

**APPEAL TO THE NATIONAL LIBERTARIAN PARTY JUDICIAL COMMITTEE
(JC)**

**RE: REPLY TO JACOB'S (EITHER AS AMICI OR RESPONDENT ON
BEHALF OF LNC)**

Appellant: Brittany Kosin on behalf of signatories to appeal

Appellee: Libertarian National Committee (LNC)

Date: January 29, 2025

Jurisdiction: LP Bylaws Articles 7.12 and 8.2

Bylaws Alleged to be Violated: Articles 7:14, 7:15, and 16 (incorporating
RONR)

Relevant RONR Provisions: Will be cited throughout as needed

Interested Parties: LNC and every national Libertarian Party Member

1. INTRODUCTION

My appeal was based upon portions of the disputed Policy Manual (PM) text in four places:

- The notice time cannot be shortened and fulfill full due process as ordered by the 2022 National Convention (PM 1.01.4(1))
- The language on rights of membership is ambiguous (1.01.4(2))
- The LNC has no authority to appoint manager “for the Party” (1.01.4(3))
- Trial cannot be in Executive Session

I dispute that Mr. Jacobs has any authority to respond on behalf of the LNC. The Chair cannot swoop in at the last hour and take back an ongoing ballot. The LNC exercised its authority to direct the Chair, and she must wait for that ballot. In any event, I am not taking the position that the LNC's failure to respond is an admission or default. That is not stated anywhere in our Bylaws or the JC rules. I do ask the JC to reject Mr. Jacobs' submission as the Response of the LNC in violation of LNC rules and treat it as an Amicus. It is a distinction with little difference, but we should follow our rules. It is the fault of the Chair that she failed to take care of this matter timely. Also, it is my understanding that there is a dispute under DC law as to whether or not her

resignation was in fact effective on the date she submitted it, and thus she had no authority to direct Mr. Jacobs.

I will address his points but will simply refer back to my initial Petition for brevity when possible. I had further hoped this comment would not be necessary but Mr. Jacobs continual self-references to his work on a child molestation scandal as if that were relevant to the LP is beyond inflammatory and not relevant to our Bylaws.

I reply in order of Mr. Jacobs' submission:

2. EXECUTIVE SESSION

He says:

The respondent does cite RONR, but not the clauses the appellate **[sic]** suggests. It is this clause: "Neither the society nor any of its members has the right to make public the charge of which an officer or member has been found guilty, or to reveal any other details connected with the case. To make any of the facts public may constitute libel (63:3, emphasis added)." Other than the index, this is the sole mention of libel; it may be the sole to **[sic]** tort mentioned as such in RONR."

The Bylaws are superior to RONR so this is entirely irrelevant. I refer the JC to my petition where I set forth a Bylaws argument and showed that trials **were specifically and intentionally not intended to be in Executive Session when it was passed** no matter how much Mr. Jacobs or the LNC wishes otherwise.

Avoiding actionable libel is easy. Don't libel someone. No one can avoid frivolous suits, that is why they are frivolous. And while I am not an attorney, it appears to me that keeping it in Executive Session doesn't necessarily shield the LNC from liability for libel in any event. Libel requires "publication to a third person" not wide public release. The accused has a right to an attorney who would be present. There may be parliamentarians present. The calling of witnesses and the questions asked could all be considered publication to a third person in whole or in part. But all of this is irrelevant. The Bylaws do not allow it.

Mr. Jacobs also does not appear to be aware of the Party's PM in this claim:

RONR, in fact, requires the actions of an executive session to be minuted, with the minutes themselves being approved in executive session (9:27). It is also possible, under RONR, for a convention to order the minutes opened to the delegates (49:19).

Thus, Mr. Jacobs claims that the happenings in Executive Session may be made public through minutes. However, the PM explicitly over-rides RONR in 1.02.5 by stating with regard to Executive Session: "No recording shall be made or minutes." And the reason for this is simple: RONR allows votes in Executive Session, and the LP Bylaws do not. It is surprising that Mr. Jacobs was unaware of this provision and did not explain why the RONR practice was not relevant to the LP due to our requirement of **all votes and actions** being in open session with limited specified exceptions.

Even if that provision on prohibiting the taking of minutes was not present, minutes are no substitute in the case of the LP since no motions or decisions can be made in Executive Session, as even Mr. Jacobs concedes, so there would be nothing to "minute" except the start and ending time, and perhaps the names of the witnesses called. His argument completely fails on every ground relevant to the Party. The LP is not Penn State.

He goes on to state:

The second point is the "dirty hands" claim. This is bizarre because the material complained of is not subject to this rule. The appointment of the committee, any charges recommended from the committee, and charges adopted to try the accused and the finding of guilt or no guilt, and any penalty inflicted, are not subject to executive session. Further, anything adopted, like the recent investigative committee report, is automatically removed from executive session. As these items could not be subject to executive session, there **[sic]** inclusion is irrelevant.

Yes there is something bizarre, and it is not my point, but his. Mr. Jacobs claims that the investigatory report is adopted and public. That is simply not necessarily true and defeats any pushing of the panic button over libel.

First, our Bylaws do not address the secrecy of reports, only actions flowing from reports, and thus RONR would control, and RONR states that the investigation of an investigatory committee is “confidential” (RONR 63:7) and thus, this LNC violated that provision in releasing that past report. Mr. Jacobs also makes the “bizarre” claim that I assumed this would be applied to one individual. I did not. I used one particular case as an example.

