

Adult Sexual Misconduct and Counseling

Twenty percent of GuideOne's sexual misconduct claims involve adult claimants, with the overwhelming majority of these adult incidents taking place in the counseling setting.

The allegations against those who provide religious counseling take many forms, including: negligent counseling, clergy malpractice, abuse of authority, breach of fiduciary duty, undue influence, breach of confidentiality, alienation of affections, sexual battery, and defamation.

To protect your congregation from allegations of misconduct in the counseling setting, consider the following safeguards:

1. **Counseling covenant or agreement:** Use a written agreement with the counselee setting out the scope of counseling, its length and duration, its confidential nature, and consider including an alternative dispute resolution clause. Such a clause can provide that any disputes arising from the counseling relationship will be submitted to mediation and/or arbitration instead of filing a lawsuit.
2. **Limited scope of counseling:** Counseling should be limited to spiritual or biblical counseling. Counseling for matters such as domestic abuse, mental health, and addiction rehabilitation should be referred to professional counselors in the area.
3. **Opposite gender counseling:** To avoid allegations of impropriety, carefully consider how to handle opposite gender counseling. Some churches prohibit members of one gender from counseling the other. Others that permit opposite gender counseling require the presence of a third party. Because including a third party in counseling sessions has implications for the clergy-penitent privilege, it may be wise to consult with a local attorney concerning the laws of your state.
4. **Limited sessions:** Avoid an open-ended counseling relationship that could go on over an extended time. Establish a limit on the total number of sessions that will be provided (such as 3-5 total per year), and refer to professional counselors if counseling needs extend beyond that time.
5. **Limited time and duration:** Consider limiting counseling to the established office hours of the church. Likewise, set limits on the length of each counseling session (such as 30 or 45 minutes) and stick to that limit. If counseling needs extend beyond that time, refer to professional counselors.
6. **Limited locations and visible setting:** Also consider limiting the locations at which counseling may take place, such as limiting them to the pastor's office or another location on church property. It is often wise to avoid off-campus counseling. The greater the visibility of the counseling session – without compromising confidentiality – the less likely there will be an allegation of misconduct. Thus, consider installing a window in the minister's office and/or leaving the door open. Some churches have installed a video camera in the office (without audio) to capture activities during counseling, although consultation with a local attorney would be appropriate to ensure that you are complying with state and local law.

7. **Maintaining confidences:** If notes or other documents are generated during the counseling session, make sure that those documents are kept in confidence in a locked location. Also, the counselor should not discuss the substance of the counseling sessions with other parties but should keep the conversations confidential. One exception is if the minister learns of child abuse during the counseling relationship. In that instance, the minister should consult with a local attorney concerning the mandatory reporting statute in your state and its relationship to the clergy-penitent privilege.
8. **Watch for boundary violations:** Those providing counseling should establish an accountability system with their spouses and/or other persons to head off improprieties in counseling relationships. Some warning signs that counselors should watch for include the following:
 - Increasingly personal conversations, particularly concerning the counselor's personal life.
 - Moving physical contact beyond greetings to inappropriate pats or hugs.
 - Fantasizing about a sexual relationship with counselees.
 - Offering to drive counselees home.
 - Arranging meetings outside of the normal counseling time.
 - Increasingly hiding feelings and/or meetings with the counselees from the counselors' accountability systems, including spouses.

By establishing these guidelines and providing them to counselees in advance, ministers and congregations can take proactive measures to protect themselves from allegations of misconduct in the counseling setting.