

RONR ~~10TH~~ 11TH Edition

CHAPTER XX

DISCIPLINARY PROCEDURES

§61. DISCIPLINE OF MEMBERS AND GUESTS

In most societies it is understood that members are required to be of honorable character and reputation, and certain types of associations may have particular codes of ethics to enforce. Although ordinary societies seldom have occasion to discipline members, an organization or assembly has the ultimate right to make and enforce its own rules, and to require that its members refrain from conduct injurious to the organization or its purposes. No one should be allowed to remain a member if his retention will do this kind of harm. (p. ~~624, 643:1-12~~11)

Formatted: Underline

Punishments that a society can impose generally fall under the headings of censure,* fine (if authorized in the bylaws), suspension, or expulsion. The extreme penalty that an organization or society can impose on a member is expulsion. (p. ~~643, 12-15~~)

*It is also possible to adopt a motion of censure without formal disciplinary procedures.

If there is an article on discipline in the bylaws (p. 583, ll. 6-11), it may specify a number of offenses outside meetings for which these penalties can be imposed on a member (p. 643:16-18) of the organization. Frequently, such an article provides for their imposition on any member found guilty of conduct described, for example, as “tending to injure the good name of the organization, disturb its well-being, or hamper it in its work.” In any society, behavior of this nature is a serious offense properly subject to disciplinary action, whether the bylaws make mention of it or not. (p. ~~644, 1-7~~)

Formatted: Underline

Formatted: Underline

Formal disciplinary procedures should generally be regarded as a drastic step reserved for serious situations or those potentially so. When it appears that such measures may become necessary, proper and tactful handling of the case is of prime importance. It is usually in the best interests of the organization first to make every effort to obtain a satisfactory solution of the matter quietly and informally. (p. ~~624:13-19~~644, 8-14)

Formatted: Underline

Punishments that a society can impose generally fall under the headings of censure, fine (if authorized in the (p624, 20-21) bylaws), suspension, or expulsion. The extreme penalty that an organization or society can impose on a member is expulsion. (p. ~~625:1-3~~)

Cases of conduct subject to disciplinary action divide themselves into: offenses occurring in a meeting; and offenses by members outside a meeting. (p. ~~625:4-6~~644, 15-17)

[p. 625, 9p644, 19 through p. 629, 29649, 15 are not shown as they apply only to offenses in a meeting.]

Offenses Elsewhere Than in a Meeting; Trials

If there is an article on discipline in the bylaws (p. 564), it may specify a number of offenses outside meetings for which penalties listed on page 624, line 20 to page 625, line 3 can (p. 629, 32-35) be imposed on a member of the organization. Frequently, such an article provides for their imposition on any member found guilty of conduct described, for example, as "tending to injure the good name of the organization, disturb its well-being, or hamper it in its work." In any society, behavior of this nature is a serious offense properly subject to disciplinary action, whether the bylaws make mention of it or not. (p. 630, 1-7)

Formatted: Underline

Formatted: Underline

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 should be required to report its findings and recommendations to the assembly for action. (p. 630, 8-15)In addition, even when improper conduct occurs at a meeting, in order for disciplinary action to be taken other than promptly after the breach occurs, charges must be preferred and a formal trial held. However, the only way in which a member may be disciplined for words spoken in debate is through the procedure described on pages 645-48, which may be employed only promptly after the breach occurs. In some societies (depending on particular provisions of the bylaws, as explained in 62), the same steps must also be employed if an officer of the society is to be deposed from office.

Formatted: Underline

RIGHTS OF THE SOCIETYThe procedures governing all such cases are described in detail in 63.

§62. REMOVAL FROM OFFICE AND THE ACCUSED. SinceOTHER REMEDIES FOR DERELICTION OF DUTY IN OFFICE OR MISCONDUCT

Formatted: Font: Bold

The presiding officer and other officers have the duties set forth in this manual (see 47) and in the organization's bylaws. This section covers procedures available if they neglect those duties, abuse their authority, or engage in other misconduct that calls into question their fitness for office. This section also covers removal from office at the pleasure of the assembly when the bylaws permit such removal.

Remedies for Abuse of Authority by the Chair in a Meeting

Formatted: Font: Bold, Not Highlight

ENFORCING POINTS OF ORDER AND APPEALS. If the chair at a meeting acts improperly (for example, fails to recognize a member entitled to the floor, see 42, or ignores a motion properly made and seconded that is not dilatory, see 39, and neither states the question on the motion nor rules it out of order), a Point of Order (23) may be raised, and from the chair's decision an Appeal (24) may be taken. This

procedure enables the majority to ensure enforcement of the rules unless the chair ignores the point of order, ignores the appeal, or fails to act in accordance with the assembly's decision on the appeal.

