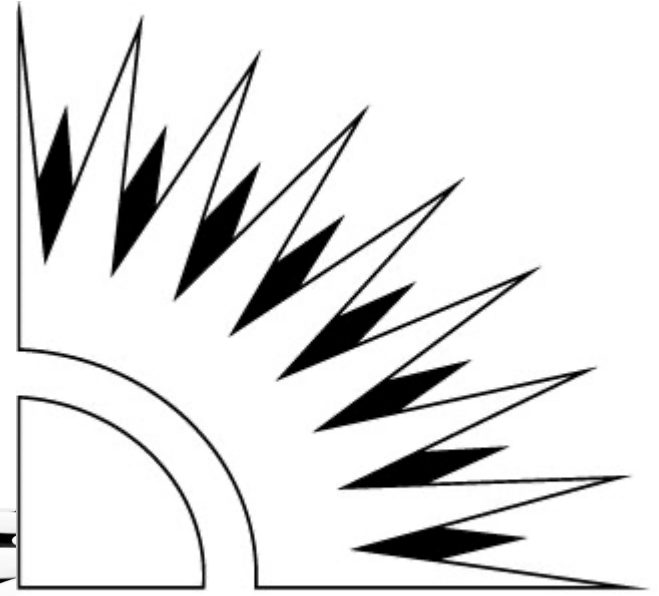


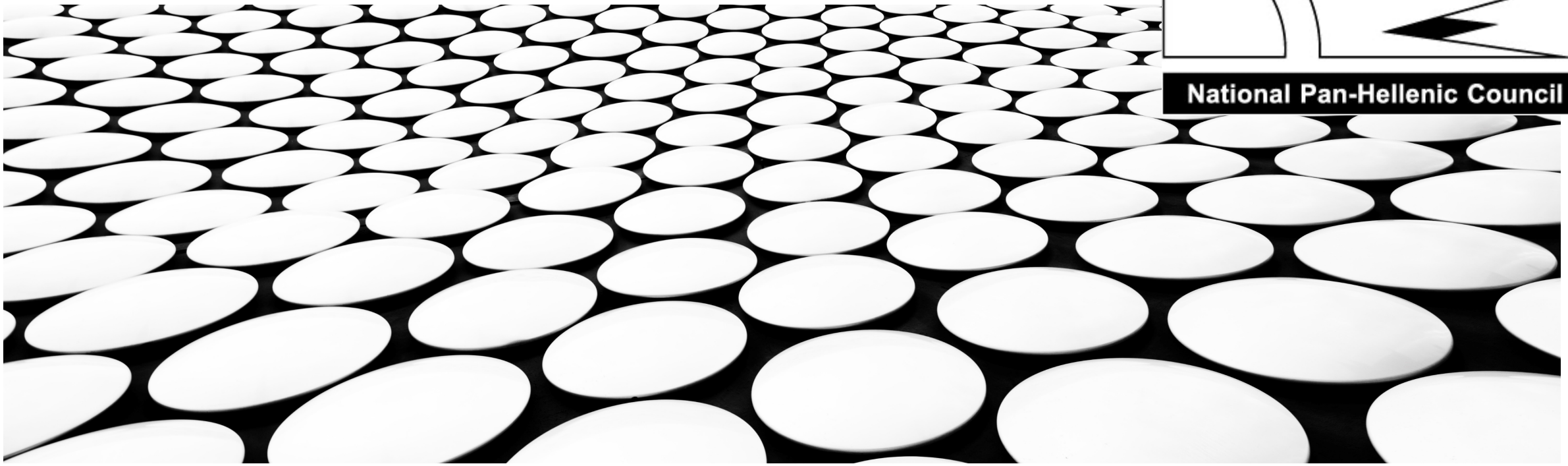
THEY GOT TO GO!!!

FRANCES JACKSON, PHD, RN, PRP

NPHC



National Pan-Hellenic Council



REMOVING AN OFFICER FROM OFFICE

- Increasingly, this officer is getting requests and complaints by councils who want to remove an officer, usually the president, from office.
- Robert's says that most organizations should not have lengthy procedures on officer removal in their bylaws. It's too cumbersome and unwieldy.



THE PROCESS STARTS WITH WHAT THE BYLAWS SAY

If you followed the NPHC Bylaw template, then your council bylaws should have a provision that says either:

Officers shall serve a term of X years OR until a successor is elected;

OR

Officers shall serve a term of X years AND until a successor is elected.

