

## Background

On June 8th, the Libertarian Party of New Hampshire Executive Committee (EC) voted 5-1-0 to expel [...] from the state party. Subsequent to this decision, the Judicial Committee (JC) was contacted by At-Large EC member Sean Dempsey requesting that the JC review the decision.

Per the bylaws of the LPNH the Judicial Committee undertakes review of disputes and petitions brought forward to it.

### *IX. Standing Committees*

#### *F. Judicial Committee*

*1. The Judicial Committee (referred to as “committee” in this Section of this Article) shall serve the State Party by resolving disputes, hearing petition cases brought to it in accordance with these bylaws and any special rules of order adopted by the State Party,...*

Although no appeal or dispute between parties with differing opinions has been formally or informally brought forward to the Judicial committee, we believe that the request by the EC for a third party review of their own decisions is well within the spirit of the purpose of the JC.

The request from the EC is reproduced here:

LPNH Judicial Committee,

*On June 08 2021 the LPNH EC voted 5-1-0 to expel [...] from the state party for reasons related to “doxxing” (publicly providing information about another party member for the stated purposes of harming their vocation/employment, personally life, and/or emotional well-being).*

*We felt this behavior was a violation of the NAP and flagrant enough to merit expulsion from the LPNH.*

*Our organization’s bylaws are silent on the matter of party expulsions, only saying that the EC has the ability to act in the best interest of the party and the right to appeal any EC decision is permitted to go to the Judicial committee.*

*Although no appeal has been filed, would you please, proactively, confirm/affirm the decision to expel had merit; if you find otherwise please provide guidance to the EC members (cced here), and advise if a retraction of the decision or any other revision should be made for the public record.*

*Cordially and respectfully yours,  
Sean Dempsey, At Large LPNH*

Based upon this request, and concerns expressed publicly by members we decomposed this request into the following questions.

1. Does the EC have the authority to expel a member?
2. If so, did the EC execute this authority in a manner compliant with the bylaws?
3. Was the expulsion executed in good faith by the EC?
4. What follow-up actions must be taken as a result of this review?

## Does the EC have the authority to expel a member?

While the bylaws are silent on member expulsion, there are several sections that have been suggested to be relevant to the actions under review.

### VII. Executive Committee & Leadership Board

#### A. Executive Committee

1. The purpose of the Executive Committee (referred to as “committee” in this Section of this Article) shall be to oversee and act in respect to all matters pertaining to the organization, maintenance, conduct, affairs, and interests of the State Party consistent with law, these bylaws, and any rules of the State Party. The Executive Committee shall act as directed by these bylaws, the rules of the State Party, the Board, and the General Court. The ongoing business of the State Party between conventions shall be administered by the Executive Committee.

This section of the bylaws appears to be the primary section the EC felt allowed them the authority to consider this action. While this grant of authority to the EC does not explicitly call out expulsion or discipline of members, the grant of authority is broad and consistent with the expectations for a body such as the EC defined in Robert’s Rules of Order, Art. IX. Committees and Boards.

*50. Boards of Managers or Directors, Boards of Trustees, Executive Committees, etc. Committees of this class are essentially small deliberative assemblies, subordinate to the body that appoints them, with their duties and authority, and the number of their regular meetings and their quorums, defined by the parent body, or by its authority. Boards or Committees of this class are usually appointed by organizations that meet only annually or quarterly. With such an organization it is customary and necessary to delegate to a committee, usually known as the Board of Managers or Directors, all its authority, with slight limitations, to be exercised between its meetings. The by-laws of the Board are adopted by the parent body, or the Board may be authorized to adopt its own by-laws. It is usual to authorize the Board to appoint from its membership an Executive Committee of a specified number who shall have all the power of the Board between the meetings of the Board, just as the Board has all the power of the Society between the meetings of the Society, except that the subordinate body cannot modify any action taken by its superior. The Executive Committee should be small and the members should live near enough each other to be able to have frequent regular meetings, besides special meetings in emergencies. Where the organization is local, such as a society for sustaining an orphan asylum, the Board of Managers usually divides itself into committees having charge of different branches of the work during the intervals between the monthly or quarterly meetings of the Board, when these committees report on the work done.*

Though more explicit wording and procedure would be preferable for an affiliate of the Libertarian Party given members' apparent desire for transparency and due process, we find that the EC does have the authority to initiate the discipline of members up to and including expulsion.