If the chair ignores a point of order that is not dilatory, the member can repeat the point of order a second and third time and if the chair still ignores it, the member, standing in his place, can immediately put the point of order to a vote without debate. The question may be put as, "Is the point of order that ... well taken?" If the point of order was that the chair improperly ignored another motion, the member may, instead of repeating the point of order, repeat the original motion, and if it is seconded and the chair still ignores it, may, standing in his place, put the ignored motion to a vote without debate.

Likewise, if the chair ignores an appeal appropriately made and seconded,* a member can repeat the appeal and if, despite its being seconded, the chair ignores it again, the member can repeat it a third time and if it is again seconded but still ignored by the chair, the member can immediately, standing in his place, put the appeal to a vote without debate. The question may be put as: "Shall the decision of the chair be sustained?"

*An appeal is not allowed from the chair's ruling on a question about which there cannot possibly be two reasonable opinions (p. 256, ll. 34–36) and is out of order in certain other circumstances (p. 256, ll. 29–32; p. 258, l. 33 to p. 259, l. 15), but in such cases the chair must announce that the appeal is out of order for the relevant reason, not simply ignore the appeal (unless the appeal is dilatory as explained at pp. 342–43).

REMOVAL OF PRESIDING OFFICER FROM CHAIR FOR ALL OR PART OF A SESSION.
If the chair fails to act in accordance with the assembly's decision on an appeal (or on a point of order submitted to a vote of the assembly) or otherwise culpably fails to perform the duties of the chair properly in a meeting, the assembly may employ measures temporarily to replace the chair with another presiding officer expected to act in accordance with the will of the assembly.

If the offending occupant of the chair is an appointed or elected chairman pro tem (see pp. 452–54), a motion can be made to "declare the chair vacant and proceed to elect a new chairman." Such a motion is a question of privilege affecting the assembly (19) and is an incidental main motion requiring a majority vote for its adoption.*

If the chair is not an appointed or elected chairman pro tem, a motion to declare the chair vacant is not in order. However, a motion can be made to Suspend the Rules so as to take away from him the authority to preside during all or part of a given session.** When such a motion is made and seconded, after stating the motion he must turn the chair over to another following the procedure described on page 395, and the remedy for refusal or failure to do so is that the motion may be put to a vote by its maker.

*Once such a motion is made and seconded, the chair must state it, and then, since it refers to the presiding officer in a capacity not shared in common with other members, the chair must be turned over to the secretary or secretary pro tem. The new occupant of the chair then presides during consideration of the motion to declare the chair vacant and proceed to elect a new chairman. The new occupant continues to preside until the result of the vote on that motion is announced and, if it is adopted, until the election of the new chairman is completed. If the presiding officer refuses or fails to turn the chair over as required, and ignores a point of order on the issue (or ignores, or does not abide by the decision on, an appeal of a ruling on the point of order) the motion to declare the chair vacant may be put to a vote by its maker as explained on pages 650–51. In such a case, the motion is undebatable.

**This is true even if the bylaws contain a provision to the effect that the president shall preside at all meetings, since such a provision is clearly in the nature of a rule of order, which may be suspended even if in the bylaws. see page 17, ll. 22–25.

Any one motion to Suspend the Rules that might limit the authority or duties of the presiding officer during a meeting can remain in effect, at most, for one session. (see p. 87, ll. 6–11 and p. 88, ll. 26–35.) Therefore, in order to prevent the regular presiding officer from presiding during subsequent sessions, the motion to Suspend the Rules would have to be renewed and separately adopted at each of the sessions. Moreover, since Suspend the Rules applies only when “an assembly wishes to do something during a meeting that it cannot do without violating one or more of its regular rules” (p. 260, ll. 19–21, emphasis added), the motion cannot be used to remove from the presiding officer (even temporarily) any administrative duties—those related to the role of an executive officer that are distinct from the function of presiding over the assembly at its meetings. (Cf. p. 456, ll. 22–23.)

If the motion to suspend the rules is adopted by a two-thirds vote, then, unless the motion names a new occupant of the chair, the ranking vice-president (or, in the absence of the vice-president, an elected temporary presiding officer, pp. 453–54) has the duty of presiding through the end of the session (or any shorter period specified by the motion to suspend the rules).

A permanent removal of the presiding officer, and removal of authority to exercise administrative duties conferred by the bylaws, requires the procedure described below.

