

2/26/25

(Note: for reference throughout this opinion, Bylaws Articles and Sections and Clauses will be listed as "Article-Section-Clause", e.g., Article 8 Section 2 subsection d is "8-2-d". Also all references to Robert's Rules of Order, Newly Revised, will be listed by the section and subsection number as given in the 12th Edition, e.g., Section 56 subsection 68 is "56:68", with further subsections in parentheses. All dates are in 2024.)

In the case of RE: ADOPTION OF REVISIONS TO POLICY MANUAL PROVISION 1.01.4 IN EMAIL BALLOT ENDING JANUARY 2, 2024 (aka Kosin v. LNC), Mr. Seebeck delivers the following opinion.

1. BLUF¹: The Policy Manual amendment is poorly-written, uses improper and vague terms, has unnecessary verbiage, and violates the Bylaws, not to mention opening a too-wide door for lawfare rather than proper due process and justice, so it should be null and void. The majority and concurring opinions are in error, and I dissent.

Standing

2. Petitioners have provided over the required 10% of 937 credentialed delegates (94). Signature threshold has been met in accordance with 7-12. Standing has been established. This group is collectively referred to here as the "Petitioners." The LNC is referred to here as the "Respondent."

Requested Relief

3. Petitioners have requested the following reliefs (here placed in a list for clarity):

1. A voiding of the decision of the LNC to amend the policy manual, which would revert it back to its previous language.
2. Resubmission of a previous appeal that was withdrawn as moot by the amendment.
3. Alternatively, even though the LNC did not pass this amendment as a series of amendments, to leave the non-violative language in place, and striking the violative language.

Jurisdiction

4. While 7-12 allows member or delegate petitions of LNC decisions, once the petition is submitted and determined to be valid per the Judicial Committee Rules, the Judicial Committee shall consider it. That consideration requires the Judicial Committee to determine "whether or not a decision of the National Committee contravenes specified sections of the bylaws" (which includes all of RONR where not overridden per Bylaw 16). If a decision is vetoed by the Judicial Committee, the result is a reversion to the status quo as if the decision was never made: an affirmative decision does not become a negative decision, nor does a negative decision become an affirmative decision, but either if vetoed results in the prior state before the decision was considered or implemented.

5. It is not enough to say a decision was just procedurally sound under the assembly's rules, but the

¹ BLUF: Bottom Line Up Front; a common engineering term that indicates a short summary of what's to come.

effects of the decision itself must also not violate the Bylaws². That is what is appealed here.

6. As is the case for all petitions to the Judicial Committee, it is necessary to examine if the Judicial Committee has subject matter jurisdiction to rule on each of these requests.

7. The jurisdiction of the Judicial Committee to certain matters is explicitly listed and limited by 8-2. The relevant part, subsection d, is “*voiding of National Committee decisions*,” referencing 7-12, which is the member or delegate petition thresholds, and also specifically states that the consideration is of “*the question of whether or not a decision of the National Committee contravenes specified sections of the bylaws.*”

8. The first requested relief is to void the LNC decision to amend the Policy Manual to the current wording. Since this was a decision made by vote of the LNC, the Judicial Committee has jurisdiction under 8-2-d to decide this issue.

9. The second requested relief is to have a previous submission of a petition regarding the prior language of the Policy Manual be resubmitted to the Judicial Committee for consideration because it would no longer be mooted by the amendment. Because that petition was withdrawn, petitioner will have to resubmit it. Neither the Bylaws nor the Judicial Committee rules allow for automatic resubmission of a withdrawn petition, nor is the Judicial Committee obligated to be a repository for petitions not under consideration. This requested relief should be denied.

10. The third requested relief is an alternative to the first requested relief that only the violative provisions of the amendment to the Policy Manual be struck. The language of the amendment was clearly passed as one resolution even though it clearly could have (and should have) been considered in parts as separate motions. As such, it stands or falls on its own *en toto* and is not severable³: if one part of the amendment is violative, then the entire amendment is violative. This requested relief should be denied.

Jurisdiction Summary

11. Because such a petition was properly made under 8-2-d, the Judicial Committee has jurisdiction in this case.

Opinion

12. Should the actions of the LNC be overturned?

13. The amendment is procedurally correct in its passage. But it still violates the Bylaws and Rules:

² 10:26-1: “*No main motion is in order that conflicts with the corporate charter, constitution, or Bylaws... and to the extent that procedural rules applicable to the organization or assembly are prescribed by federal, state, or local law, no main motion is in order that conflicts with such rules.*”

³ In *Phillies v. LNC*, it was noted in that case, there were eight separate motions to consider, which the Committee considered separately and they were severable from each other. As such, the LNC could have, but did not, chosen to combine them into one motion. Here, the LNC could have separated the amendments and considered them separately and did not, so they are not severable, by LNC lack of action to do so.

