or entity, (2) the sexual misconduct alleged arises in a non-Church related setting, the circumstances of which raise questions of character and effectiveness of a person covered by this policy, or (3) the alleged improper conduct occurs in a setting in which access is granted to the alleged victims by a particular church of the Presbytery, whether with members or non-members.

M. Reasonable Suspicion

is a subjective criterion that refers to a belief or opinion based on facts or circumstances that are sufficient for a reasonable person to want to inquire further, to take protective action, or to report to authorities.

N. Response

is the action taken by the Council or entity when a report of sexual misconduct is received. It may include:

1. Inquiry into facts and circumstances.
2. Possible disciplinary action (administrative, judicial or both).
3. Pastoral care for alleged victims and their families and others.
4. Exoneration and pastoral care for those falsely accused.
5. Pastoral care and rehabilitation for the perpetrators and care for their families.
6. Administration leave (with or without pay) for the person accused while the response is under way.

N.B:

If the alleged act is considered to be criminal in nature, the report shall be referred to the appropriate secular authorities.

O. Response Team/s

are to be constituted as detailed by the enforcing procedures, and shall be a body or bodies constituted by a Council or entity to facilitate the process of responding to allegations of sexual misconduct.

P. Secular Authorities

are the governmental bodies, whether city, town, county, state, or federal, who are given the responsibility to investigate, criminally prosecute, and/or bring charges against individuals accused of sexual crimes or sexual misconduct offenses against other adults or children. The structure and identity of the secular authorities will vary from jurisdiction to jurisdiction, but basic responsibilities to detect, deal with, and resolve such crimes and offenses will follow generally recognized patterns.

Q. Secular Law

is the body of city, town, county, state, or federal laws, often referred to collectively as civil or criminal law. Prohibited behavior addressed by this policy is that which is governed by criminal or civil law regarding sexual misconduct.

R. Sexual Harassment

as defined for this policy is as follows:

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute sexual harassment when:

- a. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, the individual's pastoral relationship, or the individual's participation in Presbytery-sponsored programs or activities, or their achieving or continuing a given status in an institution;
- b. Submission to or rejection of such conduct by an individual is threatened or used as the basis for employment, pastoral, or Presbytery-sponsored program participation decisions affecting such individual; or
- c. Such conduct has the purpose or effect of unreasonably interfering with an individual's work or volunteer performance or an individual's pastoral or camping experience or creating an intimidating, hostile or offensive working, pastoral, or camping environment. .

Sexual harassment can occur in the form of physical, verbal, an/or non-verbal harassment. Among the examples of behavior that may constitute sexual harassment are, without limitation: pressure for sexual activity; uninvited physical contact, including touching, pats, squeezes, repeated brushing against, the impeding or blocking of one's movement, or behavior intended to be playful; disparaging remarks about one's gender; lewd or sexually suggestive verbal comments; sexual suggestions disguised as humor; requests for sexual favors accompanied by implied or overt threats; dissemination or display of sexually offensive materials, including pictures, drawings, or cartoons; the use of pornographic materials; and unwelcome communications, notes, phone calls, text messages, instant messages, e-mail, and social media posts or messages.

S. Sexual Misconduct

is the comprehensive term used in this policy to include:

1. Child sexual abuse as defined above;
2. Sexual harassment as defined above;
3. Rape or sexual contact by force, threat, or intimidation;
4. Sexual conduct (such as obscene, prurient or suggestive language or behavior, unacceptable visual contact, unwelcome touching or fondling) which is reasonably injurious to the physical or emotional health of another.
5. Sexual malfeasance as defined below.

T. Sexual Malfeasance

is defined for this policy as follows:

the broken trust resulting from genital contact (contact with the breasts, buttocks, or pubic area) within a ministerial (e.g., clergy with a member of their congregation) or professional relationship (e.g., counselor with a client, lay employee with a church member, presbytery executive with a committee member).

