



The
Episcopal Diocese
 of New York

**SEXUAL MISCONDUCT IN THE CHURCH:
 WHAT ARE THE RULES AND HOW IT IS HANDLED**

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What is sexual misconduct?

Sexual misconduct occurs whenever one person violates his or her position by using or manipulating another for his or her own sexual gratification or by committing abusive or coercive conduct related to the workplace based on sex, sexual orientation or gender identity.

Why is sexual misconduct by clergy and other church workers so harmful?

The community has certain expectations of the church and those who work for it. They believe that the church is, and ought to be, a place where they and their families can be completely safe in moments of deepest faith and in times of vulnerability and stress. They also believe that people who have chosen to work for the church do so out of a particular commitment to God and to the Christian way of life, and they trust those persons to act in accordance with Christian principles. When church workers act inappropriately, they damage the church as an institution, give rise to scandal, and even alienate others from God.

For reasons of both professional ethics and Christian theology, sexual misconduct by members of the clergy is especially problematic. The cleric's profession is teaching the Word of God and helping others come into right relationship with God. Clergy take a vow at ordination to pattern their lives after the teachings of Christ, so that they may be a wholesome example to the people of God. Clergy who abuse the power and authority of their office by becoming sexually involved with people who are vulnerable to abuse or who are in their professional care betray their vows and their calling, as well as their victims and the church.

It is thus critically important that the church condemn sexual misconduct by Covered Persons (as defined below) in the strongest terms and have clear rules that define what it is and how it will be punished.

What is the Diocesan policy on sexual misconduct?

The Episcopal Diocese of New York forbids all members of the clergy, all Diocesan employees and their supervisors, all lay church workers, and all consultants and other independent contractors engaged by the Diocese or a parish ("Covered Persons") from engaging in, or trying to engage in,

sexual behavior, or

sexually suggestive behavior

with a person

who is incapable of giving fully informed consent to sexual behavior, or

who is under the professional care of the member of the clergy or lay church worker in any way.

Any member of the clergy who violates this rule is subject to ecclesiastical discipline (discipline from the Bishop) in accordance with canon law. If the member of the clergy is employed by the Diocese or is deployed by the Bishop to a congregation, he or she may also be disciplined as an employee; such discipline does not affect the individual’s status as a member of the clergy and is purely an employment matter. Any lay church worker (whether employee or volunteer) who violates this rule can be disciplined by whoever supervises that lay worker in his/her church work.

Who is a member of the clergy?

Members of the clergy are persons who have been ordained as ministers of The Episcopal Church - bishops, priests and deacons - and who are subject to ecclesiastical authority of the Bishop of New York under canon law. Any ordained minister who is canonically resident in this Diocese (even though living and working elsewhere), or who is licensed to work in ministry here (even though canonically resident elsewhere) must abide by these rules. Postulants and candidates for holy orders also must abide by the rules applicable to clergy.

Who is a lay church worker?

Lay church workers are non-ordained persons (including members of the professed religious orders) who are employed by or who volunteer to work for some institution affiliated with the Episcopal Diocese of New York, whether that institution is the Episcopal Diocese of New York, or a parish within the Diocese, or some other institution affiliated with the Diocese (for example, the Cathedral of St. John the Divine, the Seaman’s Church Institute, the Episcopal Mission Society, or the Instituto Pastoral Hispano). The term “lay church workers” includes (1) anyone who receives a salary for any sort of full- or part-time church work; (2) anyone who is engaged as a consultant or other independent contractor in connection with a church-sponsored program; or (3) anyone who volunteers his/her time to assist with church-sponsored programs. Examples of employees and volunteers who are covered by these rules are listed on the following charts:

LAY CHURCH WORKERS - DIOCESE

EMPLOYEES

Chief Administrative Officer

Diocesan Secretaries

VOLUNTEERS

Chaperones

Regional Administrative

Members of Diocesan
Trustees, Counsel or
Diocesan Committees

Administrative Assistants

IPC Representatives

LAY CHURCH WORKERS - PARISH, CONGREGATION or OTHER INSTITUTION

EMPLOYEES

VOLUNTEERS

Choir Director

Lay Eucharistic Minister

Parish Secretary

Lay Eucharistic Visitor

Sexton

Outreach Coordinator

Paid Staff Counselor or
Lay Pastoral Caregiver

Member of a pastoral
calling and caring group

Paid Director of Youth
Ministries or Christian Education

Sunday School Teacher

Faculty member or administrator
of a church-affiliated school

Homeless Shelter Monitor

Soup Kitchen Worker

The rules on sexual misconduct apply to all lay church workers, not just those who are engaged in giving pastoral care to others (i.e., counselors, lay pastoral callers, lay Eucharistic ministers, etc.). However, they apply only if the prohibited conduct is committed in the context of their work for the church.

What is sexual behavior?

Sexual behavior is any kind of behavior that is designed to give sexual gratification to any of the parties involved. While it is not possible to list every form of sexual behavior, examples are not limited to the obvious (such as intercourse or oral sex), but include stimulating or suggestive kissing, touching or embracing, and photographing or depicting another person in a sexually suggestive manner. It does not matter whether the Covered Person does these things or allows someone else to perform such acts on him/her--if the other party is among those with whom sexual behavior by a cleric or a lay church worker is forbidden, the conduct cannot be tolerated.

What is sexually suggestive behavior?