1. 14 days' notice of exactly what is not clear. Is it 14 days before trial, 14 days before suspension from duty, 14 days to flatten the curve, what? Its wording alone is void for vagueness. Mr. Jacobs, before representing the Respondent, has stated publicly⁴ that it is 14 days' notice for the trial. There has been no further clarification, so that will be assumed to be the case here. If the trial procedures are the only thing modified, per the motion language itself, then the 14 days violates a member's rights as RONR 63:21⁵ applies to the right to prepare a defense beforehand, not actual trial procedure itself as the amendment claims, which is covered in RONR 63:30-63:34. They are two different things, simply because 63:7-63:29 references actions taken before the trial, not during it. So that Policy Manual rule cannot be modified as worded.⁶ It is simply out of scope of the proposed amendment.⁷
2. "the accused's rights of membership" is also out of scope for the same reason, except that such a suspension is referenced in a different section ahead of the trial procedure.⁸
3. "either personally or counsel" denies the right of the accused to do both. The accused should have the maximum ability to defend themselves, especially in such short of a time, which means they should have the option of both.
4. "counsel *may* either be a sustaining member...or a licensed attorney, or both" also means because it is an optional "may" instead of a required "shall," they could be neither, or anybody, so this clause is meaningless and unnecessary verbiage.
5. The trial manager is for the LNC, not the Party. See below.⁹
6. Testimony and deliberations are NOT "pending or potential litigation" of any sort, so Executive

⁴ See petition, p.10.

⁵ 63:21: *"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."*

⁶ In deliberations, the Judicial Committee discussed the applicability of 63:7: *"For the protection both of the society and of its members 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 must be followed in the absence of such provisions."* The key point there is "fair" disciplinary process, and it is inherently UNfair for an investigative committee to have essentially an unlimited period of time to prepare their case but only 14 days for preparation of a defense, in and around whatever professional and personal life the accused may have. If it were truly "fair," then both the investigatory committee and the accused should have equal time, not unlimited on one hand and only 14 days on the other.

⁷ 12:6: *"An amendment must always be germane—that is, closely related to or having bearing on the subject of the motion to be amended."* The subject here of the motion is the trial procedure, not the due process steps leading up to the trial.

⁸ 63:13: *"Report of the Investigating Committee; Preferral of Charges. If after investigation the committee's opinion is favorable to the accused, or if it finds that the matter can be resolved satisfactorily without a trial, it reports that fact.⁸ But if the committee from its investigations finds substance to the allegations and cannot resolve the matter satisfactorily in any other way, it makes a report in writing—which is signed by every committee member who agrees—outlining the course of its investigation and recommending in the report the adoption of resolutions preferring charges, arranging for a trial, and, if desired, suspending the rights of the accused,..."*

⁹ See paragraph 23, below.

Session cannot apply. Those terms have a very specific legal meaning applying to courts of law, not investigatory committees, and certainly not parliamentary law, and this wording doesn't get there. Plus, disciplinary matters are not listed in the Bylaws under 7-15¹⁰, nor were they ever intended to be, so per RONR 56:68-4¹¹, those can't be under Executive Session. The Bylaws Committee deliberations in 2020 also bear that out¹². This violates 7-15.

7. A transcript or recording of Executive Session violates its necessity for secrecy, making it unnecessary to be in Executive Session in the first place. And for what purpose are those done if they are in Executive Session? They are not viewable outside of Executive Session, barring consent of all parties or a leak. So they really serve little purpose. Plus, it violates 7-15, as the action of recording a session or transcribing it must be in open session. It also contradicts Policy Manual Rule 1.02.5¹³, as noted by petitioner, a rule which is consistent with 7-15.
8. There is no point to having the ability to act on the report of an Investigatory Committee at any point prior to the "final adjournment" (the correct term is "adjournment *sine die*") of the next national convention, EXCEPT to do one thing, and that's to create conditions of retroactivity and ex post facto, which could be weaponized as a sword of Damocles against an accused member to drive them off the LNC from fear of and actual retaliation for actions that may be completely allowable but unliked and offensive to the tender sensitivities of other LNC members ("Vote and do things our way or else!"). That's no way to govern this Party. If a future action is enough to require an Investigatory Committee, then that Investigatory Committee is limited to that action, not past actions already investigated and disposed of. Nor should an Investigatory Committee process be abused by creating Investigatory Committee after Investigatory Committee to go digging years into the past to try to find something to prefer a charge on, as that is not nor never has been the intent of having such a committee. That devolves from due process into harassment and retaliation and lawfare, and would be a waste of Party time and resources in the pursuit of bad optics and unnecessary infighting.
9. This reverts "cause" to what is defined in RONR. Unlike the version of this Policy from two

¹⁰ 7-15: *"The National Committee and all of its committees shall conduct all votes and actions in open session; executive session may only be used for discussion of personnel matters, contractual negotiations, pending or potential litigation, or political strategy requiring confidentiality."*

¹¹ 56-68-4: *"If the bylaws authorize certain things specifically, other things of the same class are thereby prohibited. There is a presumption that nothing has been placed in the bylaws without some reason for it."* As I have stated multiple times, *"The converse is also true: there is a presumption that some things have NOT been placed in the Bylaws with some reason for excluding them. The words as written matter,"* (Phillies v. LNC, para 11, emphasis in original)

¹² See petition, pp.5-8.

