

**Outline**

1. Fiduciary Responsibility

a. What is a Fiduciary?

Black's Law Dictionary describes a fiduciary relationship as "one founded on trust or confidence reposed by one person in the integrity and fidelity of another." A fiduciary has a duty to act primarily for the client's benefit in matters connected with the undertaking and not for the fiduciary's own personal interest. Scrupulous good faith and candor are always required. Fiduciaries must always act in complete fairness and may not ever exert any influence or pressure, take selfish advantage, or deal with the client in such a way that it benefits themselves or prejudices the client. Business shrewdness, hard bargaining, and taking advantage of the forgetfulness or negligence of the client are totally prohibited by a fiduciary.

**Fiduciary relationship** n. where one person places complete confidence in another in regard to a particular transaction or one's general affairs or business. The relationship is not necessarily formally or legally established as in a declaration of trust, but can be one of moral or personal responsibility, due to the superior knowledge and training of the fiduciary as compared to the one whose affairs the fiduciary is handling - Farlex -Free Dictionary.

b. Who is a Fiduciary in the Church setting?

c. Legal Obligations of Fiduciary -

- Duty of Loyalty
- Avoid Conflict of Interest - provide full disclosure
- Confidentiality
- Duty of Care
- Act in best interest of client/organization
- Be reasonably informed
- Act in good faith
- Independent Judgment

2. How to protect yourself from personal liability?

a. Tort - Injury to another caused by your actions

- Strict liability - Copyright laws
- Intentional - Willful and wanton
- Reckless - Gross Negligence
- Negligent - reasonable person standard

b. Contract - Agreement between two or more parties

- Authority
- Personal vs. Representative

- c. Breach of Fiduciary Responsibility
    - Duty of Care
    - Duty of Loyalty
    - Violate terms of Trust
    - Violation of Copyright laws
    - Defamation
    - Wrongful discharge of Employee
    - Failure to withhold taxes
  - d. Immunity - Protection by law, must act in good faith
  - e. Indemnification - Defense and liability paid.
  - f. Insurance (review annually)
    - Directors and Officers liability coverage
3. When should your Church seek legal advice?
- a. Organization and Operation
    - Articles of Organization
    - By-Laws
    - Elections - Meetings
    - Board Policies - workers/employees
    - Employee - discharge
    - Dissolution
  - b. Dealing with Real Estate
    - Selling
    - Purchasing
    - Construction
    - Financing
    - Leasing
  - c. Entering into contracts
    - Terms and Conditions
    - Interpretation
    - Length
  - d. Threat of lawsuit or claim.
  - e. Estate Planning - Elder Care
    - Wills/Living Wills
    - Living Trusts - Testamentary Trusts
    - Durable power of attorney

Power of Attorney - Health Care  
Medicaid

4. When do you have a duty to report acts within the Church to those outside the Church.
  - a. Conduct resulting in abuse or neglect of a child
    - Appendix A
    - Appendix B
  - b. Criminal Conduct - Adults
    - Theft
    - Sexual acts
    - Drug Abuse
  - c. Factors to consider when the church is a victim of a criminal act.
    - Restoration through Biblical Principals
    - Contractual Obligation
    - Fiduciary Obligation
    - Ethical Considerations
    - Church member/visitor/outsider
  
5. Immigration issues for the Church.
  - Non-Profit employers are required to complete Form I-9 (within 3 days hire)
  - Independent Contractor may be considered an employee
  - Required to review original documents
  - Required to maintain for 3 years
  - Penalties

## Appendix A Confidentiality vs. State Law Requirements

(from the corporate attorney for the General Board Church of the Nazarene)

Paragraph 433.14 of the *Manual* imposes a requirement of confidentiality on minister communications:

It shall be the duty of every minister of the Church of the Nazarene to hold in trust and confidence any communication of a confidential nature given to him or her by a counselee of the congregation while he or she is acting in his or her professional character as a licensed or ordained minister of the Church of the Nazarene. The public dissemination of such communication without the express written consent of the declarant is expressly condemned. Any Nazarene minister who violates the above regulation subjects himself or herself to the disciplinary sanctions set forth in Part VI, Subsection V of this *Manual*.

On the other hand, all 50 states have a child abuse reporting law requiring designated persons to report known or reasonably suspected incidents of child abuse to a designated state agency. State laws designate certain persons as “mandatory reporters”, and ministers are mandatory reporters in many states. Some states exempt ministers from reporting child abuse if they learn of the abuse in the course of a conversation protected by a minister–communicant privilege. Ministers may even face criminal and civil liability for failing to report child abuse where they are required to do so and no privilege is recognized.