Sexually suggestive behavior includes unwelcome bawdy or suggestive conversations or jokes, unwelcome and persistent flirtations and showing or sharing pornographic materials. This type of behavior has been found to be improper by some courts, especially where the behavior is repeated and continues after the individual has been asked to stop.

Who is incapable of giving valid consent to sexual or sexually suggestive behavior?

Two classes of people are incapable of giving consent to sexual or sexually suggestive behavior:

- 1) Minors (under New York law, this means all persons under the age of 17), and
- 2) People who are mentally challenged, are physically unable to move, or have been drugged or are inebriated.

In every instance, a Covered Person who has a sexual relationship or engages in sexually suggestive behavior with a minor will be violating applicable Diocesan and/or parish or institutional rules; there are no exceptions. Furthermore, no Covered Person who has any history of child sexual abuse (civil or criminal), who has admitted prior sexual abuse, or who has been diagnosed as being a pedophile, exhibitionist or voyeur by a psychiatrist may have any interaction with children or youth under applicable insurance underwriting rules.

The Diocese will refer to the District Attorney any allegation of child sexual abuse, whether made during the child's minority or later by an adult who claims to have been abused as a child. The Diocese would resume its own investigation following the conclusion of the criminal investigation and any criminal proceedings that might result.

In every instance where a Covered Person has a sexual relationship with a person who is mentally challenged or unable to move, or who is inebriated or under the influence of chemical substances (whether consumed voluntarily or administered by someone else), the sexual or sexually suggestive behavior will violate applicable rules unless the Covered Person can prove that he/she did not know that the other person was legally incapable of giving informed consent. Proving this will be difficult if not impossible in most cases.

A Covered Person who engages in sexual behavior with a legally incapacitated person (including a minor) may be liable to criminal charges and to a civil suit for damages, as well as to ecclesiastical and/or employment discipline. The Diocese or the parish or institution where that Covered Person works may also be sued.

What persons are under the professional pastoral care of church workers?

There are people who can give legal consent to sexual contact, but who are incapable of giving fully informed consent because they are extremely vulnerable to abuse. Such people are presumptively incapable of consenting to sexual or sexually suggestive behavior with a member of the clergy or with lay church workers who are involved in their pastoral care. While sexual behavior with such persons is not a crime, it may expose the cleric or lay pastoral caregiver, as well as the institution for which he/she works, to a civil suit for damages. It is up to the cleric or lay pastoral caregiver to know about the vulnerability of individuals who are in their charge and to set appropriate boundaries.

The following people are deemed to be under the professional pastoral care of church workers, and are therefore “off limits” to those clergy and lay church workers who are involved in their pastoral care (“lay pastoral caregivers”).

1. Persons who are currently being counseled or given spiritual direction by the cleric or lay church worker, and also members of their families.
2. Former counselees or directees and members of their families, if a sexual relationship between the cleric or pastoral caregiver and the former counselee or family member would compromise the integrity of the original counseling relationship or would constitute the use of the original counseling relationship for the cleric’s or lay church worker’s personal gratification.
3. Students who are being taught by the member of the clergy or lay church worker or who attend schools where the member of the clergy or lay church worker is an administrator (this rule applies to lay faculty and administrators at church-sponsored schools only).

NOTE this rule also applies to all church-sponsored programs.

4. For clergy, parishioners at any parish, mission or congregation served by the member of the clergy, or patients, residents or students at institutions where the cleric is a chaplain.

While these “professional ethics” violations do not have criminal implications unless the other person is a minor or is legally incapable of consent, sexually exploitative professional behavior will not be tolerated in our church settings and can result in a civil suit against the offending member of the clergy or lay church worker and the parish or institution for which they work.

Is it ever possible for a member of the clergy to have a romantic relationship with a parishioner?

Because of the special position occupied by clergy in the congregation, romances with parishioners are very dangerous for both clergy and congregants, and they are strongly discouraged by the Diocese. For the protection of both cleric and parishioner, such relationships are permitted only when the member of the clergy discloses the relationship at its inception to a representative of the Diocese and to a warden or member of the vestry of his/her parish. If a relationship is not properly disclosed, the Diocese will presume that it is improper. Even if the relationship is disclosed, however, such a romance may be unwise; if the relationship sours, the clergy partner could be vulnerable to charges of misconduct by the other person.

Is it ever possible for a member of the clergy or lay pastoral caregiver be sure that a sexual relationship with a former counselee or spiritual directee is not exploitative?

Because of the inequality inherent in any counseling relationship and the trusting and vulnerable position in which a counselee or spiritual directee stands vis-a-vis the counselor or director, a relationship between a clergy or lay pastoral caregiver and a former counselee or directee will rarely, if ever, be mutual and equal in a way that would make a sexual relationship between them appropriate. A member of the clergy or lay pastoral caregiver who is accused of exploiting a relationship with a former counselee or member of the former counselee's family will probably find it difficult to convince the appropriate institution (whether the Diocese or a parish) that the relationship was not exploitative. At a minimum, the counseling relationship must have been over for a substantial period of time, and both parties should have undergone separate counseling prior to embarking on such a relationship. Even these steps will not guarantee that the relationship will pass muster. Relationships with current counsees or directees or members of their families are never permissible.

What is sexual harassment?

