



148A Information for Congregation Presidents

Since January 1, 1991 the Southeastern Minnesota Synod has been complying with the provisions of Minnesota Statute § 148A. The compliance procedure has included doing background checks on all pastors receiving calls in the synod since January 1, 1991. It also included a provision to do background checks on pastors who had received calls in the synod after August 1, 1986 and before January 1, 1991 at the congregation's request.

The synods' compliance procedure is designed to assist congregations in conducting the *background* checks required by §148A before calling a pastor, and does not in any way to replace the traditional responsibilities of the congregational call committee. Call committees must bear in mind that §148A is, in some respects, quite narrow: It requires only that some (not all) of the candidates' current and former employers (not acquaintances or bishops or even the candidates themselves) for the past 5 (five) years be contacted and that they be asked only about sexual misconduct (not

other types of misconduct), and then only about sexual misconduct with counselees (not sexual misconduct generally). Call committees should continue to inquire into the wide range of professional and personal qualities that bear upon whether a particular candidate can provide the pastoral leadership sought by a particular congregation.

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Many congregations have inquired about whether or not other employees of the congregation should be subject to the provisions of Minnesota Statute § 148A. The accompanying document (page 5) explains the position of the six Minnesota synods on lay church workers and the § 148A statute.

Your congregation should determine for itself whether any lay church employees, whether rostered or non-rostered, need to have the background check completed. I have prepared a packet of information for your congregation to use to complete the background check on lay church workers. Please call the synod office for a copy.

Ms. Beth Gabriel, §148A Compliance Administrator
Southeastern Minnesota Synod, ELCA
507-280-9457 or 800-426-6376 (MN only)

Minnesota Statutes § 148A and Non-Clergy Employees of a Congregation

The synod has established procedures to assist congregations that so request in complying with Minnesota Statutes § 148A. A detailed memorandum describing this statute as it applies to clergy, together with a copy of the statute, has previously been mailed to all congregations in the synod. Additional copies can be obtained on our web site, or by contacting the synod office.

Questions are sometimes asked about whether this statute also applies to Associates in Ministry (AIMs) or other

employees of a congregation. AIMs, as the term is used in this discussion, includes all of the rostered, but non-clergy church workers in the ELCA.

The answer to the applicability of Minnesota Statutes § 148A does NOT depend upon

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whether the non-clergy employee of the congregation is rostered as an AIM or not. The answer to the applicability of Minnesota Statutes § 148A depends ENTIRELY on whether the non-clergy employee of the congregation is or will be performing “psychotherapy” as defined in the statute, namely “the professional treatment, assessment or counseling of a mental or emotional symptom or condition.”

Under this definition it is very unlikely that a secretary, a custodian or an organist would ever be within the scope of the statutory definition. If the duties of a teacher, youth director, social worker or parish nurse include counseling, then in the event of a lawsuit involving alleged sexual

misconduct, a court may find that the statute applies. In summary, the critical test with respect to a lay employee of a congregation is what that employee does or will be doing, not whether the employee is an AIM.

The statute is applicable to persons hired after August 1, 1986. A congregation who added laypersons with counseling responsibilities to its staff may wish to comply with this statute retroactively.

It is important for you to understand that this background check asks only for information relating to possible sexual misconduct in a counseling situation. Completing this background check does not give you information that could be obtained in other types of background investigations.

I would suggest two publications that could be of use in the employment of lay staff church workers not on the rosters of this synod:

- *The Church Guide to Employment Law* by Julie L Bloss, J.D., CEBS
- *Selecting and Screening Church Workers: A Guide to Selecting and Screening Ministers, Church Employees and Volunteer Workers* by James F. Cobble, Jr. and Richard R. Hammar

These are available from Christian Ministry Resources, P.O. Box 1098, Matthews, North Carolina 28106, (704) 841-8039, www.churchlawtoday.com. Copies are also available for you to look at in the synod office.

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