WHAT DO THE BYLAWS SAY?

If the language says, “officers serve X years AND until a successor is elected,” then the term of office is FIXED and the officer can only be removed for cause. Unless your bylaws have their own process, this would require:

- The appointment of an investigating committee
- Charges must be preferred
- A formal trial must be held

If the language says, “officers serve X years OR until a successor is elected,” then the term of office is NOT fixed and you only need a motion to remove that officer from office. The vote required to adopt the motion to rescind the election of that officer is:

- Two-thirds without previous notice
- Majority vote when previous notice has been given (notice given at the previous meeting)
- A vote of a majority of the entire membership (whether present or not)
- Even with the above language, your bylaws may require a process for officer removal that is more than just making a motion rescinding their election.
- This presentation will focus on the process.

INVESTIGATION AND TRIAL



Right of the Society and Rights of the Accused



As an organization, you have the right to:

Investigate the character of your members and officers, only to the extent needed to enforce organizational standards.

If, after trial, a member is expelled or an officer removed from office, the organization has the right to disclose that fact, but only to the extent required for the protection of the organization, or other organizations.

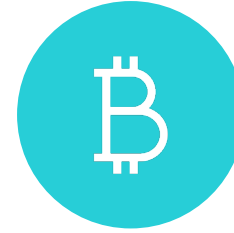
INVESTIGATION AND TRIAL

- What An Organization Cannot Do
 - You cannot make public any information obtained as a result of a disciplinary investigation.
 - If a trial is held, it must always be held in executive session as must the introduction and consideration of all resolutions leading up to the trial.
 - Neither the organization 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 detail connected with the case. To do so, may constitute libel.
 - A trial by the organization cannot legally establish the guilt of the accused as understood in a court of law. It only establishes their guilt as the society has judged their fitness for membership or office.

STEPS IN A FAIR DISCIPLINARY PROCESS



1. CONFIDENTIAL
INVESTIGATION BY A
COMMITTEE



2. REPORT OF THE
COMMITTEE, AND
PREFERRAL OF CHARGES, IF
WARRANTED



3. FORMAL NOTIFICATION OF
THE ACCUSED



4. TRIAL



5. THE ASSEMBLY'S REVIEW
OF A TRIAL COMMITTEE'S
FINDINGS (IF THE TRIAL WAS
HELD IN COMMITTEE
INSTEAD OF THE ASSEMBLY)

CONFIDENTIAL INVESTIGATION

01

A committee is established to conduct a confidential investigation

02

The committee will make a reasonable attempt to interview the accused

03

The committee will decide whether it recommends further action, including the preferral of charges if necessary, is warranted

CONFIDENTIAL INVESTIGATION

To appoint the investigation committee, any member can offer a resolution in a form similar to the following (RONR p. 657):

For an Officer:

- *Resolved*, That a committee of X (odd number, maybe 5) be elected by ballot to investigate allegations of neglect of duty in office by our treasurer, John Thomas, which, if true, cast doubt on his fitness to continue in office, and that the committee be instructed, if it concludes that the allegations are well-founded, to report resolutions covering its recommendations.



CONFIDENTIAL INVESTIGATION

- For A Member (RONR, p. 657):
 - *Resolved*, That a committee of X be appointed by the chair (or elected by ballot) to investigate rumors regarding the conduct of our member, Mr. Jones, which, if true, would tend to injure the good name of this organization, and that the committee be instructed, if it concludes the allegations are well-founded, to report resolutions covering its recommendations.

CONFIDENTIAL INVESTIGATION



To protect officers and members who may be innocent, the resolution should avoid details as much as possible.



An individual member cannot prefer charges, even if that member has proof of an officer's or member's wrongdoing. If a member attempts to prefer charges, the chair should rule the resolution out of order.



A resolution is improper if it implies the specific rumors or contains insinuations unfavorable to the accused.

This would be out of order: Whereas, it seems probable that the treasurer embezzled council funds.....

CONFIDENTIAL INVESTIGATION

- The investigating committee:
 - Does not have the power to require the accused or anyone else to appear before it
 - Should conduct a complete investigation with the focus on learning all relevant facts
 - If a person gives information to the Investigating Committee in strict confidence, it may help the committee form an opinion, but this information cannot be reported to the council or used in a trial, unless part of the information can be shared without revealing the confidential particulars.
 - Every reasonable attempt should be made to meet with the accused for a frank discussion to hear their side of the story
 - It is within the power of the Investigating Committee to say to the accused that if the situation is not rectified or if they don't resign, they will be brought to trial.

