

PRESBYTERY OF THE PEAKS

A. SEXUAL MISCONDUCT POLICY

B. PROCEDURE FOR SEXUAL MISCONDUCT COMPLAINTS

C. SEXUAL MISCONDUCT COMMITTEE

SECTION A

POLICY ON SEXUAL MISCONDUCT

**This policy supercedes and replaces the previous policy titled
“Policy and Procedures on Sexual Misconduct.”**

PART I. POLICY

POLICY STATEMENT

It is the policy of the Presbytery of the Peaks, of the Presbyterian Church (U.S.A.), that all church members, church officers, non-member employees and volunteers of governing bodies and entities of the church are to maintain the integrity of the ministerial, pastoral, employment and professional relationship at all times. Sexual misconduct is not only a violation of the principles set forth in Scripture but also of these relationships and is never permissible.

PART II. BASIC PRINCIPLES

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

Tend the flock of God that is in 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; 5:2-3; James 3:1, NRSV

The ethical conduct of all who minister in the name of Jesus Christ is of vital importance to the church because through these representatives is conveyed an understanding of God and the gospel’s good news. “Their manner of life should be a demonstration of the Christian gospel in the church and the world”. (G-6.0106a)

The basic principles guiding this policy are as follows:

- Sexual misconduct is a violation of the role of pastors, employees, volunteers, counselors, supervisors, teachers, and advisors of any kind who are called upon
- to exercise integrity, sensitivity, and caring in a trust relationship. The church has a covenant to act in the best interests of parishioners, clients, co-workers, and students, which is broken when sexual misconduct occurs.
- Sexual misconduct includes a misuse of authority and power, which breaches Christian ethical principles by misusing a trust relationship to gain advantage

over another for personal pleasure in an abusive, exploitive and unjust manner. If the parishioner, student, client or employee initiates or invites sexual conduct 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 children and persons who are less powerful and, therefore, less able to act for their own welfare. It violates the mandate to protect the vulnerable from harm.
- False accusation is a violation of trust just as sexual misconduct is a violation of trust.

PART III. STANDARDS OF CONDUCT

A. Sexual Misconduct is the comprehensive term used in this policy to include:

1. Child Sexual Abuse includes, but is not limited to, any contact or interaction between a child and an adult when the child is being used for the sexual stimulation or gratification of the adult person or of a third person. The behavior may or may not involve touching and includes display of private or sexual parts. Sexual behavior between a child and an adult is always considered forced whether or not consented to by the child. The age of maturity is 18 years of age.
2. Sexual Harassment as defined for this policy is unwelcome sexual advances, requests for sexual favors and other verbal or physical conduct of a sexual nature which constitute sexual harassment when:
 - a. Submission to such conduct is made either explicitly or implicitly as a term or condition of an individual's employment or his/her continued status in an institution;
 - b. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions such as continued employment, possible promotions or demotions, salary increases or decreases, affecting such individual; or
 - c. Such conduct or statements have the purpose or effect of unreasonable interference with an individual's work performances by creating an intimidating, hostile, or offensive working environment and can be a series of
 - d. acts or statements or one significant act or statement.
3. Rape or sexual contact by force, threat or intimidation; sexual contact includes the touching of clothing covering private or sexual parts; and
4. Sexual Malfeasance. Sexual malfeasance is defined as sexual conduct within a ministerial relationship (e.g. clergy with a member of the congregation) or professional relationship (e.g. counselor with a client, lay employee with a church member, presbytery executive with a committee member who may be a lay person, a minister or an elder). Sexual conduct includes conduct of a sexual nature even if mutually agreed, unwelcome sexual advances, requests for sexual favors and verbal or physical conduct of a sexual nature. This definition is not meant to cover relationships between spouses.
5. The definitions found in The Book of Order G-6.0106 and D-10.0401 shall also constitute sexual misconduct.

- a. It is not necessary for the complainant to be a member of the church nor necessary that the conduct be related to church activities for this policy and procedures to apply.

