

## **Legal and Ethical Issues in Counseling**

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**Elisha Training Initiative Session #2:**

**Association of North American Missions - Southwest Regional Meeting**

**January 8, 2013**

**Legal Disclaimer:** I am not a legal expert. You should not consider this presentation to be personal legal counsel for any specific church or ministry. This information is provided as a synopsis of my research of best practices in order to encourage you to be more aware of basic ethical and legal considerations. I encourage each of you to take responsibility to remain current, as legal interpretations change over time. You should contact an attorney who is an expert on the pertinent laws in your state, as the law does vary from jurisdiction to jurisdiction. Churches and other religious organizations should maintain and provide liability insurance covering the church, pastors, trustees, elected leaders and those involved in the ministry.

## **Legal Theories Arising From Counseling Relationships**

- **Vicarious Liability**
- **Breach of Fiduciary Duty**
- **Organizational Negligence**
- **Failure to Report**
- **Breach of Confidentiality**
- **Negligent Counseling – Clergy Malpractice**

**Nally v. Grace Community Church, 763 P. 2d 948 - Cal: Supreme Court 1988**

## **General Biblical Principles for Counseling Ministry<sup>1</sup>**

- 1. The Law of Love (Romans 13:1-10)**
- 2. Do No Harm (Matthew 23, Matthew 18:1-14)**
- 3. Conduct Ourselves in a Godly and Ethical Manner (1 Timothy 3:1-16; 1 Peter 5:1-5)**
- 4. Act Justly (Micah 6:8)**
- 5. Ethics Flow From Character of God (1 Peter 1:15-16)**

## **Reporting Requirements for Biblical Counselors**

- Child Abuse Reporting**
- Elder Abuse Reporting**
- Criminal Conduct**

## **Informed Consent: Issues to Cover**

- Who you are**
- What types of services for you offer and not offer**
- Confidentiality Issues (Including Church Discipline)**
- See Example Consent Form<sup>2</sup>**

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<sup>11</sup> Robert W. Kelleman, Equipping Counselors for Your Church, Phillipsburg, NJ: P&R Publishing, (2011), p. 304-305.

<sup>2</sup> “The Leadership Opportunity: Supplemental Materials,” Billings, MT: Peacemakers Ministries, p. 44.

## **Risk Management Suggestions for Counseling Ministry<sup>3</sup>**

- 1. Establish a clear policy of biblical counseling**
  
- 2. Employ a counseling agreement**
  
- 3. Maintain propriety in counseling situations**
  
- 4. Seek to improve counseling skills**
  
- 5. Keep good counseling records**
  
- 6. Comply with state licensing laws**
  
- 7. Obtain professional liability insurance**
  
- 8. Additional methods**

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<sup>3</sup> Constance Frisby Fain, "Minimizing Liability for Church-Related Counseling Services: Clergy Malpractice and First Amendment Religion Cases," *Akron Law Review* 44, 2011, p. 253-259.

## CONSENT TO COUNSELING

**Our Goal:** Our goal in providing Christian counseling is to help you meet the challenges of life in a way that will please and honor the Lord Jesus Christ and enable you to enjoy fully his love for you and his plans for your life.

**Biblical Basis:** We believe that the Bible provides thorough guidance and instruction for faith and life. Therefore, our counseling is based on scriptural principles rather than those of secular psychology or psychiatry. Neither the pastoral nor the lay counselors of this church are trained or licensed as psychotherapists or mental health professionals, nor should they be expected to follow the methods of such specialists.

**Not Professional Advice:** Some of our counselors work in professional fields outside the church. When serving as counselors within this church, however, they do not provide the same kind of professional advice and services that they do in their professional capacities. Therefore, if you have significant legal, financial, medical, or other technical questions, you should seek advice from an independent professional. Our pastoral and lay counselors will be happy to cooperate with such advisors and help you to consider their counsel in the light of relevant scriptural principles.

**Confidentiality:** Confidentiality is an important aspect of the counseling process, and we will carefully guard the information you entrust to us. There are four situations, however, when it may be necessary for us to share certain information with others: (1) When a counselor is uncertain how to address a particular problem and needs to seek advice from another pastor or elder in this church; (2) when a counselee regularly attends another church and it is necessary to talk with his or her pastor or elders; (3) when there is a clear indication that someone may be harmed unless others intervene; or (4) when a person persistently refuses to renounce a particular sin and it becomes necessary to seek the assistance of others in the church to encourage repentance and reconciliation (see Proverbs 15:22; 24:11; Matthew 18:15-20). Please be assured that our counselors strongly prefer not to disclose personal information to others, and they will make every effort to help you find ways to resolve a problem as privately as possible.

**Resolution of Conflicts:** On rare occasions a conflict may develop between a counselor and a counselee. In order to make sure that any such conflicts will be resolved in a biblically faithful manner, we require all of our counselees to agree that any dispute that arises with a counselor or with this church as a result of counseling will be settled by mediation and, if necessary, legally binding arbitration in accordance with the *Rules of Procedure* of the Institute for Christian Conciliation, a division of Peacemaker Ministries. Judgment upon an arbitration award may be entered in any court having jurisdiction. (We would be happy to provide you with a copy of these *Rules of Procedure*. For additional information, please visit [www.peacemaker.net/rules](http://www.peacemaker.net/rules).)

**Agreement:** By signing this consent, you agree that you will not attempt to subpoena or require any counselor to appear in any legal proceeding related to any matters discussed during counseling; nor will you attempt to subpoena any notes or records related to this counseling.

Having clarified the principles and policies of our counseling ministry, we welcome the opportunity to minister to you in the name of Christ and to be used by him as he helps you to grow in spiritual maturity, leads you into his truth, and prepares you for usefulness in his body. If you have any questions about these guidelines, please talk with a pastor or elder. If these guidelines are acceptable to you, please sign below.

Signed \_\_\_\_\_

Date \_\_\_\_\_

## Suggested Resources

Child Welfare Information Gateway, [www.childwelfare.org](http://www.childwelfare.org).

Church Law & Tax, [www.churchlawandtax.com](http://www.churchlawandtax.com).

Church Lay Counseling Risk Management Guidebook, Fort Wayne, IN: Brotherhood Mutual, 2009.

Richard r. Hammar, Counseling Ministries: A Legal Checkup, Springfield, MO: Enrichment Journal of the Assemblies of God Church, 2007.

Robert w. Kelleman, Equipping Counselors for Your Church, Phillipsburg, NJ: P&R Publishing, 2011.

The Leadership Opportunity, Billings, MT: Peacemakers Ministries, 2009.