Lastly, Mr. Jacobs is surely aware that “adopting” a report in full is highly discouraged by RONR as **that act makes every word endorsed by the body** (RONR 51:13) which is an act which can expose an organization to libel if that is truly the concern. The only thing that needs to be adopted are charges. The dirty hands of the LNC in doing this in the past belies any concern about a need to have a trial in secret (which again violates the Bylaws). If this libel exposure is real, it has already happened, and solely by their own unforced error.

The due process concerns that are violated by secrecy are particular to the LP and thus his references are irrelevant. A JC is a unique feature of the LP and as an appellate body it needs to be able to fully review the record, not a filtered version. As a Libertarian body, we must behave in a Libertarian fashion and secret tribunals are profoundly anti-Libertarian. The rest of the due process issues are covered in my extensive discussion of the decision of the delegates at the 2022 National Convention.

3. SHORTENING NOTICE

Mr. Jacobs did not deal with the “full due process” argument as required by the delegates at the 2022 National convention or RONR 32:32fn10 which limits the portions of the required disciplinary process that can be changed which is specific to that section, not a general reference in the introductory chapters of RONR. If thirty days notice is reasonable, anything less is *unreasonable* and not **full due process**.

Since Mr. Jacobs appreciates references to his own writings, I will oblige him: this is once again a parliamentary Pascal’s wager. One route definitely **does not lead to any semblance of a violation** (i.e., thirty days’ minimum notice), and the other **potentially does lead to a due process violation** (i.e., shortening notice when the highest authority in the Party, the delegates assembled in convention, already overturned a disciplinary action for lack of *full due process*). Is two weeks worth the risk? It certainly is not wise.

Mr. Jacobs' further citations are, to use his word, bizarre:

Further, there is already an example of a previously existing rule which establishes less than 30 days' notice requirement. That rule is Rule 4.1 in the Judicial Committee Rules of Appellate Procedure, which provides less than 30 days' notice. It provides less than 14 days' notice. It provides seven days' notice, one half of the notice required under this rule. Likewise, for removal, the officer/member suspend [**sic**] is given seven days to appeal his removal under the LNC Bylaws. In short, this rule provides for twice the notice provided for by the bylaws or LPJC Rules in similar situations.

None of that is remotely relevant or, as Mr. Jacobs claims, *similar*. The first example has nothing to do with a trial. It is about a member appealing an LNC decision. In the second, that is AFTER the accused has ALREADY had thirty days and is already removed if they do not appeal. They have ALREADY had a trial, and this is extra protection unique to the JC.

And honestly, his next claim is not bizarre, it is actually shocking:

In the context of RONR, the notice required for disciplinary action is solely notice sent to the accused of the charges, trial date, and any suspension of abilities and rights. The respondent needs no great insight, only bare familiarity with disciplinary action.

Excuse me? That thirty days isn't to *prepare a defense??* (see RONR 63:21) This blithe dismissal of due process rights as just needing a bare familiarity is not only completely different from what he has apparently advised in the past,¹ it is frankly offensive to the Libertarian conscience.

¹ See 2021 Petition on Appeal by Caryn Ann Harlos when Mr. Jacobs was representing her: "The Petitioner had no ability to adequately prepare a defense. The "Bill of Particulars," was posted on August 27, 2021. RONR mandates thirty (30) days' Notice." It is noted in that case there was no trial at all, but this statement still supports that even with a trial, due process for reasonable preparation requires thirty days.
<https://mywikis-wiki-media.s3.us-central-1.amazonaws.com/lpedia/Petition-FINAL.pdf>

Mr. Jacobs may state that the Petition was authored by Ms. Harlos, and he does not agree with that statement, but there is no evidence on the record of such disagreement, and pursuant to Ms. Harlos, he did assist in the preparation of the Petition.

4. POLICY MANUAL CANNOT CLAIM TO APPOINT A TRIAL MANAGER FOR THE “PARTY”-- CAN ONLY APPOINT FOR LNC

Mr. Jacobs states:

The term “Manager for the Party” is similar to the term “state’s attorney,” or “district attorney.” Neither term implies that everyone in the state or district is trying to convict [sic] defendant. Under RONR, charges are made by the society, on behalf of the society. Here, the LNC acts on behalf of the Libertarian Party as per Article 7.1 on the Bylaws.

While the LNC may be authorized to attempt to remove an officer or at-large member, it is a delegated authority in the same manner as the Executive Committee of the LNC. Decisions of the Executive Committee are not represented as decisions of the LNC. Decisions of the LNC are not represented as decisions of the Party as can be noted in Resolutions going back at least ten years in which the resolving clauses state that the LNC resolves such and such, not the Libertarian Party, as that privilege is reserved to delegates in convention, and those same delegates can repudiate the decisions of the LNC in some circumstances as they did in 2022.

5. POLICY MANUAL AMENDMENT LACKS CLARITY OR ILLEGITIMATELY CLAIMS A RIGHT TO SUSPEND MEMBERSHIP RIGHTS IN THE PARTY

Mr. Jacobs states:

As with notice, this is done within the context of disciplinary action against an at-large member or officer. It does not, nor could it, affect the ability of a member of the party as [sic] bylaw sustaining member.

I agree with Mr. Jacobs, but clarity is important. I believe the Bylaws are clear that a temporary suspension can be appealed by anyone, as Mr. Phillipies did in a prior appeal, but an esteemed member of the JC felt in good faith that the

Bylaw was vague and should be clearer. The LNC can simply fix this rather than arguing over it. Surely everyone wants clarity.

Sincerely,
Brittany Kosin