PART IV. RISK MANAGEMENT

A. IMPLEMENTATION

The Presbytery urges all congregations and other entities related to the Presbytery to establish policies, procedures and practices related to sexual misconduct. All are urged to take appropriate steps to inform members, employees and volunteers of the standards of conduct and the procedures for effective response when receiving a report of sexual misconduct.

The structure and procedures for responding to allegations of sexual misconduct are mandated by the *Book of Order* (see G-11.0502 and D-10.0000) and this Policy and Procedure paper. In cases of child sexual abuse or other cases in which criminal charges are filed, the secular authorities will investigate and dispose of those criminal charges. Congregations and other entities have a duty to make their own inquiries and to enforce disciplinary procedures without interfering with the secular authority.

B. LIABILITY AND INSURANCE

A congregation and or entity can be held liable for harm caused by sexual misconduct of a minister, employee or volunteer based on a number of legal theories such as negligent hiring and supervision. They must take such potential liability into consideration when establishing hiring, recruiting and supervisory practices.

Congregations and entities should regularly inform their liability insurance carriers of the activities and programs they operate or sponsor and of the duties and responsibilities of officers, employees and volunteers. The standard insurance policy must be enhanced by endorsements to cover specific exposures such as camps, day-care operations, shelters or other outreach programs.

It is also recommended that governing bodies and entities obtain an endorsement to their general liability insurance policy specifically covering sexual abuse and molestation. Such coverage may provide for legal defense expenses and judgments in civil suits brought against the organization, its officers, directors or employees.

C. EMPLOYMENT PRACTICES

1. Record Keeping

Accurate record keeping is an essential part of hiring and supervision practices. Presbytery, congregations and entities should maintain a personnel file on every employee, including ministers. The file should contain the application of employment, any employment questionnaires, reference responses and other documents related to this policy.

2. Prescreening Applicants

Presbytery, congregations and entities are urged to establish stringent hiring and recruiting 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 pre-employment screening should include specific questions related to discovering previous complaints of sexual misconduct. A person who has been offered employment should be asked the following questions and employment may be made subject to acceptable responses.

- a. Have you been found guilty or deemed to be liable in a court of law or ecclesiastical body for any actions involving sexual misconduct?
- b. Has a founded disposition been entered against you as a result of a Child Protective Services investigation?**
- c. Have you ever resigned or been terminated from a position for reasons relating to allegations of sexual misconduct?
- d. If so, indicate the date, nature and place of these allegations and the name, address, and telephone number of your employer at that time.
- e. Have you been required to receive professional treatment, physical or psychological, for reasons of sexual misconduct?
- f. If so, please give a short description of the treatment, including the date and nature of treatment, place and name, address, and telephone number of the treating physician or other professional and a release directed to all health care providers to divulge any and all recommendations of treatment relating to the subject of sexual misconduct.

A sample employment questionnaire is attached in Appendix A. The questions included in this sample may be integrated into a standard employment questionnaire, with other necessary questions.

1. References

- a. **The Presbytery, congregation or entity is responsible for contacting references for prospective ministers, employees or volunteers.** A written record of conversation or correspondence with references should be kept in a confidential personnel file.
 - b. **In dealing with ministers under consideration by a pulpit nominating committee, the Presbytery should assume responsibility for previous employer reference checks through the synod executive or the general presbyter.** The Presbytery shall report to the PNC that there have been no reports of sexual misconduct or that the committee should inquire into reported sexual misconduct.
 - c. **The person within the Presbytery, congregation or entity authorized to give a reference on behalf of a minister under consideration by a PNC is obligated to give truthful information regarding allegations, inquiries and administrative or disciplinary actions related to sexual misconduct of the applicant.** The response must be limited to information that is a matter of public record (for example, Presbytery minutes) or in the applicant's own personnel file that is maintained by a Presbytery, congregation or entity.
 - d. **If false or misleading information is given or relevant information is withheld, the applicant should be eliminated from consideration.**
- Applicants

should be informed of negative comments regarding sexual misconduct and shall be given an opportunity to submit additional references or to give other evidence to correct or respond to harmful information obtained from a reference.

