



# **GUIDE TO THE COURTS OF THE ORDER**

**“To do justice to one another raises  
the standard of human excellence  
everywhere.”**

***BPOE Ritual of Special Services***

**Issued by Law Subcommittee of  
Grand Lodge Advisory Committee**

**3rd Edition  
Compiled by the Grand Forum  
of the Benevolent and Protective Order  
of Elks of the United States of America**

**Edward C. A. Johnson  
Chief Justice, 2024-2025**

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# GUIDE TO THE COURTS OF THE ORDER

*"One who seeks justice in our courts should familiarize himself with the Laws of the Order; for, he who seeks justice must himself follow the Laws."*

[Grand Forum Case No. 786]

This Guide is issued by the Law Subcommittee of the Grand Lodge Advisory Committee for the instruction of Presiding Justices, Officers, and Members of Local Lodges, and Grand Lodge officials and others who have need for this information.

This Guide was compiled by Robert M. Goolrick who was a member of the Committee on Judiciary in 2002–2007 and a Grand Forum Justice in 2007–2014.

*This Guide is dedicated to Past Grand Exalted Ruler Peter T. Affatato, whose knowledge of the Laws of the Order and insightful guidance have always been invaluable.*



— 2024 —

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## Foreword to the Third Edition

This Guide is an invaluable source of information for members seeking assistance from the Courts of the Order. The contents are arranged logically to provide procedural and substantive guidance for members as well as the legal and judicial officers of the Order. Because of recent changes to a few Statutes, Forum Rules and suggested forms it became necessary to update the Second Edition of the Guide to the Courts of the Order. In addition, several changes were made to improve clarity.

We are grateful to the Sublaws Committee of the Advisory Committee for sponsoring the editions of the Guide. It is a useful reference to me and other Justices as well as the membership.

Bob Goolrick, the original author and compiler of the legal doctrine and case references contained in the Guide, developed a straightforward table of contents which makes it easy to find and research the judicial functions that have developed over more than hundred years within the Order. Brother Bob was a great Elk and a versatile attorney practicing law before the Federal and State Courts of the Commonwealth of Virginia. He was deeply involved in the Judiciary of our Order. When he turned his efforts toward producing a desk book, the Guide, he was committed to make it a journeyman's tome, succinct enough to be carried to a hearing and still with enough depth to form a basis for further research. Bob passed away recently. Thanks again, Bob.

Preparing this Third Edition has been a collaborative effort of all the Justices of the Grand Forum, Senior Justice Thomas M. Zisa and Associate Justices Paul E. Robinson, John H. Atwood and Bryan M. Lindsay. In addition, we received the invaluable assistance of Past Chief Justices of the Grand Forum Todd E. Deal and Francis X Olivieri.

Edward C. A. Johnson  
*Chief Justice of the Grand Forum*

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## \* PART I \*

### INTRODUCTION

At initiation, each new member of our Order takes the obligation:

*"I will never apply to the courts for redress in any matter concerning the Order without first appealing to the councils of the Order."*

The charge of the Esteemed Loyal Knight, whose motto is Justice, informs each new member:

*"But the Order of Elks not only exacts from you the strict performance of the duties of membership; it likewise bestows upon you cherished rights and privileges which its whole power and authority will insure and protect. Should you feel at any time that these rights have been invaded, the courts of the Order are open to you. The decision of its highest tribunal should be accepted as final."*

The courts of the Order are the Forums, namely (1) the Local Forum of each Lodge, and (2) the Grand Forum of the Order. The Grand Forum is the highest tribunal of the Order.

These Forums offer redress to members for breaches by others of the standards and rules of responsibility, conduct, and decorum required of members of the Order.

Just as do civil courts, these Forums facilitate the orderly resolution of disputes. They allow for the settlement of differences by peaceable means.

The Local Forum is available to a member to bring a complaint against another member of the Order to ask that the accused member be held accountable for conduct that is not in conformance with the requirements of our Order.

If a decision against the accused is made by the Local Forum, the decision may be appealed to the Grand Forum for its review. This assures that an accused member may have a conviction reviewed a second time by the Grand Forum for compliance with requirements of due process of law.

As the highest court of the Order, the decision of the Grand Forum is the final resolution of a case.

In addition to appeals from Local Forum decisions, there are also other actions against a member that under certain circumstances may be appealed to Grand Forum, namely (1) Lodge proceedings to remove a Lodge officer from office, or suspend a member for indebtedness; (2) suspensions of a member from Club privileges by the managing body of the Club facility of a Lodge if there is a showing of denial of due process; or (3) an Executive Order of the Grand Exalted Ruler to remove a Lodge officer from office, disqualify a member from holding a Lodge office, suspend such officer or member from Club privileges, or suspend or terminate membership for a violation of a previous Executive Order. Each of those actions will be discussed separately.

In addition, the Grand Forum hears actions against Lodges, which can be either (1) an Executive Order of the Grand Exalted Ruler to revoke or suspend a Lodge charter or apply other remedies, or (2) an original action against a Lodge brought to the Grand Forum by a member or by another Lodge.

