

# Statement of Policy Regarding Sexual Misconduct by Rostered Ministers

#### I. INTRODUCTION

The Oregon Synod ("Synod") of the Evangelical Lutheran Church in America ("ELCA") is committed to preventing sexual misconduct within the church and to responding with justice and compassion when such alleged misconduct occurs. This Statement of Policy describes how the Synod intends to fulfill these commitments. The Synod recognizes that responding to allegations of sexual misconduct requires determination, sensitivity, flexibility, respect, and carefor all persons affected, including the complainant, the rostered person, their families and friends, the congregation, the Synod, and the whole church. This policy is intended to provide a framework for guidance in dealing with these cases while preserving the Synod's discretion totreat each person and each case in the manner necessitated by differing facts, circumstances, and the needs of those affected. This policy cannot be imposed as rigid law, binding the Synod and others to its dictates; it must be interpreted and applied compassionately in accordance with the theological and Biblical principles of the Gospel. It must always be remembered, however, that any suspect sexual contact with a minor must be reported to the appropriate governmental agency as required by Oregon State Law concerning reporting of child abuse.

#### A. Sexual Misconduct

The Synod is concerned about fill types of inappropriate sexual behavior by rostered leaders, regardless of whether or how the misconduct is characterized by the law or by the governing

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documents of the ELCA. Federal and state laws make distinctions among various types of sexual misconduct, such as "sexual harassment," "sexual abuse," and "sexual assault." Similarly, the governing documents of the ELCA define what types of sexual misconduct can result in a rostered person being disciplined. This policy is intended to address those types of sexual misconduct that may lead to discipline of a rostered leader under Chapter 20 of *Constitutions, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America.* Understanding the distinctions among these terms should not deter a person who is troubled about the sexual conduct of a rostered leader. Any inappropriate sexual behavior should be reported to the church.

When this policy refers to "rostered" persons or leaders, it includes Pastors, Associates in Ministry, Diaconal Ministers, and Deaconesses; that is, all those on the official rosters of the ELCA. This Statement of Policy assumes that the rostered person who is accused of sexual misconduct is under call to a congregation, but it may also be adapted to calls in other circumstances. Any sexual misconduct committed by one of these persons should be reported to the Synod, including, but not limited to, any sexual contact between the rostered person and a congregant, counselee, employee, or volunteer. As noted above, any sexual contact with a minor must be reported to the appropriate state agency or law enforcement authority as required by the Oregon State child abuse reporting laws.

# B. The Role of Congregations

The Synod and its member congregations have different responsibilities and different roles to play in preventing and responding to reports of sexual misconduct by a rostered person. Each ELCA congregation governs itself and exercises control over its internal practices and policies and the use of its property. The congregation is responsible for its mission and ministry to the community and for its life together. The congregation elects its leadership and employs and supervises its own staff. In addition, each congregation, within the parameters of the constitution and letter of call, calls its own rostered leaders, determines its rostered leaders'

specific duties and responsibilities, sets the rostered leaders' salaries and benefits, and supervises its rostered leaders' day-to-day ministry. The Synod has neither the authority nor the ability to make those decisions for a congregation.

In accordance with the *Constitutions, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America,* it is the congregation, in consultation with the Synod, that finally decides whether to terminate a pastor's call. The congregation is also authorized to initiate disciplinary action against its rostered leaders, as well as its members. Obviously, then, the church cannot be a safe place unless every one of its member congregations shares its commitment to preventing sexual misconduct by rostered leaders.

This Statement of Policy is the Synod's; it says little specifically about the important roleplayed by congregations in preventing and responding to reports of sexual misconduct by rostered leaders. This should not obscure the fact that congregations have a vital role to play. The Synod strongly urges its member congregations to develop their own sexual misconduct policies. The publication, *Safe Connections: What Parishioners Can Do To Understand and Prevent Clergy Sexual Abuse,* is available from the ELCA Vocation and Education Unit and from Augsburg Fortress Publishers, order code 69-8110. The Synod recommends this publication as a useful resource for congregations addressing this issue.

It should be noted that the Synod may not be able to assume primary responsibility for addressing all allegations of sexual misconduct by rostered leaders. For example, if a pastor who is under call to a congregation is accused of sexually harassing another of the congregation's employees, civil law may require that the congregation, as employer, take timelyand appropriate action; the law may prevent the Synod from interfering in the situation. Nevertheless, the synod should be consulted in all cases involving rostered persons.