U. Alleged victim

is the term used to identify the person alleged to have been subjected to and/or injured by sexual misconduct as defined above.

V. Volunteer

is the term used for those who provide services for Councils and entities of the Church and who receive no benefits or remuneration. Volunteers include persons elected or appointed to serve on boards, committees, and other groups. For purposes of this policy volunteers are treated the same as employees. Responsibilities of the Council or entity are the same for volunteers as for employees.

III. Guiding Principles

The members of the Presbytery and its congregations are charged with the care, nurture, and spiritual well-being of those persons who come to us. This is a sacred trust and is based implicitly and explicitly on Scripture, the Confessions of the church, the oaths of office for the church officers, and the traditions of the church. In trying to follow the model of our Lord, Jesus Christ, we are directed to remember:

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

Tend the flock of God that is your charge,
not under compulsion but willingly, not for sordid gain but eagerly,
do not lord it over those in your charge, but be examples to the flock.

You know that we who teach shall be judged with greater strictness.
1 Peter 1:15; 5:2; James 3:1, NRSV

The ethical conduct of all who minister in the name of Jesus Christ is of vital importance to the Church. Through these representatives an understanding of God and the gospel's good news is conveyed. Their manner of life should be a demonstration of the Christian gospel in the Church and the world, *Book of Order G-2.0104a* Thus, the Presbyterian Church (USA) and the Presbytery, in order to uphold the honor of the Church and the Christ it is pledged to serve, has every Biblical, ecclesiastical and pragmatic right to expect of its servants a life and general behavior consonant with the above principles.

Sexual misconduct is a violation of the role of pastors, employees, volunteers, counselors, supervisors, teachers, and advisers called to exercise integrity, sensitivity, and caring in a trust relationship. As the place where the Body of Christ gathers for work, worship and edification, the church is charged by its founder to act in the best interests of parishioners, clients, co-workers, and students. When sexual misconduct occurs, this commission from our Master is rejected, and faith is broken with those who trust the church to be a place of Christian nurture.

Sexual misconduct is a misuse of authority and power which breaches Christian ethical principles by misusing a trust relation to gain advantage over another for personal pleasure in an abusive, exploitative, and unjust manner. If a parishioner, student, client, or employee initiates or invites sexual content in the relationship, it is the pastor's, counselor's, officer's, or supervisor's responsibility to maintain the appropriate role and prohibit a sexual relationship.

Sexual misconduct takes advantage of the vulnerability of others, especially those who are less powerful and therefore unable to act for their own welfare. Sexual misconduct is antithetical to the gospel call to work as God's servant in the struggle to bring wholeness to a broken world. Sexual misconduct violates the mandate to protect the vulnerable from harm.

IV. Guidelines for Reporting a Complaint

The Presbytery will follow the reporting procedures of the Rules of Discipline in the *Book of Order*. Reports of alleged sexual misconduct must comply with the following procedure (see D-10.0100):

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

V. Guidelines for Investigating a Complaint

The Presbytery of the James will follow the investigation procedures provided in the Rules of Discipline of the *Book of Order*.

VI. Guidelines for Appeal

The Presbytery of the James will follow the appeal procedures provided in the Rules of Discipline of the *Book of Order*.

VII. Implementation

The structures and procedures for responding to allegations of sexual misconduct are mandated, in part, by the *Book of Order*, such as the roles of the Committee on Ministry and the Investigating Committee (see G-3.0303 and D-10.0201). When sexual misconduct occurs, especially child sexual abuse, the secular authorities shall be notified as provided above. The Presbytery also has a duty to make inquiry and enforce those disciplinary procedures warranted when it can be done without interfering with the secular authority.

The Presbytery shall take appropriate steps to inform members, employees, volunteers, and students of this policy and the standards of conduct set forth herein. All persons involved in any alleged incident are reminded of their duty to cooperate with the secular authorities in the investigation and prosecution of any charges, except as exempted above or as may be permitted by law.

