

BEFORE THE JUDICIAL COMMITTEE OF THE LIBERTARIAN PARTY

Date: 10/18/2021

Petitioner: Caryn Ann Harlos

Subject: Appeal of the LNC motion of 9/5/2021 to suspend and remove Petitioner as LNC Secretary, as per Article 6, Section 7 of the Bylaws.

Interested Parties: Members of the LNC, Joe Bishop-Henchman, as he is alluded to in the in the initial complaint against the Petitioner.

Relief requested: Voiding of suspension motion and reinstatement as LNC Secretary.

Committee Jurisdiction: Article 8, Section 2, subsection b, regarding suspension of officers, and Article 8, Section 2, subsection d, regarding voiding of National Committee decisions.

Appearing on Behalf of Petitioner: DL Cummings

Response by Jonathan M. Jacobs, PRP, CPP

There were several procedural matters raised during the hearing that had not been made known to the Petitioner prior to the hearing. This response is to address these issues.

The first issue was raised by member Alicia Mattson in her question. This question was "You don't believe that the principles of interpretation of *Robert's* say that when the Bylaws provide a specific procedure it excludes other procedures?" This new question is related to the "Principles of Interpretation" section of *RONR* (56:68), presumably number 4.

That particular principle is "*If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited.*" The explanation of this principle notes, "There can be no valid reason for authorizing certain things to be done that can clearly be done without authorization of the bylaws" Without some Bylaw or rule superseding *RONR*, the LNC would not have any authority to remove an officer. This power would be reserved solely for the Delegates at Convention.

In general, boards, which is what the LNC effectively is, have limited authority (49:6, 56:41). But for this Bylaw provision, the LNC could not remove an Officer from office. Even if an Officer were to commit some heinous act during a meeting, absent this clause, the best that the LNC could do would be to remove that Officer from the remainder of the meeting (49:15).

Article 6, Section 7, transfers the authority to remove an Officer from the Convention Delegates to the LNC. In that regard, it would act to prohibit Convention Delegates from removing an Officer through disciplinary action. This is the "valid reason" for including this clause in the Bylaws, to transfer this authority from the Convention Delegates to the LNC. **This clause also changes the vote total needed to remove an Officer from the current edition of *RONR*, but it does not change the process needed to adopt the motion.**

Stating that the LNC has the exclusive authority to remove Officers, subject to appeal to the Judicial Committee, is **not** the same as saying that all procedural rules in *RONR* for disciplinary actions do not apply. The LNC *could* have adopted special rules that would circumvent the trial required in disciplinary actions, but to date, they have not done so. Similarly, the framers of the Bylaws could have inserted language into Article 6, Section 7, to remove an Officer through a simple motion; they have not.

Richard Brown, the parliamentarian for the LNC, referred to 56:57 has indicated that the disciplinary process included in a bylaw could “be simple or elaborate.” The Petitioner’s parliamentarian does not disagree, and noted in his original opinion “A simple clause, stating that this would be done ‘by motion,’ would have been sufficient to remove the RONR requirement; that wording, however, does not exist.” That this requirement would only need to be simple wording does not make it simply appear out of thin air.

Mr. Brown, in relation to another question, cited the RONR Forum. This citation is somewhat problematic since there is no limitation on who may post answers. The RONR Forum contains this disclaimer:

“Questions posted to the Question and Answer Forum may get an immediate answer or no answer, depending upon whether visitors to the site choose to respond, but you generally will not know the background or reliability of the person answering it. Neither the Robert’s Rules Association nor the authorship team assumes responsibility for answers that may be posted on the Questions and Answer Forum, and there is no guarantee that these answers are correct as a matter of parliamentary law.” (<https://robertsrules.com/qa-forum/>)

Because of this, it cannot be considered truly authoritative.

There is a peer reviewed journal, *National Parliamentarian*, which is authoritative. This included an article on discipline by Harry S. Rosenthal, JD, then a Registered Parliamentarian, which runs counter to some of Mr. Brown’s claims (“Disciplinary Procedures by Associations Require Care,” 4th Quarter, 1997). He noted, among other things that “An accused must be informed with reasonable specificity of what he is charged,” and that “The basic elements of due process must be accorded to an accused.” Mr. Rosenthal is now a Professional Registered Parliamentarian, an advanced certification, and is the author of *Parliamentary Law and Practice for Nonprofit Organizations*, 3rd Edition.