## If so, did the EC execute this authority in a manner compliant with the bylaws?

The Chair abstained from the final vote. This is consistent with the bylaws:

### VI Officers

#### K.

1. *All officers of the party shall have any additional duties and powers specified by the Board, the General Court, these bylaws, and the rules of the State Party.*

2. No Officer or member of the Board shall receive compensation for services as an Officer or Board Member but may be reimbursed for any reasonable expenses.
3. Whenever an Officer has a personal or financial interest in any matter coming before the Executive Committee or the Board, the affected person shall
  - a. fully disclose the nature of the interest and
  - b. withdraw from voting on the matter.The minutes of meetings at which such votes are taken shall record such disclosure, abstention, and rationale for approval.

Since the existing bylaws contain no provisions on a *method* for expelling a member, and since the bylaws do contain the provision of:

*XIII. Parliamentary Authority*

*A. The rules contained in the 12th edition of Robert's Rules of Order Newly Revised shall govern the State Party in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order the State Party may adopt.*

It is reasonable to interpret our bylaws as requiring usage of Robert's Rules disciplinary procedures.

*Offenses Elsewhere Than in a Meeting; Trials*

*61:22 If improper conduct by a member of a society occurs elsewhere than at a meeting, the members generally have no first-hand knowledge of the case. Therefore, if disciplinary action is to be taken, **charges must be preferred and a formal trial held before the assembly of the society, or before a committee—standing or special—which is then required to report its findings and recommendations to the assembly for action.***

Even when combined with the broad grant of authority to the EC in the bylaws, this provision states the need for a formal trial. While Robert's Rules grants that such a trial is not a legal trial with normal rules of evidence, it does nonetheless contain guidance about the nature of the trial.

*63:4 Ordinarily it is impossible for the society to obtain legal proof of facts in disciplinary cases. To get at the truth under the conditions of such a trial, hearsay evidence has to be admissible, and judgment as to the best interests of the society may have to be based on it. Witnesses are not sworn. The persons with first-hand knowledge may be nonmembers, who probably will decline to testify, and may be willing only to reveal the facts privately to a single member on condition that their names in no way be connected with the case. Even members may be reluctant to give formal testimony against the accused. A member can be required to testify at a trial on pain of expulsion, but it is very seldom advisable to force such an issue.*

The accused is assumed to have the right to due process

*63:5 A member or officer has the right that allegations against his good name shall not be made except by charges brought on reasonable ground. If thus accused, he has the right to due process—that is, to be informed of the charge and given time to prepare his defense, to appear and defend himself, and to be fairly treated.*

Robert's rules go on to describe the nature of this including

*63:8 Confidential Investigation by Committee. A committee whose members are selected for known integrity and good judgment conducts a confidential investigation (including a*

*reasonable attempt to interview the accused) to determine whether to recommend that further action, including the preferring of charges if necessary, is warranted.*

Robert's Rules further describe the nature of the motion that should initiate the investigation and committee:

*63:10 To initiate disciplinary proceedings involving a member, a suitable resolution would be: Resolved, That a committee of... [perhaps "five"] be appointed by the chair [or "be elected by ballot"] to investigate rumors regarding the conduct of our member Mr. N, which, if true, would tend to injure the good name of this organization, and that the committee be instructed, if it concludes the allegations are well-founded, to report resolutions covering its recommendations.*

*63:11 For the protection of parties who may be innocent, the first resolution should avoid details as much as possible. An individual member may not prefer charges, even if that member has proof of an officer's or member's wrongdoing. If a member introduces a resolution preferring charges unsupported by an investigating committee's recommendation, the chair must rule the resolution out of order, informing the member that it would instead be in order to move the appointment of such a committee (by a resolution, as in the example above). A resolution is improper if it implies the truth of specific rumors or contains insinuations unfavorable to an officer or member, even one who is to be accused. It is out of order, for example, for a resolution to begin, "Whereas, It seems probable that the treasurer has engaged in graft, ..." At the first mention of the word "graft" in such a case, the chair must instantly call to order the member attempting to move the resolution.*

In the interest of transparency, the Executive Committee provided the JC with the email thread where the decision was made:

**From:** Andrew Olding <olding.aj@gmail.com>  
**Date:** Tue, Jun 8, 2021, 1:24 PM  
**Subject:** Re: Motion to Expel [...]  
**To:** Stephen Nass <stephenjnass@gmail.com>  
**Cc:** Ugga Dugga <uggadugganh@gmail.com>, Sean Brennan <seanbrennan150@gmail.com>, Jilletta Jarvis <jarvis-jilletta@comcast.net>, Sean Dempsey <sean@seandempsey.com>

*I informed [...] and told her she can appeal to the JC.*

*On Tue, Jun 8, 2021 at 1:04 PM Stephen Nass <stephenjnass@gmail.com> wrote:  
Motion Passed*

*On Tue, Jun 8, 2021, 12:59 PM Andrew Olding <olding.aj@gmail.com> wrote:  
Fair enough. I vote yes.*

*On Tue, Jun 8, 2021, 12:24 PM Ugga Dugga <uggadugganh@gmail.com> wrote:  
AYE. Let's get this motion done and send it to Judiciary Committee for review with our voting #s and reasoning before notification to person in question.*

*On Tue, Jun 8, 2021, 12:01 PM Andrew Olding <olding.aj@gmail.com> wrote:*

*This is gonna have to go to judicial committee probably. Has anyone asked them what their interpretation of what we're trying is?*

On Tue, Jun 8, 2021, 10:57 AM Sean Brennan <[seanbrennan150@gmail.com](mailto:seanbrennan150@gmail.com)> wrote:  
aye

Sent from my iPhone

On Jun 8, 2021, at 10:29 AM, Jilletta Jarvis <[jarvis-jilletta@comcast.net](mailto:jarvis-jilletta@comcast.net)> wrote:

*Since I am personally affected by this decision, I'm going to ethically have to abstain.*

Jilletta

On Jun 8, 2021, at 8:56 AM, Stephen Nass <[stephenjnass@gmail.com](mailto:stephenjnass@gmail.com)> wrote:

*You beat me to it. I was just reading the bylaws. She has been actively trying to hamper LPNH, and this brigading and doxxing is the final straw.*

2nd. Aye.

On Tue, Jun 8, 2021, 8:50 AM Sean Dempsey <[sean@seandempsey.com](mailto:sean@seandempsey.com)> wrote:

*For egregious violations of personal privacy for certain members as well as repeated hostile attacks and the spreading of mistruths, I motion we permanently expel [...] from the LPNH.*

-Sean

Based on emails provided to the JC, there are several immediately apparent facts:

1. The motion to expel the member was initiated without a trial where the accused was offered the option to testify.
2. The Chair allowed the motion to be made and did not rule it out of order as required by Robert's Rules. While the chair's assertion of being personally affected by the decision is valid reason (per bylaws VI K 3) why she should not be present on the committee, it is not a reason to fail to rule the motion out of order or make an attempt to inform the members of proper procedure.
3. One board member suggested that the appropriate action was to vote on the motion and then ask the JC to review the decision before communication with the accused.

4. The communication to the accused proceeded prior to the JC being asked to provide an opinion.

The secretary indicated that he contacted the accused in error and by the time he realized it was not consistent with the discussion, it was too late. Further he correctly points out that the motion did not contain the request to delay communication. A more appropriate action in this case would have been to amend the motion to include review by the JC.

### **Was the expulsion executed in good faith by the EC?**

If the charges discussed by the EC were found to be true after an investigation and trial we believe disciplinary actions would be appropriate. If the member did indeed combine public and potentially private information and use that to encourage harassing communication outside of channels intended for party matters, we believe that would be a sufficient reason to expel a member. Consequently, we feel that the EC acted in good faith, and that the decision to expel had merit.

### **What follow-up actions should be taken as a result of this review?**

We find that the EC did not follow proper procedure when voting to expel the member. Per Robert's Rules, the chair failed to detect and rule the motion out of order as required. The secretary communicated the motion to the accused prior to the informal request for review by the JC. While it is tempting to ascribe malice to these actions, discussions with the secretary and a review of the email chain do not support an unbiased finding of malice but rather imply that the board was entirely unaware of the requirements of Robert's Rules beyond the requirements for how to execute a meeting. It is clear that they believed they should vote on the motion to convey the strength of their position and then use the JC in a parliamentary role after the fact. This is improper procedure, however we would not support disciplinary action against the Chair for her failure to rule the motion out of order as there is no evidence that the Chair nor any member of the board acted with mens rea and there is evidence to support that the board was seeking guidance on the appropriate way to proceed.

