

PERSONNEL

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PERSONNEL

For who is greater, the one who is at the table or the one who serves? Is it not the one at the table? But I am among you as one who serves.

Luke 22:27

As he walked by the Sea of Galilee, he saw two brothers, Simon, who is called Peter, and Andrew his brother, casting a net into the sea-for they were fishermen. And he said to them, "Follow me, and I will make you fish for people." Immediately they left their nets and followed him. As he went from there, he saw two other brothers, James son of Zebedee and his brother John, in the boat with their father Zebedee, mending their nets, and he called them. Immediately they left the boat and their father, and followed him.

Matthew 4:18-22

Background

The area of employment law has become increasingly important in recent years, as challenges to personnel decisions, more government regulation, and overall fears about liability exposure have expanded the awareness of employers that they need to be careful when making decisions involving hiring, supervision and termination of personnel. Church organizations are not totally immune from this flurry of activity in the employment arena. While many government regulations exempt religious organizations (*i.e.*, much of the federal Americans With Disabilities Act does not apply to churches; most state unemployment compensation statutes exempt churches; and Title VII does not cover clergy), there are other government regulations that do not exempt religious organizations (for example, many state worker's compensation laws do not exempt churches; some state disabilities and discrimination laws do not exempt churches; etc.).

Increasingly, disgruntled employees and former employees of religious organizations - as well as disgruntled clergy - are filing lawsuits in an effort to have the courts address their often bitter feelings toward their employer, church or denomination. **The courts especially try to avoid dealing with disputes between persons serving in ministerial positions and churches, because it is impossible to address these lawsuits without becoming entangled in the church's polity and ecclesiastical affairs. Part of the protection of the First Amendment of the U.S. Constitution and many state constitutions is to prevent the courts from meddling in a church's internal polity.** The courts are generally very respectful of that important protection and will not deal with clergy claims and lawsuits.

Nonetheless, many local churches, annual conferences, and other church entities are becoming increasingly interested in developing personnel policies that give guidance about how to handle particular types of common personnel problems. The Church's Social Principles provide an overall basis for fair and just treatment of employees. In addition, many annual conferences have developed and continue to refine policies for addressing sexual abuse, misconduct and harassment. Local churches were required by the 1996 and 2000 General Conferences to develop such policies as well. Sample policies are included in this section to assist local churches and annual conferences in policy development.

The Church's disciplinary process for clergy is addressed in the publication, "Administrative and Judicial Procedure Handbook," available on the GCFA website at www.gcfa.org/ls_AdminJudProcHandbook.html

Advantages and Disadvantage of Personnel Policies

There are several important advantages to having personnel policies on certain key issues:

- **Strong statement of acceptable and unacceptable conduct:** Policies send a strong message to staff and others about conduct that is acceptable and unacceptable in a work setting; the existence of a policy makes it more difficult for a staff person to say that s/he did not understand this type of behavior would not be condoned (examples: policy on the use of alcohol during work hours or while traveling on church business; policy on reimbursement or non-reimbursement of certain business expenses; policy on use of the internet and e-mail; policy on sexual abuse and harassment).
- **Uniform statement of information:** Written policies provide a uniform method of providing staff with information that they need to know about such things as benefits (health insurance, pension, etc.), continuing education, vacation, and the like - and ensuring that the same information is given to all employees (example: if the vacation policy is that all staff receive two weeks of vacation, it is important that all staff know this).
- **Consistency:** Policies can help ensure that certain situations are handled in a consistent manner (examples: holidays; work schedule; reimbursement of business expenses) - and that all staff are treated equally.

- **Protection from liability exposure:** Policies can help protect a church or church organization from liability exposure by preventing misunderstandings and misconduct.

There is one major disadvantage to personnel policies:

- If an organization adopts a policy and then does not follow it - or follows it only with respect to certain staff - there is an increased risk of liability exposure to the organization.

Common Personnel Policies

Each local church, annual conference or other church entity, in close consultation with legal counsel, needs to decide for itself whether to adopt personnel policies, who should be covered by each policy (lay/clergy; full/part-time staff), and which types of policies should be included in a set of policies. Subjects that are commonly included in personnel policies are the following:

- **Hiring policies** (recruitment; job posting; immigration; references; hiring of relatives; promotions; statement of “at-will” employment; etc.)
- **Salary administration** (pay periods; overtime; time card procedures; wage assignments; performance reviews; etc.)
- **Operations** (work schedule; etc.)
- **Benefits** (health insurance; disability; life insurance; pension; bereavement leave; worker’s compensation; social security; unemployment compensation, if applicable; vacation; holidays; maternity and paternity leave; sick leave; jury duty; personal days; policy on HIV/AIDS; attendance records; leave of absence; family and medical leave; continuing education; etc.)
- **Accountable reimbursement policy** (information appears in Tax section)
- **Retirement issues**
- **Termination and resignation issues**
- **Conduct issues** (race and gender issues; sexual abuse, misconduct and harassment; violence; code of ethics; internet/e-mail use; confidentiality; etc.)

Personnel Records

Local churches, annual conference and other church entities should work with their attorneys to have a clear understanding about the importance of keeping good personnel records - and what to keep and what not to keep in those records. For example, if a local church lay staff person is tardy in arriving to work 3 out of 5 days each week, week after week, month after month, and the local church has warned the staff person several times that repeated tardiness will not be tolerated, the tardiness - and the warnings to the staff person - should be documented in the person's personnel file. If the situation becomes intolerable and the local church decides to terminate the person, then the documentation in the file will serve as an important record of **what** transpired, **when** it transpired, and **how** it was handled. If the terminated staff person tries to challenge the decision, the detailed records will provide an important defense for the local church in support of its decision.

The *Discipline* directs GCFA and the General Board of Higher Education & Ministry to provide to the annual conferences guidelines for keeping clergy personnel records and guidelines for keeping clergy supervisory records. Both sets of guidelines are found at the end of this section.

1. Access to Personnel Records and Confidentiality

There are state and federal laws that provide access to or protect confidentiality of certain personnel records. Annual conferences and local churches should review these legal requirements with legal counsel. Medical information is particularly sensitive. It should be gathered only when there is a legitimate business reason to do so and then gathered, retained and disclosed in strict compliance with applicable state and federal laws. A written consent to release medical information, signed and dated by the employee specifying the information to be released, must be obtained by the employer before any release of medical information. Any medical information should be kept in a separate file, not the employee's personnel file and access should be strictly limited only to those with the clear need to know. A sample confidentiality of employee records policy is included in the sample policies found later in this section.

2. Record Retention

The types of personnel records that must be retained by federal law include but are not limited to:

RECORD TYPE

Payroll records

Personnel records used in hiring, termination and promotion

Records relevant to legal action
or discrimination complaint

Time sheets

Family Medical Leave Act records

Immigration Reform and Control Act records

An employer should consider three separate types of files on an employee in its human resources office: 1) the official personnel file; 2) confidential file (interview evaluation, reference checks, EEO/affirmative action data, credit checks, and information regarding legal actions or internal complaints); and 3) medical information. If a medical information file is maintained the employer should ensure this is a separate and confidential file.

An additional note is in order about medical information. The privacy of medical information has become a major public policy issue in the United States. Congress recognized the need for national patient record privacy when they enacted the Health Insurance Portability and Accountability Act of 1996 (HIPAA). New regulations go into effect in 2003. They are intended to protect medical records and other personal health information maintained by health care providers, hospitals, health plans and health insurers, and health care clearinghouses. The effect and application of HIPAA is addressed in a memo found at the end of this chapter.

3. Subpoena of Personnel Records

Secular courts have the power to issue a subpoena which is a written request to view documents of the church/employer. Upon receipt of a subpoena, the employer should consult with legal counsel to determine whether this disclosure is permitted under state law and how to proceed. If there is no law on point, the employee whose records are being “subpoenaed” should still be notified. If the employee objects, the employee’s own attorney may act to quash or modify the subpoena. At the same time, the employer should let the attorney who issued the subpoena know of the employee’s objection. In any event, the employer should contact the issuing attorney to determine the issues in the matter that require the subpoenaed documents.

Federal Laws Coverage

Many federal laws regulate employers' actions. The theory of federal government control is typically under the Interstate Commerce Clause in which the federal government may assert jurisdiction into states and over organizations involved in interstate commerce. Typically, most organizations having a certain number of employees can be assumed to be in “interstate commerce,” and therefore many federal laws set a certain number of employees as the threshold on which coverage by the federal law applies. The following is a short summary of key federal laws affecting employers who have the required number of employees:

- **Civil Rights Act of 1964 (Title VII) as amended:** banned discrimination based on race, gender, national origin, and religion in employment; applies to organizations of 15 or more employees. There is a limited exception for religious organizations to enable them to restrict job positions to those of their own religious faith. In the leading case on the matter, the Supreme Court has given religious organizations very broad powers to proscribe religious qualifications for their employees. Most states and large cities have similar civil rights laws and many of those laws have a lower threshold for the number of employees.
- **Age Discrimination Employment Act of 1967 (ADEA):** prohibits discrimination against employees age 40 or older with limited exceptions (if age is a bona fide occupational qualification, mandatory retirement of age 70 for tenured faculty at institutions of higher education etc.). The Older Worker Benefit Protection Act of 1990 prohibits age discrimination in the provision of benefits. Applies to organizations of 20 or more employees. This law is enforced by the EEOC. Most states and large cities have parallel laws.

The First Amendment to the U.S. Constitution protects a church's right to set a mandatory retirement age for ministerial staff.

- **Occupational Safety and Health Act of 1970 (OSHA):** a regulatory system designed to aid worker safety; current threshold for required reporting, 11 employees or more. States and municipalities may also have laws covering fewer employees. Exempts religious activities.

- **Americans with Disabilities Act of 1990 (AwDA):** broad piece of legislation, covering both treatment of employees as well as architectural requirements for buildings; employment provisions apply to organizations of 15 or more employees. This act requires employers to make reasonable accommodation for employees with disabling conditions, including accessibility, training, and job structure, absent a showing of “undue hardship” and expense. If significant risks to health and safety of others that cannot be eliminated by reasonable accommodation would arise from the employment of a disabled person, the AwDA does not require hiring of that person. The protection afforded by the AwDA applies to qualified individuals with a disability. This law is enforced by the EEOC.

The AwDA includes a ministerial exception that exempts ministerial staff from its coverage. The Act also contains provisions permitting churches to discriminate in hiring based on religion. There is also an exemption for churches relieving them of the requirement to comply with provisions related to building accessibility to public accommodations by the disabled, but this does not relieve a church organization of the responsibility to make a reasonable accommodation for a disabled employee (if covered by the AwDA or similar state or local laws).

- **Fair Labor Standards Act:** overtime pay of time and one-half to non-exempt (non-managerial) employees working over 40 hours a week; also regulates child labor providing that anyone age 18 or older may work, but employees who are younger are subject to restrictions related to hazardous work and work hours, and provides for a minimum wage. There is a limited exception for religious camps operating no more than seven months a year. The Department of Labor may view any entity with employees as covered by the Act, including churches. The operation of a day care facility, pre-school or school will subject a church to coverage by the Act. Further, the requirements of the Act cannot be avoided by classifying a worker as an independent contractor to avoid paying him overtime. Clergy are professional employees and are exempt from the overtime pay requirement but most other church employees are covered. Changes to FLSA in 2004 brought many formerly exempt church employees under the law, if the employee earned less than \$455 per week, including part time employees. This law is enforced by the Department of Labor’s Wage and Hour Division. Many states also have wage and hour laws.

- **Equal Pay Act:** The Fair Labor Standards Act was amended by the Equal Pay Act to require equal pay for equal work, regardless of the employee's sex.
- **Family Medical Leave Act of 1993:** Eligible employees may take up to 12 weeks of unpaid, job-protected leave with continued benefits during a 12-month period for the birth of a child, care of a newborn, placement for adoption, or foster care, to care for a spouse, son, daughter or parent with a serious health condition, or the employee's own serious health condition. To be eligible the employee must have worked for the employer at least 12 months and at least 1250 hours during the immediately preceding 12 months, at a work site where 50 or more employees are employed within 75 miles of the work site. There is specific exception for churches, but if a church employs less than 50 employees it is not covered by the law. The employer's obligation is triggered by the employee's prior notice to the employer of the need to take leave under the Act or upon the employer's learning that the leave is for purposes covered by the Act. The employer should require medical certification from the affected person's physician. "Serious health condition" covers inpatient care and continuing treatment by a health care provider. This law is enforced by the U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division. Many states have family medical leave statutes. Due to the complexity of this law, it is a good idea to work with an attorney who specialized in employment law to ensure compliance.
- **Unemployment:** United Methodist entities are exempt under the terms of the Group Ruling Exemption from Federal Unemployment Tax (FUTA). However, state laws vary, and some states may have unemployment coverage for United Methodist entities.
- **Workers' Compensation:** This is a matter of state law. There is no per se exemption for churches, and coverage depends upon the specific state law. It is important to consider who is considered a covered employee for state law purposes.
- **National Child Care Protection Act of 1993:** This Act allows (does not require) states to require that certain child care providers make mandatory background checks on child care workers (both employees and volunteers). States will have the right to designate certain organizations, such as day care centers, nurseries, schools, and possibly Sunday schools, as child care providers. Church organizations should become aware of their state's requirements regarding the designation of child care providers. The National Child Care Protection Act was amended in 1999 by the Volunteers for Children Act to enable (not require) child care providers designated by state law as qualified entities to

contact an authorized agency of the state to request nationwide criminal fingerprint background checks. To find out if churches are designated as qualified entities in your state, contact a local attorney. There are advantages and disadvantages to any screening process; select a screening process that best suits the needs of your organization.

- **Pregnancy Discrimination Act:** This Act prohibits discrimination against a female employee because she is pregnant. If she is able to work, she must be permitted to work under the same conditions as other employees. If she becomes unable to work for medical reasons, she must receive the same rights to benefits and leave as other workers who become unable to work.
- **Employee Polygraph Protection Act:** This Act applies to churches engaged in interstate commerce and prohibits requiring or suggesting employee or job applicants submit to polygraph tests. Consult with your attorney to determine whether your church is engaged in interstate commerce and covered by the Act.
- **Uniformed Services Employment and Re-employment Rights Act of 1994:** Generally, this law provides that an employee who leaves to train or serve in the uniformed services must be re-employed upon return and has a right to certain benefits during absence and upon return, provided the employee's service does not exceed five years and the employee did not receive a dishonorable discharge. There is no exemption for churches or small employers. The employer is not required to re-employ under specified limited circumstances set forth in the Act. This law is enforced by the U.S. Secretary of Labor and may be referred to the U.S. Attorney General for further action. Application to clergy serving as chaplains can be found at GBHEM's website at www.gbhem.org/resourcelibrary/UMEA_Guide_Bishops.pdf.

Posting Requirements

The following is a list of the federal laws that require covered employers to post notices for employees. First, determine whether or not your organization a "covered employer." Many of these laws may be inapplicable because your organization does not meet the minimum number of employees or does not engage in interstate commerce. Second, the Free Exercise clause of the First Amendment exempts ministerial positions and, in some cases, other core religious employees from some of these laws. These notices need to be posted if you are a "covered employer."

- The Fair Labor Standards Act (minimum wage and overtime)
- Equal Employment Opportunity
- Occupational Safety and Health Act (OSHA) (note: probably not applicable to local churches)
- Employee Polygraph Protection Act
- Family Medical Leave Act (FMLA)

Posters for all of the above, except Equal Employment Opportunity, can be obtained at no charge from your local office of the U.S. Department of Labor. For a free poster covering Equal Employment Opportunity, contact your local office of the Equal Employment Opportunity Commission. Most states have posting requirements in addition to those required by federal laws. Many vendors sell employment posters that incorporate federal and state requirements.

