

LP PA Judicial Committee

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Johannes Ernhardt, Chairman

Ryan Bourinski

Ken Krawchuk

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Richard Schwartz

February 16, 2022

Members of the Libertarian Party of Pennsylvania:

On January 31, 2022, the PA LP Judicial Committee (JC) received both appeal and petitioned by member in good standing, John Waldenberger, to review the actions of the Board of Directors (the BOD) and interpret a handful of questions through the lens of the LPPA Governing Documents. The JC internally concluded that the questions within the Appeal and Petition were pertinent to the JC's designated fiduciary duty to members, 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: Section 1–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 13, 2022, providing the Petitioner and the LPPA membership an opportunity to provide relevant testimony on the matter with the goal of clarifying answers to the questions at hand.

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 the JC's interpretations/rulings following each question indented and in blue text.

---Start of Ruling---

Jan 31, 2022, 8:20 PM

Madame Chair, and members of the Judicial Committee

As the meeting held on January 15, 2022 did not adjourn until the following day, I hereby claim that this is the 15th and last day possible to appeal my discipline by the BOD.

There was some discussion about if the clock starts with the Board of Directors (BOD) action or with the end of the meeting given meetings could theoretically continue with completely unrelated business well beyond the following day. Nevertheless, the JC chose the more liberal interpretation.

I wish to exercise my right to request a judicial hearing for the purpose of reinstating my right to serve on committees and in other capacities of the Libertarian Party of Pennsylvania.

The question of authority arises on this statement. The JC has no authority over Committee Appointments, which are appointed at the pleasure of the BOD.

I also am challenging the motion by Dr Moulton forcing the chair to act and remove my position on the Newsletter committee.

Dr Moulton, as a member of the BOD, may make motions as a BOD member regarding committee appointments.

Per the bylaws, "I hereby certify I do not believe in or advocate the initiation of force or fraud as a means of achieving political or social goals" I find such a motion to "force/direct the chair in such a manner to be a direct contradiction to the pledge.

Also per the bylaws, the action taken is not consistent with the severity of the accusations, nor is it inline with the disciplines as outlined in the bylaws.

The JC does not referee BOD actions that are permitted by the bylaws.

I am requesting that Mr Ken Krawchuck be prevented from serving on this hearing. He has made several commentaries and profited from discussing such on his radio show "The Pennsylvania Project". Any involvement by him in any of the proceedings would be a direct conflict of interest. Please refer to episode 145 and 146 of his show, which he explicitly names myself. Among other shows where he has alluded to me by actions but not name.

There is no mechanism for the JC to prevent its members from participating in a hearing. Recusal is the provenance of each individual to decide if they should recuse themselves.

I am also requesting a ruling on the following:

Matter 1: tied to this based on Article IV OFFICERS (Executive Committee) of the policy manual.

****using last posted policy manual dated 3/20/2021****

Under reference to (c-4) Secretary

What constitutes “posting minutes within 5 days of adjournment” (summarized)?

Within 5 days of the BOD meeting’s adjournment.

Per Policy Manual IV. (c)4 -, [The Secretary shall] Make the minutes and records available to members online; minutes shall be posted on the website within five days of the adjournment of a meeting. Any amendments to the minutes will be handled as soon as possible, but before the next board meeting. A draft of the minutes should be made available within 5 days of the meeting adjourning, per the policy manual.

COMMENT: There has been testimony from the Secretary that volunteer workload recently has been extraordinary, with eight-hour meetings, and so forth, and that under such duress, deadlines may need to be revisited to account for such instances. Delays have the potential to create domino effects for issues such as raised by this Appeal / Petition.

Shall this include request for access by members present (regardless of board status)?

The citation prior says “members”, implying all members of the LPPA.

Does failure to do so have any consequences upon the officer serving?

The governing documents make no provisions other than leaving it to the BOD.

(This is not a request for action- rather an inquiry as the current serving secretary is stepping down upon close of convention).

The reason for wishing to include this, is that I wanted to have a copy of the minutes or access to the recording, but the secretary was unable to provide either one.

Please see the statement provided by the secretary explaining her situation.

The BOD may want to consider contingency plans when its workload exceeds reasonable volunteer expectations.

Matter 2:

Regarding recording policy Section V-6

What constitutes a board member who shall have access to recordings?

The Policy Manual V. BOARD OF DIRECTORS (BOD) 6.

Business meetings shall be recorded using LPPA provided equipment and/or software, and maintained using LPPA persistent storage.

Board members may request access to the recordings within 90 days of the meeting. Requests should include a signed NDA from the requestor and be logged. Recordings shall be deleted after 60 days of approval of the minutes, unless there is a litigation hold requiring preservation of records.

Board Members are members of the BOD.

Does a person who was a board member during a particular meeting have the right to request and be granted access to the recording?

The governing documents allow for access only to Board Members and have no provisions for permitting such rights to former board members.

Especially if it is needed to confirm information regarding disciplinary action taken against them, and minutes are not available within the 5 days as outlined?

The governing documents allow for access only to Board Members and have no provisions for permitting leeway in this event.

