

CLERGY SEXUAL MISCONDUCT

Search committees and personnel committees should carefully consider their practices regarding the calling of staff persons. This study can enable them to determine whether they are at risk in "hiring practices."

Negligent hiring occurs when employers fail to **exercise reasonable care** in hiring employees. The term "reasonable care" in hiring practices most definitely includes **written applications, thorough interviews and reference checks**. Any search committee, whether involved in seeking a pastor or a staff person, should always secure a written application (Illustration D) and an appropriate release (Illustration E) and do a very detailed interview and a complete reference check (Illustration F). These documents must be protected for confidentiality and permanently retained.

If a church knows that a pastor or staff person has previously engaged in any kind of sexual misconduct, the church **should seriously consider its potential liability** should the person again engage in sexual misconduct.

If, after a thorough investigation, the church is convinced that the minister has received adequate counseling and is unlikely to repeat the conduct, the church should **still avoid** putting the minister in situations which might lead to the temptation or perception of sexual misconduct.

In the event that the denomination (state convention or association) or a previous church **knows of sexual misconduct** and has **withheld such information**, it **may be held liable** in the event of a repeat offense. Churches should be aware of the potential for negligent hiring claims when they fail to **exercise reasonable care** in calling a minister or staff person.

Churches have been sued as a result of the sexual misconduct of one or more of its staff or members. The number of lawsuits involving molestation, sexual abuse and sexual harassment against churches is alarming. It is very difficult to "prove innocence" since it is "one's word against another." The church can significantly reduce the risk of such incidents — and of false allegations — in a number of ways. The following procedures are recommended for handling **individual** ministerial assistance or "counseling" sessions:

- Sessions in the church office should be conducted **only during regular** office hours. (Sessions off the premises should be avoided when possible.)
- A **third party** should be available outside the session at all times.
- Some authorities suggest the **presence of a third party** during the session or at least **visible** through a glass partition.
- Limit total number of sessions to **no more than four per person**; and no longer than **45 minutes per session**.
- Consider using the **telephone** for sessions.
- Prepare the **furnishings** in the session room in such a manner as to maintain proper distance and separation of the parties involved.
- **Avoid the use of couches** in the session room.
- Allow the person being assisted to have **direct access to the exit door** without any obstruction.

See section entitled, "CLERGY MALPRACTICE," for additional information on "counseling."

Church leadership should be aware of and take precautions to prevent sexual harassment litigation. There are two primary forms of sexual harassment:

- **Quid Pro Quo** (Tangible Job Benefits)

Refers to unwelcome verbal or physical sexual advances, and/or requests for sexual favors when submission to such conduct is made a term or condition of an individual's employment either explicitly or implicitly.

- **Hostile environment**

Refers to conduct having the purpose or effect of unreasonable interference with an individual's work performance, or creating an intimidating, hostile or offensive work environment.

Ministers should be **cautioned** against inappropriate touching, terms of endearment, demeaning comments, advances, taking advantage of power positions, etc.

In either situation the church leadership has the responsibility of taking immediate and appropriate action if there is knowledge of the situation, and the church still may have liability if there **should have been knowledge** of the situation.

In addition, the church may be responsible for acts of nonemployees without immediate and appropriate corrective action. The **key point** is to take each allegation seriously and investigate thoroughly.