Avoiding Problems in Hiring and Firing Employees

1. Interviewing Lay Persons

In formulating questions for interviewing lay persons, the two most important guidelines are to ensure that each question be related to the job for which the applicant is applying and that the same questions be asked of each applicant for the position (job relatedness and consistency). Questions should not be formulated to draw out race, marital status, age, sex, national origin, citizenship or disability. Because a religious organization may discriminate based on religion, a church organization may require that employee be United Methodist or may indicate that applicants who are United Methodist will be given preference. Consistency is a key here, to be sure all applicants and employees are treated the same.

Examples of prohibited questions:

- 1) What year did you graduate from high school? (Can learn of age)
- 2) Please enclose a photograph with your resume. (Can learn of race, national origin, sex or age)
- 3) Are you married? What is your maiden name? (Illegal inquiry about marital status)
- 4) What is your native language? Are you a U.S. citizen? Where were you born? (National origin discrimination)
- 5) Are you disabled? What is the nature or severity of your disability? What caused your disability? (Disability discrimination)
- 6) How old are you? What is your date of birth? (Age discrimination)
- 7) Do you plan to have children? Do you have children? What are you childcare arrangements? (Sex discrimination)
- 8) Are you pregnant? (Pregnancy discrimination)
- 9) Do you have a drug or alcohol problem? (Disability discrimination)

Examples of permitted inquiries (job related)

- 1) Have you ever been fired or otherwise had your employment involuntarily terminated?
- 2) There is a gap in the time frames shown on your resume. Tell me about that.
- 3) If hired, can you prove you are at least 18 years of ages?
- 4) Can you show proof of eligibility to work in the United States?
- 5) Are you able to perform essential functions of this job with or without accommodation?
- 6) Would you be willing to travel?
- 7) What would your last boss tell a new potential employee about you?
- 8) What skills do you think you bring to this job?
- 9) How much do you know about our organization?
- 10) Who and what has motivated you in the past?
- 11) Why did you leave your last position?
- 12) When were you last responsible for doing this kind of work?
- 13) How were you able to demonstrate teamwork in your last position?
- 14) What do you consider your greatest work accomplishment?
- 15) What goals did you set for yourself during your last position?
- 16) What does service mean to you?
- 17) How might your skills be improved?
- 18) Where do you see yourself a year from now? In three years? Five years? Ten years?
- 19) Tell me about the last time you broke the rules to serve a client/customer in need. (*Flexibility, judgment*)
- 20) Tell me how you have used humor to diffuse a tense situation. (*Tact*)
- 21) Give me an example of a time you went above and beyond the call of duty to assist a co-worker when you received no recognition or credit. (*Unselfishness, teamwork*)
- 22) Give me an example of how you worked with an extremely difficult co-worker. How did you handle it? (*Adaptability*)
- 23) Describe a time when a co-worker failed to pull his or her weight. What did you do? (*Adaptability*)
- 24) Tell me about the most difficult customer you've ever dealt with. How did you handle it? (*Service focus*)
- 25) What's the most important thing you've learned in the last six months? What new skills, knowledge or experience have you gained? (*Willingness and ability to learn*)
- 26) Tell me about the last time you tried something new or took on additional responsibility when there was no guarantee for success. (*Willingness to take risks*)
- 27) Tell me about the last time you asked someone for feedback. What did you do with that information? (*Willingness to learn/listen*)
- 28) Tell me about the last time you had to work with others to accomplish a critical result. What did you do? (*Teamwork*)

If you need to compile applicant tracking information for affirmative action purposes, for example, do not ask for this information on the employment application unless it is on a perforated portion at the bottom which will be separated from the application and not available to the decision maker.

At the end of this section is a sample Employee Hire Checklist that may be useful to help remember the details of the needed follow through for hiring new staff.

2. Ministerial Positions

In the civil law arena, the protections of the First Amendment to the Constitution of the United States give much greater flexibility in posing questions to a person being considered for a ministerial position. The *Discipline* discourages discrimination on the bases of race, ethnic origin, sex, marital status, age or disabilities. Interview questions must comply with the *Discipline*.

3. Background Checks in General

Employers are finding themselves in lawsuits over their hiring and firing practices. Failing to properly investigate a prospective employee's background could result in legal liability for negligent hiring or negligent retention if that employee later seriously harms someone (if the background check would have revealed prior "misconduct" or a propensity to commit such wrongdoing). A criminal background check is especially important for employees who will be working with children, counseling, or operating church vehicles. Criminal background and credit history checks can be important for finance staff. Investigation of the applicant's background should involve contacting personal and employment references as well as conducting a criminal records investigations. A few guidelines to follow in conducting background checks are: a) inform the applicant and obtain a written release from the applicant; and b) do not ask references questions that are legally impermissible to ask the applicant (see examples above). The release from the applicant for reference checks can be included on the employment application. Sample language could read:

“ I hereby authorize _____ to verify and obtain any information from any reference schools, residential management agents, former and current employers, religious bodies, criminal justice agencies, courts, business, individuals and other resources relating to my activities. This information may include, but it is not limited to, academic, residential, achievement, performance, attendance, personal history, disciplinary, criminal conviction records and any judicial or ecclesiastical proceedings involving me. I hereby direct and authorize you to release such information upon request to the bearer. I hereby release _____ and any individual or group, including records custodian, from any and all liability for damages of whatever kind or nature which may at any time result to me on account of compliance or any attempts to comply, with this authorization.”

A sample Notice and Authorization form, including a request for a credit check and disclosure is included at the end of this section.

If the information obtained in a reference check is inappropriately used or disclosed, the employer could later be found to be liable to the employee or prospective employee for defamation or violation of privacy. Church organizations should develop reference checking procedures in consultation with their legal counsel.

Background checks are regulated by the federal Fair Credit Reporting Act. FCRA prohibits checks except with the applicant’s written permission, and require specific notice be given to an applicant if adverse action is taken.

4. Background Checks for Ministerial Positions

Neither the *Discipline* nor *The Book of Resolutions* addresses the subject of background checks for United Methodist clergy or other persons in ministerial positions in the Church. That said, more and more annual conferences are conducting criminal and other background checks on candidates and clergy, and more and more local churches and other church organizations are conducting background checks, especially for any person who works with children or youth. Background checks do not solve all problems, nor should they be viewed as a standard of care or requirement for all church settings or situations.

¶ 315.5 of the *Discipline* requires all candidates to submit (on a form provided by the board of ordained ministry), a notarized statement detailing any written accusations or convictions for felony, misdemeanor, or incident of sexual misconduct, or certifying that the candidate has neither been accused in writing nor convicted of a felony, misdemeanor, or any incident of sexual misconduct. This is not the same as a background check, because it is the candidate’s own disclosure of his/her history and it assumes the individual will be completely candid in the disclosure. Criminal background checks can be a helpful additional tool for verifying a candidate/clergy person’s history.

The General Board of Higher Education and Ministry, Division of Ordained Ministry, Section of Elders and Local Pastors has a sample form for the ¶ 315.5 disclosure available (615.340.7389). This Form 114 and other forms available on GBHEM's website www.gbhem.org/ResourceLibrary/Form114.org

5. Other Checks and Balances for Lay and Clergy Applicants and Staff

Background checks will only uncover information about the person's history, and a "clean" background check is not necessarily a good predictor of a person's future behavior. Other organizational internal controls and checks and balances are important in the candidacy process, as well as throughout a person's career in ministry. For example, checking all listed plus other references on all applicants can provide an invaluable source of information and insights on applicants. Checking all information on a job application also is helpful (education, certifications, licenses, etc.).

The physical design and layout of the facility can be especially important for counseling and child care settings (doors should have a window in them, etc). Strong support (not lip service) for vacations and other self-care is important. There is much, much more that can be done!

For more information about checks and balances for reducing the risk of abuse in the Church, see Safe Sanctuaries for Youth and Safe Sanctuaries, Reducing the Risk of Child Abuse in the Church, by Joy Thornburg Melton, Discipleship Resources, 800.685.4370 (also available through Cokesbury). For more information about checks and balances regarding clergy sexual ethics, see Living the Sacred Trust: Clergy Sexual Ethics, General Board of Higher Education and Ministry available through Cokesbury. See also the important United Methodist policies on sexual harassment and child abuse in *The 2004 Book of Discipline* ¶161(I) and in *The 2004 Book of Resolutions*, Resolutions 36,37 and 48. State law requirements also should be reviewed, because more and more states have special laws to protect children or other vulnerable persons.

If reference and background checks reveal previous incidents of sexual misconduct, Richard Hammar's Pastor, Church and Law recommends that the following factors be considered before hiring the person: "(a) the nature and severity of the previous misconduct; (b) the frequency of the previous misconduct; (c) how long ago the misconduct occurred; (d) whether the minister received counseling; (e) the competency and effectiveness of any counseling received; (f) the likelihood that the minister will repeat the same type of misconduct now; (g) the possibility of legal liability if a jury concludes, on the basis of all evidence, that the church [organization] was negligent in hiring the minister."

Hiring any person who has been involved in previous serious criminal acts can be extraordinarily risky for a church organization, because of the ever present possibility of a recurrence and the difficulty of taking careful steps to prevent such a recurrence. It is typically hard for a church to balance the seeming conflict between Biblical notions of forgiveness and redemption and the stark reality in today's world that someone in a church setting may cause injury to a member, embroiling the church in an expensive and painful lawsuit in the event of a recurrence, especially when children are involved. Church organizations should consult with legal counsel and other experts in this area before making any decision.

6. Job Descriptions and Performance Management

Job descriptions define the essential and nonessential functions of a position. They are useful in providing job information to the employee and supervisor, information for performance appraisals, information in situations calling for review under the Americans with Disabilities Act, and information for the employee discipline process. The performance appraisal should be conducted at least annually. Supervisors should manage employee performance throughout the year, documenting conversations with the employee regarding acceptable and unacceptable performance. Any documentation should contain only facts, not generalizations or assumptions.

For example, as noted earlier, if a church staff person is tardy in arriving to work 3 out of 5 days each week, week after week, month after month, and the church has warned the staff person several times that repeated tardiness will not be tolerated, the tardiness – and the warnings to the staff person – should be documented. If the situation becomes intolerable and the church decides to terminate the person's employment, then the documentation in the file will serve as an important record of **what** transpired, **when** it transpired, and **how** it was handled. If the discharged staff person tries to challenge the decision, the detailed records will provide an important defense for the church in support of its decision. When performance appraisal is an ongoing process, the annual performance review will be unlikely to contain assessments that surprise the employee. Performance appraisals should be truthful appraisals. It is unhelpful to both the employee and the church employer to gloss over or fail to document performance problems. Truthful appraisals are important in the defense of adverse personnel actions and in improving performance.

Employees should be given an opportunity to review and comment on the performance appraisal. The performance appraisal should be signed by the supervisor and the employee to indicate that the review occurred, not that the employee necessarily agreed with the review. If the employee refuses to sign, indicating that the review has occurred, the supervisor may note that fact on the appraisal form.

Note: An excellent publication from Cokesbury's "Guidelines for Leading Your Congregation" series is the "Pastor Parish Relations" by Betsey Heavner. Copies may be ordered through Cokesbury. The Division of Deacons and Diaconal Ministers, General Board of Higher Education and Ministry, also has a brief list of topics to be addressed in church personnel policies and job descriptions. These are posted on GBHEM's Resource Library at www.gbhem.org/ResourceLibrary/4055.pdf. Although this document is directed at deacons under appointment, it includes universal concepts.

7. Termination of Lay Staff

Before terminating the employment of a lay employee, the church organization should determine whether employment in their state is "employment at will," meaning the employment relationship between the employer and the employee may be terminated by either at any time with or without cause. If an employment contract with an employee exists, that eliminates the "at-will" relationship and the employee's rights upon termination will be governed by the employment contract. A few states recognize oral and implied employment contracts. In those states, the employment contract may not have to be in writing to be enforceable. Included in the sample policies that follow is a sample policy on employment "at will" that may defeat an employee's claim that s/he had an employment contract with the organization. A termination in violation of a state or federal law will be subject to legal challenge. For example, a typical employee cannot be discharged on the basis of age, sex, race or for any other unlawful reason.

In addition, an employer that discharges an employee in retaliation for exercising the employee's right or obligations under state or federal law may be found liable for wrongful discharge. For example, if an employee files an EEOC complaint for race discrimination, s/he cannot be terminated for filing the complaint.

Problems with termination of lay staff can be avoided or minimized by following a few basic rules of the road:

1. Do your homework and document.
2. Follow your own policies.
3. Do not discharge an employee in haste or anger.
4. Investigate the facts before you act.
5. Review the personnel file to be sure the performance or behavior issues are well documented and to familiarize yourself with the employee's work history. If the work history and problems are not well documented, then work with your attorney to develop a plan to obtain the documentation that can be crucial to supporting the need to terminate.
6. Consider all options. Is termination really the best way to address the situation? Would some other form of discipline meet your needs? Should you give the employee an opportunity to resign?

7. Consistency. Are you treating this employee in the same manner that you have treated other employees who have had the same or similar problems?
8. Consult with legal counsel.
9. Prepare for the termination meeting. Have a witness present at the meeting. Be honest and straightforward about the decision at the meeting.
10. Be prepared for addressing office details: returning office property and keys, computer access and security; what you will say about the decision; summarizing the termination meeting in a memo to the file; continuing benefits; accrued vacation; etc. (see sample Termination Checklist at the end of this section)
11. Be prepared for what you will say when called to give a reference for the person.
12. Be the Church. Treat the employee with care, compassion and dignity.

Employee or Independent Contractor

An important question arises when a church retains a new person to perform a particular job for the church - is the person an employee or independent contractor? Serious tax consequences may result if a person is misclassified. Most persons retained to do the day to day work of any organization, including a church, are considered employees. The IRS and courts have determined that United Methodist clergy at the local church are to be classified as employees for income tax purposes. The IRS views independent contractor arrangements with suspicion and scrutiny, because of previous abuses and an underlying viewpoint that persons who are working for an organization should be considered employees for income tax purposes.

The IRS uses a 20-factor test to determine whether a person is an employee for tax purposes.

In

connection with this test, the IRS has stated the following:

. . . 20 factors have been identified that indicate whether sufficient control is present to establish an employer-employee relationship. The degree of importance of each factor varies depending upon the occupation and the context in which the services are performed. It does not matter that the employer allows the employee freedom of action, so long as the employer has the right to control both the method and the result of the services . . . (Business Reporting, I.R.S. Publication 937).

Every state has its own set of tests, but the IRS' 20 factors provide a good indicator. Those factors are:

- 1) **Instructions.** An employee must comply with instructions about when, where, and how to work. Even if no instructions are actually given, the control factor is present if the employer has the right to give instructions. Independent contractors direct themselves as to when, where and how to do their work.