# C. Role of the Synod

The Synod's role is essentially twofold. First, the bishop is constitutionally responsible for providing pastoral care and leadership to the Synod's congregations and rostered persons. Reports of sexual misconduct invariably create an acute need for such care and leadership.

Second, rostered leaders who commit sexual misconduct may be disciplined, leading to possible removal from the roster of the ELCA. The bishop is primarily responsible for overseeing the preliminary or consultation stage of the disciplinary process and, typically, the bishop initiates the formal stage of the disciplinary process, if necessary. When the bishop provides pastoral care and leadership in the wake of sexual misconduct by a rostered leader, he or she is truly engaged in the Synod's ministry.

In every sexual misconduct case, the bishop and his or her staff will attempt to provide for the pastoral care of the victim of the misconduct, the victim's family, the rostered person accused of the misconduct, the accused's family, members of the rostered person's present or of former congregations, the rostered person's colleagues, and others. However, the bishop and the bishop's staff do not themselves function as a pastor, counselor, advocate, attorney, or other caregiver to any of these individuals. The ultimate responsibility of the bishop and his or her staff is to the Synod in its entirety, and not to any individual within the Synod. If a conflict arises between what is in the Synod's interests and what is in the interests of someone else, thebishop and the bishop's staff are obligated to act on the overall Synod's behalf. In unusual circumstances, the fact that the bishop and bishop's staff are responsible to the Synod may require that they act contrary to the wishes of the complainant.

Every report of sexual misconduct by a rostered person involves unique people and unique circumstances. This Statement of Policy merely describes the general approach that the Synod will follow in responding to reports of sexual misconduct by rostered leaders. It will not be appropriate or even possible for the Synod to follow this approach in every case. The Synodreserves the right to depart from this Statement of Policy at any time and for any reason.

The freedom of the Synod to decide for itself how God has called it to minister to those harmed by sexual misconduct is a precious one that is constitutionally protected from governmental interference. The same is true of the Synod's freedom to decide who will be on its roster, and of the freedom of each congregation to decide who will preach and teach from itspulpit and participate in other called leadership roles. Nothing in this Statement of Policy is intended to diminish these freedoms in any respect or to create any rights or responsibilities under civil law.

#### **II. SYNOD POLICY**

An ELCA Strategy for Responding to Sexual Abuse in the Church (November 1992) recommended that nine elements be included in any synodical policy regarding sexual misconduct by rostered leaders.

The Oregon Synod of the ELCA has decided to incorporate those nine elements as follows:

## A. Adequate Preparation

The Synod is committed to take action to prevent sexual misconduct by rostered leaders. The Synod will make its position on this issue clear in educational opportunities that it provides, in the way it responds to reports of sexual misconduct by its rostered leaders, in discussions that it has with seminarians and others who seek to join its rosters, and in its public and private statements on the subject.

First, the Synod will not tolerate sexual misconduct by rostered leaders. This means that the Synod will not ignore reports, will act upon substantiated allegations, and will properly disclose findings of sexual misconduct by rostered leaders. This is not to say that the Synod will treat every case in the same way. Sexual misconduct varies greatly by type, by degree, and by its effect on those involved. The Synod will attempt to respond appropriately toeach case while not tolerating any misbehavior discovered to exist.

Second, the Synod intends to provide or promote ongoing educational opportunities regarding sexual misconduct for rostered

persons, congregations, and others. Education willfocus on such subjects as prevention of sexual misconduct by rostered leaders and the impactof such misconduct on its victims. The Synod strongly urges its rostered leaders and its congregations to take advantage of these opportunities, as well as appropriate educational programs offered by others.

In addition, the bishop and the bishop's staff will continue to take advantage of educational opportunities that are available to them. The Synod recognizes that society generally and churches particularly have much to learn about sexual misconduct. As the Synod's understanding of this problem changes, this Statement of Policy and educational efforts may change as well.

The Synod's preventative efforts are intended to complement similar efforts that have been or will be made by the Synod's member congregations, by the churchwide organization, by ELCA seminaries, and by other entities affiliated with the ELCA.