D. DISTRIBUTION

Copies of this policy and its procedures shall be distributed to all congregations, entity offices, all employees and volunteers, and be available to all church members. It is intended for use by church members, church officers, employees and volunteers.

PART V. INVESTIGATING COMMITTEE POOL

1. Introduction

The Investigating Committee works at the governing body level to make an inquiry and to determine if a disciplinary case shall be initiated.

2. The Investigating Committee Pool (the “Pool”): formation, composition, length of term.

- a. The Pool shall consist of at least nine members designated by a committee comprised of the Stated Clerk, the Chair of the Division on Ministry and the Chair of the Nominating Committee. The initial Pool of ten members shall be divided into three classes labeled Class A, Class B, and Class C. Class A shall consist of four members selected to serve a two-year term. Class B shall consist of three members selected to serve a three-year term. Class C shall consist of three members selected to serve a four-year term. Thereafter, all members shall be selected to serve three-year terms, thereby providing for continuing staggered terms. When a Pool member is appointed to an IC, that member should commit to serve for the duration of the case.
- b. All Pool members shall be members of the Presbyterian Church (U.S.A.).
- c. The Pool shall be diverse as to gender, race, ethnic background and geographical location.
- d. The Pool shall include members with expertise and/or experience in the following areas:
 1. child advocacy,
 2. law (particularly sexual harassment/abuse, civil torts, due process, criminal or domestic issues),
 3. conflict management and resolution (particularly in the religious community setting),
 4. personnel management and training, and
 5. insurance and risk management.
- e. The Pool members shall be familiar with Presbyterian policy and procedure and shall complete the education and training requirements as scheduled by the Sexual Misconduct Committee.
- f. Presbytery staff is prohibited from membership in the Pool.
- g. All Pool members shall sign the Employment Questionnaire (see Appendix A of this document) and file it with the Presbytery office within fifteen days of selection to the Pool.

- h. Pool members shall meet not less frequently than once a year for continuing professional training and sharing of information and experiences relating to their duties and responsibilities in the Pool.
- 3. The Investigating Committee (hereafter the IC”): formation, composition, term and duties**
- h. The IC shall consist of three to five members appointed from the current elected Pool.
 - i. The IC shall be diverse as to gender and reflect, at least to some extent, the ethnic background of both the complainant and the accused.
 - j. The IC shall possess to the extent reasonable expertise and/or experience in the following areas:
 - 1. child advocacy, when appropriate,
 - 2. law,
 - 3. conflict management and resolution,
 - 4. insurance and risk management, and
 - 5. personnel management and training, when appropriate.
 - k. IC members shall have completed training and disclosure requirements.
 - l. No member of a specific IC may be a member of the congregation from which the allegation at issue arises.
 - m. The members of the IC shall select their own chair.
 - n. Costs of the IC and related services shall be provided by the Presbytery.
 - o. The IC shall be responsible for providing requisite notice, to include notice of available alternate remedies, assuring due process, investigating the allegation, facilitating resolution and filing a final report.
 - p. The IC shall be dismissed when the final report is filed or at the termination of the case, whichever comes last.

VI. THE CARE TEAM

A. Function.

Since the process of the investigation of an alleged incident of sexual misconduct can be traumatic to all parties involved, provisions should be made that the accused, the complainant and/or reporter, the families of the accused and the complainant and/or reporter and all other parties involved in the complaint shall have access to supportive pastoral care. It is the responsibility of the CARE Team to provide support and to meet the needs delineated in Section IV of this paper.