Sexual harassment is a form of sexual misconduct committed against one's co-workers (including volunteers) or subordinates at work. It occurs when a person is required (either explicitly or by implication) to submit to offensive sexually-oriented conduct as a condition of (a) getting a job, a raise or bonus, a promotion or a good assignment, or (b) avoiding demotion, undesirable assignments, or termination. The term "sexual harassment" also includes sexually-oriented conduct that unreasonably interferes with an individual's work performance or creates a hostile or offensive working environment.

Sexual and other unlawful harassment (including but not limited to bullying and cyber-bullying) is a violation of federal law, as well as many state and local laws. Additionally, harassment based on any other characteristic protected by law - such as race, color, ancestry, national origin, gender, sex, sexual orientation, gender identity, marital status, religion, age, disability, veteran status, or other characteristic protected by state or federal law - is prohibited.

The Diocese has “zero tolerance” for workplace discrimination and harassment and all supervisors are expected to be committed to ensuring a professional work environment free from discrimination and harassment.

“Harassment” is abuse or coercive conduct related to the workplace, and may involve both supervisor-subordinate relationships and co-working relationships. This includes actions which create a “hostile workplace” for the person who is being harassed. A hostile workplace is created where severe or repeated conduct on the part of an aggressor makes it difficult or unsafe for the victim to be at work.

Offensive sexually-oriented conduct is behavior that has some sexual content, that is unwelcome, and that would be personally offensive to a reasonable person. Some examples of such conduct include:

- recurring verbal remarks of a sexual nature, including those made as a part of any purported humorous conduct (such as off-color jokes, epithets, innuendos, comments, slurs or inappropriate questions, or about appearance or physical characteristics, marital status, gender characteristics, gender or sexual orientation or sexual preference), whether directed to a specific person or made generally;
- persistent sexual flirtations, propositions or requests for sexual favors or romantic relationships;
- unwanted physical touching of any kind; open displays or unsolicited showings of nude or sexually explicit photographs;
- unwelcome requests for social engagements;

OR

- non-sexual forms of harassment that are directed only toward members of one sex (for example, always being rude or belittling to women but never to men).

Such conduct need not take place on workplace premises to constitute sexual harassment.

Sexual harassment is a gender-based form of harassment which includes unwelcome sexual advances, requests for sexual favors, or any other visual, verbal, or physical conduct of a sexual

nature when (1) submission to the conduct is made either an explicit or implicit condition of employment, (2) submission to or rejection of the conduct is used as the basis for an employment decision, or (3) conduct occurs that is unwelcome, interferes with an employee's work performance and/or creates an intimidating, hostile, or offensive work environment.

Offensive sexually-oriented conduct can be directed to either men or women, and may be heterosexual or homosexual. A supervisor or high-ranking employee may be guilty of sexually harassing a subordinate, but so can an individual's co-workers or volunteers if, by their behavior, they create an environment in which the employee or volunteer is uncomfortable and has difficulty functioning.

Fear of unfounded sexual harassment charges is very great today, but it may be lessened by educating people about what harassment is. Conduct becomes sexual harassment if a reasonable person in the alleged victim's position would find it intimidating. Therefore, one or two inappropriate comments or unwanted requests for a date are generally not enough to create a hostile work environment. But continuing such conduct after being told to stop is out of bounds. So is any unwanted physical touching, or any suggestion that a favorable job action depends on the receipt of sexual favors.

Remember, sexual harassment is not about sex; it is about the abuse of power.

The prohibition against harassment covers all Covered Persons.

What should I do if I have good reason to believe a Covered Person has violated the Diocesan rules against sexual misconduct?

If the person is a member of the clergy or is a lay employee or volunteer for the Diocese, report your belief to the Diocesan Intake Officer, the Rev. Nora Smith by email at nsmith@Diocesenyc.org or by telephone at 917-319-3959. Be prepared with specific concerns so that your report is as detailed as possible.

If the person is a lay church worker or other non-clerical Covered Person in your parish or some other institution, then follow the procedures adopted by that institution for dealing with allegations of sexual misconduct. If you don't know what those procedures are, ask a member of the clergy or someone you trust (a vestry person, another employee) at that institution. Or call the Bishop's Office and ask to speak to someone who can help you deal with an instance of possible sexual misconduct. A Diocesan representative will help you find the right person to call.

No reprisal, retaliation, or other adverse action will be taken, or permitted, against any church employee (clerical or lay) for making a good faith complaint or report of discrimination or

harassment or for assisting in the investigation of any such complaint or report. Any suspected retaliation or intimidation should be reported immediately to one of the persons described above.

What will happen when the Diocese receives a report of possible sexual misconduct by a member of the clergy?

The Diocese has devised procedures for handling reports of sexual misconduct by members of the clergy. The procedures were designed to provide:

- justice for both the alleged victim and the accused member of the clergy in accordance with canon law;
 - openness with the alleged victim and the accused member of the clergy in accordance with canon law;
 - punishment for offenders that is proportional to the offenses committed;
 - protection for a member of the clergy who may be falsely accused of sexual misconduct;
 - appropriate pastoral assistance to victims, offenders, and their loved ones when sexual misconduct occurs;
 - compliance with all current Diocesan and The Episcopal Church canon law.
1. If the Bishop receives a report of possible sexual misconduct, he/she will attempt to resolve the matter informally if the complainant wishes.
 2. If the Bishop has sufficient reason to believe that an offense has been committed and no informal resolution is possible, he/she will treat such offense as a possible breach of the Standards of Conduct set forth in Canon IV.4 of the Canons of The Episcopal Church and will follow the procedures set forth in Title IV thereof.
 3. If the member of the clergy is found not guilty of the charges, the Diocese will do everything possible to help the accused restore his/her reputation.
 4. At all times, the Diocese will cooperate with any civil authorities who are investigating allegations of abuse and will respond truthfully to request for information about charges of abuse. The Diocese may choose to postpone formal ecclesiastical disciplinary proceedings if criminal charges are brought against a member of the clergy, although pastoral assistance will still be available to anyone (including affected congregations) who needs it. In cases where the alleged victim is still a minor at the time the report is made, the Diocese will notify the appropriate civil authorities and defer the Diocesan investigation.