Response to complaints of sexual misconduct in the course of employment will be governed by the Presbytery's or by the employing entity's existing personnel policy. The same allegations may also result in charges filed against a church member or minister under the *Rules of Discipline*, and may lead to temporary or permanent removal from membership or office.

Implementation of this policy requires the Presbytery to adopt educational programs to prevent sexual misconduct. All minister members and Certified Christian Educators enrolled by the Presbytery shall be required to attend a seminar offered or approved by the Presbytery or its Committee on Ministry on the issues of sexual misconduct at least once every five years.

VIII. Compliance

A. Employment Practices

Accurate record keeping is an essential part of hiring and supervision practices. The Presbytery of the James shall maintain a personnel file on every employee including ministers. Among other documents,

the file shall contain the application for employment, employment questionnaires, reference responses, and an acknowledgment document that this policy has been read before employment is begun.

The Presbytery shall establish stringent hiring practices. If an applicant is unknown to the employer, the employer should confirm the applicant's identity by requiring photographic identification such as a driver's license. Part of the pre-employment screening shall include specific inquiry related to discovering previous complaints or of sexual misconduct.

B. Distribution

Copies of this policy shall be available on the POJ website and distributed to all sessions and employing entities under the jurisdiction of the Presbytery and shall be distributed to all employees and be available to all church members. The policy shall also be made available to persons who accuse others of misconduct, including those who are or claim to be victims of sexual misconduct and their families. The policy shall also be made available to those serving on special disciplinary committees, committees on ministry, and response teams.

All incoming ministers and educators to the presbytery shall, as part of their orientation, sign a document (see attached) stating that they have read and understood the Policy. Every third year, beginning in 2016, the packet for the October presbytery meeting shall contain a copy of the policy. Time will be allocated during the October meeting for silent reading of the policy. This practice will help to insure that awareness of the policy remains high. This statement shall be signed and returned to the Stated Clerk where it shall be kept in each minister's or educator's personnel file.

C. Volunteers

While these guidelines are intended for volunteers of the Presbytery, no requirement for screening and application is usually applied. The increase of litigation requires that local churches do a better job of screening and supervising unpaid volunteers. Every church is encouraged to have policies consistent with this document and procedures in place before allowing volunteers to work in high-risk positions such as youth adviser, children's workers, lay counselor, Boy or Girl Scout, or camp counselors.

**Acknowledgment of Sexual Misconduct Prevention Policy
of the Presbytery of the James**

This is to acknowledge that as part of my annual certification to serve in the position of a trusted leader in a church within the Presbytery of the James; I have received, read, and reviewed the Presbytery of the James' Sexual Misconduct Policy and Procedures dated _____.

Printed Name

Date

Signature

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Implementation

Part 1:

October 2013 POJ meeting: The **misconduct** policy distribution and implementation plan will be announced. Copies of the policy will appear in the packet. Shortly after, the policy will be distributed (see Part 2).

Part 2:

Late October 2013: The policy will be distributed electronically to all Teaching Elders (TEs) and Certified Christian Educators (CCEs). Each will acknowledge (electronically) having read the policy. For those who do not have email, hard copies will be distributed and hard copy acknowledgements received.

Part 3:

2014 and 2015: **Introductory workshop** (6 hours) offered twice each year, once in spring, once in fall, at Union Presbyterian Seminary. All current POJ TEs and CCEs must attend. Any new TE or CCE will attend upon reception into the presbytery.

2016: **Introductory workshop** is offered once a year, every year, in the fall, after the October presbytery meeting, for new TEs and CCEs.

2019, 2024, 2029, etc.: Half-day **Refresher workshop** is offered to meet policy requirement to participate in an educational event within five years of taking introductory workshop.

Part 4:

October 2016 presbytery meeting: Beginning at this time, and then every third year, a copy of the policy shall be included in the packet and time allocated during the meeting for a silent reading of the policy.