B. The CARE Team Pool (the “CARE Pool”); formation, composition, length of term.

- 1. The CARE Team Pool shall be composed of clergy and lay persons with expertise
- 2. in the dynamics of sexual misconduct in the church and with appropriate pastoral and counseling skills.
- 3. The CARE Team Pool shall consist of at least nine members designated by a

committee comprised of the Stated Clerk, the Chair of the Division on Ministry and the Chair of the Nominating Committee. The initial Pool of nine members shall be divided into three classes labeled Class A, Class B, and Class C. Class A shall consist of three members selected to serve a two-year term. Class B shall consist of three members selected to serve a three-year term. Class C shall consist

4. of three members selected to serve a four-year term. Thereafter, all members shall be selected to serve three-year terms, thereby providing for continuing
5. staggered terms. When a Pool member is appointed to a CARE Team, that member should commit to serve for the duration of the case.
6. All Pool members shall be members of the Presbyterian Church (U.S.A.).
7. The Pool shall be diverse as to gender, race, ethnic background and geographical location.
8. The Pool members shall be familiar with Presbyterian policy and procedure and shall complete the education and training requirements as scheduled by the Sexual Misconduct Committee.
9. The Presbytery of the Peaks staff are prohibited from membership in the Pool.
10. All Pool members shall sign the Employment Questionnaire(see Appendix A of this document) and file it with the Presbytery office within fifteen days of selection to the Pool.
11. Pool members shall meet not less frequently than once a year for continuing professional training and sharing of information and experiences relating to their duties and responsibilities in the Pool.

C. Confidentiality of the Work of the CARE Team

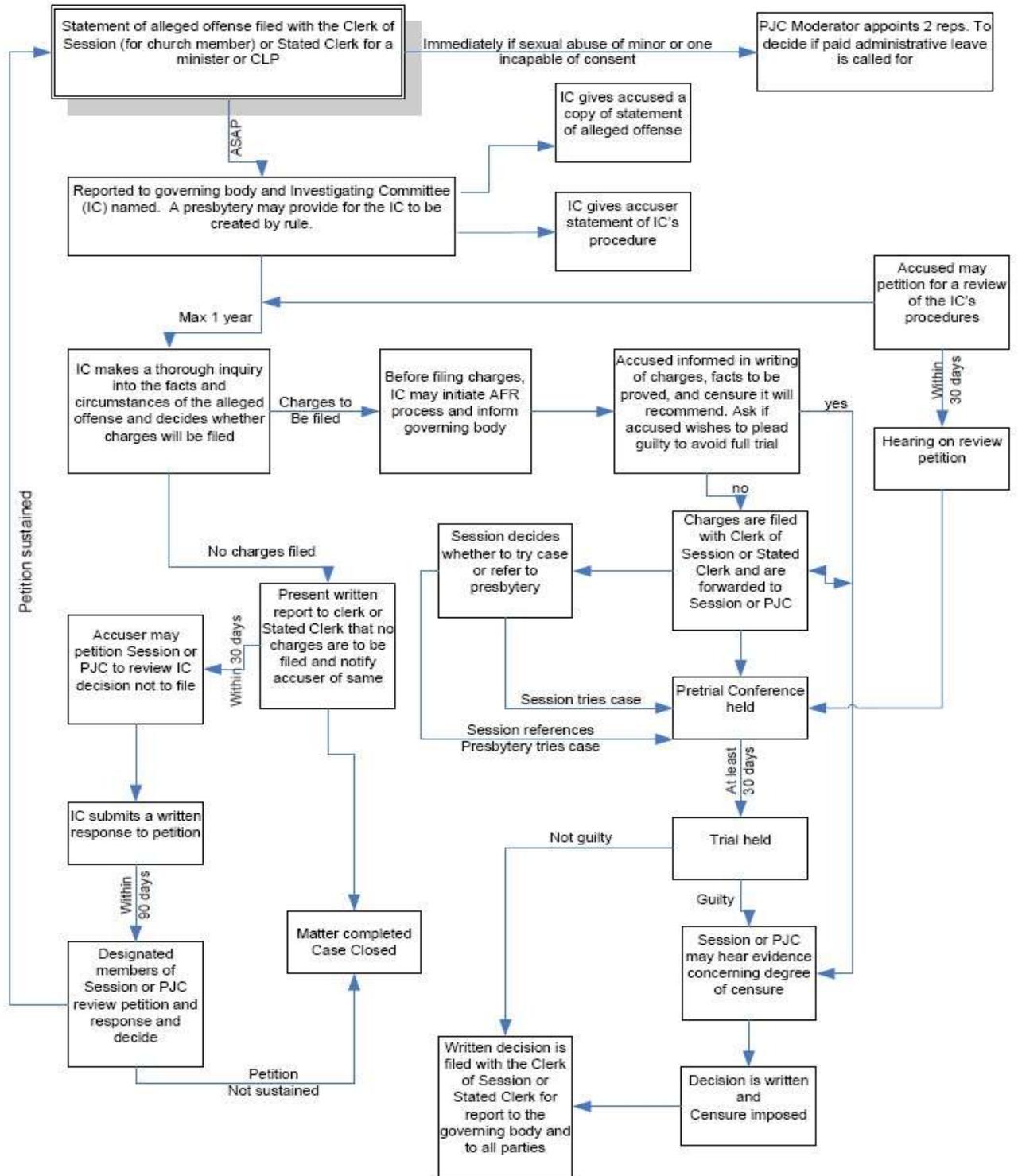
Because confidentiality is crucial in effective pastoral care and pastoral counseling, the conversations between the CARE Team members and the persons involved in the complaint shall be held in confidence and not shared with the IC nor anyone else unless written permission is given by each person who provided the information to a CARE Team member or the Team member is so ordered by a court of law.