What will happen when the Diocese receives a report of alleged sexual misconduct by a lay Diocesan church worker or by another non-clerical Covered Person?

The procedures for dealing with allegations of sexual misconduct by a lay church worker differ from those for dealing with clergy because canon law does not apply to lay church workers. That has two separate implications. First, if a lay employee or volunteer is accused of sexual misconduct, the accusation can be treated as an employment matter and the Diocese does not need to follow special canonical procedures. *[NOTE: This does not mean that the Bishop has to follow canonical procedures before administering employment discipline to a member of the clergy whom he/she employs. The Bishop can fire or suspend an errant employee from his/her job, even if that employee is a priest or deacon. However, the Bishop cannot inhibit or suspend a priest or deacon from functioning as an ordained minister without following canon law.]* However, this also means that the Diocese can only deal with allegations made against lay employees and volunteers who work for the Diocese. The Diocese has no authority over lay persons who work or volunteer for parishes or other church-affiliated institutions or over any other non-clerical Covered Persons. That is why parishes and institutions need to have their own rules and procedures for dealing with allegations of sexual misconduct against their own lay church workers and other non-clerical Covered Persons.

If a lay Diocesan church worker is accused of sexual misconduct or harassment, the following steps will be taken.

- The Chief Administrative Officer of the Diocese will appoint an investigative team to look into the charges and report back in writing on their findings and proposals for disciplinary actions.
- The Chief Administrative Officer will decide whether the allegation is supported by the evidence. He/she is not bound by the conclusion and recommendations of the investigative team, and he/she may ask for additional information or conduct his/her own investigation prior to making a final determination.
- If the Chief Administrative Officer decides that the allegation is supported by the evidence, he/she will administer discipline that is proportional to the offense. If appropriate, or where required by the Church Insurance Company, satisfactory completion of counseling and/or training and restitution to the accused may be required before the accused can be re-employed or resume participation in Diocesan-sponsored activities.
- At any time during the investigation, the Chief Administrative Officer may place the accused on administrative leave or suspend the accused from participation in Diocesan-sponsored activities pending the conclusion of the matter. He/she may

also direct the accused to have no contact with the complainant while the matter is pending.

- The Chief Administrative Officer may also appoint a Complainant's Liaison to perform the same functions as in cases of alleged clerical misconduct.
- The Diocese will follow the same rules for lay employees as for clergy concerning rehabilitation in cases where charges are not sustained, dealing with press inquiries, cooperating with authorities, and processing allegations of abuse made by minor children.
- Where a lay member of the Bishop's Senior Staff is accused of sexual misconduct, the Bishop will perform the function of the Chief Administrative Officer.

How do my parish's rules about sexual misconduct differ from the Diocesan rules?

Although the Diocese has provided a model policy for consideration and adoption by parishes and institutions affiliated with the Diocese, each parish and institution is ultimately responsible for adopting its own rules and procedures. If those rules are to comply with the Church Insurance Company's underwriting regulations, they should not be materially different from the Diocesan rules. But check with your rector, vicar or priest-in-charge to be sure.

Establishing a requirement to complete Safe Church training as a condition of volunteering or employment is the responsibility of each parish or organization. It is highly recommended that a statement about attendance requirements be added to the written policies of each parish or organization, and then communicated to every volunteer or employee before they begin work or service.

No policy can foresee every possible circumstance to which it may be applied. Whenever applicable, questions of civil, criminal, and/or ecclesiastical discipline and employment offenses should be addressed with the relevant authorities immediately.

What is Safe Church training?

Safe Church training teaches participants to recognize the signs of sexual abuse and behavior of sexual perpetrators, how to respond to those behaviors when they observe them, and provides screening information to help stop abuse before it happens.

In-person Safe Church training is led by an experienced facilitator, is offered twice a year by the Diocese, and covers:

- The Diocese of New York's policies and procedures.

- **Safeguarding God’s Children:** Awareness & Prevention of Child Sexual Abuse covers: child abuse awareness & prevention, boundary issues, ethical and theological considerations, strategies for prevention in church setting, response and reporting, and the Episcopal Diocese of New York policies and procedures.
- **Safeguarding God’s People:** Awareness & Prevention of Adult Sexual Harassment & Exploitation covers: sexual harassment and exploitation awareness & prevention, trust and safety in ministry, power and boundary issues, ethical and theological considerations, strategies for prevention in church setting, response and reporting, and the Episcopal Diocese of New York policies and procedures.

Web-based Safe Church training (Safeguarding Online) is a comprehensive multi-module training program. Specific training options & expectations are available at www.Dioceseny.org under Safe Church training.

Who needs to complete Safe Church training?