COMMENT: The BOD may wish to consider adjustments to the governing documents to provide leeway for such circumstances created by the knock-on effects of heavy volunteer workloads and potentially difficult to achieve deadlines, knock-on effects, etc.

Matter 3:**Article V- 7 communications Policy:****Per the policy all content is determined by the committee, and in effect the chair of said committee.**

The policy specifically describes the rights to pre-screen materials, providing veto rights to certain board members. It is otherwise silent on after the fact adjustments within the rights of the BOD. That policy would not remove from the BOD their ordinary discretion on staffing committees.

If content shall not be subject to veto by the EC, then does the BOD not have any exercise of power in disciplining members of the committee?

The board is permitted full discretion on who serves on any committee. Committee members serve at the discretion of the BOD. It may also formally discipline at its discretion.

Note: Mr. Moulton rescinded his motion to discipline, confining motions only to committee appointments.

Would such actions be against the right of members to have transparency to the affairs of the party?

Members' rights to transparency vary by subject. However, as previously noted, the LPPA's obligation to provide draft minutes and meeting recordings has been previously addressed. These are separate from BOD's rights to adjust Committee assignments.

Per policy manual all aspects of the process are at the discretion of the committee,

Again, this statement conflates two separate periods of time and concepts of authority. The Right to review and veto material vs. the BOD's rights to adjust committee assignments.

Does action taken by the board violate the autonomy of this committee?

No. All committee members serve at the discretion of the Board. There is no autonomy of the Standing or Working Committees, Each are specifically assigned at the pleasure of the Board. The sole exceptions are the ExComm and the Judicial Committee, whose mechanism of assignment is direct election by members of the LPPA at Convention.

Does the chair of ANY other committee retain the right to make final decisions on behalf of the committee?

The BOD has authority over committee assignments. Committee Chairs have authority over their committee actions only. A member of the BOD that serves as a Chair of one committee may still vote on matters of another committee's assignments as a BOD member, unrelated to their role as Chair of their own committee.

Matter 4**What recourse do other committees have the right to take when a member acts out (including the chair of said committee) in "bad faith" and are they subject to micromanaging by the BOD and other committees?**

To the extent that they are members of the BOD, they may motion for action on any committee assignments. Otherwise, a member of good standing may use ordinary LP business channels to seek redress for their concerns via the BOD.

For example if a member of a standing committee acts in a manner that the members of the committee do not agree with, what is the proper recourse of action for that person?

The governing documents do not micromanage committees. Robert's 50:5 gives standing committees the power to act in a manner that allows the committee to best serve the members of the Party, thus resolution of conflict rests within the committee. Per Robert's, committees are permitted to self-govern so long as they are not operating in violation of the governing documents.

Additionally, the BOD is charged with authority over who is assigned to committees, per the governing documents, and hence has indirect authority over any committee's operations given the BOD's authority to restaff any committee to align at the BOD's intent / at the pleasure of the BOD. Should a committee member feel that the committee itself is not in order, they may take their thoughts to the BOD for resolution.

Generally: Decisions within a committee should be challenged within committee authority first; if the challenge fails it could then be taken to the Board of Directors. If action is not taken by the BoD, or if the petitioner feels the actions taken by the BoD fails to correct internal committee issues or errors, then appealing the decision to the JC may be appropriate.

What is the recourse if they are the chair?

See prior answer.

Same scenario for working committees- which are formed by appointment of the chair of the party?

See prior answer.

I also ask and seek clarification on the "notification of disciplinary action" clause.

NOTE: This appeal is determined do not qualify as a appeal of formal disciplinary action as defined by the Governing Documents. These actions previously in question are governed by ordinary authority of the BOD's discretion for committee assignments.

What constitutes a written notice?

Notice in writing (Note, the Bylaws require 15 day notice of disciplinary action)

What is the proper methods of notification?

The governing documents are silent, but it would seem reasonable by any means with which there is physical evidence of being done (text, email, etc.)

What is the proper timeline of appeal?

This is dependent on the type of appeal.

Bylaws Article II Section 3 and 4 discusses disciplinary appeal, which per Section 2 must occur within 15 day of notification of disciplinary action. For such appeals, the JC must hold a hearing within 30 days. This is the type of appeal the JC believes this question is referencing. However, the JC finds that the substance of this appeal is directed against the BOD's rights to staff committees rather than a specific BOD disciplinary action as described in Sections 3 and 4. While such committee assignment changes may take place because of the BOD's dissatisfaction with a particular committee members actions resulting in replacement of said appointee, such is specifically not a "warning", "censure", or "suspension" as described in Section 3.

For appeal to the JC of ruling on a petition, unrelated to disciplinary action per Bylaws Sections 3 and 4, this may occur at any time, subject to ordinary hearing scheduling requirements described in the governing documents.

I reserve the right to elaborate on any of these with further questions at a hearing.

Respectfully,

John Waldenberger

---End Ruling---

The JC would like to thank all who provided testimony at the hearing and further assisted by providing notes and citations in writing.

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.
- 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.

Respectfully submitted,

Judicial Committee

Libertarian Party of Pennsylvania