

**Libertarian National Judicial Committee**

**Petitioner: Brittany Kosin**

**VS**

**Respondent: Libertarian National Committee**

**Re: Adoption of Revisions to the Policy Manual  
Provision 1.01.4 in Email Ballot ending January 2,  
2024 [sic]**

**Libertarian National Committee Respondent Brief**

**In Conjunction with**

**Jonathan M. Jacobs, Sustaining Member**

**January 26, 2025**

## Executive Session

The appellant has raised several points in her appeal, some of which are irrelevant. The first, and the main, argument deals with the use of executive session. This is also, irrelevant and inaccurate, related to the final point.

The respondent does cite RONR, but not the clauses the appellate 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 tort mentioned as such in RONR.

As can be seen from this passage, executive session exists to protect the organization, not the accused, from litigation; this is not a right to due process. It is sole direction in RONR to refrain from an action because the action can lead to litigation. That is because of how great the likelihood of litigation is in terms of disciplinary action.

The appellant took exception to citing an article titled, “Procedural Aspects of the Penn State Scandal.<sup>1</sup>” This article is quite relevant, as it chronicles not only the NCAA imposition of penalties against Penn State, but the suit against both the NCAA and Penn State by the Paterno family, et al., over the penalties. This is cited to show the likelihood of litigation in disciplinary matters. It is so pervasive that the tongue in cheek, “Jacobs’ Rule for Engaging in Disciplinary Action” was coined: “Even if you do everything right, you still have about a fifty percent chance of being sued.”

Though not mentioned in the article, there was also a libel suit by former Penn State president Graham Spanier against the author of the investigatory report; Spanier’s suit was dismissed after he was convicted criminally. This helps illustrate the likelihood of litigation. In the respondent’s experience, litigation is a fairly common occurrence as a result of disciplinary actions.

There is a high degree of likelihood that disciplinary action against an officer or member at large will trigger a lawsuit. It may be by the targeted party or by people mentioned in the report or during testimony. This is not an attempt to “re-define” a clause of the bylaws, but recognition of the reality that disciplinary actions are very likely to lead to litigation.

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, their inclusion is irrelevant.

There is another problem with the “dirty hands” theory; it assumes that this policy will only be applied to one member. It will not. It is a series of rules that applies across the board to all officers and at-large directors, as can be seen from recent events.

The idea of a record that sealed does not defeat the argument. It may be in review by LPJC, or by the courts in the case of litigation. 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).

### Notice

The appellate complains about a shortening of notice. While RONR recommends 30 days, it does permit this rule to be overridden. It says rather specifically that, “Special rules of order supersede any rules in the parliamentary authority with which they may conflict (2:16).” Footnote 5 to that citation notes that the only exception is when RONR requires something to be placed in the bylaws<sup>2</sup>. There is no requirement in RONR that notice be placed in the bylaws.

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 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.

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.

### Managers

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 the 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.

### Suspension

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 bylaw sustaining member

## Submission

**This is being submitted on behalf of Libertarian National Committee, whose approval is pending, which is currently without a chair or vice chair. If it is not granted, this should then be considered as an amicus brief from a sustaining member.**

## End Notes

<sup>1</sup> “Procedural Aspects to the Penn State Scandal,” Parliamentary Journal, LV, No. 4 October, 2014. 138-154 Text is here:

[https://www.academia.edu/26614831/Procedural\\_Aspects\\_of\\_the\\_Penn\\_State\\_Scandal](https://www.academia.edu/26614831/Procedural_Aspects_of_the_Penn_State_Scandal)

<sup>2</sup> This type of requirement is found in a number of parliamentary authorities. See “Parliamentary Authorities’ Rule Shift Function,” Parliamentary Journal, XLVI, No. 4, January 2005, 1-11