**PURPOSE OF WORKSHOP – TO *PREVENT*, NOT MERELY *PREVAIL***

* To honor God through faithful biblical counseling without government interference
* To avoid dishonoring Christ by going before the secular courts to solve disputes inside the church (1 Corinthians 6:1-8)
* To facilitate biblical reconciliation and peacemaking
* To avoid loss of time and resources in civil litigation
* ***NOT*** to escape responsibility for sinful conduct

**LOCAL ATTORNEYS**

* This workshop covers general legal principles.
* Unlike the Bible, state law varies widely!
* Be sure you have an ongoing relationship with a local attorney.

**STRUCTURE OF COUNSELING CENTER**

* Church (recommended for maximum First Amendment protection)
* *Hosanna Tabor Lutheran* (2012) and other cases affirm church autonomy
* Separate non-profit, religious, tax-exempt corporation
* Recommend donation-based ministry rather than set fees

Beware: Proposed federal “Equality Act” (promotes inequality for Christians!)

**GOVERNING DOCUMENTS & POLICIES**

* Articles and/or Constitution
* Bylaws
* Denominational standards
* Policies for accountability to avoid immorality (women counseling women)
* Define marriage and God’s creation of human beings as immutably male/female
* Use specific Scriptures – often!
* Use biblical terminology, rather than psychological terms
* Be aware of legal developments in the courts and legislatures (federal/state).

**INFORMED CONSENT – REVIEW THE FORM THAT FOLLOWS**

***INFORM*** your counselees about who you are and what you do, giving them an opportunity to ***VOLUNTARILY CONSENT*** after they understand your approach and policies.

**1. Religious/Biblical Nature of Counseling (*INFORM*!!)**

* **WHO YOU ARE**: Your counseling is based on the Bible.
* **WHO YOU ARE NOT**: You reject the methods/theories of psychotherapy. Your counselors are NOT psychotherapists, psychologists, or such.
* Be aware of relevant state laws (examples – NC, MN). Review licensing requirements, *definitions*, and religious *exemptions*.
* Your policy is NOT to refer to "mental health professionals" because of your RELIGIOUS convictions.
* Base your representations to counselees on God's promises in the Bible.

**2. Marriage and Sexuality (*IMPORTANT!*)**

Define *marriage* in biblical terms with Scriptures! (one man plus one woman)

Define *sexuality* in biblical terms with Scriptures! (immutably male and female)

**3. Referrals to Other Professionals (medical, legal, financial)**

**4. Confidentiality**

* You do not guarantee *absolute* confidentiality.
* The Bible may require you to make disclosures (church discipline).
* The civil law may require disclosures (e.g., child abuse reporting, subpoenas).
* Consent should cover your ability to contact the counselee's pastor and/or elders, if you counsel people outside your church.

**4. Christian Mediation/Arbitration Policy – Biblical Peacemaking**

* Courts generally uphold arbitration clauses, even in a secular context.
* Courts have upheld church policies.
* Peacemakers Ministry!

**5. Minor Children Counselees**

* Be aware of custody issues if parents are separated or divorced.
* Obtain written consent of custodial parent.
* Parents have constitutional rights concerning religious training.

**6. Records Release**

* Establish a policy for the release of records.
* Notice to counselee
* Written consent, unless subpoena mandates disclosure
* Clergy privilege (state law varies – typically narrow)

**BIBLICAL COUNSELING CENTER (BCC)**

**CONSENT TO BIBLICAL COUNSELING AND DISCIPLESHIP**

 **Our Goal**: The purpose of biblical counseling and discipleship is to help you meet the challenges of life in a way that will please and honor the Lord Jesus Christ. We offer counseling and discipleship free of charge, as a ministry of the Biblical Counseling Center (BCC) and \_\_\_\_\_\_\_\_\_\_\_ Church. Counselees may donate to the ministry, but this is not expected or required as a condition of counseling. You have no express or implied obligation to pay fees for the ministry you receive through BCC.