- 2) **Training.** An employee is trained to perform services in a particular manner. Independent contractors ordinarily use their own methods and receive no training from the purchasers of their services.
- 3) **Integration.** An employee's services are integrated into the business operations because the services are important to the success or continuation of the business. This shows that the employee is subject to direction and control.
- 4) **Services rendered personally.** An employee renders services personally. This shows that the employer is interested in the methods as well as the results. Independent contractors are generally free to hire assistants or to sub-contract their work, since they are directing their own operations and making their own decisions about how to get the job done.
- 5) **Hiring, supervising and paying assistants.** An employee works for an employer who hires, supervises, and pays assistants under a contract that requires him or her to provide materials and labor and to be responsible only for the result.
- 6) **Continuing relationship.** An employee has a continuing relationship with an employer. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals. An independent contractor ordinarily is hired to do a particular job and then moves on to do work elsewhere for another organization.
- 7) **Set hours of work.** An employee has set hours of work established by an employer. An independent contractor is the master of his or her own time.
- 8) **Full-time work.** An employee normally works full-time for an employer. An independent contractor can work when and for whom he or she chooses.
- 9) **Work done on employer's premises.** An employee works on the premises of an employer, or works on a route or at a location designated by an employer. An independent contractor ordinarily sets his/her own place of work.
- 10) **Order or sequence set.** An individual who must perform services in the order or sequence set by an employer looks like an employee, subject to direction and control.
- 11) **Oral or written reports.** A person who regularly submits reports to a supervisor looks like an employee, who must account to the employer for his or her actions.
- 12) **Payments.** An employee is paid by the hour, week, or month. An independent contractor is paid by the job or on a straight commission.
- 13) **Expenses.** An employee's business expenses are customarily paid by an employer. This shows that the employee is subject to regulation and control. An independent contractor ordinarily pays for his/her own business expenses.
- 14) **Tools and materials.** An employee is furnished significant tools, materials, and other equipment by an employer (examples in a church: computer, books, music, uniforms)

15) **Investment.** An independent contractor has a significant investment in the facilities he or she uses in performing services for someone else.

16) **Profit or loss.** An independent contractor can make a financial profit or suffer a financial loss, whereas an employee ordinarily does not suffer any financial losses associated with his/her work.

17) **Works for more than one person or firm.** An independent contractor offers and ordinarily gives his or her services to two or more unrelated persons or firms at the same time (example: an outside snow removal or lawn service used by a church would do the same work for a number of clients and would be considered an independent contractor; a facilities maintenance person who does full time work for the church that includes snow removal and lawn service and does not have a snow removal/lawn service business for other clients probably would be considered an employee, absent other unique circumstances).

18) **Offers services to general public.** An independent contractor makes his or her services available to the general public.

19) **Right to Fire.** An employer can fire an employee. An independent contractor typically cannot be terminated so long as he or she produces a result that meets the specifications of the contract for the services.

20) **Right to quit.** An employee can quit his or her job at any time without incurring liability. An independent contractor usually agrees to complete a specific job and is responsible for its satisfactory completion, or is legally obligated to make good for failure to complete it.

Examples in a church setting:

- A church organist/music director who holds the position of Minister of Music, who works 35 hours a week and who works under the direction of the church, probably is an employee.
- An organist who works for six area churches when their regular organist is sick or on vacation (and offers his/her services to other churches) probably is an independent contractor.
- A maintenance person who works 20 hours a week for the church on evenings, weekends (and after weddings and funerals) and who has a regular day job elsewhere but does not have a facilities maintenance business probably would be viewed by the IRS as an employee of the church, absent other facts.
- A maintenance person who works for ABC Maintenance Company and is sent to different job locations, including the church, depending on the work schedule set by ABC, would be an employee of ABC Maintenance Company. ABC Maintenance Company would be an independent contractor in its relationship with the church.
- A painter who walks in off the street and offers to spend the next four weeks painting the church for a flat fee is probably an independent contractor. S/he will do the assigned painting tasks and then go on to paint other churches, businesses or homes.

Churches sometimes have fact scenarios that are somewhere in-between these extremes. Each church organization needs to do its own analysis, in close consultation with legal counsel, for any “job” that is in a gray area if the church wants to consider the person doing the job to be an independent contractor.

For more information on the status of a worker as an employee or independent contractor, see IRS Publication 15-A, “Employer Supplemental Tax Guide,” available from the IRS.

Sample Personnel Policies

In the pages that follow are **sample** personnel policies. The word **sample** is emphasized, because it is important that personnel policies be carefully considered and developed to fit the needs of each church organization and reviewed in light of each state's unique laws. In addition, the GCFA legal department is not recommending or endorsing any of these policies. And, GCFA is not suggesting that these subjects all should be covered by an organization's set of personnel policies - or that no other subjects should be covered. They are provided as **samples** strictly as a convenient reference and starting point to help local churches, annual conferences and others in the development of policies on the covered subjects, as desired.

APPENDIX

Introduction

The principal function of this Staff Reference Manual is to provide a current, accurate and readily accessible reference source for use by the staff of the [organization]. This Manual is to be interpreted and used by [organization] in its absolute discretion.

All employees of the [organization] are employed at will and not by contract. Employment at [organization] means you and the [organization] are each free to terminate the employment relationship at any time without notice, and for any reason. This Manual is not an employment contract and is not to be construed as such. It is a statement of operating procedures and policies. Whether or not the disciplinary procedures described here are followed, all employees are subject to dismissal without notice at any time, when in the sole opinion of management, the employee's job performance and/or conduct is found unsatisfactory for any reason.

The Manual is designed to assemble descriptions of privileges and benefits to which employees are entitled. From a policy standpoint, it details those administrative policies and procedures presently authorized for members of the staff. It is not a static document. From time-to-time revisions and additions to this Manual will be made and those changes will be controlling.

Occasionally a question will arise which has not been discussed in the Manual or an elaboration is needed on a topic already presented. In such cases, please contact the [list position] for additional information.

Policies as Applicable to United Methodist Clergy

Whenever there is a conflict between the personnel policies of [organization] and *The Book of Discipline of The United Methodist Church* with respect to ordained United Methodist clergy, the *Book of Discipline* takes precedence to the extent that a conflict exists.

Staff Member Qualifications

All staff shall have at a minimum the following qualifications:

- They shall be persons who are sympathetic with the Christian faith and purposes of The United Methodist denomination;
- They shall possess the special aptitudes, skills and capacities which are required in their respective fields of work;
- They shall be persons who can win and hold the cooperation and goodwill of the people they serve as well as their associates;

- They shall have the ability to maintain and keep confidences;
- They shall be persons who can demonstrate the capacity to learn and to improve their abilities.

Equal Employment Opportunity

[Organization] shall provide equal employment opportunity to all staff members and applicants for employment. No person shall be discriminated against in employment because of race, color, sex, national origin, age or disability. This policy applies to all terms, conditions and privileges of employment. Any communication from any applicant for employment to a staff member, a government agency, or an attorney concerning any equal employment opportunity matter shall be referred to [list position].

Recruitment

[Organization] shall post information of position openings on all bulletin boards within the offices prior to external announcements.

The recruitment process may also include the public announcement of vacancies through the various news media and church journals, and through notification of appropriate institutions, professional organizations, related agencies and groups with special access to qualified women and racial ethnic minority persons who may be potential applicants.

Ethics Statement

The following statement shall be presented and signed at the time of appointment, election, or employment and reaffirmed annually:

All funds and property received and administered by the [organization] are entrusted to them by God through the faithful financial support of church members. Therefore, the highest degree of Christian stewardship and fiduciary responsibility is expected of all directors, non-director committee members and staff in matters relating to the receiving, reporting and use of such funds and property. Ethical, moral and legal conduct are critical components of Christian stewardship. Fiduciary responsibility also includes loyalty to the objectives and purposes for which funds have been allocated, prudence and care in the administration of entrusted funds and property and personal commitment to the highest standard of fiscal responsibility.

Therefore, I agree to abide by the highest ethical and moral standards and practices, and all applicable laws and regulations (for example, criminal, Disciplinary, IRS and civil), in all actions that I take on behalf of [organization].

Name

Date

At Will Employment

All employees are at will. This means that you and the [organization] are free to terminate the employment relationship at any time without notice, for any reason or for no reason.

Nepotism

A person shall not become a regular full-time or regular part-time staff member for any position that would require that person to directly supervise, or be directly supervised by, a member of that person's family (spouse, parent, children, in-laws, etc.) Who is already employed by [organization]. Any exceptions to this policy must be authorized by the [list committee or position] prior to employment.

Pay Periods

All staff are paid on the 15th and 30th of each month. If a payday falls on a holiday, Saturday or Sunday, salary checks will be dated and distributed on the prior work-day.

Payroll Advances

[Organization] will not provide payroll advances or extend credit to staff.

Overtime

Overtime by support personnel paid on an hourly basis is sometimes necessary and is determined by the departmental supervisor.

Overtime is computed as follows:

The first 40 hours of work in any one work week shall be computed at the regular pay scale. The hours worked in addition to 40 hours in any given work week shall be computed on a time and one-half basis. Unworked hours (vacation, holidays, sick leave) are not included in overtime computation. The employee may elect to take compensatory time off, instead of pay, with the approval of the supervisor. Pursuant to law, compensatory time earned by non-exempt staff must be taken during the pay period in which it was earned if the employee elects compensatory time in lieu of overtime. For purposes of computing overtime, the work week begins on Monday and ends on Sunday.

1. All requests for overtime must be approved in advance by [list position];
2. All overtime worked up to and including 40 hours is computed at straight pay; all overtime worked in excess of 40 hours is computed at time-and-one-half pay;
3. Employees desiring to take comp time in lieu of overtime pay must designate that choice at the time overtime is approved;
4. All overtime is to be clearly reported on your time card. If you are taking comp time, that time must be designated on the time card;
5. Approval to use accrued comp time must be secured in advance from your supervisor; and,
6. Employees who elect to take comp time in lieu of overtime pay must do so in the same pay period in which the time is earned.

Overtime pay is not available for exempt, salaried staff. If you would rather take comp time but cannot do so within the pay period, you may take overtime pay and then, at a later date, take some time without pay. [Note: It is important to work with a local attorney to define “exempt” and “non-exempt” staff if these terms are unclear to the organization]

Wage Assignments

A wage assignment or a garnishment is a legal order requiring an individual's employer to withhold part of the employee's wages in order to pay a debt. Wage assignments which meet legal requirements will be honored when issued. At that time, employees are presented with written notification of the garnishment.

Social Security

All lay employees are covered by the Federal Old Age and Survivors Benefits Act to provide the protection offered by Social Security. Social Security tax is paid half by the employee and half by the employer. The percentage of salary deduction and the maximum amount of salary subject to taxation will vary depending upon federal legislation.

Clergy pay the total cost for Social Security coverage as “self-employed” persons for Social Security purposes. Employees are urged to check the accuracy of their accounts with the Federal Social Security Administration at least once every three years.

Assisting Employees With Life-threatening Illnesses

The [organization] recognizes that staff with life-threatening illnesses including, but not limited to cancer, heart disease, and AIDS may be covered by the short-term and long-term disability benefits. As long as a staff person is able to meet acceptable performance standards, and medical evidence indicates that their conditions are not a threat to themselves or others, staff with life-threatening illnesses should be treated consistently with other staff.

The [organization] seeks to provide a safe work environment for all staff. Therefore, precautions should be taken to ensure that a staff person's condition does not present a health and/or safety threat to other staff. Education, counseling, referrals to agencies, and benefit consultation to assist employees in effectively managing health, leave and other benefits is available in the Human Resources Department.

There is usually no medical basis for staff refusing to work with fellow staff or others with life-threatening illnesses. The concerns of staff who fear fellow workers or others with life-threatening illness will be taken seriously and addressed with appropriate information. Where such measures are unsuccessful, and where the [organization] determines an staff person's refusal or threat of refusal to work with a staff person is impeding and disrupting the organization's work, the [list position] will consider appropriate corrective or *Disciplinary* action against the threatening or disruptive staff persons. Such *Disciplinary* action may include transfer and/or dismissal from employment.

Appropriate revisions in this policy reflecting current information, both medical and legal, will be made as necessary.

Death in The Family

[Organization] provides for its staff in the event of death in their family by offering time away from the office. If there is a death in the staff person's immediate family (spouse, parents, children, or family members who are living in the immediate household), this may be arranged without loss of pay, for up to five days. For other family members (brothers, sisters, father-in-law, mother-in-law or grandparents) absence of up to three days with pay may be arranged depending upon distance involved.

In the event of the death of a more distant relative, arrangements may be made for one such day to be taken.

Military

The purpose of the military leave policy is to insure employee rights to job protection when serving with the military, National Guard and Reserve. The [organization] supports and complies with the Veteran's Reemployment Rights Act and applicable state laws.

Active Full-Time Military Duty

Any staff person who leaves [Organization] to perform full-time active duty in the armed forces for a period not to exceed four (4) years (plus any involuntary extension of not more than one year), is considered to be on “active full-time military duty.”

Staff ordered to active full-time military duty shall be entitled to payment of the differential between their military pay and their salary for a period up 20 (twenty) working days, said payment to be made only where military pay is less than the salary, to commence at such time as the becomes eligible for payment for his/her active full-time military duty.

Upon his/her return from active full-time military duty, such staff shall be reinstated to his/her former position or a job of similar seniority, status and pay. In order to qualify for reemployment, a staff person must meet the following requirements:

- The position he/she left must have been an “other than temporary position.”
- Application for reemployment must be made within 90 days after release from active duty or from hospitalization continuing for a period of not more than one year after completion of active duty; and
- Satisfactory completion of the period of active duty, and presentation of certificate to that effect.

Reserve/National Guard

- A. **Initial Active Duty** — Staff who become members of the military Reserve or National Guard will be considered to be on military leave of absence during their “initial period of active duty training”. This initial training period is normally of a 3 to 6 month duration.

Any staff person who meets the requirements set forth will be reinstated to his or her former position or to a position of similar seniority, status and pay, except a Reservist or National Guard member on initial active duty for training must apply for reemployment within 31 days after

release from training or discharge from hospitalization not exceeding one year.

- B. **Short-term Military Training** — Staff who are Reservists or National Guard members must request a military leave of absence to perform short-term training such as weekly drills, summer encampments, or similar types of training. This request will be granted by the organization.

When possible, thirty days prior notice of such absences should be given to the supervisor and to [list position]. Staff on military leave for short-term training are required to report back to work for the next regularly scheduled work period after training ends, with a reasonable time allowed for travel.

The [organization] is required to accommodate the employee's Reserve and National Guard obligations by scheduling his/her work around periods of short term training.

- C. **Other Provisions** — The following provisions are applicable to all persons on military leave of absence:

- Staff on military leave will not receive a regular agency salary except as otherwise noted.
- Regular pension contributions will be made on the staff person's behalf on any wages paid by the agency during the time of leave;
- Staff are not required to take paid vacation time during their period of active duty or short-term training; and
- Staff returning to work in accordance with other provisions of this policy will resume accrual of vacation and sick time at the normally scheduled rates as though no leave had occurred.

Jury Duty

A staff person need not worry about loss of salary in the event of a call for jury duty or a subpoena to appear as a witness in court. The [organization] assures full salary while fulfilling such obligations to all full-time staff and part-time staff with 20 or more hours of regularly scheduled service a week. Under normal circumstances, [organization] will not provide excuses for jury duty. **[Optional:** If the staff person is paid a jury duty fee in addition to jury duty travel expenses, then such fee must be turned over to [organization] or deducted from the staff person's pay check.]