- **The Bishop *requires*** the following people to complete Safe Church training in-person:
 - All clergy
 - All persons in the ordination process
 - All persons serving in field education assignments
 - All Lay Chaplains

NOTE in-person training is mandatory the first time. Subsequent trainings can be completed in-person or online.
- **The Bishop *requires*** all persons seeking a Lay Eucharistic Visitor license to attend Safe Church training in-person or online before licensure.
- **The Bishop *expects*** the following people to complete Safe Church training, either in-person or online:
 - All paid employees
 - Administrative Assist. / Secretary
 - Sexton
 - Organist / Choir Director
 - Christian Education Coordinator
 - Camp Director
 - All volunteering on a regular basis

- Sunday/Church School Teacher
- Warden
- Vestry Member
- V.B.S. Teachers & Assistants
- Camp Counselor
- Acolyte Leader
- Youth Leader
- Pastoral Visitor
- Licensed Eucharistic Visitor
- Licensed Eucharistic Minister
- Licensed Worship Leader
- Spiritual Director
- Pastoral Counselor
- Lay Chaplain
- Confirmation Sponsor
- Diocesan Standing Committee

How often does Safe Church training need to be completed?

- **The Bishop *requires*** the following people to update their training every five years, either in-person or online:
 - All clergy
 - Lay Eucharistic Visitors
 - Lay Chaplains

- **The Bishop *expects*:** all employees and volunteers (as listed above) to update their training every five years, either in-person or online.

Establishing a requirement to complete Safe Church training as a condition of volunteering or employment is the responsibility of each parish or organization. It is highly recommended that a statement about attendance requirements be added to the written policies of each parish or organization, and then communicated to every volunteer or employee before they begin work or service.

Model #1

WHAT CONSTITUTES SEXUAL MISCONDUCT BY EMPLOYEES OF OR VOLUNTEERS FOR *[Parish/institution]*

1. A lay person who is employed by or who volunteers for *[parish/institution]* is guilty of sexual misconduct:
 - (a) when, in the context of his/her employment or volunteer activity, he/she engages in sexual behavior or sexually suggestive behavior, or asks or otherwise attempts to engage in such behavior, with
 - (1) Any person who is under the age of 17, or who is otherwise legally incapable of giving informed consent as provided in § 130.05 of the Penal Law of the State of New York;
 - (2) Any person as to whom engaging in or attempting to engage in such behavior would constitute a violation of the professional ethics of the employee or volunteer; or
 - (b) when he/she commits acts of sexual harassment in the work place, in violation of the policy against sexual harassment adopted by *[parish/institution]*.
2. The term “lay person who is employed by or volunteers for the *[parish/institution]*” as used in this rule means any lay person:
 - (a) who receives a salary for full-time or part-time work from the *[parish/institution]*;
 - (b) who is engaged as a consultant or other independent contractor in connection with any program sponsored by *[parish/institution]*;
 - (c) who volunteers his/her time to assist with any program sponsored by *[parish/institution]*.
3. The term “sexual behavior” as used in this rule means any form of physical or voyeuristic behavior that is intended to provide sexual gratification to any party involved in that behavior, including but not limited to “sexual abuse” and “sexual misconduct” as those terms may be used by The Church Insurance Company in any underwriting definition of “sexual misconduct” hereafter adopted.

4. The term “sexually suggestive behavior” as used in this rule means any form of verbal or visually graphic behavior that, to a reasonable person, suggests sexual matters.
5. An employee of or volunteer for *[parish/institution]* commits a violation of his/her professional ethics within the meaning of this rule if he/she engages in sexual behavior or sexually suggestive behavior, or asks or otherwise attempts to engage in such behavior, with:
 - (a) any person with whom the employee or volunteer is in a counseling relationship, which includes:
 - (1) any person to whom the employee or volunteer is giving any form of pastoral care, including counseling, spiritual direction or spiritual guidance; and
 - (2) any person from whom the employee or volunteer, acting in his/her capacity as a Diocesan employee or volunteer, has received confidential or privileged information;
 - (b) any member of the family of a person to whom the employee or volunteer is giving any form of pastoral care, including counseling or spiritual direction or spiritual guidance;
 - (c) any former counselee or directee, or any member of the family of a former counselee or directee, if sexual behavior between the employee or volunteer and the former client or family member would compromise the integrity of counseling or direction and/or constitute the use of the counseling relationship for the member of the clergy’s personal gain;
 - (d) if, in the context of his/her employment or volunteer activity, the employee or volunteer serves as a teacher or administrator of a church-affiliated educational institution, any student who is currently being taught by or is under the administrative purview of the employee or volunteer;
 - (e) if, in the context of his/her employment or volunteer activity, the employee or volunteer serves as an administrative or residential supervisor of a church-affiliated residential center, any person who lives, whether temporarily or permanently, in that shelter.
6. *[parish/institution]* strictly prohibits any interaction with children or youth by anyone with a civil or criminal record of child sexual abuse or who has admitted prior sexual

abuse or anyone known to have a paraphilic diagnosis (e.g., pedophilia, exhibitionism, voyeurism) as defined by the American Psychiatric Association.

7. A member of the clergy or a postulant or aspirant for orders who is employed by or who volunteers for *[parish/institution]* shall abide by the Diocesan rules concerning sexual misconduct by clergy.