### **B. Initial Contact**

Even the best preventative measures cannot completely eliminate sexual misconduct byrostered leaders. The Synod must always be prepared to respond to reports of misconduct. The more open the Synod is to receive such reports, the more often sexual misconduct byrostered leaders will be reported and hopefully prevented.

Anyone who knows or suspects that a pastor or other rostered person may have been involved in sexual misconduct should report that knowledge or suspicion to the bishop or an assistant to the bishop. As used in this Statement of Policy, the term "complainant" means a person who reports sexual misconduct to the Synod. This Statement of Policy assumes that the complainant is also the victim of alleged sexual misconduct, but that may not always be the case.

The names, addresses, and telephone numbers of the bishop and his or her assistants are attached to this Statement of Policy. If a

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complainant is uncomfortable about contacting abishop or an assistant to the bishop, then the complainant should contact one of the other people listed in the attachment. Those people-who may include men and women, clergy and laypersons, Lutherans and non-Lutherans-have agreed to be available to receive reports of sexual misconduct from complainants who are uncomfortable contacting the bishop directly.

However, it must be stressed that these people are acting on behalf of the Synod, and any information that they are given will be shared with the bishop (unless it is the bishop who isbeing accused of sexual misconduct, in which case the presiding bishop of the ELCA will be contacted.)

A contact may be made with the bishop or other authorized person by mail, by telephone, or in person. The complainant need not identify herself or himself when she or he first contacts the Synod. The complainant may ask questions anonymously about how the Synod would respond to a particular complaint of misconduct. However, the Synod can do littleabout a report of sexual misconduct until the complainant identifies herself or himself and the pastor or other rostered person involved in the misconduct.

The bishop or other person contacted by the complainant will (1) assure the complainant that the Synod does not tolerate sexual misconduct and takes seriously all reports of such misconduct; (2) explain the Synod's process for responding to reports of sexual misconduct and offer to provide a copy of this Statement of Policy; (3) answer the complainant's questions about the policies and procedures of the Synod; (4) express care and concern for the complainant; (5) when the complainant is anonymous, encourage the complainant to identify herself or himself and the pastor or other rostered person involved in the misconduct.

## C. First Response

After a report of sexual misconduct by a rostered leader has been received from an identified complainant, the bishop or bishop's designee will interview the complainant in personor, if that is not possible, by telephone. This interview may continue through a series of meetings, calls, and correspondence. The bishop or bishop's designee will ask the complainantto provide as much detailed information about the sexual misconduct as the complainant is comfortable sharing. The complainant will be asked to reduce the information to writing or to sign a written statement prepared by the Synod. The bishop or bishop's designee will also ask the complainant what she or he is seeking in coming forward and whether the complainant is prepared to participate in the disciplinary process, if necessary. The complainant should be given a copy of this Statement of Policy, if she or he has not already received it.

In all meetings with Synod personnel, the complainant may be accompanied by a friend, family member, support person, or advocate of her or his choice. The complainant may contactan advocate and may be accompanied by that advocate through the reporting, investigative, and, if necessary, disciplinary processes. Under no circumstances will any employee of the Synod function as the complainant's advocate; however, at the complainant's request,

the Synod will contact an advocate for her or him. The bishop or other person contacted by the complainant may also offer to provide the complainant with a list of advocates who are available to provide support and to help interpret the Synod's policies and procedures. This list may include advocates who are affiliated with the ELCA and advocates who are not. The complainant is welcome to use an advocate who does not appear on the Synod's list-such as a friend or family member-or to decline to use an advocate.

The bishop or bishop's designee will discuss with the complainant how she or he feelsabout the possibility that her or his identity may become known to the accused or others. Insofar as possible, the Synod will respect the wishes of the complainant regarding confidentiality. However, at some point, the Synod may be required by civil law or by the governing documents of the ELCA to disclose the identity of the complainant. Also, the identity of the complainant may be revealed by others or become known despite the best efforts of the Synod to protect it. The synod cannot guarantee confidentiality to a complainant.

The bishop or bishop's designee will discuss with the complainant her or his needs for pastoral care and may suggest professional counseling. If the complainant requests, the bishop or bishop's designee will help to put the complainant in touch with persons who can provide pastoral care or professional counseling. No employee of the Synod can function as the complainant's pastor, therapist, or counselor.