Holidays

[Organization] recognized eleven (11) paid holidays for its employees:

New Years Day
Martin Luther King Jr.'s Birthday (third Monday in January)
Good Friday
Monday after Easter
Memorial Day (last Monday in May or day observed)
Independence Day
Labor Day (first Monday in September)
Thanksgiving Day
Friday following Thanksgiving
Day preceding Christmas Day
Christmas Day

These are paid holidays with the following provisions:

- A. When any of these holidays falls on a weekend, the following Monday shall be considered a holiday.
- B. Should the holiday be on the day part-time employees of the Conference Center are not scheduled to work, an equivalent day shall be granted, in consultation with one's supervisor, during the calendar year.
- C. Temporary/seasonal (full-time or part-time) employees are not eligible for holiday pay.
- D. Persons on leave of absence are not eligible for holiday pay.
- E. Holiday hours shall be counted as hours worked in computing overtime for the week in which the holiday falls.

Leaves

[The organization's sick and other leave policies should be included in the staff reference manual.]

Annual conference Attendance

Clergy and lay staff who are members of an annual conference shall be granted time off with pay to attend the conference. Such time off shall not be charged to vacation. **[Optional:** Travel to and from the conference shall be paid by the organization.]

Jurisdictional and General Conference Attendance

Staff who are elected delegates or reserve delegates to a jurisdictional or general conference shall be granted time off with pay to attend the conference. Such time off shall not be charged to vacation.

Personnel Files

[Organization] maintains a personnel file for each staff person. These files are kept in the [list location] and are open to inspection by the employee, subject to the [list state statute that governs personnel records].

[Organization] attempts to maintain those documents which are, have been or are intended to be used in determining a staff person's qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action.

A staff person has the right to inspect certain portions of his/her personnel file up to two times during the calendar year. Such a request must be submitted in writing using the form provided for this purpose. Once such a request has been received, the [list position] will schedule an appointment within seven (7) working days of the request to give the staff person an opportunity review the open portions of the personnel file.

This information is generally not to be released to a third party. Requests for the release of personnel file information to third parties should be cleared with the [list position].

Contents of Personnel Files

Generally, personnel files contain primarily such information as listed above. That is, documents which are, have been or are intended to be used in determining that staff person's qualifications for employment, promotion, transfer, additional compensation, discharge or other disciplinary action.

Each personnel file usually will include the following items, which are subject to inspection:

- Employment application
- Resume (when appropriate)
- I-9 verification
- Plan participant enrollment forms (SPP, MPP, DBP, Beneficiary forms, etc.)
- Employment offer form
- Emergency notification form
- Performance appraisals

- Attendance calendars (used for employment transfer, promotion, etc.)
- Employee benefit verification form
- Change of address forms
- Garnishments
- Post-employment training
- Payroll information originating from HR
- Probationary forms (beginning and completion, employment counseling reports, etc.)
- Salary history

Documents which may be included in a staff person's personnel file but are not open to inspection:

- Letters of references
- Tests and results, except cumulative scores
- Records that may be produced in a judicial proceeding as part of a pending claim between the employer and the staff person
- Information used for management planning, bonuses, operational goals, expansion, future salary increases, job assignments, other wage treatments, development, closing, except when such material relates only to the staff person in question
- Information of a personal nature about a person other than the staff person which might be construed as an unwarranted invasion of that other person's privacy
- Medical records
- Records regarding an employer's investigation of alleged criminal activity (except when [organization] acts adversely based on information in those records)
- Other employers may receive copies of items in their personal file upon payment of a per page copy charge. All such requests shall be made in writing on the form provided for such requests to the [list position].

Staff Reviews

A progress review is intended to provide a periodic means of appraising a staff person's performance on the job.

Review Dates — Introductory Period of Employment

There shall be an introductory period of employment of three months following initial employment. If the staff person does not meet performance standards, employment can be terminated at any time during the three months or thereafter. Approximately two weeks before the end of this period, the supervisor shall conduct a “Performance Appraisal” covering the staff person's performance during the period. The completed form will be sent to [list position] for inclusion in the staff person's file.

1. If performance is satisfactory, this period will end, although the staff person continues to serve at the pleasure of the [organization]. (See Section on “Employment At Will.”)
2. If performance is not satisfactory, this period may be extended in writing or the staff person may be terminated.

Review Dates — Annual Review

By September 30 of each year, the performance of every staff person will be evaluated utilizing the current “Performance Appraisal Form.” These reports will be placed in each employee's personnel file. Staff persons will have an opportunity to file a response to their evaluations. [Note: Portions of this policy would not apply to clergy staff]

Volunteer in Mission Participation by Staff

[Organization] feels that the participation of staff in United Methodist Church Volunteer in Mission projects would benefit both the staff person and the mission project. To enable such participation and involvement in United Methodist projects, [organization] proposes that a combination of vacation days and work days may be used for the purpose of taking the trip. Authorization for participation in any Volunteer in Mission trip must be given by the supervisor and the [list position]. Approval is within the sole discretion of the [list position]. Approval also will be contingent on available funds if unbudgeted. A staff person may request approval for such participation no more than once a quadrennium.

If the staff person is not able to finance the trip and funds are not available from other sources, the employee may apply for assistance from [organization] to enable the employee to join a Volunteer in Mission team. This assistance shall be up to one week's pay to apply to the trip expenses. If the staff person receives financial assistance from [organization] to join a team, vacation days only may be used for time out of the office. If a staff person is able to finance his/her trip, then [organization] shall

award up to one week's time for the trip and not require the use of the staff person's vacation days for the entire trip.

- [Organization] may assist in the following ways to enable an staff person to be a Volunteer in Mission:
- [Organization] approves one week of time off; staff person pays for trip.
- [Organization] contributes up to one week's pay toward cost; staff person uses vacation time.

Electronic Communications Policy

[Organization] is committed to providing an environment that encourages the use of computers and electronic communications as essential tools to support [organization's] ministry of administration. In utilizing [organization's] computers and electronic communications systems including, but not limited to, electronic mail and access to the Internet, it is important for all employees (Users) to be aware of organization's] policy regarding responsible use. It is the responsibility of each User to ensure that this technology is used for proper business purposes and in a manner that 1) is responsible, professional, and legal; 2) does not compromise the confidentiality of proprietary or other sensitive information; 3) does not compromise the security of [organization's] computer resources; and 4) is consistent with good stewardship and the mission and ministry of [organization].

The purpose of this policy is to ensure the appropriate use of computer resources, to monitor and maintain productivity of employees, to assist in preventing harm to the interests of [organization] and its employees, and to prevent the violation of various state and federal laws.

No Privacy. Users do not have a personal privacy right in any matter created, received, sent, or stored on [organization] computer resources, whether or not the matter is designated as private or confidential. [Organization] reserves the right to access all computer resources for the purpose of supporting its mission and ministry, assuring compliance with statutory requirements, as well as internal policies supporting the performance of internal investigations, and assisting with the management of [organization's] information systems.

All aspects of [organization's] computer, technology and communications systems, including but not limited to hardware, software, and all files and message contents, are the property of [organization]. The computer, technology and communications systems, including e-mail and Internet access, are business tools provided by [organization] which should be used for business purposes only.

[Organization] reserves the right to monitor and review e-mail messages and Internet access,

without prior notice. This includes the right to monitor Internet sites visited, duration of employee's Internet use, and files which have been viewed, accessed, or downloaded. E-mail messages and Internet access are not private, and employees should not consider their e-mail messages and Internet access to be private. An employee's access code or password does not give him or her any right to privacy with respect to using the agency's e-mail and Internet systems.

Any violation of this policy may result in disciplinary action up to and including termination of employment.

Internet Access (General)

[Organization] provides the ability to access the Internet through an Internet browser. [Organization] employees designated to have access to the Internet are required to use their access to the Internet in a legal, responsible and informed way, conforming to network etiquette, customs and courtesies. Internet E-Mail access/usage is subject to [organization's] policies and guidelines related to E-Mail.

[Organization] management will determine:

- the extent to which an employee may use the Internet to accomplish job responsibilities. Any questions about the appropriateness of a particular use of the Internet should be discussed with the employee's supervisor;
- the appropriateness of using the Internet for professional contacts and career development activities during office hours;
- training required of staff using the Internet and work time that may be used to practice/acquire skills needed to effectively access and use the Internet.

The Internet is not a secure communication channel and should not be used for sending or receiving confidential or sensitive information.

Use of the Internet is a privilege, not a right, which may be revoked at any time for inappropriate conduct. Misuse of Internet access by any employee may result in other disciplinary action, including but not limited to, termination of employment. Examples of inappropriate conduct include, but are not limited to: use of inappropriate or offensive or abusive language in either public or private messages; unlawful activities; gambling, defamation; infringement of copyrights; misrepresentation of oneself or [organization]; logging on or accessing obscene, pornographic, sexually explicit, racist or violent sites; pirating software or transmitting software programs or other

copyrighted or trademarked material; engaging in transactions or activity for personal financial gain; jeopardizing [organization's] tax exempt status; creating unauthorized contractual liability for [organization]; violating any [organization] policy or procedure; engaging in any activity or communication that is inconsistent with norms of professional and business conduct; and sending messages that might result in congestion or disruption of networks and systems.

Employees must abide by security policies, procedures and guidelines in their use of the Internet, and are to refrain from practices which might jeopardize [organization's] computers, data, network, systems security or work in general. Employees must guard against computer viruses and security breaches of any kind. Employees who use the Internet:

- may not transfer or install any software or files from the Internet to any [organization] computers or information systems except in consultation with appropriate technical staff (i.e. no downloading of software, programs, games, etc.).
- may not use the Internet to connect to secure accounts (accounts requiring proprietary password log-in) on computer systems outside the [organization] network without prior approval from your supervisor.

Personal Use

The Internet is not "free." Valuable and scarce resources are used to establish, operate, and maintain [organization's] access to the Internet including the valuable use of staff time needed to make inquiries, send and receive E-mail, and participate in discussion groups on the Internet. All employees are expected to be good stewards in the use of these valuable resources. Personal use may be allowed in consultation with a supervisor. Personal use should not occur during working hours.

Electronic Mail

Electronic mail (E-mail) has been established for agency purposes related to the mission of [organization]. [Organization] offers the use of E-mail by its employees as an opportunity to enhance their ability to carry out their job responsibilities. Electronic communications, including internal and Internet E-mail, other forms of electronic media and all of their components parts, such as hardware, software, messages and other data ("E-mail"), are the property of [organization]. It may be used for personal purposes only in accordance with [organization] guidelines and may never be used in any way that may be disruptive or offensive to others. E-mail may not be used to solicit participation in any activity not directly related to or sponsored by [organization] (i.e., personal, religious, political or

charitable causes).

E-mail is to be used as an agency tool. E-mail should be drafted with the same thought and concern devoted to written or verbal communications, such as letters and memoranda. The E-mail system should not be used to create any offensive or disruptive messages. Users must identify themselves with their full E-mail address or legal name. [organization] neither assumes nor shares responsibility for incidents of harassment, slander, malice, defamation of character, copyright violations, or any civil or criminal actions that occur or are alleged to have occurred through any personal or inappropriate use of E-mail. The responsibility for and defense against such actions or claims is solely that of the individual.

E-mail is not a private, confidential communication. The confidentiality of any message should not be assumed. Messages should be treated as confidential by other employees and accessed only by the intended recipient. Employees are not authorized to retrieve nor read any E-mail messages that are not sent to them. Any exception to this policy must receive prior approval from the employee's supervisor.

In the use of E-mail, employees should not use pass codes, access a file, nor retrieve any stored information unless authorized to do so. All computer pass codes must be provided to supervisors. No pass code may be used that is unknown to [organization].

[Organization] reserves the right to access and disclose all messages, for any purpose, at any time for legitimate [organization] reasons without the permission of the employee.

Workplace Violence Policy

[Organization] recognizes that a place of employment safe from violence or the fear of violence is fundamental to the health and well-being of staff. The policy of [organization] is that its staff should work in environments free from physical attack, threats, and menacing or harassing behaviors.

As used in this policy, violence is defined to include the following:

- **Physical attack** is an unwanted or hostile contact, such as hitting, fighting, pushing, shoving, or throwing objects.
- **Threat** is stating a present or future intention to cause physical or mental harm. Any expression of intent to cause physical or mental harm is considered to be a threat.
- **Harassment** is behavior or communication designed or intended to intimidate, menace, or frighten another person.

- **Property damage** is behavior or acts that contribute to the destruction or damage of another's property.

At [organization], physical attacks, threats, harassment, and property damage are always prohibited.

Any staff person who experiences or witnesses such acts, conduct, behavior, or communication must immediately contact his or her supervisor and [list position].

Any supervisor or manager who receives a complaint of violence, threats, harassment, or property damage or who has reason to suspect that these acts or behaviors are occurring, must notify [list position].

Upon being informed of an allegation of violence, threat, or harassment, [list position] will investigate the matter.

Upon conclusion of the investigation, [organization] will determine how to respond. In the interim, [organization] will respond as it deems appropriate.

Appropriate disciplinary action, up to and including termination, will be taken in instances of misconduct, as judged by [organization].

Employees who know of information about violence, threats, or harassment, but did not notify an appropriate person consistent with this procedure, will be subjected to appropriate discipline, up to and including termination.

A staff person will not be retaliated against by [organization] for reporting violence, threats, harassment, or property damage.

Termination and Resignation — Voluntary Termination (Resignations)

Should a staff person decide to leave the employ of [organization], it is expected that at least two weeks written notice will be given. A written letter of resignation should be submitted to the supervisor with a copy to the [list position] stating the date of the resignation and including any additional comments the staff person may wish to make. This letter will be placed in the staff person's personnel file.

Misconduct or Unsatisfactory Performance

Proper conduct and satisfactory performance are necessary to assure an efficient and effective working system. Should a staff person fail to display these qualities, the supervisor will discuss the problem with [list position] to determine what course of action appears appropriate. Substantiated misconduct and/or continuous unsatisfactory performance are cause for immediate dismissal. This may include theft, physical abuse, gross insubordination, or criminal conduct.

Probation

Any employee being considered for involuntary termination - except in the case of reorganization, substantial misconduct, or other reasons set forth herein - ordinarily will be placed on probation and given an opportunity to correct the problem(s). However, [organization] reserves the right to discharge a staff person at any time without a probationary period. Identification of the problem(s) and terms of the probation shall be put in written form and documented, and shall be discussed with the staff person by the supervisor. If the staff person is placed on probation, the term of the probation shall include a date on which the probation period ends.

A progress review may be scheduled at that time. In the event the employee does not improve and the problem continues, the [organization] retains the right to terminate the individual's employment at any time during the probation period. Termination shall be based on appropriate documentation and under ordinary circumstances will take place only after discussion with the employee involved.

Before leaving, staff must return all [organization] property such as office keys, credit cards, garage door card, telephone card, the Staff Reference Manual and personnel lists.

Exit Interview

Before leaving [organization's] employment, the [list position] will conduct a formal Exit Interview. This document will become part of the exiting staff person's personnel file.

Misconduct of a Sexual Nature

The [organization] affirms the 2004 Book of Resolutions, Sexual Abuse Within the Ministerial Relationship and Sexual Harassment Within the Church, which states that sexual abuse within the ministerial relationship and sexual harassment within the church as incompatible with biblical teachings of hospitality, justice and healing. In accordance with the *2004 Book of Discipline*, ¶ 161.F, all human beings, both male and female, are created in the image of God, and thus have been made equal in Christ. As the promise of Galatians 3:26-29, states all are one in Christ, we support equity among all persons without regard to ethnicity, situation, or gender.

Sexual abuse within the ministerial relationship occurs when a person within a ministerial role of leadership (pastor, educator, counselor, youth leader or other position of leadership) engages in sexual contact or sexualized behavior with a congregant, client, employee, student, staff member, co-worker or volunteer.