Removal from Office

Except as the bylaws may provide otherwise, any regularly elected officer of a permanent society can be removed from office by the society’s assembly as follows:

- If the bylaws provide that officers shall serve “for ____ years or until their successors are elected,” the officer in question can be removed from office by adoption of a motion to do so. The vote required for adoption of such a motion is (a) a two-thirds vote, (b) a majority vote when previous notice (as defined on p. 121) has been given, or (c) a vote of a majority of the entire membership—any one of which will suffice. A motion to remove an officer from office is a question

of privilege (19) affecting the organization of the assembly, and so also is the filling of any vacancy created by the adoption of such a motion.*

- If, however, the bylaws provide that officers shall serve only a fixed term, such as “for two years” (which is not a recommended wording; see p. 573, l. 33 to p. 574, l. 3), or if they provide that officers shall serve “for ____ years and until their successors are elected,” an officer can be removed from office only for cause—that is, neglect of duty in office or misconduct—in accordance with the procedures described in 63; that is, an investigating committee must be appointed, charges must be preferred, and a formal trial must be held.

*The assembly normally cannot proceed to fill the vacancy created by removal of an officer immediately, since notice is a requirement (see p. 291, ll. 20–23). If the president is removed from office, the vice-president thereby succeeds to the presidency, creating a vacancy in the vice-presidency which requires notice to fill. If it is desired to fill a vacancy that may be created by removal, previous notice may be given in advance of the meeting at which removal is contemplated that, should removal of the officer occur, the resulting vacancy may be filled at that meeting.

§63. INVESTIGATION AND TRIAL

As explained in 61 and 62, the removal of an officer for cause, or the discipline of a member for improper conduct, may require that charges be preferred and that a formal trial be held. The full procedure for such cases is described in this section.** (p. 654, 15–20)

**It is possible for a disciplinary proceeding to affect an individual’s status both as an officer and as a member, and a resolution preferring charges (see pp. 659–60) may combine notice to show cause both why the accused should not be removed from office and why he should not be expelled from membership. If the bylaws make membership a required qualification for office (see p. 447, ll. 16–19), then expulsion from membership necessarily results in removal from office.

Rights of the Society and the Accused

A society has the right to prescribe and enforce its standards for membership, it has the right to investigate the character of its members and officers as may be necessary to ~~this~~the enforcement—of its own standards. But neither the society nor any member has the right to make public any information obtained through such investigation; if it becomes common knowledge within the society, it should not be revealed to any persons outside the society. Consequently, a trial must always be held in executive session; and, as must the introduction and consideration of all resolutions leading up to the trial also should take place when nonmembers are not present trial. (p. 630, 16–28655, 1–11)

If (after trial) a member is expelled or an officer is removed from office, the society has the right to disclose the fact that he is no longer a member — fact—circulating it only to the extent required for the protection of the society or, possibly, of other

Formatted: Font: Not Italic

Formatted: Font: Not Bold

Formatted: Not Highlight

organizations. Neither the society nor any of its members has the right to make public the charge of which an ~~expelled officer or~~ member has been found guilty, or to reveal any other details connected with the case. To make any of the ~~(p. 630, 29-35)~~ facts public may constitute libel. A trial by the society cannot legally establish the guilt of the accused, as understood in a court of law; it can only establish his guilt as affecting the society's judgment of his fitness for membership. ~~(p. 631, 1-4 or office. (p. 655, 12-23))~~

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 firsthand 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. (p. ~~631, 5-17~~ 655, 24-35)

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 a member is 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. (p. ~~631, 18-23~~ 656, 1-6)

Formatted: Underline

Formatted: Underline

Formatted: Underline

If a member ~~or officer~~ is guilty of a serious offense and knows that other members are in possession of the facts, he may wish to submit his resignation ~~from membership.~~ When the good of the society appears to demand the ~~separation~~ departure of an ~~offending member~~ offender, it is usually best for all concerned to offer ~~to offer the member~~ him the opportunity to resign quietly before charges are preferred. The society ~~had~~ has no obligation to suggest or accept such a resignation at any stage of the case, however, even if it is submitted on the offender's own initiative. (p. ~~631, 24-32~~ 656, 7-15)

STEPS IN A FAIR DISCIPLINARY PROCESS.—Steps in a Fair Disciplinary Process

Most ordinary societies should never have to hold a formal ~~(p. 631, 34-35)~~ trial, and their bylaws need not be encumbered with clauses on discipline. For the protection both of the society and of its members ~~alike and officers~~, however, the basic steps which, in any organization, make up the elements of fair disciplinary process should be understood. Any special procedures established should be built essentially around them, and the steps should be followed in the absence of such provisions. ~~As applying to offences elsewhere than in a meeting, the important steps are as follows: (p. 632, 1-9)~~ As set forth below, these are: (1) confidential investigation by a committee; (2) report of the committee, and preferral of charges if warranted; (3) formal notification of the accused; (4) trial; and (5) the assembly's review of a trial

committee's findings (if the trial has been held in a committee instead of the assembly of the society). (p. 656, 18-32)