The bishop or bishop's designee will appoint a contact person within the Synod. That contact person (who may be the bishop or bishop's designee) will keep in regular contact withthe complainant and will inform the complainant of significant developments. That contact person will also be available to respond to the complainant's questions and concerns about heprocess.

If the bishop or bishop's designee learns that a child or vulnerable adult, as legally defined, may have been neglected or physically or sexually abused, the bishop or bishop's designee will be legally required by Oregon State Law to report that information to law enforcement authorities. The bishop or designee will also urge and assist the complainant tofile a report with the authorities. If possible, the complainant will be notified before such a report is made by the Synod.

## D. Initial Investigation of the Complaint

After interviewing the complainant, the bishop or bishop's designee will carefully review the information provided by the complainant. If the report appears credible and involves sexual misconduct for which the perpetrator might be disciplined, the bishop or bishop's designee may conduct a preliminary investigation to determine whether information either supporting or contradicting the report exists. This preliminary investigation may include (1) further discussion with the complainant; 2) a review of the records of the Synod, another ELCA synod, the ELCA, or an entity affiliated with the ELCA; or (3) interviews of former bishops of the rostered leader, those who served as assistants to former bishops of the rostered leader, those who succeeded the rostered leader at the congregation served, pastors or other rostered leaders who served on he same staff with the rostered leader, pastors or other rostered leaders who presently serve on the same staff with the rostered leader, respected members of congregations served by the rostered leader, members of the congregation currently being served; or (4) persons identified by the complainant, or friends, family members, rostered leaders, or counselors of the complainant.

This preliminary investigation will be conducted as quickly and as discreetly as is possible under the circumstances. All of those contacted will be asked to keep the contact instrictest confidence. If the Synod or a discipline hearing committee later determines that the rostered leader did not commit sexual misconduct, that conclusion

will be communicated to those who were contacted by the Synod in the course of its preliminary investigation.

If a criminal investigation, or other investigation by law enforcement authorities, is underway, then the Synod may need to postpone its own investigation pending the outcome of the government's inquiry or prosecution. However, a final determination in a related civil or criminal legal proceeding does not necessarily dictate the necessity for, or the outcome of, the church's disciplinary process.

#### E. Conversation with the Rostered Person

The bishop will usually meet with the accused pastor or rostered leader after the preliminary investigation is concluded. The bishop should be accompanied by the bishop's designee or another person. In some cases (such as when the rostered leader is aware of the complainant's report or when the rostered leader may pose an immediate danger to members of the agency or congregation) the bishop or bishop's designee may meet with the rostered leader immediately after or perhaps even before meeting with the complainant. If the bishop meets alone with the rostered leader, the bishop will clarify that the meeting is not confidential and that the bishop may disclose anything that he or she is told.

At their meeting, the bishop will provide the rostered leader with information regarding the complaint and ask the accused to respond. The bishop may ask the rostered leader to reduce his or her response to writing. The bishop will also (1) assure the rostered leader that, while the Synod does not tolerate sexual misconduct, the Synod will give any person who denies an allegation of sexual misconduct a full and fair opportunity to contest it; (2) explain the Synod's process for responding to reports of sexual misconduct and provide a copy of this Statement of Policy; (3) answer the rostered leader's questions about the policies and procedures of the Synod; (4) express care and concern for the rostered leader, the rostered

leader's family, and the affected congregation; (5) strongly discourage the rostered leader from having any contact with the complainant, either directly or indirectly; and (6) invite the rostered leader to contact an advocate and to be accompanied by that advocate through the investigative, and, if necessary, disciplinary processes. If the rostered leader requests, the Synod will assist the rostered leader in finding an advocate. The rostered leader may decline touse an advocate.

In appropriate cases, the bishop may ask the rostered leader to resign his or her call orto resign from the roster of the ELCA. The bishop cannot force the rostered leader to submit are signation. In most cases, only a discipline hearing committee can remove a rostered leader from a roster involuntarily.

Depending upon the circumstances, the bishop may ask the rostered leader voluntarily to agree to certain restrictions upon his or her ministry until the investigation and/or disciplinary proceedings are concluded. If the rostered leader refuses, the bishop may ask the congregation council to impose restrictions. The bishop may also ask the rostered leader to take a leave of absence-either with or without pay-until the investigation and/or disciplinary proceedings are concluded. Again, if the rostered leader refuses, the bishop may ask the congregation to place the person on an involuntary leave of absence. In extreme circumstances, the bishop may consider temporarily suspending the rostered leader without prejudice.