Sexual harassment is any unwanted sexual advance or demand, either verbal or physical, that is reasonably perceived by the recipient as demeaning, intimidating, or coercive. Sexual harassment includes, but is not limited to, the creation of a hostile or abusive working environment resulting from discrimination on the basis of gender (the *Book of Discipline* ¶ 161.I).

Sexual abuse within the ministerial relationship involves a betrayal of sacred trust, a violation of the ministerial role and exploitation of those who are vulnerable. Similarly, sexual harassment must be understood as an exploitation of a power relationship rather than as an exclusively sexual issue.

Misconduct of a sexual nature within the life of the Church interferes with its moral mission. [Organization] stands in opposition to the sin of misconduct of a sexual nature in the Church and society at large and commits itself to fair and expedient investigation of any charge of sexual misconduct within the church and to take action deemed appropriate and in compliance with the *Book of Discipline*. Further, [organization] seeks to create an environment of hospitality for all persons, male or female, which is free of misconduct of a sexual nature and encourages respect, equality and kinship in Christ.

Some instances of sexual harassment can be resolved easily and informally between the parties. In all other instances, misconduct of a sexual nature should be reported to [list position or positions]. If the conduct involves a clergy person, it should be reported to the district superintendent or the presiding bishop.

Sample Notice and Authorization

THIS IS AN IMPORTANT LEGAL DOCUMENT THAT REQUIRES YOUR ATTENTION PLEASE REVIEW IT CAREFULLY

If you wish to be considered for employment at [organization], you must sign this Notice and Authorization.

As part of a pre-employment background check, [organization] may obtain a report about you from a credit reporting agency and/or may obtain an investigative consumer report for the purpose of evaluating you for employment. If you are hired, [organization] may obtain additional consumer reports or investigative consumer reports about you for the purpose of evaluating you for promotion, reassignment or retention as an employee.

Under the provisions of the Fair Credit Reporting Act U.S.C., Sec. 1681, et seq., the Americans with Disability Act and all applicable federal, state and local laws, I hereby authorize and permit the Company to obtain, any person, firm or entity to release to the [organization], the following: 1) my employment record; 2) records concerning any criminal history; 3) records concerning my credit history; and 4) verification of my academic and/or professional credentials. The above items which constitute an "investigative consumer report" may include information as to my character, general reputation, personal characteristics, and mode of living. I agree that a copy of this authorization has the same effect as an original. I hereby release and hold harmless any person, firm or entity that discloses matters in accordance with this authorization and [organization] from liability that might otherwise result from the request for use of and/or disclosure of any or all the foregoing information.

You are further advised under said act that you may request a copy of the report from the consumer reporting agency, _____ that compiled said report after proper identification has been received.

APPLICANT REFERENCE RELEASE

I authorize any references, schools, current or former supervisors, churches or denominational agencies, or any other person or organization, whether or not identified in this application, to give you any information (including opinions) regarding my character and fitness for employment. I hereby release any individual, employer, church, denominational agency or official, reference, or any other person or organization, including record custodians, both collectively and individually, and whether or not identified in this application, from any and all liability for damages of whatever kind or nature which may at any time result to me, my heirs, or family, on account of compliance or any attempts to comply with this authorization, excepting only the communication of knowingly false information. A facsimile or photocopy of this authorization shall be valid as the original.

Should my application be accepted, I agree to be bound by all rules and policies of [organization]. I understand and agree that nothing in this application for employment or in any pre-employment interview is intended to or shall create a contract between myself and [organization] for either employment or the providing of any benefit.

Sample Disclosure Statement

By this document, [organization] discloses to you that a consumer report may be obtained for employment purposes as part of the pre-employment background investigation and at any time during your employment. Please sign below to signify receipt of the foregoing disclosure.

Please Print Clearly

Full Name _____ Other Name Previously
Used _____

Street Address _____ Social Security Number

City, State, Zip Code _____ Birth
Date _____

I understand this authorization and release and authorize [organization] to obtain consumer reports and references as explained above.

Signature _____

Dated _____

Personnel Record Guidelines For Clergy, Candidates, And Diaconal Ministers In The United Methodist Church

Effective Date: January 1, 2001

The guidelines statement which follows has been prepared by the General Council on Finance and Administration to fulfill the requirements of ¶ 606.9 of *The 2004 Book of Discipline*. The guidelines are intended for use by annual conferences in relation to personnel records they maintain with respect to candidates for ordination as deacons; elders; or deacons, elders, diaconal ministers, local pastors, and ministers of other denominations under appointment. They have not been prepared for use in relation to files or records which may be kept for other lay employees or volunteers in local churches, districts, annual conferences, or denominationally related agencies or institutions. The General Council on Finance and Administration of The United Methodist Church also maintains a separate set of guidelines for supervisory files, **Supervisory File Guidelines for Clergy, Candidates and Diaconal Ministers in The United Methodist Church**. Those supervisory guidelines are to be used by the bishops and cabinets.

I. Personnel Records in the Context of the Annual Conference and Its Mission. The relationship between the annual conference and its candidates, clergy and diaconal ministers carries with it an obligation to ensure that the personnel records the conference maintains for those persons are kept with integrity and in a manner that will foster and enhance an atmosphere of trust. Records and files are kept as a service to candidates, clergy and diaconal ministers, the annual conference, and The United Methodist Church.

Records which are accurate and complete will contribute to fulfilling both the obligations of the conference to its personnel and the mission of the annual conference in several ways:

1. Conference agencies and officers who are responsible for the preparation, deployment, and support services for the clergy and diaconal ministers related to the conference will be assisted in their tasks. The goal of these agencies and officers is to fulfill their tasks in a way that will enable those ministers to serve with maximum effectiveness in all of the settings in which the conference seeks to be in mission and ministry in the name of Jesus Christ.
2. Such files can help to protect the clergy and diaconal ministers from decisions which might otherwise be less fully informed. Likewise, the annual conference can be protected from legal liability which might

result from undocumented or poorly documented decisions or decisions not based on fact.

3. Clergy and diaconal ministers can be assisted as they seek to evaluate and assess their own personal and professional growth and to plan for continuing education and other experiences that will further that growth.
4. Where consistent with limitations to access as defined in these guidelines, such records may serve as a source of data for research and study.

II. Requirements of the 2004 Edition of *The Book of Discipline*. *The Book of Discipline* of The United Methodist Church describes the basic task of keeping personnel records and sets forth certain principles related to that task:

¶ 606.6. The secretary, treasurer, or other administrative officer named by the annual conference shall keep a complete service record of ordained and diaconal ministry personnel in the annual conference. Service records shall include but not be limited to biographical information supplied by the individual, a list of appointments, and a record of annual conference actions with regard to conference relationships. In addition to service records, the secretary, treasurer, or other administrative officer named by the annual conference shall keep descriptions of circumstances related to changes in conference relationships, credentials surrendered to the bishop or district superintendent, and confidential trial records.

¶ 606.9. All records of candidates and ordained and diaconal ministry personnel maintained by the conference secretary, treasurer, or other administrative officer named by the annual conference, board of ordained ministry, board of pensions, and the district committee on ordained ministry are to be kept on behalf of the annual conference in conformity with guidelines provided by the General Council on Finance and Administration, in consultation with the General Board of Higher Education and Ministry and the General Board of Pension and Health Benefits, and the following principles: a) the annual conference is the owner of its personnel records and files; b) individuals in whose name a record is kept shall have access to the information contained in a record or file, with the exception of surrendered credentials and information for which a right of access waiver has been signed; c) access to unpublished records by persons other than the bishop, district superintendent, conference secretary, treasurer, or other administrative officer or the board of ordained ministry, through its chair, board of pensions, through its chair, the district committee on ordained ministry, through its chair, counsel for the Church and the committee on investigation, through its chair, shall require written consent of the person in whose name a record is kept; access to trial records shall be governed by the provisions of ¶¶ 2712.5, 2713.5.

Other sections of *The Book of Discipline* (especially those dealing with conference relationships of clergy and diaconal ministers and judicial proceedings) contain provisions related to

content of and access to personnel records. These guidelines are intended to be in conformity with those provisions; in the event of any conflict, the provisions of *The Book of Discipline* take precedence.

III. Definitions. In these guidelines certain terms are used with specific meanings, as follows:

1. The terms “personnel” and “referent(s)” are used interchangeably to denote the candidates for deacons and elders, deacons and elders in full connection, commissioned members, probationary members, associate members, affiliate members, diaconal ministers, local pastors, and ministers of other denominations under appointment, related to the annual conference and in whose name the records are kept.
2. “Personnel files” and “personnel records” denote the files and records kept on clergy and diaconal personnel related to the annual conference. The terms as used in these guidelines do not refer to any other files or records which may exist in relation to other lay employees or volunteers in the annual conference, its districts, agencies, or institutions related to it.
3. “Candidacy records” and “candidacy files” denote the personnel records kept on personnel during the period prior to their admission into associate membership or membership in full connection. (See Section XI for guidelines governing disposition.)
4. “Permanent records” and “permanent files” denote the personnel records and files kept on personnel after they are admitted into associate or full connection membership (or, as local pastors, have chosen to remain in the local relationship to the annual conference), or have been consecrated as diaconal ministers.

IV. Ownership and Custody. *The Book of Discipline* clearly identifies the annual conference as the owner of its personnel files and records, while the custodian may be the conference secretary, treasurer, or other administrative officer designated by the conference to perform this task (for permanent records); the district committee on ordained ministry, the conference board of ordained ministry (for candidacy records); or the conference board of pensions (for material specifically related to current or potential pension and/or benefit claims).

If the referent receives an appointment in another annual conference or is appointed in a missionary conference while retaining membership in another annual conference, the conference where membership is held (“membership conference”) should forward to the conference where appointed (“appointive conference”) a copy of that portion of the file that would be sent in the event of a transfer (see Section VII). During the period when the person is serving such an appointment, the appointive conference should have authority to add to that copy of the file material related to service

in that conference. A copy of any such material added to the file should be sent to the membership conference. Officers and agencies of the appointive conference responsible for deployment and support services for ordained clergy should have similar rights and responsibilities in relation to the file during the referent's period of service there as the corresponding officers and agencies of the membership conference.

V. Content.

1. To fulfill the purposes for which personnel records are kept, their content should meet certain criteria:
 - a) The information they contain should be relevant to the purpose for which they are to be used.
 - b) The kinds of information to be maintained should be consistent for all personnel.
 - c) The records should be complete, in the sense that information which meets the tests of relevance and consistency shall not be intentionally or arbitrarily excluded from any individual's record.
2. Content of a file may be of several types:
 - a) *Identifying/directory information*: Name, address, telephone number, and e-mail address.
 - b) *Census-type information*: Gender, ethnic origin, birth date, and educational background (limited to the names of higher educational institutions attended, the dates of enrollment in those institutions, and degrees earned).
 - c) *Family data*: Marital status, date(s) of marriage, names of spouse and children, birth dates of spouses and children, date(s) of dissolution of marriage (if any), parents' names, and names of brothers and sisters. The custodians of the records, in consultation with those who need and are authorized to use them, may want to make decisions as to whether all of these kinds of family data are needed. Any such decisions should be applied consistently for all referents; information gathered and kept for some persons should be sought and maintained for all.
 - d) *Candidacy information*: Files and records maintained by the district board of ordained ministry and the conference board of ordained ministry during the candidacy period and the period during which persons are probationary members or otherwise are in the process of qualifying for deacon, in full connection or associate membership in the annual conference.

- e) *Conference relationship information:* Dates of admission to associate, probationary, and/or full connection membership, full time and part time local pastor membership, ordination, transfers into or out of the conference, leaves, termination of membership, retirement, and other changes in conference relationship shall be entered in the file. Correspondence or other documents related to circumstances surrounding entry, voluntary termination, or other voluntary changes in conference relationships should be included in the file only under one or more of the following circumstances: if required by *The Book of Discipline*; if requested to be included by the annual conference, another agency, or officer empowered to do so by *The Book of Discipline* (such as the bishop, district superintendent, conference board of pensions); or if requested in writing to be included by the referent. The inclusion of documentation related to involuntary terminations or changes in conference relationship shall be included as set forth in the applicable provisions of *The Book of Discipline*.
- f) *Appointment information:* A list of appointments served (or, in the case of diaconal ministers, service appointments), including the beginning and ending dates for each.
- g) *Judicial proceedings records:* Records related to complaints, investigations, church trials, and appeals related to them should be kept only as required by, and in strict conformity with, the requirements of *The Book of Discipline*, and with special attention to the *Discipline's* provisions related to their confidentiality and limitations on their accessibility.
- h) *Surrendered credentials:* Surrendered credentials shall be collected and filed in accordance with the provisions of *The Book of Discipline*.
- i) *Optional data:* With the permission of the referent, a conference may collect and maintain in its personnel files other biographical or personal information furnished voluntarily by the referent; examples of such information would be continuing education, awards, publications, military service, prior employment, board and committee membership, interests, and activities. Because such information is optional and supplied voluntarily, it need not be consistent for every individual.

VI. Sources of Information. Identifying/directory information, census-type information, family data, and any optional data should be supplied by the referent.

Conference relationship information should be supplied by the board of ordained ministry and/or from the official record of the conference session at which the action was taken.

Appointment information should be entered, in the case of appointments fixed at the conference session, from appointment lists certified as accurate by the bishop and cabinet. In the case of interim changes of appointment, such changes should be entered from official written notices received from or certified by the bishop or district superintendent.

The inclusion and sources of records of judicial proceedings or surrendered credentials is governed by applicable provisions of *The Book of Discipline*.

VII. Access to Information. Access to personnel records should be governed by the purposes for which they are maintained; within the context of those purposes, the individual's rights of privacy must be protected by procedures which will guard against unauthorized access to or disclosure of information.

Annual conference officers and agencies responsible for overseeing preparation, deployment, and support services for personnel in the annual conference may have access to all or specific parts of the material in personnel files, depending on their assigned function and the special nature of the various types of material. These officers and agencies include: the bishop and district superintendents; secretary, treasurer, or other administrative officer of the conference who has been designated by the conference to keep the personnel records under the provisions of ¶ 606.8, .9; the district committee on ordained ministry; and the conference board of ordained ministry, and board of pensions. Counsel for the Church and members of a committee on investigation in a church judicial proceeding may have access to portions of the material in a given file as needed. The referent will also have access to all of the material in his or her own file except: 1) surrendered credentials; 2) material to which he or she has waived right of access in writing prior to its placement in the file; and 3) material to which *The Book of Discipline* specifically denies such access. Except for the material which is defined below as "public information," no one other than the agencies and persons listed above should have access to personnel files, unless access is specifically permitted by *The Book of Discipline* or granted in writing by the referent. A written record of access, showing the dates of access, the names of the persons who were granted access, and the basis for their access, should be kept with each file.

If the referent transfers from one annual conference to another, all of the files, records and proceedings, and candidacy information, unless specifically prohibited by *The Book of Discipline*, should be sent to the receiving conference.

1. *Public information.* The following data is to be considered public information and, as such, may be printed in the conference journal, used in news stories or releases, or otherwise disclosed at the discretion of the custodian of the files:

- a) Identifying/directory information (see V.B.1 above);
 - b) Census-type information (see V.B.2 above),
Name of present spouse, names of children;
 - c) Dates (only) of admission to conference membership, ordination, retirement, termination of conference membership, and other significant changes in relationship to the conference;
 - d) Appointment information (see V.B.6 above).
2. *Optional data.* Biographical or personal information supplied voluntarily by the referent (see V.B.9 above) may be treated as public information.
 3. *Limited Access Information.* Access to all records, data, and documents not defined as “public information” should be limited to the persons, officers, and agencies listed in the first paragraph of this section. Those persons, officers, and agencies should only have access to the portions of a file which are relevant to their functions and responsibilities, and only when acting in their official capacity. Whenever *The Book of Discipline* specifically authorizes or limits access to particular kinds of information, its provisions shall take precedence over these guidelines.
 4. *Restricted Material.* Surrendered credentials shall be retained in a place where access can be strictly controlled; no access shall be allowed to them unless they are reissued upon readmission of the individual to annual conference membership. Access to records related to judicial proceedings is governed by applicable provisions of *The Book of Discipline*.