~~Confidential Investigation by Committee~~ CONFIDENTIAL INVESTIGATION BY COMMITTEE. A committee whose members are selected for known integrity and good judgment ~~should conduct~~ conducts a confidential investigation ~~(usually p. 656, 34-36)~~ (including ~~and a reasonable attempt to~~ interview ~~with~~ the accused) to determine whether to recommend that further action, including the preferring of charges if necessary, is warranted. (p. 657, 1-4)

Formatted: Underline

Formatted: Underline

Formatted: Underline, Not Highlight

Accordingly, if the ~~bylaws~~ rules of the organization do not ~~otherwise~~ provide for the method of charge and trial, a member ~~should~~ may, at a time when nonmembers are not present, offer a resolution to appoint an investigating committee, ~~offer a resolution to appoint an investigation committee.~~ This resolution is to be in a form similar to the following: (p. 657, 5-9)

Formatted: Not Highlight

Resolved, That a committee of ... [perhaps "five"] be elected by ballot to investigate allegations of neglect of duty in office by our treasurer, J.M., which, if true, cast doubt on her fitness to continue in office, and that the committee be instructed, if it concludes that the allegations are well founded, to report resolutions covering its recommendations. (p.657, 11-17)

To initiate disciplinary proceedings involving a member, a suitable resolution would be: (p. 657, 19-20)

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, ~~render him unworthy~~ would tend to injure the good name of membership for "cast doubt on worthiness for membership", ~~this organization,~~ and that the committee be instructed, if it concludes the allegations are well-founded, to report resolutions covering its recommendations. (p. 632, 10-29 657, 22-28)

For the protection of parties who may be innocent, the first resolution should avoid details as much as possible. ~~It is best that an~~ 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 ~~(p. 632, 31-35)~~ investigating committee's recommendation, ~~another member should move to postpone this~~ the chair must rule the resolution ~~indefinitely, saying out of order, informing the~~ (p. 657, 30-36) member that ~~if the indefinite postponement is approved, he will~~ 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 ~~members of the finance committee have~~ treasurer has engaged in graft, ..." At the first mention of the word

Formatted: Underline

Formatted: Underline

“graft” in such a case, the chair ~~should~~must instantly call to order the member attempting to move the resolution. (p. 658, 1-10)

Formatted: Not Highlight

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 ~~generally~~ 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. (p. 633, 1-27658, 11-24)

Formatted: Underline

Formatted: Underline

Formatted: Underline

~~*Report of Resolution Either Exonerating the Accused or Preferring Specific Charges.*~~ REPORT OF THE INVESTIGATING COMMITTEE; PREFERRAL OF CHARGES. If after investigation the committee’s opinion is favorable to the accused, ~~or if it should prepare and report a resolution exonerating him, finds that the matter can be resolved satisfactorily without a trial, it reports that fact.*~~ But if the committee from its investigations (p.658, 26-30) finds substance to the ~~rumors~~allegations and cannot resolve the matter satisfactorily in any other way, it ~~should make~~makes a report in writing—which ~~should be~~is signed by every committee member who (p. 633, 28-35) agrees—outlining the course of its investigation and ~~preferring charges. The preferral of charges is accomplice by~~ recommending in the report the adoption of resolutions preferring charges, arranging for a trial, and, if desired, suspending the rights of the accused, as in the following example:

Formatted: Font: Not Italic

*If the investigating committee submits a report that does not recommend preferral of charges, it is within the power of the assembly nevertheless to adopt a resolution that does prefer charges. It is also possible for the assembly to adopt instructions to the committee specifying when it is to report, or even to adopt a motion to Discharge a Committee (36) and thereafter to consider a resolution preferring charges; but in order to provide due process to the accused, any such instructions must allow the investigating committee a reasonable and adequate time to investigate and prepare a report, and the committee may be discharged only if it has had such time yet has failed to complete its report.

Resolved, That when this meeting adjourns, it adjourn to meet at 8 P.M. on Wednesday, November 15, 20__.

[For variations depending on conditions, see the first paragraph following these resolutions, below.]

Resolved, That J.M. is hereby cited to appear at said adjourned meeting for trial, to show cause why she should not be removed from the office of treasurer on the following charge and specifications:

Charge. Neglect of duty in office.

Specification 1. In that J.M. has failed to account for at least \$10,000 of the Society's funds known to have been given into her custody.

Specification 2. In that J.M. has repeatedly failed to provide the financial records of her treasurership for review by the auditing committee.