The bishop or bishop's designee will discuss with the rostered leader his or her needs for pastoral care or professional counseling, as well as the care of the rostered leader's family. If the rostered leader requests, the bishop or bishop's designee will help to put the rostered leader in touch with persons who can provide such care or counseling. Under no circumstanceswill any employee of the Synod function as advocate, pastor, or counselor to the rostered leader or the rostered leader's family.

The bishop or bishop's designee will appoint a contact person within the Synod. That contact person (who may be the bishop or bishop's designee) will keep in regular contact withthe rostered leader and will inform that person of significant developments. That contact person will also be available to respond to the rostered leader's questions and concerns about the process.

## F. Assess the Information

After meeting with the rostered leader, the bishop will carefully review the information provided by the complainant, discovered during the preliminary investigation, and provided by the rostered leader. The bishop also may consult with staff or other advisors. The bishop will then decide upon a course of action, keeping in mind that changed circumstances may require changes in direction as the matter progresses. Among options available to the bishop are the following: taking no further action at this time; pursuing further investigation; requesting the rostered leader to undergo a psycho-diagnostic evaluation; seeking a resolution by consulting directly with the parties; requesting the rostered leader's congregation to take some action; convening a consultation or advisory panel; or initiating the formal disciplinary process. These latter two options are discussed further below. Depending upon the circumstances, additional options may be considered as well, including inviting the rostered leader to resign from the call, from the roster, or both.

# G. Consultation or Advisory Panel

Reports of sexual misconduct always present a bishop with difficult decisions. To assisthim or her in making these decisions, he or she may, at his or her discretion, appoint a consultation or advisory panel. The function of a consultation or advisory panel is described at length in Bylaw 20.21.04 to 20.21.06 of the ELCA Constitution and Bylaws. Further detail appears in Section "D" of Rules Governing Disciplinary Proceedings Against an Ordained Minister, a Rostered Layperson, or a Congregation of the Evangelical Lutheran Church 10/14/2021 13

in America. Both of these documents are available from the Synod.

Essentially, a consultation or advisory panel is a small group of clergy and laypersons who are asked to recommend a course of action to the bishop. Before making that recommendation, the panel may do its own investigation, including interviewing the complainant, the rostered person, the bishop, the bishop's designee, and others. If possible, the panel will seek to resolve the controversy through recommendations that are pastoral and therapeutic and that will eliminate the need for disciplinary proceedings, if they are accepted by all concerned. If such a resolution-does not appear possible, the panel will advise the bishop whether it believes that the disciplinary process should be initiated.

Whether to employ the advisory or consultation process is always discretionary with the bishop. Use of such panels may be beneficial in a variety of circumstances. For example, a bishop may be confronted with "one person's word against another's"-that is, a situation in which both the complainant's report and the rostered person's denial of the report appear credible, and there is no corroborating evidence supporting either version. Numerous other reasons may also cause the bishop to call for a consultation or advisory panel, or the bishop may decide to utilize such panels routinely.

## H. Formal Hearing

Disciplinary proceedings are the process by which the ELCA determines if a rostered leader is guilty of the charges and, if so, what the penalty should be. The process is governed by Chapter 20 of the Constitutions, Bylaws, and Continuing Resolutions of the Evangelical Lutheran Church in America and by the Rules Governing Disciplinary *Proceedings.* A pastor may be disciplined for committing "conduct incompatible with the character of the ministerial office," which, according to Definitions and Guidelines for Discipline of Ordained Ministers includes "[a]dultery, promiscuity, the sexual abuse of

10/14/2021 14 another, or the misuse of counseling relationships for sexual favors." *Definitions and Guidelines* is available from the Synod.