Model #2

PROCEDURE IF A PARISH EMPLOYEE OR VOLUNTEER IS ACCUSED OF SEXUAL MISCONDUCT

[parish/institution]

- A. Reporting Allegations of Sexual Misconduct:
1. Anyone who wishes to report an allegation of sexual misconduct by a lay or clerical employee of or volunteer for *[parish/institution]* may direct his/her report to any of the following persons (unless that person is the alleged offender):
 - (a) the (rector/vicar/priest-in-charge),
 - (b) one of the Wardens,
 - (c) a member of the Vestry, or
 - (d) any other person who supervises the work of the alleged offender.
- B. Procedures for Dealing with Allegations of Sexual Misconduct by Clergy
1. If the allegation reported involves sexual misconduct by a member of the clergy (bishop, priest or deacon) who is an employee of or volunteer for the parish, the person who receives the report should inform a representative of the Episcopal Diocese of New York as designated in the Diocesan Procedures for Handling Allegations of Clerical Sexual Misconduct (“Diocesan Procedures”). If the alleged offender is someone other than the *[rector/vicar/priest-in-charge]*, the matter may also be reported to the *[rector/vicar/priest-in-charge]*; if the alleged offender is the *[rector/vicar/priest-in-charge]*, the matter may also be reported to the Wardens. In either event, the Diocese will investigate the allegation in conformity with the Diocesan Procedure. The parish should await word from the Diocese before undertaking any investigative or disciplinary action of its own.
 2. If the Bishop determines that there is probable cause to order a canonical investigation into an allegation of clerical sexual misconduct, and if the accused cleric is a cleric other than the *[rector/vicar/priest-in-charge]*, then the *[rector/vicar/priest-in-charge]*, after consultation with the Bishop, may suspend or restrict the accused cleric from the performance of some or all ministerial duties within the parish during the pendency of the canonical proceedings contemplated by the Diocesan Procedures and shall suspend the accused cleric from all duties having any connection with youth if the allegation

against the cleric involves sexual abuse of a minor. The [rector/vicar/priest-in-charge] may also direct the accused cleric to have no contact with the complainant until the matter is resolved. If the accused is the [rector/vicar/priest-in-charge], the Wardens and Vestry, after consultation with a representative of the Diocese, may suspend or restrict that cleric's continuing performance of ministerial duties within the parish during the pendency of canonical proceedings, but only to the extent that such restriction is canonically and contractually permissible.

3. If a member of the clergy is found guilty of or confesses to sexual misconduct, then in addition to any ecclesiastical penalties imposed by the Bishop, the appropriate parish authorities may take any disciplinary action against the offender that is canonically and contractually permissible. If the offender is a cleric other than the [rector/vicar/priest-in-charge], then the [rector/vicar/priest-in-charge], may admonish, censure, suspend or terminate the offender and may require education, counseling, and/or restitution by the offender as a condition of reemployment. If the offender is the [rector/vicar/priest-in-charge], then the Wardens and Vestry may take any disciplinary action against the offender that is not barred by canon or by the terms of the offender's contract with the parish and/or the Diocese.
4. It is the policy of this parish to cooperate fully with all aspects of the Diocesan Procedures, including procedures for confidentiality of investigations and for disclosure to the parish and healing within the parish.
5. All press inquiries regarding any allegation of clerical sexual misconduct that are directed to any representative of the parish (clergy, lay staff, Wardens, Vestry, volunteers) shall be referred to the press officer handling the matter on behalf of the Diocese of New York.

C. Procedures for Dealing with Allegations of Sexual Misconduct by Lay Employees and Volunteers

1. All allegations of sexual misconduct by a lay employee or volunteer, by whomever received, must be reported to the [rector/vicar/priest-in-charge].
2. Within 72 hours after learning of an allegation of sexual misconduct by a lay parish employee or volunteer, an investigative team consisting of one Warden or Vestry Member and the [rector/vicar/priest-in-charge] shall begin an investigation into the charges. In conducting the investigation, the investigative team should interview the complainant, the accused, the person who directs or supervises the accused's activities, the person who directs or supervises the complainant (if the complainant is an

employee or volunteer) and any witnesses who have information relevant to determining the truth of the allegation. Whenever possible, the investigative team should meet with witnesses and obtain written statements from them.

3. At the conclusion of the investigation, the investigative team shall prepare a written report summarizing its findings.
4. The [rector/vicar/priest-in-charge] shall be the final arbiter of whether or not the allegation is supported by the evidence. If the [rector/vicar/priest-in-charge] determines that the allegation is supported by the evidence, he/she shall take disciplinary action against the accused that is proportional to the offense. For employees, discipline may include reprimand, demotion or refusal to give a promotion, counseling or training, suspension (with or without conditions) or dismissal. For volunteers, discipline is limited to reprimand or termination from participation in all or certain specified parish sponsored activities. If appropriate, satisfactory completion of counseling and/or training and restitution to the accused may be imposed as a disciplinary sanction precedent to re-employment or renewed participation in parish-sponsored activities.
5. A written notation of the [rector's/vicar's/priest-in-charge's] determination and any discipline imposed shall be made in a confidential investigative file (see procedure #18) and in the accused's personnel file, if any. It shall also be sent to any supervisory personnel who need to be informed of the matter's outcome.
6. There shall be no appeal from the decision of the [rector/vicar/priest-in-charge].
7. At any time during the investigation, the [rector/vicar/priest-in-charge] may direct that the accused be placed on administrative leave (with pay, in the case of an employee) or be suspended from participating in some or all parish sponsored activities pending the conclusion of the investigation and the determination of the matter. The [rector/vicar/priest-in-charge] may also direct the accused to have no contact with the complainant until the matter is resolved.
8. The [rector/vicar/priest-in-charge] may appoint a Complainant's Liaison to assist the complainant during the investigation. The Complainant's Liaison shall serve as the intermediary between the parish and the complainant, as a resource person and as a source of information for the complainant. He/she may assist the complainant in making a formal complaint and help the complainant during the investigation if the complainant so desires. The Complainant's Liaison should also be alert to the pastoral needs of the complainant and should inform the parish if provision needs to be made for the pastoral care of the complainant.