Resolved, That from the time official notification of this resolution is delivered to J.M.'s address until disposition of the case, all of J.M.'s authority, rights, and duties pertaining to the office of treasurer are suspended.

Resolved, That members S and T act as managers for the Society at the trial. [See below.] (p. 659, 1-30)

In a disciplinary proceeding against a member, an example of the second and third resolutions is:

Resolved, That Mr. N ~~be, and is~~ hereby ~~is,*~~ cited to appear at said adjourned meeting for trial, to show cause why he should not be expelled from the ~~society~~Society on the following charge and specifications:

Charge. Conduct ~~unworthy of a member~~tending to injure the good name of this organization.

Specification 1. In ~~this~~ that Mr. N has so conducted himself as to establish among a number of his acquaintances a reputation for willfully ~~origination~~originating false ~~report~~reports against innocent persons.

Specification 2. In ~~this~~ that on or about the evening of August 12~~, 20~~__, in the Matterhorn Restaurant, Mr. N~~r~~ was seen by patrons to be the apparent provoker of a needless and violent disturbance, causing damage to the furnishings.

~~Resolved, That Messrs. S and T act as managers for the Society at the trial.~~

Resolved, That from the time official notification of this resolution is delivered to Mr. N's address until disposition of the case, all of Mr. N's rights as a member (except as relate to the trial) are suspended pending disposition of the case. (p. 660, 1-24)

[See below.]

~~* Regarding the effect of the words "and hereby is," see pages 636-37.~~

With reference to an appropriate date for which to set the trial, thirty days is a reasonable time to allow the accused to prepare his defense. When a trial is to be

before the assembly of the society, ~~as in the example above,~~ it is generally ~~not~~ a good policy to hold it at a ~~regular~~ meeting. ~~If there (p. 634, 1-35) devoted exclusively to the matter, such as an adjourned meeting as in the example above. To devote a meeting to the trial when there~~ is to be another regular meeting between the date of adoption of these resolutions ~~should be to~~ and the date desired for the trial, the first resolution would establish a special meeting instead of an adjourned meeting (p. 660, 26-35) (see 9).)* If believed advisable—and particularly when the trial is likely to be delicate, involve potential scandal, or be long and troublesome, or when the assembly of the organization is large—the resolutions reported by the investigating committee, instead of providing for trial before the entire assembly, can be worded so as to establish a committee to hear the trial and report its findings and recommendations to the assembly for action. In such a case, the first two of the resolutions above would be worded as follows: (p. 661, 1-9)

*The assembly of a society may call a special meeting for purposes of conducting a trial and determining a punishment, even if the bylaws fail to provide for special meetings or the designation in the bylaws of those who can call special meetings does not include the assembly.

Resolved, That a trial committee consisting of Mr. H as chairman and members A, B, C, D, E, and F be appointed to try the case of J.M. and report its findings and recommendations. [A special committee appointed to hear a trial must be composed of persons different from those on the preliminary investigating committee. This resolution can either be offered with the names of the members of the proposed trial committee specified as in the example, or it can contain a blank so as to leave the manner of their selection to the assembly.]

Resolved, That ~~Mr. N be, and J.M. is~~ hereby ~~is~~ cited to appear before the said trial committee at the Society hall at 8 P.M. on Wednesday, November 15, 20__, to show cause why ~~heshe~~ should not be ~~expelled~~ removed from the ~~Society~~ office of treasurer on the following charge and specifications: ... [setting them forth, as above.]

The ~~third resolution~~ remaining resolutions would be the same whether the trial is to be before the assembly or before a special committee (see above). (p. ~~635, 1-35~~ 661, 11-30)

A *charge* sets forth an *offense*—that is, a particular kind of act or conduct that entails liability to penalty under the governing rules ~~define as entailing liability to prescribed penalties~~—of which the accused is alleged to be guilty. A *specification* states *what the accused is alleged to have done* which, if true, constitutes an instance of the offense indicated in the charge. An accused officer or member must be found guilty of a charge before a penalty can be imposed. ~~Ordinarily each~~ If the bylaws of the society provide for the imposition of penalties for offenses defined in the bylaws or an adopted code of conduct or similar set of rules, a charge may consist of such a defined offense. If such particular offenses are not defined or are

Formatted: Font: Italic

Formatted: Font: Not Italic

not applicable, a member may be charged with “conduct tending to injure the good name of the organization, disturb its well-being, or hamper it in its work,” or the like, and an officer may be charged with misconduct of the type just mentioned or with “misconduct in office,” “neglect of duty in office,” or “conduct that renders him [or “her”] unfit for office.”