 **Biblical Basis**: **BCC counseling is strictly religious in nature, conducted under the authority and leadership of the church**. We believe that God, through His revelation in the Old and New Testaments of the Bible, has provided His people with thorough guidance and instruction for faith and life (II Timothy 3:16-17; II Peter 1:3-4). Our counseling is based solely on scriptural principles. We reject the teachings and methods of modern psychology or psychiatry, whether expressly secular or an attempted integration with biblical principles. BCC counselors are not trained or licensed as psychotherapists or mental health professionals, and under **[*STATE*]** law no such licensing is required. They do not follow the methods of such persons, and our policy is to not make referrals to them. **[*ADD REFERENCES TO RELEVANT STATE-SPECIFIC LAWS, IF ANY*.]**

 **Marriage and Sexuality**: As a Christian religious ministry founded on biblical truth, BCC recognizes marriage only as the union of one man and one woman, as God ordained (Genesis 2:24-25). In addition, we recognize that God created each person immutably male and female, in His image (Genesis 1:26-27). BCC counselors offer compassionate ministry to persons desiring to leave any sort of sinful lifestyle but will not affirm any other arrangement as a valid marriage and will not validate or facilitate attempts to transition from one sex to the other, regardless of the position taken by federal or state civil authorities on these issues.

 **INITIALS\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Other Professional Advice**: If you have significant medical, legal, financial, or other technical questions, you should seek advice from a competent independent professional. Our counselors will cooperate with such advisors and help you to consider their counsel in the light of scriptural principles.

More specifically, we urge our counselees to properly care for their physical bodies and to seek proper medical treatment for all physiological problems. Our counselors will assist you in responding to such problems in a godly manner, but our counsel is not intended to replace the services of a qualified physician where organic problems are present or where medication has been prescribed.

**Confidentiality**: Confidentiality is an important aspect of the counseling process. We will carefully guard the information you entrust to us to the fullest extent possible. There are times, however, when it may be necessary for us to share certain information with others. Examples include, but are not limited to, the following:

1. Where a person refuses to renounce a particular sin, it may become necessary to seek the assistance of others in the church to encourage repentance and reconciliation (Proverbs 15:22, 24:11; Matthew 18:15-20). In such cases, we will reveal only such information as is necessary for such purposes, and only to those biblically required to be involved. Where a counselee is a member of another church, it will most likely be necessary to contact the pastor and/or elder(s) of such church.

 **INITIALS\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

2. Where a counselor is uncertain as to how to address a particular counseling issue, he or she may seek advice from a pastor or another counselor.

3. Where a counselee threatens harm to another person, it may be necessary to intervene in order to prevent such harm.

4. The counselor must follow applicable state law concerning the mandatory reporting of child abuse. The law may require a counselor to report other crimes or threats to the appropriate authorities.

5. Observers may sit in on counseling sessions, either to assist in the process or for training purposes. [*INCLUDE IF APPLICABLE*]

**Conflict Resolution - Arbitration**: On rare occasions, a conflict may develop between a counselor and counselee. 1 Corinthians 6:1-8 forbids Christians from bringing lawsuits against one another in secular courts of law. In order to ensure that such conflicts are resolved in a biblically faithfully manner, we require all of our counselees to agree that any dispute with a counselor or with this church will be settled by mediation and, if necessary, legally binding arbitration conducted in accordance with the *Rules of Procedure* of the Institute for Christian Conciliation. (A copy is available on request.) The arbiters will be the elders of \_\_\_\_\_\_\_\_\_ Church. If one or more elders of the church is a party to the dispute, then three arbiters will be selected from the [elders] of churches in the [Presbytery] of \_\_\_\_\_\_\_\_\_\_ of the \_\_\_\_\_\_\_\_\_\_ Church, with each party to the dispute choosing one arbiter, and the two arbiters then selecting the third. **[*COMMENT: This can be revised as needed for churches that do not follow the Presbyterian system of church government.*]** It is expressly understood that, by consenting in advance to such arbitration, the counselee is waiving his right to a trial in the civil courts.

 **INITIALS\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Release of Records**: It is our policy not to release BCC's records for a particular counselee without that person's written consent, or, in case of counseling a married couple or other counseling involving multiple members of the same family, the written consent of each person involved. If a counselee is under age 18, that counselee's parent or legal guardian must sign. If a subpoena or other legal demand requires BCC to release counseling records, BCC will notify the person(s) whose records must be released.