REPORT OF THE INVESTIGATION COMMITTEE



If the committee's opinion is favorable to the accused, or if the committee believes the matter can be resolved without a trial, that is what the committee reports to the assembly.



However, it is within the power of the assembly to adopt a resolution that does prefer charges regardless of the recommendation of the Investigation Committee.



If the committee finds substance to the allegations and cannot resolve the situation in any other way, it makes a report that must be in writing, and must be signed by every member of the committee who agrees, outlining the course of the investigation and recommending adoption of resolutions preferring charges, arranging for a trial, and if desired, suspending the rights of the accused.

PREFERRING CHARGES

An example of a resolution that prefers charges against an officer is on page 659 of RONR.

It has the following components:

- It sets the time, and date for the trial (an adjourned meeting)
- It names the accused and states they are cited to appear for trial to show cause why they should not be removed from office.
- It names the charges and specifications: The charge is the bylaw, rule or procedure that has been violated; the specification is the specific behavior that reflects the violation:
 - Charge: Neglect of duty in office
 - Specification 1: That x has failed to account for at least \$10,000 of the council's funds known to have been given into his custody.
 - Specification 2: That X has repeatedly failed to provide the financial records of his treasurership for review by the Auditing Committee

PREFERRING CHARGES

- The resolution could also include a paragraph detailing that the accused's right and duties are suspended.
- The resolution should name the trial managers for the society (council).
- It is very important, and RONR makes a big deal of this, that the date for the trial should be set as to allow ample time for the accused to prepare a defense. RONR states that this is usually 30 days (p.660).
- If the trial is going to be held in front of the council, then it is usually held as an adjourned meeting. An adjourned meeting is scheduled to take place prior to the next, regularly scheduled meeting.
- If there will be another meeting held before the trial meeting, then a special meeting should be used, not an adjourned meeting. In this case, the council may call a special meeting for the purposes of conducting a trial even if the bylaws fail to provide for special meetings and even if the bylaws don't provide for the assembly to have the power to call for a special meeting (p. 661, fn).

PREFERRING CHARGES

An accused officer or member must be found guilty of a charge before a penalty can be imposed.

Each separate charge contained in the resolution must have at least one specification unless the investigating committee and the accused agree that this information not be disclosed outside of the trial.

The resolution can, but does not have to contain language that suspends all or some specified portion of the accused's authority and rights, duties, etc.

PREFERRING CHARGES



The managers at trial have the task of presenting the evidence against the accused and must be members of the organization.



They are not prosecutors. You are not SDNY.



Their main role is to get at the truth and to strive for a **just** outcome.

PREFERRING CHARGES

If the organization adopts resolutions ordering a trial before the assembly or a committee, the secretary immediately sends to the accused a letter notifying him of the date, hour, and place of the trial. This notice must be sent via a delivery system that can track confirmation that notice was delivered.

The notice will contain an exact copy of the charges and specifications, the date the resolution was adopted, and directing him to appear as cited.

This notice is sent even if the accused was present at the meeting where the resolution preferring charges was presented and adopted.

The secretary is strictly charged with having on hand, at the trial, a copy of the letter of notification and the delivery confirmation as proof that the letter of notification was delivered

TRIAL PROCEDURE

The trial is a formal hearing on the validity of the charges.

At the trial, the evidence is presented by the society's trial managers.

The officer has the right to be represented by counsel and to speak in their own defense and bring witnesses.

TRIAL PROCEDURE

- If the trial is going to occur before a committee, the committee must be composed of different people from those who served on the investigating committee. In this case, the resolution reported by the investigating committee should be worded to establish a committee to hear the trial and report its findings and recommendations to the assembly for action and then the remaining resolution would set forth the charges and specifications. The resolution naming a trial committee does not have to include the names of the committee when that resolution is presented to the assembly.
- If the trial is going to be held in front of the assembly, then it should be held at a meeting devoted exclusively to the trial, such as an adjourned meeting or special meeting.

TRIAL PROCEDURE

The trial managers present the evidence on behalf of the council.

