

Response to Request for an
Opinion on Malicious Desertion from Michigan District President

The request seeks guidelines regarding “what constitutes malicious desertion, especially as it applies to withholding of sexual contact for an inordinate period of time.” Such guidelines, of course, can only be provided in the context of the biblical understanding of marriage and divorce, including the so-called scriptural or biblical reasons for divorce. In this context, guidance can be found in the Commission’s reports, *Human Sexuality: A Theological Perspective* (1981) and *Divorce and Remarriage: An Exegetical Study* (1987). The scriptural reasons for divorce are identified as twofold: 1) “sexual unfaithfulness,” which includes adultery and fornication; and 2) “desertion” or “abandonment,” if willful and definitive (or sustained).

Particular reference to the 5th summary statement on pages 38-39 of *Divorce and Remarriage* is helpful:

5. *A spouse who has been willfully and definitively abandoned by his/her partner who refuses to be reconciled and is unwilling to fulfill the obligations of the marriage covenant despite persistent persuasion may seek a legal divorce, which in such a case constitutes a public recognition of a marriage already broken, and remarry. (38)*

Further, paragraph a. provides the following consideration:

- a. In determining whether a person has been truly abandoned in a way that can be considered willful and definitive, the main factors are consent to live within the home and to carry out the commonly recognized obligations of mutual support and sexual cohabitation. [See especially 1 Cor. 7:3-7] In fact, one would also assume that where such consent and desire exist, the desire also to reconcile will manifest itself, even if this should involve separation for a time. (38-39)

The phrase “malicious desertion” may be understood to mean willful and sustained abandonment. Careful consideration, however, must be given to the circumstances which identify whether the “abandonment” is willful or malicious.

This, of course, can only be determined on a case by case basis. Each set of circumstances needs to be examined closely. Malice or willfulness includes elements of evil intent, intentional disregard, calculated and persistent failure - elements which presuppose ill motives. The difficulty facing those who must judge such situations is that it may be unfair to find malice or ill will in contexts where the offending partner is suffering from emotional, mental or physical dysfunction. Such dysfunctional components make it difficult to conclude that one is behaving with malice or ill motive toward the other. Rather, such circumstances may well fall within the categories of the traditional marriage vow to be faithful to the other “for better or for worse,” “in sickness

and in health.” In other words, the burden one spouse bears due to the other’s emotional, mental or physical weaknesses, is not an excuse for escape. Summary point 5.b of the Commission’s report *Divorce and Remarriage* cautions: “The freedom granted by the apostles’ words ‘the brother or sister is not bound’ must not be understood as license to ‘get out from under’ one’s marital obligations” (39). Efforts at reconciliation under such circumstances are necessary not only out of concern for the relationship but also out of concern for any children who suffer in the case of divorce.¹ Similar cautions and encouragements for making every effort toward reconciliation are offered in the Council of President’s 1987 policy statement “Guidelines for Dealing with Marital Crisis Involving Separation and Divorce of LCMS Clergy,” its 1989 policy statement, “Guidelines for Dealing with Marital Crisis Involving Separation and Divorce of Commissioned Ministers of Religion of the LCMS,” as well as the excursus on “Clergy Divorce” in the CTCR’s report *Divorce and Remarriage* (42-45).

Adopted by the CTCR
December 6, 2003

¹ Certainly, a marriage partner with emotional, mental or physical disorders which affect relations with the other, should not refuse reasonable attempts to deal with and treat the underlying disorder. Whether the refusal to do so allows the partner to seek divorce even in light of the disorder depends, of course, on the totality of the circumstances. Husband and wife each owe to the other the fulfillment of marital obligations. In situations where there is a failure to fulfill those obligations, each owes to the other the willingness to seek reconciliation.