VIII. Security. Personnel records and files are confidential and not to be made available to any person or organization except under the limited circumstances states under these Guidelines. Files shall be preserved from unauthorized access and guarded carefully against accidental damage and destruction. The ethical importance of maintaining proper security cannot be overemphasized.

IX. Accuracy of Information. All information included in a file should be accurate. Persons in whose name files are maintained should have a periodic opportunity to review for accuracy all of the material defined above as “public information” and all of the family data. If errors are discovered, the individual should report them in writing to the conference officer responsible for maintaining the records. If the requested correction is not in agreement with source documentation available in the conference’s files, the individual should be asked to submit documentary evidence corroborating the correction.

Referents may also review any of the “limited access” material to which they are permitted access under the guidelines for access. If an individual believes any of that material to be in error, he or she may submit a signed statement outlining the points of disagreement. If the source of the

challenged material and the individual challenging it are in agreement, the material in question may be corrected by addition, deletion, or substitution. If they are not in agreement, the referent's statement should be placed in the file and retained along with the challenged material.

Except for surrendered credentials and material related to judicial proceedings, the source(s) of any information, documents, or other material may review items they have placed in a file and, when acting in an official capacity and within their assigned functions and responsibilities, ask that additions and/or corrections be made. The referent should be notified of such changes in any material to which he or she is entitled to access. A written log of additions and/or corrections, showing the dates of changes, the types of information changed, the source of the correction or addition, and the type of any documentation submitted, should be kept with each file.

X. Psychological Assessment Reports. Assessment reports prepared during the candidacy period by a psychologist, psychiatrist, or pastoral evaluation specialist with proper credentials and released to the board of ordained ministry with the written permission of the referent should become a part of the candidacy records of the annual conference. Test scores and other data from psychological assessment should be governed by contractual arrangement between the annual conference and the psychological consultant. This contractual arrangement should be established prior to the gathering of psychological data and be consistent with the general guidelines of record keeping above. When a board of ordained ministry discontinues a relationship with a psychologist, psychiatrist, or pastoral evaluation specialist, test data and copies of reports should be given to another specialist retained by the annual conference. With the written permission of the referent, blinded copies of test scores, and other relevant assessment data may be released for research, archival entry, or longitudinal study.

XI. Retention and Disposition. Records and files should be actively maintained so long as, and only so long as, they are required for the personnel support and decision making of the annual conference.

The files of the district committee on ordained ministry should be forwarded to the conference board of ordained ministry when a candidate applies for associate or probationary membership in the annual conference. The files of the board of ordained ministry should be maintained until a candidate becomes an associate member, becomes a member in full connection or chooses to remain permanently in the local relationship to the annual conference. At that time, all files and records should be forwarded to the officer designated by the annual conference as the custodian of its clergy personnel records. The custodian may choose not to retain student files and related candidate information but no material deemed by the custodian, after consultation with the board of ordained

ministry, to be significant for future evaluation of the practice of ministry should be destroyed. Each conference may establish standards for what candidate records to retain and what records to destroy.

The files of the conference board of pensions shall be maintained until all claims or potential claims on pension funds have been exhausted.

The permanent personnel records and files of the annual conference, as maintained by its designated custodian, should be deposited with the conference commission on archives and history when no longer required for personnel support and decision-making. Twenty-five years after a clergy person retires or no longer has a relationship with the conference, the custodian/conference commission on archives and history may destroy the personnel file.

Updated and adopted by GCFA on November 18, 2000

Supervisory File Guidelines
For Clergy, Candidates, And Diaconal Ministers
In The United Methodist Church
Effective Date: January 1, 2001

I. Supervisory Records in the Context of the Annual Conference and Its Mission. The deployment of personnel within an annual conference carries with it an obligation to ensure that the supervisory records the cabinet maintains are kept with integrity and in a manner that will foster and enhance an atmosphere of trust. Records and files are kept as a service to candidates and personnel, local churches, the annual conference, and The United Methodist Church.

Records which are accurate and well kept will contribute to fulfilling these obligations in several ways:

1. Bishops and cabinets, which are responsible for the appointment, support, and supervision of personnel, will be assisted in their tasks. The goal is to fulfill their tasks in a way that will enable clergy to serve with maximum effectiveness in all of the settings in which the conference seeks to be in mission and ministry in the name of Jesus Christ.
2. Such files can help to protect personnel from decisions, which might otherwise be less fully informed. Likewise, the local church, cabinet, and the annual conference can be protected from legal concerns, which might result from undocumented or poorly documented decisions.
3. Well kept records can be used to assist personnel as they seek to evaluate and assess their own personal and professional growth and to plan for continuing education and other experiences that will further that growth.

II. Requirements of the 2004 Edition of *The Book of Discipline*. *The Book of Discipline* of The United Methodist Church describes the basic responsibilities for keeping supervisory records:

Specific Responsibilities of Bishops:

¶ 416.7. To keep and maintain appropriate supervisory records on all district superintendents and other records on clergy personnel as determined by the bishop or required by the *Discipline* or action of the annual conference. When a district superintendent is no longer appointed to the cabinet, the bishop shall give that person's supervisory file to the superintendent of record. Supervisory records shall be kept under guidelines approved by the General Council of Finance and Administration. The supervisory records maintained by the bishop are not the personnel records of the annual conference.

Specific Responsibilities of District Superintendents:

¶ 423.4. To keep and maintain supervisory records on all ministerial personnel appointed or related to charges within the district. Supervisory records shall be kept under guidelines approved by the General Council on Finance and Administration. At the time of appointment change, supervisory records shall be given to the superintendent of record. The bishop shall be the superintendent of record for the district superintendents.

Other sections of *The Book of Discipline* (especially those dealing with records and archives ¶ 606, conference relationships of diaconal ministers and ordained clergy, and judicial and administrative proceedings) contain provisions related to content of and access to clergy personnel records as distinct from the supervisory records of the bishop and cabinet. Since these records are kept under a separate set of guidelines provided by the General Council on Finance and Administration, **it is important that the Supervisory File Guidelines not be confused with the Personnel Record Guidelines.** While the Supervisory File Guidelines are to be used by the bishop and cabinet, the Personnel Record Guidelines are intended for use by the conference secretary or another agent given responsibility for maintaining the personnel records, the boards of ordained ministry, the board of pensions, and the district committees on ordained ministry.

III. Definitions. In these guidelines certain terms are used with specific meanings, as follows:

1. The terms “personnel” and “referent(s)” are used interchangeably to denote the candidates for ordination as deacons or elders, deacons and elders in full connection, commissioned members, probationary members, associate members, affiliate members, diaconal ministers, local pastors and ministers of other denominations under appointment, related to the annual conference and in whose names supervisory records are kept. Supervisory records are not only kept for those under appointment to a local church, but those in appointments in extension ministries, those on leave of absence or location, those attending school or on sabbatical, and those who are retired.
2. “Supervisory files” and “supervisory records” denote the files and records kept by the bishop and cabinet on clergy personnel related to the annual conference. They are not the permanent personnel records of the annual conference which are kept under a separate set of guidelines from the General Council on Finance and Administration, nor do they refer to any other files or records which may exist in relation to other lay employees or volunteers in the annual conference, its districts, or agencies or institutions related to it.

IV. Ownership and Custody. Supervisory records are owned by the office of the district superintendent or the bishop. Each bishop or district superintendent is the custodian or should designate the custodian of his or her files.

V. Content. To fulfill the purposes for which supervisory records are kept, their content should meet certain criteria:

1. The information they contain should be relevant to the purpose for which they are to be used.
2. The kinds of information to be maintained should be consistent for all clergy personnel.
3. The records should be complete, in the sense that information which meets the tests of relevance and consistency should not be intentionally or arbitrarily excluded from any individual's record.

Content of a file may include the following:

1. *Appointment information:*

- a) A list of appointments served (or, in the case of diaconal ministers, service appointments) including the beginning and ending dates for each;
- b) As deemed relevant, documents, conversations, agreements, and supervisor perceptions and any actions which relate to them;
- c) Letters and comments solicited and unsolicited, information from the local church, clergy personnel and committees on pastor (staff) parish relations or other clergy personnel committees for those serving in appointments to extension ministries;
- d) Appraisals and summaries written by the district superintendent.

2. *Biographical information:*

- a) Identifying/directory information: name, address, and telephone number;
- b) Census-type information: gender, ethnic origin, birth date, and educational background (limited to the names of higher educational institutions attended, the dates of enrollment in those institutions, and degrees earned);

- c) Family data: marital status, date(s) of marriage, names of spouse and children, birth dates of spouses and children, date(s) of dissolution of marriage (if any), parents' names, and names of brothers and sisters.

3. *Candidacy information*: Letters and comments, solicited and unsolicited, from local churches, pastors, or mentors on the fitness of candidates; appraisals and summaries written by the district superintendent.

4. *Conference relationship information*: Dates of admission to associate, probationary, and/or full connection membership, full time and part time local pastor membership, ordination, transfers into or out of the conference, leaves, termination of membership, retirement, and other changes in conference relationship should be entered in the file when deemed appropriate. Correspondence or other documents related to circumstances surrounding entry, voluntary termination, or other voluntary changes in conference relationships may be included at the discretion of the bishop or cabinet member.

5. *Complaint procedures records*: Materials related to potential complaints; copies of complaints and charges; recommendations of the board of ordained ministry; and decisions of the annual conference or trial court.

6. *Surrendered credentials*: Surrendered credentials should be collected by the district superintendent in accordance with the provisions of *The Book of Discipline* but should be placed in the personnel files kept by the conference secretary or other officer designated by the annual conference. A record of the receipt and a notation on the forwarding of the credential should be made by the district superintendent and placed in the supervisory file of the referent.

7. *Optional data*: With the permission of the referent, bishops or district superintendents may collect and maintain in their supervisory files other biographical or personal information furnished voluntarily by the referent; examples of such information would be continuing education, awards, publications, military service, prior employment, board and committee membership, interests, and activities. Because such information is optional and supplied voluntarily, it need not be consistent for every individual.

Note that *The 2004 Book of Discipline*, in ¶ 315, requires a disclosure statement from all entrants (qualifications for probationary membership) detailing any written accusations or convictions for felony, misdemeanor or incident of sexual misconduct, or certifying that the entrant has neither been accused in writing nor convicted of a felony, misdemeanor or any incident of sexual misconduct. This statement should be maintained in the supervisory file. If a bishop requests a signed disclosure statement from all members similar to the statement required by ¶ 315 for entrants, then this statement should be maintained in the supervisory file. If the entrant or member provides a response or explanatory statement regarding such matters, this statement also should be maintained in the supervisory file. It should also be noted that the term, “sexual misconduct” is defined by General Conference and annual conference policies. See *The Book of Resolutions* for more information.

VI. Sources of Information. Information pertinent to the appointment making process comes from a variety of sources: bishop, cabinet, clergy personnel, committees on pastor (staff) parish relations, and other relevant sources.

Identifying/directory information, census-type information, family data, and any optional data should be supplied by the referent.

Conference relationship information should be supplied by the board of ordained ministry or from the official record of the conference session at which the action was taken.

VII. Access to and Disclosure of Information. Access to supervisory records shall be governed by the purposes for which they are maintained. Superintendents and bishops should disclose to committees on pastor (staff) parish relations (or to appropriate boards and agencies in the case of clergy appointments in extension ministries) pertinent information regarding all admissions or current or past complaints brought to or charges from the Committee on Investigation, regarding financial misconduct or misconduct of a sexual nature. Disclosure of other types of information, including complaints about other types of clergy misconduct or performance issues, should be made when such information might be helpful in predicting the conduct of a person under appointment or assisting the receiving entity to extend care and concern to the clergy person, or when it may affect the reception of the clergy person in his/her appointment. Superintendents and bishops, in cooperation with the referent, also are encouraged to disclose other matters which may affect his/her reception in an appointment. These matters may include physical, behavioral, family, financial or other factors which may affect the appointment. Within the context of the purposes of supervisory files, the right of privacy for pastors and those who have furnished material for the supervisory files of a pastor must be protected by procedures which will guard against unauthorized access to or inappropriate disclosure of information.

The bishop and cabinet are responsible for overseeing the appointment and support of clergy personnel in the annual conference and have a right of access to all or specific parts of the material in the supervisory files of the cabinet and the personnel files of the annual conference, boards of pension, boards of ordained ministry and the district committee on ordained ministry. Reasonable access to supervisory files may be granted to the referent at the discretion of the district superintendent, bishop, or cabinet except that the referent should not have access to: 1) material to which he or she has waived right of access in writing prior to its placement in the file; 2) material to which *The Book of Discipline* specifically denies such access; 3) material determined by the district superintendent, bishop, or

cabinet to be of a confidential or privileged nature for which permission to share has not been granted by the author; and 4) materials that the district superintendent, bishop, or cabinet believe to be of a confidential, privileged, or private nature (including, but not limited to, notes of meetings, conversations, personal notes, comments, or observations).

If the referent wishes to be transferred from one annual conference to another or to receive an appointment to a church under the provisions of ¶ 335 or be appointed in a missionary conference while retaining membership in another annual conference, the cabinet of the conference where appointment is anticipated (“appointive conference”) should, with the permission of the referent, request from the cabinet of the conference where membership is held (“membership conference”) a statement on the referent’s fitness for ministry and copies of any grievances, complaints, or other relevant records contained in the supervisory files. When the cabinet of the membership conference receives such a request for information from its supervisory files, it should, with the written permission of the referent, send to the cabinet of the appointive conference a statement of fitness and any information on grievances and complaints.

If the referent has been appointed under the provisions of ¶ 335 but anticipates an appointment within the conference where membership is held, the cabinet of the appointive conference should forward to the cabinet of the membership conference a statement on the referent’s fitness for ministry and copies of any grievances, complaints, or other relevant supervisory records.

The supervisory file of a referent appointed under the provisions of ¶ 335 should be retained by the district superintendent of record in the membership conference while under appointment in another annual or missionary conference. However, it is recommended that the supervisory files be kept along with the personnel files in a depository approved by the annual conference whenever the referent’s conference membership is transferred or terminated.

VIII. Security. Supervisory files are confidential and not to be made available to any person or organization except under the limited circumstances stated in these Guidelines. Files shall be preserved from unauthorized access and guarded carefully against accidental damage and destruction. The ethical importance of maintaining proper security cannot be overemphasized.

IX. Accuracy of Information. All information included in a file should be relevant, accurate, and up to date. Corrections made in the personnel files of the annual conference should also be made in the supervisory files.

X. Retention and Disposition. Supervisory records and files should be actively maintained so long as the clergy is in a relationship with the annual conference. When a conference member is located and membership is transferred to a local church, the pastor in charge is expected to begin a new supervisory file for the located clergy. Such files are to follow these guidelines and access to the files is available to the district superintendent and bishop of record. When a clergyperson, retires, dies or no longer has a relationship with the conference, the supervisory file should be given to the secretary of the conference for retention for a period of twenty-five years.