The accused has the right to be represented by counsel. This can be an attorney, or not, but **MUST** be a member of the organization unless the trial body, by vote, agrees that a non-member can be counsel to the accused.

TRIAL PROCEDURE



If the charges are found to be true, a penalty may be imposed or recommended. But if the charges are not substantiated, the officer or member is exonerated and any rights, duties, privileges that were suspended are automatically restored.



If non-members testify, they can only be in the room while giving testimony.

STEPS IN THE TRIAL PROCEDURE

1. The chair (president) directs the secretary to read the charge(s) and specification(s).

The chair asks the accused how he pleads – guilty or not guilty, first to the specifications, then to the charge.

If the member/officer pleads guilty, there is no trial and the meeting proceeds directly to the determination of the penalty, after hearing a brief statement of the facts.

STEPS IN THE TRIAL PROCEDURE

- 4. If the plea is not guilty, the trial proceeds in the following order:
 - Opening statements by both sides, the trial managers for the assembly going first.
 - Testimony of witnesses by the trial managers.
 - Testimony of defense witnesses.
 - Rebuttal witnesses on behalf of the assembly, then on behalf of the defense.
 - Closing arguments, both sides.

STEPS IN THE TRIAL PROCEDURE



5. Up until the completion of the closing arguments, no one is entitled to the floor except the trial managers and the defense.



6. Much like a judge in a real court, the presiding officer rules on questions of evidence and any objections raised by the managers or defense.



7. If a member who is not a manager or with the defense wishes to question a witness, manager or the defense, the question must be in writing and given to the presiding officer, who will, at the appropriate time, ask the question, if it is in order.



8. Once the closing arguments have been made, the accused must leave the room.

STEPS IN THE TRIAL PROCEDURE



9. If the trial took place before the assembly, the chair states the following:

“The question before the assembly (or the committee) is whether Mr. X is guilty of the charge(s) and specification(s) preferred against him?”



10. Each specifications and then the charge is read, opened to debate, and voted upon separately.



11. The specifications or charges can be amended to conform to facts brought out in the trial, but any changes cannot make the accused guilty of a charge that was not included in the original resolution.

STEPS IN THE TRIAL PROCEDURE

12. If the accused is found to be not guilty of any of the specifications, he is automatically not guilty of the charge, and no vote is taken on it. Even if, for some reason, a vote has already been taken on the charge, it is ignored if the accused is found to be not guilty on the specification(s).

13. If the accused is found guilty on one or more of the specifications but not of the charge, and if a lower degree or level of the offense is defined in the bylaws, or other governing documents, then such a lesser charge may be moved and voted on.

STEPS IN THE TRIAL PROCEDURE

14. If the accused is found guilty of the specifications and the charges, then the chair announces that the next item of business is determination of the penalty.

15. One of the trial managers makes the motion for a penalty the managers feel is appropriate, although any member can move that a specific penalty be imposed. The motion is debatable and amendable.

16. On the demand of one member, both the question of guilt and the question of penalty must be voted on by ballot.

STEPS IN THE TRIAL PROCEDURE

17. The usual, possible penalties for officers are:

- Censure
- Removal from office
- Could also include the repayment of money

18. For all penalties, including removal from office, majority vote is required. For expulsion, it is 2/3.

STEPS IN THE TRIAL PROCEDURE – TRIAL COMMITTEE



If the trial was held in front of a trial committee instead of the assembly, the committee reports to the assembly in executive session the results of the trial with resolutions.



If it finds the officer guilty, the resolution should include the penalty that is being recommended to the assembly.



This report does NOT include confidential information.



It does include a summary of its findings.

STEPS IN THE TRIAL PROCEDURE – TRIAL COMMITTEE

Unless the report of the trial committee exonerates the accused, he is then permitted, either personally, or through counsel, to make a statement of the case.

The committee is then allowed to present a statement in rebuttal.

The accused and any other non-members leave the room and the assembly acts on the resolutions presented by the trial committee.

The members of the trial committee remain, the same as any members of the society.

STEPS IN THE TRIAL PROCEDURE – TRIAL COMMITTEE

The assembly can decline to impose any penalty, no matter what the trial committee recommends.

The assembly can reduce the penalty.

It CANNOT increase the penalty.

The assembly cannot impose a penalty if the trial committee found the accused not guilty

THE VERDICT

- Once the assembly makes its decision, the accused is brought back into the room to hear the results of the vote.
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QUESTIONS

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