Each separate charge contained in the resolutions ~~should~~must be accompanied by at least one specification, unless the investigating committee and the accused agree in preferring that this information not be disclosed outside the trial. ~~Each~~It is best if each specification ~~should be~~is carefully worded so as to make no broader allegation than is believed sufficient to establish the validity of the charge if the specification is found to be true.

A resolution preferring charges may (although it need not) be accompanied by one suspending all or some specified portion of the accused’s authority, rights, and duties as an officer or rights as a member (except those rights that relate to the trial) pending disposition of the case, effective from the time official notification of the resolution is delivered to the accused’s address. (p. 662, 1-31)

The “managers” at the trial—referred to in the ~~third~~fourth resolution of the complete set shown above— have the task of presenting the evidence against the accused, and must be members of the society. Their duty, however, is not to act as (p. 662, 32-35) prosecutors—in the sense of making every effort to secure conviction—but rather to strive that the trial will get at the truth and that, in the light of all facts brought out, the outcome will be just. (p. 663, 1-4)

~~Formal Notification of the Accused.~~ 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. ~~If the resolutions contain all the necessary information as illustrated on the two preceding pages, and if the second resolution includes the words and hereby is before the word cited (see first line), the~~ The secretary’s letter of notification can ~~(p. 636, 1-35)~~ reproduce the resolutions in full and can be worded as follows:

Dear Mr. N:

Your attention is called to the fact that the ... Society, at its meeting on October 14, 20__, adopted the following resolutions:

... [Text of resolutions].

Kindly be present at the Society hall at the time indicated above.

Sincerely,

John Clark, Secretary

If, however, ~~It is~~ the words and ~~hereby is~~ were omitted from the second resolution, the secretary's notice to the accused should be worded as a formal citation, thus:

Dear Mr. N:

Your attention is called to the fact that the ... Society, at its meeting on October 14, 20__, to show cause why you should not be expelled from the Society on the following charge and specifications: ... [Text duty of charge and specifications].

Formatted: Not Highlight

By order of the ... Society, adopted at its meeting on October 14, 20__.

John Clark, Secretary

Whichever form of the letter is sent to the accused as described above, the secretary should to have at hand at the trial a ~~photo-copy~~ photocopy, printout, or other direct reproduction of it-the letter of notification with the ~~return receipt~~ delivery confirmation attached, as proof that ~~the accused~~ it was informed of the charges against him. In any event, from the time the accused has been thus notified, all of his rights as a member of the society (except as relate to the trial) are suspended pending disposition of the case. delivered to the accused's address. (p. 637, 1-35 663, 6-27)

~~Trail Procedure.~~ TRIAL PROCEDURE. The trial is a formal hearing on the validity of the charges, ~~at which.~~ At the trial, the evidence against (p. 663, 34-35) the accused officer or member is presented by the managers for the society, ~~at which and the accused officer or member~~ has the right to be represented by counsel and to speak and produce witnesses in his own defense, ~~and after which, if.~~ If the charges are found to be true, a penalty ~~is may be~~ imposed or recommended; but if the charges are not substantiated, the ~~accused officer or member~~ is exonerated and ~~his any authority, rights, duties, and privileges of office or membership that had been suspended~~ are automatically restored. The managers, as previously stated, must be members of the society. Defense counsel can be attorney(s) or not, but must be member(s) of the society unless the trial body (that is, the assembly or the trial committee as the case may be) by vote agrees to permit attorney(s) who are not member(s) to act in this capacity. Nonmembers who consent to testify can be brought in as witnesses at the trial, but such a witness should be allowed in the room only while testifying. (p. 664, 1-16)

Formatted: Not Highlight

Formatted: Not Highlight

Formatted: Not Highlight

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

At any time before the commencement of the trial with the first of the "preliminary steps" described below, the assembly may, by majority vote, adopt a resolution to govern the trial specifying details not inconsistent with the procedures described

here.* The resolution may include an agenda that establishes times for portions of the trial, such as time limits for opening and closing statements. If time limits are imposed, they must allow the defense at least equal time for each element of the trial as that allowed the managers, and this rule may not be suspended without the consent of the defense.

*The assembly may vary the procedures described here through adoption of special rules of order for disciplinary proceedings either by previous notice and a two-thirds vote or by a vote of a majority of the entire membership.