Updated and adopted by GCFA on November 18, 2000

Sexual Harassment/Misconduct Investigations Guidelines

(Prepared by the General Commission on the Status and Role of Women)

Objectives

Bishops, Cabinets, conferences, and churches need to develop prompt, thorough and consistent procedures for the handling of allegations of sexual harassment and/or misconduct and for developing and implementing corrective actions as warranted. Churches, conferences and institutions, as well as individuals in a supervisory capacity, are legally most vulnerable to litigation when they are perceived as indifferent or slipshod in their approaches to investigation and remediation of a complaint of sexual harassment or misconduct. If victimized persons feel that their church won't listen to them, they're far more likely to seek a secular court that will. Persons who are involved in investigating these complaints should keep in mind two key objectives--first to provide a just process that is fair to the complainant and the accused, and second, to be sure to document the process to be able to demonstrate its fairness in the event of subsequent scrutiny of the process.

I. Preliminary Considerations

A. Consider using a team of two unbiased investigators

1. Greater reliability in gathering facts
2. Check on each other's conduct during the investigation
3. Collective decisions more probative than unilateral ones--"Two heads are better than one"
4. Corroboration of each other's testimony, in the event of a subsequent trial

B. Create a separate file on the investigation for notes, statements taken, the report of the investigation and any disciplinary actions taken

1. Avoid editorial comment or personal opinions
2. Record facts leading to conclusions
3. File access confidentiality

II. Gathering Facts

A. Be acquainted with existing conference sexual harassment/misconduct policies as well as any previously adopted by the church or institution, General Conference resolutions, relevant provisions in the Book of Discipline, pertinent Judicial Council decisions, and document the review of existing policies.

B. Interviewing the alleged victim (complainant)

1. Take the complaint seriously
2. Consider the use of a victim advocate

3. Explain at the outset what the investigation/complaint process will involve
4. Do not promise complete confidentiality, but do indicate those with knowledge of the complaint and the investigation will be limited by the investigators' best efforts
5. Listen and find out what happened from the complainant. Remember this may be your best opportunity to hear the complainant's story in a non-adversarial setting
6. Note specific facts and ask open-ended questions--in particular what it was that happened? when? who? where? welcome or unwelcome? who did complainant tell? witnesses?
7. Find out the effect of the conduct on the complainant from the complainant
8. Ask the complainant what he/she wants to happen and whether they will give their permission to be identified
9. Explain what procedures available and how complainant can access them
 - a. Third party mediation
 - b. Grievance/complaint process
10. Assess the complainant's credibility
 - a. Demeanor
 - b. Believability - motive to lie?
 - c. Refusal to provide information such as witnesses, specifics as to the misconduct - ***DOCUMENT***
11. Obtain a written statement from the complainant. Make it concise and specific (date, place, specific events).
12. Type up interview notes for file

C. Interviewing the accused perpetrator (respondent)

1. Explain the purpose and indicate that no decision has been reached concerning the truth of the allegation
2. Identify the alleged victim (if permission has been previously obtained) ... and the specific basis of complaint
3. Warn against any retaliation or reprisal against either the alleged victim or any witnesses
4. Elicit response to the allegations - ask follow up questions, determine who are corroborating witnesses
5. If cooperation with the investigation is refused, document the refusal
6. Assess credibility (see B.10 above)
7. Take statement, if warranted and/or offer the opportunity to submit a written statement
8. Type notes for file

D. Interviewing Witnesses

1. Find out what witness knows--get specifics
2. Distinguish between firsthand (eyewitness) and secondhand (hearsay, rumor) information
3. Assess credibility (see B.10 above)
4. Take statement, if warranted (dates, places, specific events)
5. Inquire whether witness may be willing to testify
6. Type notes for file

III. Evaluation

- A. Evaluate the facts from the perspective of the alleged victim -- the "reasonable person" standard for objectionable and offensive conduct
- B. Determine if sexual conduct was "voluntary" or "unwelcome." Take into account the relationship of the parties. Be wary of finding "voluntary" conduct in counseling situations. Due to the relative powerlessness of counselee, some states have enacted statutes establishing criminal misconduct whenever counselors engage in sexual activity with counselees.
- C. Draft thorough, even-handed report
 - 1. Describe the process chronologically (dates, places, events)
 - 2. Provide the exact details of complaint (specific events)
 - 3. Note what documents, if any, were reviewed and when relevant, attach copies
 - 4. Describe interviews, noting where information received was firsthand as opposed to rumor and hearsay
 - 5. State conclusions reached and justification for them - be specific
 - 6. Recommend corrective action or actions, which will
 - a. Prevent further harassment/misconduct
 - b. Avoid punishing complainant for coming forward
 - c. Be consistent with practice under the policies in place
 - d. If resources available, offer counseling, other assistance
- D. Follow up with complainant and accused perpetrator

REMEMBER

Prompt, thorough and consistent handling of sexual harassment or sexual misconduct complaints and implementation of corrective and remedial action to prevent future occurrences are the best ways to legally protect a church, conference or institution. The basis of most litigation arising out of allegations of sexual harassment or misconduct is the failure of the organization to take the issue seriously, either at the investigative or the remedial stages.

Why do victims sue? Primarily because they don't feel they are taken seriously by the "system" and therefore must go outside it to get redress in the form of damages for past harassment and corrective action against future misconduct.

SAMPLE
Employee Hire Checklist

Employee Name

Date of Hire

Social Security Number

Home Telephone Number

ITEM	COMPLETED	COMMENTS
Employee Application, signed and dated		
Federal W-4 Form, signed and dated		
State W-4 Form, signed and dated		
W-9 Form, signed and dated		
Health Insurance Application		
Other applications: Life		
Disability		
Dental		
Pension		
Other		
Personnel Manual signature sheet, signed and dated		
Signed verification of receipt of job description		
Copies of appropriate licenses, resumes, examination results		
Copies of I-9 information		
Ethics Statement, signed and dated		
Verification of issuance of:		
Keys		
Employee ID		
Equipment		
Parking Pass		
Credit Cards		
Telephone Calling Card		
Other		

Date of completion of checklist

NOTE: This sample checklist is not intended to serve as legal advice or as a substitute for consultation with legal counsel, nor does it establish a standard of care regarding hiring procedures.

SAMPLE
Employee Termination Checklist

Employee Name

Date of Termination

Social Security Number

Home Telephone Number

ITEM	COMPLETED	COMMENTS
Letter of Resignation, signed and dated		
Health/Dental Insurance Continuation Rights Notification to Employee, signed and dated		
Life Insurance Conversion Notice, signed and dated		
Disability Insurance Coverage Notice (if applicable), signed and dated		
Receipt of Certified Carrier (If appropriate)		
Verification of Receipt of Returned Property:		
Keys		
Employee ID		
Equipment		
Manuals		
Parking Pass		
Credit Cards		
Telephone Calling Card		
Other		
Copy of Final Paycheck Detailing		
Copy of Employee's Election Form for Health/Dental Continuation, signed and dated		
Copy of Termination Notice to all insurance carriers		
Exit Interview notes		

Date of completion of checklist



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MEMORANDUM

HIPAA PRIVACY RULE AND LOCAL CHURCHES

In general, the HIPAA Privacy Rule does not apply to the traditional practices of local churches publicizing prayer lists and prayer requests. There are, however, some special circumstances where the HIPAA Privacy Rule or other federal or state laws may restrict these practices. In this memorandum we discuss these legal issues and provide some general guidelines for local churches to consider when disclosing health related information about parishioners and other individuals.

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Introduction

HIPAA. These five little letters have caused a great deal of confusion and anxiety lately. The purpose of this memorandum is to take some of the mystery out of HIPAA and address the most common questions concerning the impact of HIPAA on local churches.

It may be best to begin at the beginning. HIPAA is an acronym for the Health Insurance Portability and Accountability Act, a federal law passed in 1996. The first HIPAA rules to be implemented dealt with the portability of health insurance for individuals who changed health plans, typically, after a change in employment. The subject of this memorandum is another set of HIPAA rules – those dealing with protecting the privacy of individuals' health related information. The final version of the so called HIPAA Privacy Rule ("privacy rule") was issued by the U.S. Department of Health and Human Services ("HHS") on August 14, 2002, and became effective, in most circumstances, on April 14, 2003.

This probably comes as no surprise, but the privacy rule is both complex and astonishingly far-reaching. And because it is so vast and so new, health law professionals (and even the government) are still trying to figure out how it will apply in the myriad of situations where the privacy of an individual's health related information is an issue. Hence, it is also no surprise the general public is confused and, of course, confusion, misinformation, and fear travel much more quickly than the truth.

Perhaps you have seen some of the "scary" articles circulating around discussing the severe penalties for violating the privacy rule. Indeed there are serious civil and criminal penalties for violating the privacy rule, but not everything cited in these articles actually is a violation of the rule. Over time, most of this uncertainty and confusion will sort itself out and we will all become more familiar and comfortable with this new rule. While this memorandum can only begin to address the most basic aspects of this complex rule, we hope it can bring some clarity to the narrow issue of how it applies to local churches.

Publicizing Prayer Lists and Requests

By far, the most common questions about the impact of the new privacy rule on local churches concern a church's announcement or publication of health related information about its parishioners and other individuals. Typically, this occurs in the context of a request for prayers, or establishing a prayer list or prayer chain. After the privacy rule became effective, many churches expressed concern that these traditional practices would no longer be permitted. Fortunately, most of these concerns are unfounded:

In general, the HIPAA Privacy Rule does not apply to churches' disclosure of health related information about its parishioners or other individuals in the context of publicizing prayer requests and prayer lists.

We will discuss the legal basis for this statement in more detail below. But, as with life itself, there are few absolutes. Indeed, there are some exceptional circumstances where the privacy rule and other federal and state laws may apply to these practices and we will discuss some of these special privacy concerns later in this memorandum.

Before we proceed with the technical legal discussion, this might be a good place to reflect on all the "chaos" caused by the privacy rule. As noted above, the privacy rule does not restrict traditional church practices in most circumstances. But all the discussion about the privacy rule has had an indirect benefit. For perhaps the first time, we have all been forced to think seriously about the issue of "privacy" - what it really means and how it should be respected. In the long run, that may be the most important legacy of this (painful) experience.

To begin understanding the legal ramifications of the privacy rule, we start with a brief overview of the rule itself.

What is the HIPAA Privacy Rule?

In the most simple terms:

The HIPAA Privacy Rule regulates the use and disclosure of “protected health information” by “covered entities.”

Said another way, the privacy rule sets forth the circumstances and conditions under which a covered entity may use or disclose protected health information.

The privacy rule defines the critical terms “protected health information” and “covered entities” in great detail but the following definitions should suffice for most purposes:

Protected health information (“PHI”): Basically, any information that identifies an individual and relates to the past, present, or future: (i) physical or mental health or condition of that individual, (ii) health care provided to that individual, or (iii) payment of health care provided to that individual.

Covered entities: (i) health plans, (ii) health care providers (who electronically transmit certain health care related information), and (iii) health care clearinghouses.

It follows from the above definition that virtually all health related information will be PHI if it also identifies the individual that is the subject of the information. For example, a statement by a plastic surgeon to his next-door neighbor that “I performed cosmetic surgery on your friend, John Smith” would clearly be a disclosure of PHI (about John Smith). Furthermore, any health related information that just reasonably identifies the subject of the information will also be PHI. For example, the statement by the plastic surgeon that “I performed cosmetic surgery on a good friend of yours who lives just down the street” would probably also be PHI even though the statement does not explicitly name the individual.

In the above definition of covered entities, “health plans” include virtually all types of individual and group plans that provide or pay the cost of health care. Some examples are: health, dental, and prescription drug insurers, HMOs, Medicare, Medicaid, and employer sponsored group health plans like those typically offered by United Methodist annual conferences to clergy and church employees. (On the other hand, workers' compensation, life insurance, and short and long term disability plans are generally not "health plans" as defined by the privacy rule.)

Covered entities also include “health care providers” such as doctors, hospitals, clinics, and counseling centers, provided they transmit certain health care related information electronically. More specifically, health care providers will be covered entities if they electronically transmit health related information in connection with any of the so called “standard transactions” described in the privacy rule. These standard transactions include all the basic communications that are the “lifeblood” of third-party health care billing in America today, e.g., submitting health claims, paying health claims, inquiries about benefit eligibility, and referrals to other providers. In short, it would be a rare professional health care provider who is not a covered entity subject to the privacy rule. (Note that if a health care provider is a covered entity, it is subject to the requirements of the privacy rule when it discloses PHI in any form - oral, written, or electronic.)

Finally, “health care clearinghouses” are also covered entities. Health care clearinghouses are typically third-party billing services used by health plans and health care providers. Because these entities have little connection with the activities of local churches, they are not discussed further in this memorandum.

Application of the HIPAA Privacy Rule to Local Churches

We said earlier the privacy rule does not generally apply to a church's disclosure of health related information concerning an individual. This follows from the statement of the rule and the definitions given above. Simply put, because churches are not generally “health plans” or “health care providers” (or health care clearinghouses), they are not “covered entities” subject to the rule. Moreover, this is true whether or not the information disclosed by the church would otherwise be PHI.

What about disclosures made by individuals acting on their own, independent of the church? First, obviously nothing prohibits parishioners or other individuals from disclosing as much or as little of their own health related information to as few or as many people as they may choose - including the entire congregation. And taking this a step further, in most circumstances, it is not a violation of the privacy rule for an individual to disclose health related information about someone else. As was the case with churches, unless the individual making the disclosure is a covered entity, the privacy rule does not apply.

As an example, suppose Mary and Betty are members of First United Methodist Church. One Sunday, during the church service, Betty informs the congregation that Mary is in the hospital being treated for injuries she sustained during an assault earlier that week. Betty asks the congregation to pray for Mary's recovery. If Betty did not have Mary's permission to inform the congregation, was the disclosure a violation of the privacy rule? No, except in the unusual case where Betty is a covered entity (or connected with a covered entity). For example, Betty (not the church) would have violated the privacy rule if Betty was Mary's doctor, a nurse at the hospital where Mary is a patient, or a claims processor for Mary's health insurance company. Otherwise, there is no violation of the privacy rule.

In summary, the privacy rule does not have the wide-ranging effect on church practices that many had feared. But there are some special circumstances where the privacy rule and other federal and state laws can be a significant concern. These special privacy issues are discussed in the next section.

Special Situations And Privacy Concerns

Local Church Employees — Disclosure of health related information about church employees can raise several privacy issues. And these issues are the same for all church employees, regardless of whether they are also parishioners of their church-employer. First, many church employees and their dependents are covered by group health plans sponsored by their church or other church organizations. While the church, in its role as employer or plan sponsor, is generally not a covered entity subject to the privacy rule, the health plan that covers the church employee is a covered entity. As discussed below, what this means is that the privacy rule will, indirectly, govern a church's disclosure of PHI about its employees and their dependents who are covered under the church's health plan.

Because they are covered entities, the privacy rule regulates the disclosure of PHI by employer sponsored health plans. But depending on the structure of the health plan and the degree of the employer's involvement in the administration of the plan, the employer may need a great deal of information from the plan, including PHI. The privacy rule permits this type of disclosure from the health plan to the employer under certain conditions.