**We find that the decision to expel the member was out of order**, however the Judicial Committee does not believe it has the authority to undo this action:

Per Roberts:

*35:6 Actions That Cannot Be Rescinded or Amended.*

*c) When a resignation has been acted upon, or a person has been elected to or expelled from membership or office, and the person was present or has been officially notified of the action. (The only way to reverse an expulsion is to follow whatever procedure is prescribed by the bylaws for admission or reinstatement. For the case of an election, see 62:16 regarding removal of a person from office.)*

Since the member was informed, the appropriate method to address this issue would be for the member to reapply for membership.

## Closing Remarks

While we would encourage the EC to review Robert's Rules directly for matters related to investigation and potential discipline of a member, our analysis on proper procedure for investigation and discipline of a member based on a subset of key paragraphs follows:

First, the EC should form/select an investigative committee. That committee should contact the member to hear their side of the story.

61:22 If improper conduct by a member of a society occurs elsewhere than at a meeting, the members generally have no first-hand knowledge of the case. Therefore, if disciplinary action is to be taken, charges must be preferred and a formal trial held before the assembly of the society, or before a committee—standing or special—which is then required to report its findings and recommendations to the assembly for action.

*63:8 Confidential Investigation by Committee. A committee whose members are selected for known integrity and good judgment conducts a confidential investigation (including a reasonable attempt to interview the accused) to determine whether to recommend that further action, including the preferring of charges if necessary, is warranted.*

*63:10 To initiate disciplinary proceedings involving a member, a suitable resolution would be: Resolved, That a committee of... [perhaps "five"] be appointed by the chair [or "be elected by ballot"] to investigate rumors regarding the conduct of our member Mr. N, which, if true, would tend to injure the good name of this organization, and that the committee be instructed, if it concludes the allegations are well-founded, to report resolutions covering its recommendations.*

*63:12 An investigating committee appointed as described above has no power to require the accused, or any other person, to appear before it, but it should quietly conduct a complete investigation, making an effort to learn all relevant facts. Information obtained in strict confidence may help the committee to form an opinion, but it may not be reported to the society or used in a trial—except as may be possible without bringing out the confidential particulars. Before any action is taken, fairness demands that the committee or some of its members make a reasonable attempt to meet with the accused for frank discussion and to hear his side of the story. It may be possible at this stage to point out to the accused that if he does not rectify the situation or resign, he probably will be brought to trial.*

That committee should investigate the matter and if appropriate suggest a trial in the form of suggested resolutions provided to the EC.

*63:13 Report of the Investigating Committee; Preferral of Charges. If after investigation the committee's opinion is favorable to the accused, or if it finds that the matter can be resolved satisfactorily without a trial, it reports that fact.<sup>8</sup> But if the committee from its investigations finds substance to the allegations and cannot resolve the matter satisfactorily in any other way, it makes a report in writing—which is signed by every committee member who agrees—outlining the course of its investigation and recommending in the report the adoption of*

*resolutions preferring charges, arranging for a trial, and, if desired, suspending the rights of the accused ...*

The EC could then adopt the resolutions initiating the trial (or the EC upon review of the draft resolutions could choose to take no action). If the EC adopts the resolution calling for a trial, the member should be notified.

63:28 Formal Notification of the Officer or Member. If the society adopts resolutions ordering trial before the assembly or a committee, the secretary immediately sends to the accused, by a method providing confirmation of delivery to his address (such as registered mail with delivery confirmation), a letter notifying him of the date, hour, and place of the trial, containing an exact copy of the charge(s) and specifications with the date of their adoption, and directing him to appear as cited—even if the accused officer or member was present when the resolutions were adopted.

The process for the trial in Roberts is lengthy and likely inappropriate to recreate in its full form in this document; however, it is worth noting that the trial may proceed whether or not the member attends. Roberts also requires that the trial committee be made up of different members than the investigatory committee.

*63:31 If the accused fails to appear for trial at the appointed time as directed, the trial proceeds without him.*

*63:37 Under this procedure, the assembly can decline to impose any penalty, notwithstanding the trial committee's recommendation; or it can reduce the recommended penalty; but it cannot increase the penalty. The assembly cannot impose a penalty if the trial committee has found the accused not guilty.*

The process is exceedingly complex and even a streamlined application of Robert's is likely to be unwieldy in an organization the size of LPNH.

Victoria Saucier  
Conrad Nelson  
Ben Richards  
Jeffrey Creem