To summarize briefly the disciplinary process, generally the bishop, as "accuser," will initiate the proceedings against a rostered leader, as the "accused," by filing written charges setting forth the offense that the rostered leader is accused of committing, detailing the facts supporting the charge, and describing any other circumstances concerning the alleged misconduct. A committee of twelve persons-six from a panel elected by the Synod and six from a panel elected by the Churchwide Assembly-are convened to hold a hearing on the charges. The hearing resembles a court trial, at which an appointed hearing officer presides. The bishop presents testimony and other evidence in support of the charges, and then the rostered leader presents testimony and other evidence in opposition to the changes. The governing documents of the ELCA provide for certain rights for the accuser, the accused, and the witnesses. Typically, a bishop will not initiate formal disciplinary proceedings unless the complainant agrees to be a witness against the rostered leader, but that is not always the case.

The hearing described in the preceding paragraph is the usual process for hearing the written charges. There is an alternative process described in ELCA Bylaws 20.23.01 through 20.23.09, that is invoked when the written charges specify that the accuser will not seek removal or suspension for a period exceeding three months. In such cases, the proceedings are conducted before a hearing committee of six members with less formality and without all ofthe procedural requirements of the full hearing process.

Under either process, the discipline hearing committee decides whether the charges are true and, if so, what discipline should be imposed. The options available (except under the alternative process described in the preceding paragraph) are private censure and admonition, suspension from the roster of the ELCA for a designated

period of time-or until the rostered leader complies with specified conditions, or removal from the roster. The discipline hearing committee's decision is generally made about four months after charges are filed. There is a process for appeals to the churchwide Committee on Appeals.

#### I. Disclosure

Except in unusual circumstances, the Synod will disclose all serious allegations of sexualmisconduct by rostered leaders. Experience has demonstrated that disclosure speeds the healing of the primary and secondary victims of the misconduct, empowers unknown victims to come forward and seek help, protects others from being victimized by the same rostered leader, starts the congregation or agency on the path to new health, and demonstrates the commitment of the ELCA to deal openly and honestly with the problem.

Decisions regarding who will make what disclosure to whom and when will vary from case to case. In general, though, the Synod will abide by the following guidelines:

- 1. Typically, disclosure of sexual misconduct by rostered leaders will be made to the leadership of the congregation, to the members of the present congregation, to synods where the rostered leader was previously rostered, and to other rostered colleagues within the Conference or the entire Synod. In some situations, wider disclosure to previous congregations, to the entire synod, or even to the news media may be made as well.
- 2. In most cases, disclosure will be made when (1) the rostered leader admits to committing sexual misconduct; (2) the rostered leader resigns his or her call or from the rosterof the ELCA after being accused of sexual misconduct; (3) the rostered leader is placed on leave of absence or temporarily suspended in response to an allegation of sexual misconduct; (4) the rostered leader is

suspended or removed from the roster as a result of formal disciplinary proceedings; or (5) secular legal proceedings (civil or criminal) are initiated against the rostered leader. Other events may give rise to the need for disclosure as well.

- 3. The Synod intends to work closely with the congregational leaders regarding appropriate disclosure to members of the congregation. The victim's concerns regarding disclosure will be considered as well. The actual announcement to a congregation will be madeby one or more of the leaders, or by the bishop, and usually to the adult members only.
- 4. To protect the privacy of those harmed by the misconduct, only the following will be disclosed: (1) the fact that the rostered leader has been accused of, admitted to, or been found guilty of committing sexual misconduct or has resigned; (2) the gender of the complainant; (3) whether the complainant was an adult or a minor at the time of the misconduct; and sometimes (4) whether the complainant was a member of the rostered leader's congregation or a person to whom the rostered leader was providing pastoral care. Disclosure should never include thename of the complainant or facts from which she or he could readily be identified. If the rostered leader has denied the allegations, that fact will also be disclosed.
- 5. Persons who believe that they have been harmed (directly or indirectly) by the rostered leader will be invited to contact the leaders of the congregation or agency, the Synod, or others who have agreed to be available to those persons.

# J. Follow-up

The Synod will work with congregations and others to help ensure that care and supportare available to those harmed by sexual misconduct by a rostered leader. As noted above, Synod personnel cannot provide this individual care themselves, but they will assist the primary and secondary victims of sexual misconduct to find resource

persons and materials that might help them on their journey to healing. The Synod will assist the congregation in dealing with the pain and disruption caused by the rostered leader's misconduct and will help the congregation continue in its mission and ministry for the sake of the Gospel.

## **Contact Information for Synod Bishop's Office Staff**

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