The privacy rule permits health plans to disclose PHI to the plan's employer-sponsor for plan administration purposes, provided the employer implements specific safeguards to protect the PHI it receives from the plan. In particular, the plan sponsor must amend its health plan documents to specify which of its employees will have access to PHI and restrict those employees' access and use of PHI to plan administration functions only. Therefore, an employer's improper use or disclosure of PHI it obtained from the health plan would constitute a failure to follow the terms of the plan document and thus, could subject the employer to potential civil liability for breach of fiduciary duty or breach of contract. (It is in this way that the privacy rule indirectly regulates the disclosure of PHI by the employer who is generally not a covered entity subject to the rule.)

As an example, suppose Betty is the office manager of Metropolitan United Methodist Church. Metropolitan UMC is a very large church with many employees. Like most churches, Metropolitan UMC is not a covered entity subject to the privacy rule but it does sponsor a group health plan for its employees and their dependents through a policy written by First Insurance Company. In fact, one of Betty's duties at Metropolitan UMC is to assist with the administration of the church's health plan. The church has amended its plan documents (as described earlier) to permit First Insurance Company to share PHI with the church for plan administration purposes. But Betty also has several other duties at the church, including, supervising the office staff and preparing the prayer requests for publication in the church bulletin.

One day, Betty gets a call from Mary, one of the church's secretaries, saying that she won't be able to come in to work for the next few days because her doctor wants her to be in the hospital while she undergoes some tests. Later that same day, while reviewing some claims for the church's health plan, Betty notices a claim for Jane, one of the assistant pastors. The claim is for cancer treatments Jane began last week before she went out of town for a church meeting. Until that day, Betty knew nothing about either Mary or Jane's medical conditions. With the best of intentions, but without asking permission from either Mary or Jane, Betty puts everything she knows about Mary and Jane in the church bulletin requesting the congregation pray for them both. How does the privacy rule apply in these two situations?

Because the church is not a covered entity, there can be no violation of the privacy rule. However, Betty's disclosure of Jane's PHI could potentially expose the church to civil liability. When Betty learned the information about Jane, Betty was wearing her plan administrator's "hat," and hence, she failed to follow the terms of the plan document by using this information for purposes other than plan administration functions. On the other hand, when Betty learned the information about Mary, Betty was wearing her "employer/employee" hat, fulfilling her duties of supervising the office staff. Because Betty did not learn the information about Mary from the plan, the disclosure did not violate the terms of the plan document. (In general, "employment records," held by the employer in its role as employer, are not considered PHI under the privacy rule. Thus, for example, the record of Mary and Jane's accumulated days of sick leave in the church's personnel files would not be PHI.) It is also important to note that we have discussed this example solely in the context of what would be "legal" and whether the church has any potential liability for Betty's actions. But there is a larger view that also considers what Betty should have done and we will return to that point in the last section of the memorandum.

Before leaving the issue of church employees, churches need to be aware that there are numerous other laws, besides the HIPAA Privacy Rule, that may restrict the disclosure of health related information about employees. For example, the Americans with Disabilities Act ("ADA") and the Family and Medical Leave Act ("FMLA") require that certain employee medical records be kept confidential. Moreover, many states also have laws regulating the disclosure of health related information about employees. In general, the law provides a great deal of protection for health related information concerning employees and churches should be extremely cautious about disclosing such information without their employees' explicit consent.

Local Churches as Health Care Providers — In some circumstances churches can be covered entities subject to the privacy rule. Recall that health care providers who transmit claims, billing, referral, or certain other types of health care related information electronically will be covered entities subject to the privacy rule. The same is true for churches that provide health care.

For example, suppose a local church operates an inner city health clinic (which is not a distinct legal entity separate from the church). Further suppose that the clinic electronically bills Medicaid, Medicare, private insurance companies, or patients' credit cards for their services. Then the church (not just the health clinic) will be a covered health care provider subject to the privacy rule in all respects. In particular, such a church could not disclose PHI about its parishioners or other individuals in its prayer lists or church bulletin without their prior written authorization. Moreover, under a literal reading of the privacy rule, the church could not disclose such information regardless of whether it acquired it through its health care activities or from some other independent source, e.g., from a relative or a friend.

As discussed in the above example, if a local church engages in health care activities or functions that make it a covered entity, the entire church is subject to the requirements of the privacy rule, not just the part of the church that engages in the covered activities or functions. There is, however, some relief available in these circumstances. Under certain conditions, the privacy rule permits a single legal entity that is a covered entity whose activities include both covered and non-covered functions to elect to become a "hybrid entity." This election to become a hybrid entity basically frees the non-covered functions of the entity from being subject to the privacy rule.

To become a hybrid entity in accordance with the privacy rule, a covered entity must, in effect, partition itself into "components" - those that perform the functions that make the entity a covered entity (the "health care components") and those that don't perform such functions. It is not necessary to make the components themselves distinct legal entities but the covered entity must designate its various components in writing. Furthermore, the covered entity must put in place safeguards to insure that PHI does not "leak" from a health care component to its other components. If the hybrid entity is created properly, then basically, the health care components will be treated as covered entities subject to the privacy rule and the other components will not be subject to the rule.

Note that even after a covered entity becomes a hybrid entity, the covered entity is still responsible for insuring that its health care components comply with the privacy rule in all respects. For example, the health care component will need to comply with the privacy rule's administrative requirements. In the case of a covered health care provider, these requirements include developing and implementing written privacy policies and procedures, designating a privacy official, training members of its workforce on the privacy policies, and implementing safeguards to protect its data. Because of the complexity of creating a hybrid entity, we recommend churches seek professional legal advice to assist with this process.

In the example discussed earlier in this section, suppose the church designated itself as a hybrid entity with the inner city health clinic as its health care component. If there were sufficient safeguards in place to protect against disclosure of PHI by the clinic, then the customary activities of the church, including publicizing prayer lists and requests, could proceed unaffected by the privacy rule.

As an aside, a church can perform functions or services for a (legally separate) covered entity (e.g., a separately incorporated health clinic) without the church itself becoming a covered entity. However, if those functions or services require access to or use of PHI from the covered entity, the church must enter into a “business associate contract” with the covered entity. As set forth in the privacy rule, a business associate contract requires, among other things, that the business associate (i.e., the church) not make any unauthorized use or disclosure of the PHI it receives from the covered entity and to implement safeguards to insure that this does not occur. (Hence, for example, the church could not disclose any PHI it received from the covered entity in a prayer list or prayer request.) Again, a church should consult with an attorney if it provides any such services to a covered entity.

Finally, in determining whether a church is a health care provider subject to the privacy rule, it may be important to first examine whether the activities conducted or performed by the church are actually “health care” as defined by the rule. For example, the preamble to the privacy rule states:

“[H]ealth care” as defined under the rule does not include methods of healing that are solely spiritual. Therefore, clergy or other religious practitioners that provide solely religious healing services are not health care providers within the meaning of this rule, and consequently not covered entities for the purposes of this rule.

Thus, it would appear that the sole acts of placing names on prayer lists and requesting prayers for individuals cannot make a church a health care provider as defined under the privacy rule. And while this statement in the preamble about spiritual healing is helpful and important, some ambiguities remain. For example, when clergy assist individuals suffering from depression it may be difficult in some cases to clearly classify their assistance as either spiritual healing or mental health counseling. The distinction is important because spiritual healing is not covered by the privacy rule and mental health counseling is covered. But in any event, it is essential to remember that health care providers will not be covered entities unless they also transmit certain health care related information electronically. As it turns out, this electronic transmission requirement is a rough proxy for identifying entities that are fairly involved in the “business” of providing health care which excludes most (but not all) local churches. For example:

Traditional pastoral counseling provided by churches at no charge to their parishioners does not make the church a covered health care provider subject to the privacy rule.

At the other extreme would be churches that operate counseling centers with professional psychologists on staff providing services to mentally ill patients and also (electronically) billing their patients' insurance carriers for their services. These churches are almost certainly covered health care providers subject to the privacy rule.

In between these two extremes there is a lot of room and the line that separates them can be hard to find. Therefore, if you have a concern that your church may be a covered health care provider subject to the privacy rule, we suggest you consult with an attorney who can advise you on your particular situation.

State Privacy Laws — As discussed earlier, the federal HIPAA Privacy Rule is not the only law regulating the disclosure of an individual's health related information. We noted in our discussion of church employees that the ADA and FMLA may apply in some circumstances. In addition, there are numerous state privacy laws addressing a variety of issues. For example, some states have laws restricting the disclosure of health related information about individuals with AIDS and other communicable diseases. In this section, however, we will focus on claims (lawsuits) that individuals (plaintiffs) may bring against defendants based on "invasion of privacy" or more precisely, "public disclosure of private facts." Many states recognize this type of claim in one form or another. Generally speaking, for plaintiffs to prevail on an invasion of privacy claim, they must show that the defendant publicized private facts about the plaintiff and that the defendant's actions would be offensive or objectionable to a reasonable person. (Thus, the plaintiff cannot prevail if the information disclosed was already public knowledge or if the disclosed information was insignificant or benign.)

An illustrative case is *Mitnaul v. Fairmount Presbyterian Church* decided by the Ohio Court of Appeals in 2002. (Note that this case was decided before the HIPAA Privacy Rule became effective.) The plaintiff in *Mitnaul* was at one time the Director of Music Ministries for the defendant church. While serving in that position, plaintiff was hospitalized for treatment of depression and during his hospitalization, the church placed the plaintiff on a medical leave of absence. After his release from the hospital, plaintiff and the church became involved in a dispute about the plaintiff's return to work. Ultimately, plaintiff sued the church alleging, among other things, discrimination based upon disability, retaliatory discharge, breach of contract, and invasion of privacy. The trial court granted summary judgment for the church, rejecting all of plaintiff's claims. On appeal, however, the appeals court remanded some of plaintiff's claims back to the trial court for further proceedings. One of those remanded claims was the invasion of privacy claim.

The basis of plaintiff's invasion of privacy claim was the following statement posted on the church's web site following plaintiff's release from the hospital:

We have good news for you! [Plaintiff] is returning to Fairmount after a long medical leave of absence. Since the summer of last year, [plaintiff] has been treated for bi-polar illness, a condition which at times has resulted in serious depression for him. Various therapies and medications have been tried, and finally, after much experimentation, his health has improved considerably. For that we are all very happy.

In remanding the invasion of privacy claim back to the trial court, the appeals court stated:

[W]hile the church's publication could be based upon informing the congregation of [plaintiff's] return to the church, the inclusion of the additional personal information about his bi-polar illness could be viewed as offensive or objectionable to a reasonable person.

Obviously, this was an unfortunate case where well-meaning people unintentionally exposed their church to legal liability. While this case did not involve the HIPAA Privacy Rule, it illustrates very clearly many of the issues churches need to consider whenever they disclose health related information about an individual. In the next section, we highlight these issues.

Summary

So, where does all this leave us?

As we have seen, the HIPAA Privacy Rule does not generally apply to a church's disclosure of health related information about its parishioners or other individuals. The two important exceptions where the privacy rule is still an issue are: (1) disclosures of certain health related information about church employees (and their dependents) who are covered by the church's health plan and (2) situations where the church itself is considered to be a covered health care provider. Also, besides the HIPAA Privacy Rule, there are other federal and state laws that may limit the disclosure of such information.

Are there any policies or procedures a church could implement with respect to publicizing prayer lists and prayer requests that would guarantee the church protection against any potential legal liability?

No. There are never any guarantees. But that is not a sufficient reason for discontinuing these practices, especially in light of the Church's spiritual mission and when there are so many things a church can do to minimize its legal exposure. Specifically, here are some general principles for churches to consider when publicizing health related information about parishioners and other individuals:

Consent, Consent, and Consent — In some sense, this entire memorandum is about how much churches can legally do without obtaining the consent of the affected individuals. As it turns out, consent is not legally required in most circumstances. But this is all backwards. ***If consent is easily and readily obtainable, why not obtain it?*** It could be something as simple as the church asking the individual "Would you mind if we shared this information with the congregation?" or "Would you like us to add you to our prayer list?" After all, not only is consent the best legal protection for the church, it is a respectful and courteous thing to do.

Certainly, there are situations where obtaining consent is impractical or impossible, e.g., in the case of incapacitated individuals. In these circumstances, the legal issues discussed in this memorandum need to be considered. But such cases are probably more often the exception rather than the rule.

As a routine practice, oral consent from the individual (or when that is not possible, from a close friend or relative) should be sufficient. But if the church is disclosing particularly sensitive information or there is some other legal concern about the disclosure, the church should consider requiring more. Obviously, as a general matter, written consent is better than oral consent and consent directly from the affected individual is better than consent from a third party on behalf of that individual. An even weaker form of "consent" is an "opt-out" procedure. In an opt-out approach, the church would regularly publish a notice, e.g., in its church bulletin, that it compiles lists of members who are ill or hospitalized as well as information about their conditions and status. The notice would further state that the church will publish this information unless an individual objects to the disclosure. Clearly, this opt-out approach is less than perfect. But the point here about all these various forms of consent is that something is always better than nothing.

TMI ("Too Much Information") — When churches disclose health related information without the individual's consent, the general rule should be "less is best." There is a significant difference between a published notice that simply says "John Smith is hospitalized and we pray for his speedy recovery" and the type of notice published by the church in the *Mitnaul* case discussed earlier. With the best of intentions, churches can expose themselves to civil liability for invasion of privacy, among other things, when they disclose private information of a sensitive or potentially embarrassing nature. Common sense can go a long way here.

Some churches have adopted an approach that largely avoids this problem by letting someone else (besides the church) disclose the details about an individual's medical condition. In the absence of prior consent, these churches simply publicize a general notice and expression of concern for the health of the individual together with contact information for a relative or close friend. Parishioners can then contact those persons for more detailed information. In this way, the relative or friend controls what information is disclosed and to whom. Moreover, the relative or friend is probably in a better position than the church to make such decisions consistent with the wishes of individuals who may be incapacitated and unable to decide for themselves.

Church Employees — As a general rule, churches should be extremely cautious about disclosing health related information concerning their employees without their consent. This is true regardless of whether the employees are also parishioners. In particular, churches can be held legally liable for disclosing health related information about employees (or their dependents) obtained through the church's health plan.

Churches as Health Care Providers — As we discussed, this is a relatively rare situation but if it is the case, the privacy rule applies in full force and effect to the entire church. Such churches who are covered health care providers should consult with an attorney to assist them in complying with the requirements of the rule.

"The Golden Rule" — Sometimes we get so focused on the law and what we have the "right to do" we lose sight of the "right thing to do." Obviously, it is essential that we try to understand and comply with the law in all cases. But sometimes the law isn't clear and frequently it is silent on what to do in particular circumstances. In these situations we need to resort to other sources of guidance. Fortunately, in the church these are not hard to find. Perhaps the best is the most well known - The Golden Rule.

When you, acting on behalf of the church, are contemplating the disclosure of health related information about someone else, first ask yourself what you would like done if you were in a similar position. Would you care whether you were first asked for your permission before disclosing the information? If you were incapacitated, would you prefer your family or friends to decide what should be disclosed and to whom? Would you possibly be embarrassed if this particular information was publicly disclosed? The answers to these questions will go a long way toward pointing us all in the right direction.

Additional Resources

<http://answers.hhs.gov> - The U.S. Department of Health and Human Services (HHS) web site containing “Questions and Answers” about the HIPAA Privacy Rule.

<http://www.hhs.gov/ocr/hipaa/> - The HIPAA web site of the Office for Civil Rights, HHS. (The Office for Civil Rights is the office within HHS responsible for enforcing the HIPAA Privacy Rule.)

This memorandum is intended to provide general information on certain topics. It is not intended to constitute legal advice and The General Council on Finance and Administration does not provide legal advice. If you have any questions concerning the application of the law to your particular circumstances, please consult with an attorney.