D. Available Resources

The CARE Team shall determine the availability of resources (including persons, funding and support services) to meet the appropriate needs of the affected persons. If necessary, these resources should be sought outside the particular governing body if such resources are not immediately available. Without endorsement, Presbyteries or other governing bodies are advised to compile and frequently update a list of available impartial psychological counselors, pastoral counselors, attorneys, conflict managers and insurance advisors who will be available for assistance to the affected parties in a given case.

FLOW CHART FOR SEXUAL MISCONDUCT COMPLAINTS

DISCIPLINARY PROCESS FLOWCHART OF PROCESS



PRESBYTERY OF THE PEAKS

SECTION B

PROCEDURE FOR SEXUAL MISCONDUCT COMPLAINT

PART I. REPORT OF SEXUAL MISCONDUCT

This procedure supercedes and replaces the previous procedure titled “Policy and Procedures on Sexual Misconduct” and shall be followed for all complaints investigated after its adoption, regardless of the date of the alleged events. Changes to the Book of Order made after the adoption of this procedure and policy are adopted and incorporated mutadis mutandis.

1. General Reporting

Reports of sexual misconduct will arise in a variety of ways. Therefore, it is important that officers, employees and persons highly visible to church members and visitors understand how to channel a report to the proper person.

Reports of sexual misconduct should never be taken lightly or disregarded. Reports should be dealt with as matters of highest confidentiality, both before and after they have been submitted to appropriate authorities.

The person receiving the initial report of sexual misconduct should not undertake an inquiry alone.

The person receiving the initial report of sexual misconduct from the complainant and/or reporter shall immediately inform the Stated Clerk, who shall provide guidance on preparation of the written report. (*Book of Order*, D-10.0000)

Jurisdiction is controlled by the Book of Order D-3.

2. Receiving the Initial Report

The individual receiving a report is required to file immediately a written report with the Stated Clerk, signed by the individual receiving the report. An effort shall be made to have an adult complainant also sign the report. [If the accused is the Stated Clerk, the concern goes to the Chair of Council, who will request the Moderator of the Presbytery to appoint a Special Clerk and an IC to handle this judicial issue. The matter may then be referred to the Synod.]

3. Child Sexual Abuse Cases

Within the church, all persons covered by this policy have a duty to report child sexual abuse to the employing entity, supervisor or governing body representative and appropriate state and local agencies. All persons should be informed of and must comply with state and local laws regarding the reporting of incidents of actual and suspected child sexual abuse.

PART II. CONVENING OF AN INVESTIGATING COMMITTEE

Upon receipt of written allegations of sexual misconduct, the Stated Clerk shall request the Chair of the Division on Ministry to convene an Investigating Committee [IC] within seven working days of receipt of the complaint. The IC shall be comprised of 3-5 members selected from the IC Pool by the Chair of the DOM. At its first meeting, the IC shall select its chair and receive a report containing the complaint and the identity of the affected parties. Legal counsel shall be made available for consultation and advice to the IC through a list provided by the

Sexual Misconduct Committee. Expense of such counsel shall be borne by the Presbytery.

