

LAW COMMITTEE REPORT – FALL CONVENTION 2015

PROCEDURES FOR PROCESSING COMPLAINTS AGAINST MEMBERS

Questions regularly arise regarding the appropriate procedures to follow if a complaint has been raised against a member for inappropriate conduct. Two sets of procedures exist. One set is followed if the challenged conduct occurred in the Member's Lounge or other areas of the Lodge except for on the Lodge meeting floor. A complaint of this nature is resolved by the managing body of the Lodge's club or social parlor. A separate procedure applies if the challenged conduct occurred on the Lodge meeting floor or outside of the Lodge. Complaints of this nature are resolved by a Local Forum and are subject to appeal to the Grand Forum. Both sets of procedures are thoroughly explained in the Guide to the Courts of the Order which is an excellent resource that can be found at <http://www.elks.org/grandlodge/judiciary/manuals.cfm>. The Guide is 56 pages, not including appendices, and is far too comprehensive to review in this summary report. It is however an excellent resource that all Lodges should be aware of. Given space and time limitations, this report will limit itself to complaints that are resolved by the Managing body of the Lodge. Complaints to Local Forum will be discussed in the Spring 2016 convention report. In the interim if questions arise, please consult the Guide to the Courts of the Order or contact a member of the Law Committee for further advice.

Each Lodge is to have a managing body for "the Club, social parlor, or other facility established in connection with the Lodge." [§16.040], which "shall have power to suspend a Member from Club, social parlor, or other facility privileges for a period not exceeding one (1) year, for violation of rules duly adopted by the Lodge and approved by the Committee on Judiciary for such Club, social parlor or other facility, or Conduct Unbecoming An Elk".

A complaint can be made by any member having knowledge of the alleged violations. The managing body itself can initiate charges where an allegation of violation is made by a non-Elk. To be grounds for a managing body suspension, conduct unbecoming an Elk must be on the premises of the Club, social parlor, or other facility. A suspension proceeding cannot be based on alleged misconduct on the Lodge floor, or conduct that takes place completely outside the Club premises. **For alleged misconduct that does not occur on Club premises, the proper remedy is by complaint to the Local Forum.**

The Grand Forum has set forth the necessary procedures to follow for a managing body suspension proceeding as follows:

1. A Hearing is held after giving the Member ten days written notice served either personally or by regular first class mail. Said notice should specifically state the charges.

2. The Hearing is before the managing or supervisory body.

3. At the Hearing before the managing or supervisory body, the Member must be given his or her due process of law which will include but not be limited to the managing or supervising body of the Lodge strictly following the provisions of Section 16.040 if there is an intention to suspend a Member from privileges of the Club or home.

4. The managing or supervisory body would then decide whether or not suspension is appropriate. A notice of suspension in writing must be served personally or by registered first class mail to the Member.

5. The Member may Appeal the Suspension to the Lodge if done so within ten days of receipt of the Notice of Suspension by filing a Notice of Appeal either by personal service or first class mail to the Lodge Secretary.

6. If the Member Appeals a Suspension to the Lodge, the suspension is stayed until the appeal to the Lodge has been completed.

7. After a Notice of Appeal has been filed with the Secretary, the Secretary reports the Appeal to the Exalted Ruler and to the Lodge at the next regular meeting.

8. The Exalted Ruler at that meeting shall then order a hearing of appeal, the hearing to be held at a regular meeting of the Lodge within 45 days.

9. Notice in writing must be sent to all Lodge Members not less than ten days prior to the Hearing on Appeal.

10. At the Hearing, the managing or supervisory body of the Club must present the evidence and the Appealing Member then has an opportunity to defend or refute the charges.

11. After the Hearing portion is completed, a Motion to Modify or reverse the action of the supervisory or managing body must pass by an affirmative secret ballot of two-thirds vote of the Members present. The Secretary should be prepared to distribute paper ballots in the event a motion is made.

12. If no motion is made, the decision of the supervisory or managing body is affirmed.

The managing body is required to strictly follow the procedures of Section §16.040 if there is an intention to suspend a member from privileges of the club or home. The managing body cannot vote to suspend a member without first giving that member a full and fair hearing. A claim of emergency circumstances will not excuse a failure of compliance with those procedures. Numerous Grand Forum decisions have held that the requirement of ten days written notice to a member before the hearing of the managing body is essential to due process. Oral notice is not sufficient. A change in the scheduled date for the hearing of the managing body cannot be made without sending a new written notice to the accused member at least ten days prior to the rescheduled date.

GLS §16.040 states that a member who is suspended by the managing body can appeal to the Lodge. The suspended member must file notice of appeal with the Lodge Secretary, by personal service or mail, not later than ten days after receipt of notice of suspension. The notice of appeal is to be reported by the Secretary at the next regular Lodge meeting. At that time, the Exalted Ruler is to order a hearing on the appeal to be held at a regular Lodge meeting not later than forty-five days thereafter. While the order is on appeal to the Lodge, the suspension order is automatically stayed pending disposition of the appeal by the Lodge, and the member retains Club privileges until the Lodge makes a decision. It is improper for the managing body to order suspension of club privileges either prior to its hearing date or during the pendency of an appeal to the Lodge.

Importantly, there is no provision in the Grand Lodge Constitution or Statutes providing for an appeal to the Grand Forum from a suspension of club privileges by a managing body. Grand Forum has said many times that it has no jurisdiction to review the propriety of a suspension order properly made under §16.040. However, Grand Forum has held that it can and will intervene and grant relief upon proper petition if it clearly appears that in a club suspension proceeding a member has been deprived of a substantial right of membership without due process of law (in other words, either proper notice was not followed or the accused was denied

the opportunity to present a full defense). This appears to be the limited basis upon which Grand Lodge will consider relief on appeal.

If there are any further questions please feel free to contact me at pr@sullivanleavitt.com

Respectfully Submitted

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