State law may not recognize a privilege for every communication which the Church of the Nazarene regards as confidential under *Manual* paragraphs 433.14. As a result, it is imperative for ministers to know (1) whether they are mandatory reporters of child abuse under their state law, and (2) whether they are required to report even if they learn of the child abuse in the course of a conversation that is protected by a minister-communicant privilege.

**State laws are subject to change. Many states have pending proposed changes to child abuse reporting requirements. Advice should be sought from an attorney familiar with local law.**

Following are some generally applied notes:

1. Most states classify persons as mandatory or permissive reporters of child abuse. Mandatory reporters are legally required to report known or reasonably suspected cases of child abuse, and they face criminal penalties (normally a misdemeanor) for failing to do so. Permissive reporters are persons who are not mandatory reporters. They are permitted to report, but are not legally required to do so.

2. Some states do not list “ministers” as mandatory reporters. However, this does not mean that ministers are not mandatory reporters. Ministers are mandatory reporters in any state that makes “any person” a mandatory reporter of child abuse. In other states, ministers may be mandatory reporters if they perform the duties of one of the specified categories of mandatory reporter. For example, a minister may be a mandatory reporter because he or she is a teacher or administrator at a church operated school, or serves as a counselor.

3. Some states include within the definition of a mandatory reporter “a person rendering spiritual treatment through prayer in accordance with the tenets of a well–recognized religion.” While this language has seldom if ever been defined by statute or interpreted by the courts, it is reasonable to assume that it refers to Christian Science practitioners and other religious leaders who perform a role analogous to physicians (who are mandatory reporters in all 50 states). It is doubtful, but not certain, that a minister who merely prays with a sick child would come within this definition.

4. All states define a “child” as a person under the age of 18.
5. Mandatory reporters who know of an incident of child abuse, or who have reasonable cause to believe that such an incident has occurred, are subject to criminal penalties if they do not comply with their state's child abuse reporting law. Generally, the penalty for noncompliance is a misdemeanor.
6. Most states provide child abuse reporters with limited immunity from liability in the event that a report of child abuse proves to have been false or is not substantiated. Limited immunity means that the reporter cannot be liable unless the report was made with malice.
7. In many states, mandatory reporters are required to report child abuse only if they learn of it in the course of performing their professional duties.
8. State law may provide that certain minister–communicant communications are privileged and exempt from disclosure under child abuse reporting requirements.
9. Several state child abuse reporting laws provide that no child who is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church shall, for that reason alone, be considered to be an “abused” child.

## Appendix B

The chart below summarizes how States have or have not addressed the issue of clergy as mandated reporters (either specifically or as part of a broad category) and/or clergy-penitent privilege (either limiting or denying the privilege) within their reporting laws.

|  | <b>Privilege granted but limited to "pastoral communications"</b>   | <b>Privilege denied in cases of suspected child abuse or neglect</b> | <b>Privilege not addressed in the reporting laws</b>  |
|--|---|--|---|
| <b>Clergy enumerated as mandated reporters</b>   | Alabama, Arizona, Arkansas, California, Colorado, Illinois, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nevada, New Mexico, North Dakota, Ohio, Oregon, Pennsylvania, South Carolina, Vermont, Wisconsin | New Hampshire, West Virginia   | Connecticut, Mississippi  |
| <b>Clergy not enumerated as mandated reporters but may be included with "any person" designation</b> | Delaware, Florida, Idaho, Kentucky, Maryland, Utah, Wyoming   | North Carolina, Oklahoma, Rhode Island, Texas                        | Indiana, Nebraska, New Jersey, Tennessee, Puerto Rico   |
| <b>Neither clergy nor "any person" enumerated as mandated reporters</b>                              | Virginia, Washington <sup>6</sup>   | Not applicable   | Alaska, American Samoa, District of Columbia, Georgia, Guam, Hawaii, Iowa, Kansas, New York, Northern Mariana Islands, South Dakota, Virgin Islands |

To see how your State addresses this issue, visit the [State Statutes Search](#).

To find information on all of the States and territories, view the complete printable PDF, [Clergy as Mandatory Reporters of Child Abuse and Neglect: Summary of State Laws](#) (PDF - 287 KB).

[http://www.childwelfare.gov/systemwide/laws\\_policies/statutes/clergymandated.cfm](http://www.childwelfare.gov/systemwide/laws_policies/statutes/clergymandated.cfm)