

LP PA Judicial Committee

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Johannes Ernharth, Chairman

Greg Deal

Ken Krawchuk

Aaron Reinsmith

Richard Schwartz

February 26, 2022

Members of the Libertarian Party of Pennsylvania:

On February 5, 2022, the PA LP Judicial Committee (JC) received an appeal via petition by member in good standing, Sasha Cohen, to interpret a handful of questions. The JC internally concluded that questions within the Petition met the JC's designated fiduciary duty to members to hold a hearing, citing the following authority:

1) LPPA CONSTITUTION

ARTICLE IV. ORGANIZATION: Section 4 – Judicial Committee:

*“...The Judicial Committee **shall be the final body of appeal in all matters regarding interpretations of the Constitution, Bylaws, and Rules or Resolutions of the Party.**”*

ARTICLE VII. THE JUDICIAL COMMITTEE: Section1–Organization:

*“The Judicial Committee shall elect a chair **who shall receive all appeals and petitions and schedule hearings** so as to obtain a quorum of the Judicial Committee...”*

2) POLICY MANUAL

VI. JUDICIAL COMMITTEE

*2. The Judicial Committee **shall review any question of non-compliance** with LPPA Constitution, Bylaws, **put forward in writing to the Committee by any LPPA member in good standing to determine the need for committee action.***

The Judicial Committee held a hearing on February 23, 2022, providing the Petitioner and the LPPA membership an opportunity to provide relevant testimony on the matter with the goal of clarifying the petition and providing interpretations and ruling where appropriate.

Based on this hearing and our own internal deliberations, the Judicial Committee, under its duty and authority as the “*the Final Body of Appeal in all matters regarding interpretations of the Constitution, Bylaws, and Rules or Resolutions of the Party*”, provides its interpretations to the petitioned questions as follows.

Below, the JC presents The Petition as submitted, adjusted in green text with questions numbered and in bold, with JC comments preceding in blue, and the JC interpretations/rulings following each question indented and in blue text.

---Start of Ruling---

Upon receipt of the following petition the JC was immediately conflicted because all questions require the JC to interpret a cited PA Statute. While the questions may be valid for the LPPA as an organization, JC members voiced concerns that PA statute exceeds the JC's clearly limited realm of authority, confined to providing interpretations of LPPA governing documents and the review of appealed BOD disciplinary actions, as cited.

Upon commencement of the hearing, and immediately following the Petitioner, Mr. Cohen, formally presenting his three questions, JC member Ken Krawchuk expressed the view that ruling on questions requiring the JC to interpret PA statute exceeds the authority of the Judicial Committee, and that the JC should avoid engaging in interpreting PA statute in the hearing, and that the JC must steer clear of presuming to provide interpretations of Statute in any ruling, which is practicing law. Mr. Krawchuk continued that the JC should confine the hearing to only its designated authority by removing all references to PA statute within the hearing. Mr. Krawchuk then motioned that Questions #2 and #3, being inextricably intertwined with the State Statute, not be heard, and that statute references in Question 1 be removed. Mr. Deal provided a second to the motion. The motion was put to discussion, the question was called, and the motion passed 3-1, the JC Chair's vote not required.

In the Petition below, this motion's results are reflected with portions of Question 1 not heard (and for which there will be no JC interpretation), struck out.

Sat, 05 Feb 2022

Gentlemen,

I am hereby making a formal petition to the Judicial Committee to ask some not-so-hypothetical questions:

1) Is the LPPA's Judicial Committee subservient to the LPPA's Board of Directors ~~as required by Pennsylvania's Nonprofit Corporation Law (Title 15 § 5731)~~, or does the Judicial Committee purport to have authority to override decisions by the Board of Directors?

These are two sperate questions, through the Petitioner presents an "either/or" false-choice, revealing a faulty premise implying either the JC or the BOD has absolute authority over the other.

We will divide the questions and answer each.

1) Is the LPPA's JC subservient to the BOD?

No. The JC is subservient to the LPPA membership that has put in place governing documents that rule the LPPA as an organization and define the authority of the JC.

As cited previously:

ARTICLE IV. ORGANIZATION: Section 4 – Judicial Committee:

“...The Judicial Committee shall be the final body of appeal in all matters regarding interpretations of the Constitution, Bylaws, and Rules or Resolutions of the Party.”

Additionally, as the JC now reminds all members at the end of its rulings:

“The JC reminds everyone that the LP PA Body (membership/leadership) always has means to rectify any Judicial Committee rulings or interpretations deemed unsatisfactory, as follows:

- 1) Per our governing documents, any JC decision “can be overturned by three quarters members present at a convention”. [CONSTITUTION: ARTICLE IV. ORGANIZATION – Section 4].*
- 2) The Bylaws may be updated by majority vote at Convention to reflect the will of the membership more accurately and clearly, or differently. [BYLAWS, ARTICLE XII. AMENDMENTS]*
- 3) The “Policy and Standing Rules” manual may be formally updated during ordinary LPPA business to reflect the will of the membership more accurately and clearly.” [BYLAWS ARTICLE XIX. POLICIES AND PROCEDURES]*

As well, the membership may, by vote, restructure the members of the JC at each Convention to better reflect its wishes. [CONSTITUTION: ARTICLE IV. ORGANIZATION – Section 4 *“The JC shall be composed of five party members elected at convention of the Party by attending delegates. The term of a members of the Judicial Committee shall run through the period of the next convention.”*]

- This is a closed circuit of authority: From a JC elected by LPPA members to serve as “final authority” of interpretation of the LPPA members’ governing documents, to the JC being subject to overrule and even replacement by the LPPA membership, refreshed at each convention.
- This authority is separate and autonomous of the BOD: There is no mechanism in any governing document providing the BOD (Or Executive Committee) with competing or superior authority over interpretation of the Governing Documents, nor for handling appeals of BOD discipline. Nor is there a citable authority or mechanism for the BOD (or the Executive Committee) to reject rulings, or to validate/certify or reject/overrule those rulings.