If the Judicial Committee is inclined to take the comments at the RONR forum into consideration with the above caveats in mind, even the claim by Mr. Brown that the RONR Forum has generally trended this way may not be accurate. Attached is a thread from Mr. Josh Martin, from August of 2020, indicating that a “combined procedure” could be used “to the extent that the procedures in your bylaws are silent on certain aspects of the process.” Mr. Martin is a known individual. He is a Professional Registered Parliamentarian and served as the Parliamentary Research Editor for *National Parliamentarian*. He co-authored a question and answer column in that journal. At least two members of the RONR authorship team, the late William J. Evans, and Thomas Balch have served as one of the co-authors at different times. The Petitioner’s parliamentary consultant was Mr. Martin’s successor as Parliamentary Research Editor.

Josh Martin

Posted August 19, 2020 at 01:09 PM

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Members

16k
Location: Minneapolis,
MN

On 8/19/2020 at 12:46 PM, Spring Taylor said:

So basically they can say they are using RONR when they lay out the "trial" rules but they don't have to follow them all the way through. They can use a combined version of the by-laws and RONR?

No. Once again, if your bylaws have their own procedures for discipline, those rules take precedence over RONR. The society (or the board) cannot pick between which process to be used - the process in your bylaws must be followed.

I suppose that a "combined" version could be used to some extent, in the sense that the procedures in RONR could be used as guidance, to the extent that the procedures in your bylaws are silent on certain aspects of the process. For example, it is conceivable that a society's bylaws might provide that a "trial" is required but say absolutely nothing about how that trial is conducted, in which event the procedures in RONR may be of assistance. The society (or the board) could not, however, take any action which conflicts with the procedures in your bylaws.

On 8/19/2020 at 12:46 PM, Spring Taylor said:

That is where the confusion comes in. They state in one instance to the member there is nothing in the by-laws to cover the appeal of her termination so they are using RONR, then when the member pushes it to go to membership as it states in Article XX, Section 63 they say they don't have to because of the By-Law.

Yes, I agree that the manner in which the board handled this is extremely confusing.

If the board's claim is that the board had the authority to remove this person under the procedure in the bylaws and that there is no appeal process under the procedure in the bylaws, they should have stuck to their guns on that. The bylaws take precedence over RONR. Nonetheless, the bylaws *still* take precedence over RONR, notwithstanding the fact that the board (perhaps erroneously) said they are "using RONR" for the disciplinary process.

On 8/19/2020 at 12:46 PM, Spring Taylor said:

If they were going to use the By-Laws and send it to a Committee then how did they get to vote at the trial when it says to .."be decided on by the Executive Board or Committee appointed by same"? Shouldn't the Committee be the only ones to vote at the "trial"?

As I understand the facts, the matter is to be decided on by the Executive Board or a committee appointed by the board. Whichever of these bodies meets, only members of that body would vote. I would note, however, that there is no reason that the committee could not consist of board members, in whole or in part.

I'd also note that the board and the committee seem to be in agreement on this matter, so there doesn't seem to be much to pursue for a challenge on this grounds.

On 8/19/2020 at 12:46 PM, Spring Taylor said:

Section 3. Any Executive Board member flagrantly neglecting duties of her office or duties assigned to her and/or abusing a member's personal confidentiality (such as personal communication to the Executive Board by a member or a member's financial information) will be notified by the remaining members of the Executive Board in writing for the first offense. If said Executive Board member continues to flagrantly neglect duties of her office or duties assigned to her and/or abusing a member's personal confidentiality the remaining members will notify the general membership and request a vote to remove said Executive Board member. If Executive Board member is removed by the general membership, she will return to general membership.

It is understood that the above is a list of the most common problems that arise from time to time and are set forth in order for all members to be aware

Expand

Your organization will be the ultimate judge of determining what its bylaws mean in this regard and resolving the apparent ambiguities and conflicts in these sections. It seems that one section might be referring to removal from the Executive Board and one section might be referring to removal from the organization, which might help to resolve the conflict.

As previously noted, the manner in which this interpretation would arise would be for a member, at a meeting of the general membership, to raise a Point of Order that the board's removal of this member was improper and is null and void, stating the reasons why. The chair would rule on this point and provide their reasoning. A member may move to Appeal from the decision of the chair. If this is seconded, the decision would then be in the hands of the assembly. A majority vote is sufficient to overturn the chair's ruling.

It should be noted that the question being decided on appeal is whether the board acted properly under the bylaws in removing the member, not whether members personally agree with the decision to remove the member on its merits.

As previously noted, the society may also wish to amend the bylaws if the society feels that the bylaws are unclear and/or if the society feels that the bylaws grant too much power to the board in this regard.

On 8/19/2020 at 12:46 PM, Spring Taylor said:

When she asked what process in RONR they were using for the appeals process they told her Article XX, Section 63. I just don't understand how they can go back and forth on what they use.

The process in the bylaws is controlling, regardless of any statements the board has made to the contrary.

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