9. Where the complainant is a minor (less than 17 years old) at the time the allegation is made, and where the conduct alleged, if proved, would constitute child abuse or a violation of the Penal Law of the State of New York, the [rector/vicar/priest-in-charge] shall advise the complainant's parent(s) or legal guardian(s) that the parish will report the matter to child abuse authorities (Child Welfare Agency in New York City; Department of Social Services elsewhere) for investigation if the parent, guardian or some other person has not already done so. If such a report is made, the parish shall defer any independent investigation of the complaint and any final disciplinary action on the complaint until the conclusion of any investigation by the child abuse authorities. However, as soon as the report is received, the [rector/vicar/priest-in-charge] shall suspend the accused from participating in parish-sponsored youth activities, and may suspend the accused from employment or participation in other parish activities. If allegations of sexual abuse of a minor are sustained, then the accused shall be terminated immediately and may not be reinstated under any circumstances.
10. If the allegations are sustained by the [rector/vicar/priest-in-charge] after inquiry, the (rector/ vicar/priest-in-charge), in consultation with the Wardens, shall decide what if any, notification about the matter should be given to the accused's co-workers, to participants in any parish-sponsored program or community program that is affected by the disciplinary action taken against the accused, or to the parish generally. The propriety and content of any such notification shall take into account the nature and severity of the offense, the need for truth and openness about sexual misconduct in the Church, the pastoral and employment needs of the accused's co-workers and/or other participants in the affected program, the potential for liability to the parish if notification is not given, and the possibility of rehabilitating the accused.
11.
 - (a) In the event of press inquiry during an investigation into sexual misconduct by a lay employee or volunteer, the parish may confirm that an accusation has been made and indicate that a formal inquiry is in progress. If the employee or volunteer has been suspended, that fact shall be stated, but with the caveat that such suspension should not be interpreted as an admission that the accused is guilty of the offense alleged.
 - (b) After the matter is determined, the parish may, in its discretion, issue a press release explaining what took place, announcing the results of the investigation and determination, and explaining the disciplinary action taken, if any.
 - (c) A single spokesperson shall be appointed to handle all dealings with the press, with sensitivity to the interests of all parties involved, including the complainant, the accused and the accused's family/loved ones.

D. Procedures Applicable to All Allegations

1. Notes, statements, briefs and reports created during an investigation shall be maintained in a confidential investigative file kept by the [rector/vicar/priest-in-charge]. and disclosure of information in this file shall only be made on a need-to-know basis consistent with these procedures. However, no person involved in the process, especially the complainant and the accused, should be given unrealistic expectations of confidentiality that would impede the ability of the parish to conduct a thorough investigation into the charges, to deal pastorally with any victims or other parties affected by the accused's behavior, or to cooperate with authorities.
2.
 - (a) The parish shall cooperate with any criminal investigation that may be commenced into allegations of sexual misconduct by a parish employee or volunteer.
 - (b) The parish shall respond fully to any lawful subpoena issued by any party to any civil or administrative action or investigation involving allegations of sexual misconduct by a parish employee or volunteer.
 - (c) No representative of the parish shall impede or discourage a complainant from reporting an allegation of sexual misconduct by a parish employee or volunteer to appropriate authorities or from filing any civil action for damages on account of such misconduct.
3. As soon as possible after an investigation is concluded, the Wardens shall notify the parish's insurer of the allegation and shall thereafter keep the insurer apprised of the matter's progress. In case of any allegation of clerical sexual misconduct, the parish shall notify its insurer when instructed to do so by the Chancellor or Vice Chancellor.
4. (Name of parish/or institution) strictly prohibits any person, whether clergy, lay employee or volunteer, who has ever sexually abused a minor or who has been diagnosed as a paraphilic from interacting with children or youth. Therefore, if at any time a parish employee or volunteer is found to have sexually abused a minor in the past, or is known to be a paraphilic, the [rector/vicar/priest-in-charge/wardens] shall take all necessary steps to ensure that the parish employee or volunteer has no contact with children or youth.

Model #3

STATEMENT ON SEXUAL HARASSMENT IN THE WORKPLACE

(For Parishes and Institutions Affiliated with The Episcopal Diocese of New York)

This statement sets forth the policy of *[parish/institution]* on sexual harassment in the workplace by members of the clergy and by employees, volunteers, consultants and other independent contractors who work for *[parish/institution]*.

[parish/institution] condemns sexual harassment in the workplace.

Sexual harassment occurs when:

- 1) a person is required (either explicitly or by implication) to submit to offensive sexually-oriented conduct as a condition of (a) getting a job, a raise or bonus, a promotion or a good assignment, or (b) avoiding demotion, undesirable assignments or termination;
- 2) sexually-oriented conduct unreasonably interferes with an individual's work performance or creates a hostile or offensive working environment.