To the extent that individual members of the JC must meet specific requirements to be eligible for serving on the JC, and that each member is expected to abide by “qualifications for membership” as outlined in the governing documents, as *individual members of the LPPA*, the JC members are not above the governing documents or the relevant BOD authorities to enforce those portions thereof in conducting ordinary business on behalf of the LPPA and its members. That includes those powers in the sections defining “cause” for the BOD to initiate discipline action against any member. Hence, the BOD could, with cause, remove a JC member from the JC. But such authorities are distinctly unique and separate from those cited/ authorized of the JC.

2) Does the Judicial Committee purport to have authority to override decisions by the Board of Directors?

The JC does not “purport to have authority”. Its authority and limits, cited above, are clearly created by the members via LPPA governing documents.

The JC is a separate entity from the BOD and is not authorized to conduct business on behalf of the members, which is the authority of the BOD, nor may it arbitrarily inject itself into, rule, or override actions of the BOD. It may, however, hear questions or appeals about BOD actions, as previously referenced, and with clear citation it may interpret that the BOD’s decisions were inconsistent with what the membership intended via the governing documents.

Again, the membership elects the JC to serve in this capacity, and may at its discretion overrule the JC, or upon reflection, amend the governing documents to conform to their liking more clearly. Similarly, if the BOD’s actions are not to its liking, the membership may adjust the BOD’s members accordingly.

CONCLUSION: As stated previously, this is not an either/or tradeoff. The BOD has clear authority silos that are unique and superior to others within those silos of authority. The same holds for the Judicial Committee. To some extent, each has authority over the other, but in very specific, limited capacities. Regardless, both are subservient to the members of the LPPA, and in the case of the BOD County seats, the members of their County Party structure.

In no uncertain terms, each entity (the JC and BOD) has unique, autonomous authority to act apart from one another as defined, with limitations.

NOTE: During the hearing, the JC Chair outlined this structure of authority silos and hierarchy to Mr. Cohen, asking him where he disagreed, if at all. He was clear that it was not his assertion that such an interpretation was incorrect within the confines of the governing documents and the current culture of the LPPA. Instead, Mr. Cohen clarified that his questions were concerned that the LPPA may not be in compliance with PA statute, and that if so, the authority-hierarchy provided in the JC interpretation may be invalidated by PA law. As such, he felt the deliberations had limited utility to address his actual concerns.

The JC empathizes with his sentiment, and in no way intends to dismiss the relevance of Mr. Cohen’s questions on the LPPA operating under PA Law. However, as previously noted, questions/concerns about PA Law exceed the authority of the JC. Instead, the JC refers questions of compliance with PA LAW to the BOD, and/or the Executive Committee, and/or the Legal Action Committee for review to determine an appropriate course of action.

2) If the Judicial Committee has authority over the Board of Directors, are the LPPA Constitution and Bylaws, which created the non-subservient Judicial Committee, out of compliance with Pennsylvania law?

As previously noted, questions/concerns about PA Law exceed the authority of the JC. Instead, the JC refers questions of compliance with PA LAW to the BOD, and/or the Executive Committee, and/or the Legal Action Committee for review to determine an appropriate course of action.

3) If our LPPA Constitution and Bylaws are out of compliance with Pennsylvania law by creating a non-subservient Judicial Committee, does Article VIII of the LPPA Constitution empower the Board of Directors to eliminate the Judicial Committee in order to bring our organization into compliance with the Pennsylvania Nonprofit Corporation Law?

As previously noted, questions/concerns about PA Law exceed the authority of the JC. Instead, the JC refers questions of compliance with PA LAW to the BOD, and/or the Executive Committee, and/or the Legal Committee for review to determine an appropriate course of action.

Thank you,

Sasha Cohen
LPPA Member

---End Ruling---

The JC would like to thank Mr. Cohen for his testimony at hearing, and those members who attended to watch the proceeding.

Relief

The JC reminds everyone that the LP PA Body (membership/leadership) always has means to rectify any Judicial Committee rulings or interpretations deemed unsatisfactory, as follows:

- 1) Per our governing documents, any JC decision “can be overturned by three quarters members present at a convention”. [*CONSTITUTION: ARTICLE IV. ORGANIZATION – Section 4*]
- 2) The Bylaws may be updated at Convention to reflect the will of the membership more accurately and clearly, or differently. [*BYLAWS, ARTICLE XII. AMENDMENTS*]
- 3) The “Policy and Standing Rules” manual may be formally updated during ordinary LPPA business to reflect the will of the membership more accurately and clearly. [*BYLAWS ARTICLE XIX. POLICIES AND PROCEDURES*]
- 4) The JC may be replaced by election at the next convention with members more inclined to rule with the memberships’ preference. [*CONSTITUTION: ARTICLE IV. ORGANIZATION – Section 4*]

Respectfully submitted,

Judicial Committee
Libertarian Party of Pennsylvania