 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 grow in spiritual maturity and prepares you for usefulness in His body. If you have any questions about these guidelines, please speak with your counselor. Your signature below indicates your **informed consent** to these guidelines.

Signed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Dated\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**LEGAL RESOURCES - *WHO YOU NEED TO KNOW***

**LITIGATION & LEGAL ASSISTANCE**

Alliance Defending Freedom (national) www.adflegal.org

Christian Legal Society www.christianlegalsociety.org

Christian Law Association www.christianlaw.org

Liberty Counsel (D.C., Florida, Virginia offices) www.lc.org

First Liberty Institute (based in Texas) www.firstliberty.org

Thomas More Society (Chicago) www.thomasmoresociety.org

Life Legal Defense Fund www.lldf.org

**EDUCATION & INFORMATION**

**Publications and Materials \***

Church Law & Tax Report www.ChurchLawAndTax.com

Christian Legal Society www.christianlegalsociety.org

Alliance Defending Freedom www.adflegal.org/campaigns/pym

 **\* These detailed materials would also help your local attorney to better assist you.**

**Conferences – Workshops – Training**

Truthxchange (Dr. Peter Jones) www.truthxchange.com

The National Center for Life and Liberty www.ncll.org

Peacemaker Ministries https://peacemaker.training

The Salt & Light Council www.saltandlightcouncil.org

National Institute of Family & Life Advocates https://nifla.org

**E-mail Alerts & Social Media**

Alliance Defending Freedom (national) www.adflegal.org

American Center for Law and Justice www.aclj.org

American Values – Gary Bauer www.amvalues.org

Family Research Council www.frc.org

Life News www.lifenews.com

North Carolina Values Coalition www.ncvalues.org

Return America www.returnamerica.org

**LITIGATION POTENTIAL – WHERE ARE YOU VULNERABLE?**

**1. CONDUCT OF THE COUNSELOR**

Courts generally *will not* hold pastoral counselors liable for the *content* of *religious* counseling. "Clergy malpractice" (*Nally* case) is a type of negligence action, which requires all of the following:

 1 - Duty (LAWSUITS BREAK DOWN HERE!)

 2 - Breach

 3 - Causation

 4 - Damages

Courts often *will* hold the counselor and/or church (or center) liable if a sexual relationship develops between counselor/counselee:

* Beware of "holding yourself out" as psychological counselor
* Intentional infliction of emotional distress
* Breach of fiduciary duty . . . or consenting adults?
* Alienation of affections (abolished in most states)
* Battery (harmful or offensive touching to another person)
* ***CRIMINAL LIABILITY*** in some states!!

**2. CONDUCT OF THE CHURCH OR COUNSELING CENTER**

**Areas of vulnerability**

* Negligent Hiring, Supervision, Retention
* Disclosure of Confidential Communications
* Church Discipline

Legal Theories of Liability

* Invasion of privacy
* Defamation (slander or libel)
* Emotional distress

**PROTECTION FROM LIABLITY**

* Governing documents (FOLLOW THEM)
* Legal Defenses to Liability
	+ Informed consent (use a well drafted form!)
	+ "Implied consent" (from church participation)
	+ Privilege - "common interest" in church matters
* "Tell it to the church" (Matthew 18:17)
	+ ***To*** church members ***about*** church members
	+ Truthful, factual information – not speculation or gossip
	+ Written (marked "privileged and confidential")

 Warn against further disclosure

 Communicate factually verifiable info only

* + Avoid announcements where visitors present
	+ Closed membership meetings
	+ Binding biblical arbitration policy (written)
	+ **CAUTION!** Prayer bulletins (carefully limit information)
* Church Membership – Definitions and Issues
	+ Member counselee v. non-member counselee
	+ Avoid ambiguous definitions of "member"
	+ Is membership a "property right" under civil law??

**3. CONDUCT OF THE COUNSELEE**

Counselee's threat to harm specific others *may* trigger duty to warn.

Counselee's threat to commit suicide (*Nally* case)

Child abuse reporting (know state law and cooperate with authorities)