"Harassment" is abuse or coercive conduct related to the workplace, and may involve both supervisor-subordinate relationships and co-working relationships. This includes actions which create a "hostile workplace" for the person who is being harassed. A hostile workplace is created where severe or repeated conduct on the part of an aggressor makes it difficult or unsafe for the victim to be at work.

Offensive sexually-oriented conduct is conduct that has some sexual content, that is unwelcome, and that is personally offensive to the person to whom it is directed. Some examples of such conduct include:

- 1) recurring verbal remarks of a sexual nature, including those made as a part of any purported humorous conduct (such as off-color jokes, epithets, innuendos, comments, slurs or inappropriate questions, or about appearance or physical characteristics, marital status, gender characteristics, gender or sexual orientation or sexual preference), whether directed to a specific person or made generally);
- 2) persistent sexual flirtations, propositions or requests for sexual favors;

- 3) unwanted physical touching of any kind;
- 4) open displays or unsolicited showings of nude or sexually explicit photographs;
- 5) unwelcome requests for social engagements; or
- 6) non-sexual forms of harassment that are directed only toward members of one sex (for example, always being rude or belittling to women but never to men, or vice versa).

Sexual harassment is a gender-based form of harassment which includes unwelcome sexual advances, requests for sexual favors, or any other visual, verbal, or physical conduct of a sexual nature when (1) submission to the conduct is made either an explicit or implicit condition of employment, (2) submission to or rejection of the conduct is used as the basis for an employment decision, or (3) conduct occurs that is unwelcome, interferes with an employee's work performance and/or creates an intimidating, hostile, or offensive work environment.

Such conduct need not take place on workplace premises to constitute sexual harassment.

Offensive sexually-oriented conduct can be directed to either men or women, and may be heterosexual or homosexual. A supervisor or high-ranking employee may be guilty of sexually harassing a subordinate, but so can a person's co-workers if, by their behavior, they create an environment in which the employee or volunteer is uncomfortable and has difficulty functioning.

Sexually-oriented conduct that is not unwelcome or offensive to the person who is subjected to it is not sexual harassment. However, the fact that co-workers once had some sort of consensual relationship does not and will not excuse harassing conduct that occurs after the relationship ends. Also, it is no defense to a charge of sexual harassment to say that the complaining party did not report it. Often, sexually-oriented conduct is unwelcome to a coworker, but that person feels intimidated about complaining, or fears retaliation, so he or she puts up with offensive behavior. Such "consent" is not really consent at all. (Parish/institution) believes that sexual harassment is inherently exploitative, undermines the integrity of the working relationship, debilitates morale and interferes with work effectiveness. No one, male or female, should be subject to unsolicited and unwelcome sexual overtures or conduct in the workplace, either verbal or physical.

Model #4

POLICY AGAINST SEXUAL HARASSMENT

[parish/institution]

Anyone, clergy or lay person, who is employed by, volunteers for, or works as a consultant or other independent contractor for, *[parish/institution]*, and who sexually harasses another employee, a volunteer or a postulant or aspirant who is being mentored by a member of the clergy, does so in violation of the policy of *[parish/institution]* and is subject to discipline proportional to his or her offense.

Procedures for Dealing with Allegations of Sexual Harassment

If anyone believes that an employee or volunteer at *[parish/institution]* is guilty of sexual harassment, we urge that person to bring the problem to the attention of someone who can help. An employee or volunteer should report such a problem to his or her supervisor, to [the Rector/Priest-in-Charge], or to a Warden or Vestry member. Persons who wish to complain about sexual harassment by a member of the clergy with whom they work may also report the problem to the Episcopal Diocese of New York by calling the Bishop's office (212-316-7413).

Whenever a possible incident of sexual harassment is brought to the attention of the *[parish/institution]* regardless of how that occurs, the *[parish/institution]* will investigate what happened and take appropriate action to remedy the situation if it is warranted. The *[parish/institution]* will conduct any such investigation promptly. Complaints will be handled on a "need to know" basis; to the extent possible, only those persons conducting the inquiry will know the identities of the charging party and the accused. However, once a senior representative of the *[parish/institution]* learns of a possible incident of sexual harassment involving a member of the clergy or an employee or volunteer worker, we must investigate the report; we cannot honor a Complainant's request that we do nothing.

If the investigation reveals that the complaint is true, the guilty party will be disciplined. Punishment for a lay employee or volunteer may range from a reprimand to mandatory counseling or sensitivity training to demotion or delay in promotion to dismissal in appropriate cases. All clergy who commit sexual harassment are liable to ecclesiastical discipline in accordance with canon law and the Diocesan policy against sexual misconduct by clergy.

No person who reports incidents of sexual harassment in the workplace will be subject to any sort of retaliation by the person accused or by anyone else. **Any retaliation against a complaining party by anyone will be grounds for immediate dismissal (if the retaliator is a**

[parish/institution] employee or volunteer). as well as the most serious ecclesiastical discipline (if the retaliator is a member of the clergy).

[Name of parish/institution] recognizes that the question of whether a particular action or incident constitutes sexual harassment or is part of a purely personal, social relationship, without a discriminatory employment effect, must be resolved based on all the pertinent facts.

[Name of parish/institution] also recognizes that false accusations of sexual harassment can have serious effects on innocent individuals. We trust that all our employees and volunteers will act responsibly to establish and maintain a pleasant working environment, free of discrimination