Prior to the convening of an IC or at the same time thereof, the Chair of the DOM shall select and notify two members from the Care Team Pool, one to act as a “care person” for the accused and one for the accuser.

PART III. RESPONSE OF IC

A. Role and Functions of the Investigative Committee

1. The IC will serve the following primary functions:
2. Receive the report of sexual misconduct,
3. Provide notice to the accused of the complaint, the formation of the IC, the right to counsel, the right to remain silent and the fact that any statements made to the IC can be used against him/her in subsequent proceedings and the availability of alternative remedies. The accused shall also be directed to have no further contact with the complainant and/or reporter or his/her family and provided with a copy of this Presbyterian Policy and Procedure on Sexual Misconduct and a copy of the Rules of Discipline from the current Book of Order D-1 through D-14.0502. The complainant and/or reporter shall receive notice of available alternative remedies and a copy of the Presbyterian Policy and Procedure on Sexual Misconduct and the Rules of Discipline from the current Book of Order D-1 through D-14.0502.
4. Confirm that civil and criminal authorities have been notified when appropriate and if not make the appropriate notifications.
5. Inquire into the allegations according to the Procedure specified in the Book of
6. Order D-10.
7. Ascertain if the parties are willing to pursue alternative remedies such as mediation, pursuant to Book of Order D-10.0202, and if so initiate and report thereon.

B. Media Contact with the Investigating Committee

1. Any inquiries from the media regarding an incident of sexual misconduct must be directed to an official designated by the chair of the DOM whose response, if any, will be made after first conferring with legal counsel. Questions from the media shall not be addressed by any member of the IC.

C. Investigating Committee Record Keeping

1. The IC shall keep careful records of its proceedings, including detailed accounts of its actions, minutes of its deliberations and its conversations with all affected persons, copies of the initial report, correspondence and copies of reports to the governing body or entity. When the matter has been resolved, the records shall be forwarded to the Stated Clerk of the governing body where they will be marked “confidential” and securely stored. Members of the IC shall keep no separate or duplicate records of material that has been turned over to the governing body as a result of its work.

D. IC Reports and Recommendations

1. A brief written report shall be made by the IC to the Stated Clerk.
2. The written report of the case for submission to the Stated Clerk shall include the following:
 - a. Names of parties involved,

- b. Governing body membership of the parties involved,
 - c. Allegations made by the accuser,
 - d. Response made by the accused,
 - e. Findings and conclusions based on probable cause standard; and
 - f. Resolution of the case or further actions to be taken by the governing body or entity, including remedies set forth above. If there are no charges of any type, the report will be included in the Presbytery Confidential file for three years.
3. The IC will report to the Presbytery whether or not it will file charges.
 4. If there are charges and a trial, the recommended action is followed and recorded in the minutes of Presbytery.
 5. *Neither the Sexual Misconduct Committee nor a member of Presbytery staff shall become involved in the investigation or resolution of any complaint except as specifically set out herein.*

PART IV. RECORD KEEPING

All documents shall be kept confidential except as set out herein.

At the conclusion of the matter, all documents relating to the allegation shall be delivered to the Stated Clerk, sealed, marked confidential and maintained by the Stated Clerk at the Presbytery Office. It shall be opened by appeal to the Stated Clerk.

The IC report shall be made a part of the accused's permanent personnel file. If referred to a permanent judicial commission, its report of its findings shall also be made a part of the accused's permanent personnel file.

SECTION C SEXUAL MISCONDUCT COMMITTEE

PART I. EDUCATION AND TRAINING

Since the issue of sexual misconduct has become an evermore present reality, there is a need to educate and train a wide variety of persons. Education often happens in response to actual cases of sexual misconduct. It is recommended that governing bodies and entities be as proactive as possible in preventing sexual misconduct by heightening an awareness of healthy professional boundaries by offering periodic educational/training events. Such events will also enable one to respond out of competence rather than out of ignorance and irrationality when confronted with allegations of sexual misconduct.