At the trial, in calling the meeting to order, the chair should call attention to the fact that the meeting is in executive (p. 664, 17-31) session (9), and to the attendant obligation of secrecy. Preliminary steps then include the secretary's reading from the minutes the resolutions adopted by the society relating to the trial, the chair's verification—by inquiring of the secretary—that the accused was furnished with a copy of the charges, the chair's announcement of the names of the managers for the society, and the chair's inquiry of the accused as to whether he has counsel. The trial then proceeds as follows: (p. 638, 1-298)

- a) The chair directs the secretary to read the charge and specifications.
- b) The chair asks the accused how he pleads—guilty or not guilty—first to each of the specifications in order, and then to the charge. (p. 638, 31-35)
- c) If a plea of guilty is entered to the charge, there need be no trial, and the meeting can proceed directly to the determination of the penalty after hearing a brief statement of the facts.
- d) If the plea to the charge is not guilty, the trial proceeds in the following order, the chair first explaining all the steps, then calling for each of them in sequence: (1) opening statements by both sides—the managers first; (2) testimony of witnesses produced by the managers for the society; (3) testimony of defense witnesses; (4) rebuttal witnesses on behalf of the society; and then on behalf of the defense, if any; and (5) closing arguments by both sides. Up until the completion of the closing arguments, no one is entitled to the floor except the managers and the defense; and they must address the chair except when questioning witnesses. Cross-examination, re-direct-examination, and re-cross examination of witnesses is permitted, and witnesses can be recalled for further testimony as the occasion may dictate.

From the first of the “preliminary steps” described above up until the completion of the closing arguments: (p. 665, 10-35)

- i) Subject to the relevant rules and the provisions in any resolution governing the trial, the presiding officer, similarly to a judge at a trial, directs the proceedings and rules on all questions of evidence and any objections or requests by the managers or the defense, the merits of which may first be argued by the managers and the defense. From any such direction or ruling, a member of the assembly may take an undebatable appeal, or the presiding

Formatted: Font: Not Italic, Underline

Formatted: Font: Not Italic, Underline

officer may in the first instance submit any such question to a vote, without debate, by the assembly. Any motion to alter a resolution previously adopted to govern the trial, which may be proposed only by the managers or defense, or a proposal by the chair to do the same, is submitted without debate to a vote by the assembly; its adoption requires the vote necessary to Amend Something Previously Adopted.

- ii) If a member of the assembly who is not a manager or with the defense wishes a question to be put to a witness, a manager, or the defense, the question must be delivered in writing to the presiding officer, who at an appropriate point puts it, unless he rules it out of order of his own accord or upon an objection by the managers or the defense, which ruling, like any other in the trial, is subject to an undebatable appeal.
- iii) The only motions in order are the five privileged motions and those motions that relate to the conduct of the meeting or to the trial itself. Any member who is not a manager or with the defense may offer such a motion, subject to the limitation in (i) above, only in writing delivered to the presiding officer,* who at an appropriate point reads the motion aloud, inquires whether there is a second (if required), and either (p. 666, 1-33) rules upon it or puts the motion to a vote without debate.

*However, any member may address the chair to appeal a ruling.

- e) When the closing arguments have been completed, the accused must leave the room. If the trial is before the assembly rather than a trial committee, the managers, defense counsel (if members of the society), and member witnesses for both sides remain, take part in discussion, and vote as any other members. The chair then states the question on the finding as to the guilt of the accused, as follows: "The question before the assembly [or "the committee"] is: Is Mr. N guilty of the charge and specifications preferred against him?" Each of the specifications, and then the charge, is read, opened to debate, and voted on separately—although the several votes can be delayed to be taken on a single ballot.

The specifications or the charge can be amended to conform to facts brought out in the trial—but not in such a way as to find the accused guilty of a charge not wholly included (~~p. 639, 1-35~~) within charge(s) for which he has been tried.

If the accused is found guilty of none of the specifications relating to a charge, he is automatically found not guilty of the charge, and no vote is taken on it (or, if the vote on the charge was already taken on the same ballot as the vote on the specifications, the vote on the charge is ignored). If the accused is found guilty of one or more of the specifications but not of the charge, and if a lower degree or level of the offense charged is defined in the organization's bylaws, adopted code of conduct, or similar set of rules, then such a lesser charge ~~should~~may be moved and voted on.

e) If the accused is found guilty, the chair announces that the next item of business is the determination of the penalty. One of the managers for the society usually makes a motion for a penalty the managers feel appropriate (see pp. 624-625); ~~although any member may move that a specific penalty be (p. 667, 1-35) imposed;~~ this motion is debatable and amendable. ~~As in the case of an offense committed in a meeting, on~~On the demand of a single member both the question of guilt and the question of the penalty must be voted on by ballot. ~~For expulsion a two-thirds vote is required.~~

Formatted: Normal, Indent: Left: 0.5", No bullets or numbering

The usual possible penalties for an officer are censure or removal from office, although in special circumstances others may be appropriate (for example, to repay into the society's treasury funds that the officer has been found guilty of misappropriating, perhaps with an added fine). For all of these, including removal from office, a majority vote is required. Penalties appropriate in disciplinary proceedings against members are discussed on page 643. For expulsion, a two-thirds vote is required.