¹³ LNC Policy Manual 1.02-5, last updated 8/1/24: *"The LNC or any committee may enter into Executive Session only in compliance with this special rule of order. The motion to enter Executive Session must list all reasons for doing so from among the following:*

- Personnel matters
- Contractual negotiations
- Pending or potential litigation
- Political strategy requiring confidentiality

*No action can be taken while in Executive Session. Discussion of action which may be taken in Open Session can occur. **No recording shall be made or minutes.**"* (emphasis added)

amendments prior, “cause” is not defined, here, so “cause “ falls to the definitions in RONR 62:16¹⁴

14. Since the amendment violated the Bylaws in multiple ways, it should be null and void and the Policy Manual should revert to its previous language.

15. To address the Jacobs AMICUS:

16. It is not an LNC response¹⁵. Ms. McArdle claims to have authorized the writing, but at that time, a vote was ongoing with the LNC to authorize it, and the LNC Chair cannot, once a vote is pending and incomplete with the LNC, unilaterally declare the motion passed or take an action that moots it. See 45:6¹⁶ and 47:7-4¹⁷. The period of the vote, per Article 13, is seven days or until all members have voted, and neither condition was met at that time. The response period for the LNC expired on 1/26, so no actual response from the LNC was submitted in time to the Judicial Committee in accordance with Rule 4.1. The LNC has no authority to reinterpret the Judicial Committee Rules of Procedure, either; that interpretative authority is exclusive to the Judicial Committee. (Nor does the LNC have any authority to tell the Judicial Committee what its job is!)

17. Furthermore, DC Code is binding upon the LNC, and according to DC Code 29-406.43-(a), *“An officer may resign at any time by delivering notice to the nonprofit corporation. A resignation shall be effective when the notice is delivered unless the notice specifies a later effective time.”* (emphasis added)¹⁸ Ms. McArdle resigned as LNC Chair at 6:30 AM January 25th, 2025, according to the timestamp of her own resignation email, so it is effective at that point, the Chair position is then vacant, and no further action by Ms. McArdle can be taken acting as Chair¹⁹. So the authorization is also invalid for that reason as well.

¹⁴ 62:16: *“...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.”*

¹⁵ It should be understood that a failure to respond to the petition is NOT the LNC defaulting on the case. It merely means they missed their deadline to respond.

¹⁶ 45:6: *“Interruption of Votes. When a vote is being taken, no interruption is permitted from the time that any member has actually voted until all have presumably voted, unless as sometimes occurs in ballot voting, other business is being transacted during voting.”*

¹⁷ 47:7-4: *“It is the duty of the presiding officer of an assembly: ... To state and to put to vote all questions that legitimately come before the assembly as motions or that otherwise arise in the course of proceedings (except questions that relate to the presiding officer himself in the manner noted below), and to announce the result of each vote (4);*

¹⁸ It should be noted that this is considered “procedural law” and is relevant per RONR.

¹⁹ While 32:5 indicates that a vote is required to accept a resignation (*“By submitting a resignation, the member is, in effect, requesting to be excused from a duty. The chair, on reading or announcing the resignation, can assume a motion “that the resignation be accepted.”*”), the DC Code overrides 32:5, making such a motion moot and unnecessary in that applicable case.

18. That leaves the Jacobs brief as an amicus, and not a response. It was not authorized properly by the LNC nor did the LNC submit a response within the seven days allotted time in accordance with the Rules of Appellate Procedure.

19. As for the amicus itself, it is unpersuasive as it first misses the most fundamental point: Bylaws supersede special rules supersedes RONR²⁰ ²¹. As such, 7-15 supersedes 63:2 et al's provision of confidentiality. The risk of libel alone is not enough to violate the Bylaws; in fact, the risk makes it even more necessary for the investigation and any subsequent charges and trial to be as impartial and free from conflicts of interests and biases as can possibly be done. Per 7-15, Executive Session can regard "potential litigation," but that term is decidedly vague as anyone can attempt to sue anyone for anything in this modern world²², and the specific work of the 2020 Bylaws Committee examined that possibility regarding disciplinary actions for an LNC member and rejected it.²³ We cannot assume such open-endedness as it would contradict the Bylaws.