A. SEXUAL MISCONDUCT COMMITTEE

The Sexual Misconduct Committee established by the previous policy shall continue with existing members of the Committee serving their appointed terms.

Future members of the Committee on Sexual Misconduct shall be nominated by the Division of Ministry and elected by the Presbytery for terms of three years. The Committee shall consist of six members with two members' terms expiring each year. One member shall be a minister member of the Presbytery. The Division of Ministry shall annually

designate one member to serve as chairperson for the following year. **The Sexual Misconduct Committee shall meet not less frequently than once a year to review the current policy and plan for educational/training events as well as fulfill its various other responsibilities.**

Responsibilities of the SMC:

1. Recruit members for CARE and INVESTIGATIVE Pool
2. Provide pool training and education,
3. Provide continuing education to Division on Ministry, presbytery staff, professional and non-professional church staff, ministers, sessions, and congregations on:
4. Sexual Misconduct Policy and Procedure,
5. Factors in crossing boundaries in professional relationships,
6. Ethical analysis of clergy roles focusing on power and authority,
7. Prevention strategies; and
8. Risk management
9. Maintain roster of attorneys, mediators, and arbitrators for referral in event of complaint.

B. EDUCATION

1. Education will be different on a group-by-group basis. Persons needing specific education include:

- a. CARE Team pool (within two months of designation)
- b. IC Pool (within two months of designation)
- c. Division on Ministry
- d. Presbytery Staff
- e. Professional and non-professional church staff (within one year of implementation of policy)
- f. Ministers (within one year of implementation of policy and/or arrival in the Presbytery):
 - Certified Christian Educators and CLPs
 - Ministerial candidates
- g. Sessions and Personnel Committees Members of the congregation The Presbytery of the Peaks at one of its stated meetings

2. Policy and Procedure

All employees and volunteers shall be well acquainted with and abide by the Presbytery of the Peaks Sexual Misconduct Policy.

3. Preventive Awareness

Training shall be provided which addresses the issues of sexual misconduct to include:

- a. Factors in crossing boundaries in professional relationships,
- b. Ethical analysis of clergy roles focusing on power and authority,
- c. Prevention strategies and ways to intervene after the fact.

4. Risk Management

Education should include basic information regarding risk management.

C. RESPONSIBILITIES OF EMPLOYING ENTITIES

1. Provide copies of the Presbytery of the Peaks Policy and Procedure on Sexual Misconduct policy to all full, part-time, temporary, and interim staff and volunteers.
2. Receive signed acknowledgment of the Policy (Appendix B).
3. Provide opportunities for continuing education.

D. CONTINUING EDUCATION

1. Continuing education shall be offered on a timely basis. It may include:
2. Additional training,
3. Legal updates,
4. Review of policy and procedure,
5. Information on currently available resources.

E. EDUCATION FOR POOLS

1. Training for the pools shall include:
2. In-depth training in the Presbytery of the Peaks Sexual Misconduct Policy and Procedure,
3. Book of Order disciplinary procedure,
4. In-depth training on sexual misconduct and its ramifications for all People involved,
5. Risk management and general information on civil and criminal laws.

Note: If you are unable to make the above certification, you may instead give in the space provided a description of the complaint, termination or the outcome of the situation and any explanatory comments you care to add.

The information contained in this questionnaire is accurate to the best of my knowledge and may be verified by the employing entity. I hereby authorize (Name of Employing Entity) to make any and all contacts necessary to verify my prior employment history and to inquire concerning any criminal records or any judicial proceedings involving me as a defendant or any Child Protective Services investigations or its equivalent. 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 relevant information to (Name of the employing Entity)

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 or judicial authority from any and all claims, liabilities and cause of actions for the legitimate release or use of any information.

Signature _____

Witness _____

Witness _____

APPENDIX B

IMPLEMENTING POLICY ON SEXUAL MISCONDUCT AND ACKNOWLEDGMENT OF RECEIPT

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

Signature

Date