f) After voting is completed, the accused is called back into the hall and advised of the result. (p. 640, 1-15)

~~In General, in any trial within a society, and accused should be found guilty of a charge only when his guilt, by its nature, has created a situation such that the best interests of the organization of the profession it represents require a finding of guilty and the imposition of a penalty.~~ A member who votes for a finding of ~~guilty~~guilt at a trial should be morally convinced ~~of the existence of this kind of guilt on the part of the accused,~~ on the basis of the evidence he has heard, ~~that the accused is guilty.~~ (p. 640, 17-25668, 1-18)

Formatted: Not Highlight

Formatted: Not Highlight

~~Assembly's Review of a Trial Committee's Findings.~~ ASSEMBLY'S REVIEW OF A TRIAL COMMITTEE'S FINDINGS. If the trial has been held before a trial committee instead of the assembly of the society, this committee reports to the assembly in executive session (9) the results of its trial of the case, with resolutions—in cases where its finding is one of ~~guilty—covering the penalty it recommends that the society impose.~~ The report is prepared in writing and includes, to the extent possible without disclosing confidential information which should be kept within the committee, a summary of the basis for the committee's finding.

Formatted: Font: Not Italic

Unless the (p. 640, 26-35) report exonerates the accused, he is then permitted—~~himself, or personally,~~ through counsel, or both, as he prefers—to make a statement of the case, after which the committee is given the opportunity to present a statement in rebuttal. The accused—and defense counsel if not member(s)—then leave the room, and the assembly acts upon the resolutions submitted by the committee. The members of the committee (p. 668, 20-36) remain and vote on the case the same as other members of the society.

Formatted: Font: Not Italic

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. (p. ~~644~~669, 1-148)

COMMITTEE ON DISCIPLINE

Committee on Discipline

In some professional societies and other organizations where particular aspects of discipline are of special importance, the handling of such matters is simplified by providing in the bylaws for a standing Committee on Discipline (see 50, 56). Its prescribed duties are normally to be alert to disciplinary problems, to investigate them, to introduce all necessary resolutions, and—in event of a trial—to manage the case for the society.

This committee may also have the duty of hearing the actual trial, in which case it should be large enough that a subcommittee can perform the confidential investigation as described on pages ~~632-33~~656-58. Under the latter practice, the full Committee on Discipline adopts the charge and specifications, and the chairman of the committee sends the citation to the accused and presides at the trial, which is conducted just as it would be if held before the assembly. It is generally best not to empower the committee to *impose* a penalty, however, but to require it to report its recommended disciplinary measures to the society for action, just as in the case of a special committee to hear a trial.

In organizations where disciplinary matters may arise with some frequency, the system of having a Committee on Discipline has the advantages of not unduly inconveniencing the society, and of promoting the avoidance of scandal and the settlement of disciplinary problems without an actual trial.

Remedies Against Misconduct or Dereliction of Duty in Office

~~If the chair at a meeting ignores a motion apparently made and seconded in good faith, and neither states the question on the motion nor rules it out of order, the maker of the motion should raise a *Point of Order* (23) covering the case, and from the chair's decision he can *Appeal* (24). If the chair also ignores the point of order, the member can repeat the motion; and if it is seconded and the chair still ignores it, the maker of the motion can himself put it to a vote standing in his place. If the regular presiding officer of an organized society culpably fails to perform the duties of the chair properly at a meeting, a motion can also be made to censure him, which can be put to a vote by the maker of the motion as just explained, if necessary (see also p. 436). If the offending occupant of the chair is not the regular presiding officer of a society, a motion can be made to "declare the chair vacant and proceed to elect a new chairman." Such a motion is a question of privilege affecting the assembly (19)~~

Formatted: Font: Italic

Except as the bylaws may provide otherwise, any regularly elected officer of a permanent society can be deposed from office for cause—that is, misconduct or neglect of duty in office—as follows:

- If the bylaws provide that officers shall serve “for ___ years or until their successors are elected,” the officer in question rescinded and a successor can thereafter be elected for the remainder of the term. The vote required for removing the offender from office in such a case is the same as for any other motion to **Rescind** (35).
- If, however, the bylaws provide that officers shall serve only a fixed term, such as “for two years” (which is not a recommended wording; see p. 557), or if they provide that officers shall serve “for ___ years *and* until their successors are elected,” an officer can be deposed of office only by following the procedures for dealing with offenses by members outside a meeting; that is, an investigating committee must be appointed, it must prefer charges, and a formal trial must be held.

Formatted: Font: Not Italic