20. The amicus also gets axle-wrapped around footnote 1 in the petition. In that footnote, petitioner references a statement the writer himself brought into the conversation²⁴ and properly calls them "inappropriate." The writer fails to understand that what may have happened to Penn State University over a decade ago is irrelevant to this case. Frankly, comparing the current ongoing situation in the LNC to that scandal is ludicrous; the former is not the latter in terms of type or scale. As such, the fixation is unpersuasive and doesn't help the arguments.²⁵

21. Plus, it misses the overall common-sense point: if there is so much of a risk of a lawsuit, then ***don't act out in the first place when doing investigations!*** Do it carefully, do it impartially, and above all, do it cleanly.

22. Regarding notice, the idea of referring to the Rules of Appellate Procedure for this Judicial Committee as an example of shortening notice as recommended in 63:21, does not follow, as the notice required in those Rules is not one regarding a disciplinary hearing, but of ANY valid appeal sent to this Committee (excluding during a national Convention). The Judicial Committee does not do disciplinary

²⁰ 2:12: *"Except for the corporate charter in an incorporated society, the bylaws (as the single, combination-type instrument is called in this book) comprise the highest body of rules in societies as normally established today. Such an instrument supersedes all other rules of the society, except the corporate charter, if there is one."*

²¹ 2:16: *"Special rules of order supersede any rules in the parliamentary authority with which they may conflict."*

²² To misphrase Tom Lehrer, "When properly viewed, anyone can be sued."

²³ See petition, pp. 5-8, supra.

²⁴ See petition, p. 10.

²⁵ And the back-and-forth between petitioner and amicus in submitted briefs doesn't help either side in the eyes of the Judicial Committee, either.

hearings as it is not within its scope to do so as an appellate body. It simply does appeals. As such, the argument is not only unpersuasive, it is a nonsensical comparison.

23. Regarding managers, the trial manager is NOT for the entire party, but for the LNC alone; and to say that the managers are for the entire Party is a misreading of what the "society" is in 63:30; the "society" in this case is the LNC, not the entire Party. To claim that it is a term similar to types of state attorneys is absurd; see 56:68-2²⁶. If the "society" is the entire Party, then per 63 the entire Party is who votes on the preferral of charges in 63:13-29, especially 63:28: *"If the society adopts resolutions ordering trial before the assembly or a committee,..."* If that is the case, then the entire suspension is invalid because the entire Party didn't vote on it, and that also contradicts the plain wording of 7-1, 6-7, 7-5, etc. which places duties and powers upon the LNC. The true meaning here per 56:68-2 is that "society" in this case is the LNC, not the Party. As such, the trial managers are for the LNC, not the Party, and that clause is invalid, which should cause the entire motion to be void.²⁷

24. In summary, the amicus is based in incorrect assumptions, incorrect interpretations of RONR, the Bylaws, and the Judicial Committee Rules, bad comparisons, and stretches to the breaking point if not past the breaking point of credulity. Its only valid point is that the Policy Manual change only applies to Officers and At-Large members. But the petitioner does not argue that it extends to other members of the Party; nor does the Policy Manual claim it does. The petitioner only argues that its limited application must be clear, and it does exactly that in its first paragraph: "A Party Officer or At-Large Member may be disciplined..." On that point, the petitioner, the Jacobs amicus, and the Policy Manual are all in agreement, so it's a non-factor as far as being contested before this Committee.

25. This case presents an example of how not to write a Policy Manual amendment. It uses improper and vague terms, unnecessary verbiage, bad references, and violates the Bylaws, not to mention opening a too-wide door for lawfare rather than proper due process and justice. For those reasons, as have been explained here, the amendment should be null and void and the Policy Manual should be reverted to its previous language.

²⁶ 56:68-2: *"When a provision of the bylaws is susceptible to two meanings, one of which conflicts with or renders absurd another bylaw provision, and the other meaning does not, the latter must be taken as the true meaning."*

²⁷ The words used and not used in constructing motions, bylaws, and rules matter. 56:11: *"The composition of bylaws is somewhat different from ordinary expository writing, in that it places greater demand on a "tight" clarity and precision in word choice, sentence structure, and punctuation. In bylaws, every punctuation mark may have an important effect; and what is omitted may carry as much significance as what is included. Indisputability of meaning and application is a more important consideration than "readability," and the latter must be sacrificed when both cannot be achieved. Each sentence should be written so as to be impossible to quote out of context; that is, either its complete meaning should be clear without reference to sentences preceding or following, or it should be worded so as to compel the reader to refer to adjoining sentences..."* The same is true for other rules beyond Bylaws.

26. Should the petitioner wish to appeal that previous language, they would have to resubmit a petition separately. No comment is offered on that here, and regardless, it's not in scope of this case.