## \* PART II \*

### REFERENCES TO LAWS OF THE ORDER

It is stated in the Constitution of the Order, Article I, Section 1:

“This Constitution, the Statutes enacted by the Grand Lodge not in conflict therewith, and the Ritual, shall be the Supreme Law of the Order.”

The Laws of the Order are set forth in the following documents:

Constitution of the Order (**cited as Const. Art., Sec.**)

Statutes of the Order (**cited as GLS § or simply §**)

Rituals of the Order (**cited as Ritual**)

*The Appendix at the back of the Elks Statutes Annotated does not comprise the Laws of the Order. [GF 1001].*

In addition, reference is to be made to rules of practice and procedure adopted by the Grand Forum pursuant to Constitution Art. VI, Sec. 8 and GLS §7.120, as follows and published as part of Statutes Annotated:

Grand Forum Rules (**cited as GFR**)

Local Forum Rules (**cited as LFR**)

In interpreting and applying the Laws of the Order, the primary source of reference is the decisions of the Grand Forum (**cited as GF followed by case number**). Since its inception, the Grand Forum has issued over 1,500 written decisions. Grand Forum decisions will customarily include an opinion setting forth the reasons for the decision. Grand Forum decisions are published as an appendix in the annual proceedings of the Grand Lodge.

Secondary reference can be made to the *Opinions of the Committee on Judiciary (COJ)* published as annotations to the Statutes Annotated. Those Opinions can be relied upon when not in conflict with Grand Forum decisions.

Forms that may be used in Local Forum proceedings are published as exhibits to the Forum Rules in the Statutes Annotated. For the convenience of readers, those forms are reproduced as *Appendix A* to this Guide.

The information in this Guide is current through August 31, 2024. There may be subsequent changes in Laws, Rules, and Grand Forum decisions which will need to be addressed in the future.





## \* PART III \*

### LOCAL FORUM CASES

#### **A. PURPOSE.**

The Local Forum allows a member to present a grievance against another member for breaches of membership duties and obligations. The Local Forum is described in Chapter 8 of the Statutes Annotated. Appendix III to the Statutes Annotated sets forth a useful “Local Forum Process Guideline” which is reproduced as *Appendix B* to this Guide.

This Part III will discuss all aspects of proceedings before the Local Forum of a Lodge, from the beginning of the proceeding through its conclusion.

GLS §8.010 states:

A Local Forum shall have jurisdiction over all cases involving an alleged offense committed against the Laws of the Order by an affiliated or unaffiliated Member of the Lodge. The Local Forum shall decide all cases and, if appropriate, prescribe the penalty.

The Local Forum shall consist of the Presiding Justice, as provided for in Section 13.020, and four members as hereinafter provided.

#### **B. PRESIDING JUSTICE.**

##### **1. Appointment and duties**

The Presiding Justice is the highest legal officer in the Lodge. This is an important position, and care should be taken that this position is occupied by a conscientious and qualified person.

GLS §13.020 provides:

The Exalted Ruler, at the first meeting after installation, shall appoint a lawyer, if available, and if not available, the Exalted Ruler may appoint a lawyer who is a Member of another Lodge, as the Presiding Justice of the Local Forum. An Exalted Ruler may appoint multiple Presiding Justices and thereafter assign a specific Presiding Justice to each case as needed. [GLS §13.020].

The same statute further provides:

An Exalted Ruler may appoint multiple Presiding Justices and/or Mediators as the needs of a Lodge may require. The Exalted Ruler shall assign a specific Presiding Justice and Mediator on each case.

If for any reason the appointment has not already been made when a Local Forum proceeding is commenced, it should be done promptly. An Exalted Ruler was guilty of neglect of office when he/she failed to use due diligence to appoint a Presiding Justice at the time it was needed, resulting in delay in a Local Forum proceeding. [GF 1224].

The Grand Forum has held that, although preferable, it is not absolutely required that the Presiding Justice must be a lawyer. GLS §13.020 is directory, not mandatory, and a non-lawyer may be appointed if a lawyer from the same or another Lodge is not reasonably available. [GF 873, 846, 456]. If it becomes necessary to appoint a non-lawyer as Presiding Justice, it should be a person “who has the necessary qualifications required for the efficient performance of his duties as Presiding Justice of the Local Forum.” [GF 456].

Local Forum proceedings are under the general supervision of the Presiding Justice. The Presiding Justice is a voting member of the Local Forum which makes decisions in a case, and the Presiding Justice also has other duties and responsibilities over and above those of other Local Forum members.

It is the function of the Presiding Justice to assure that proper statutory procedures are followed and the case is framed properly, thereby assuring due process to all concerned parties. [GF 1083].

## **2. Disqualification of Presiding Justice**

It is the duty of the Presiding Justice to act with impartiality and not engage in conduct which is contrary to a fair and impartial determination of the issues in a Local Forum proceeding. The Presiding Justice should not have or display a bias for or prejudice against any party either by words or actions [GF 1309, 1082, 1118], and cannot assert personal opinions concerning pending matters. [GF 997, 790].

Even if the Presiding Justice does not show bias or prejudice, nevertheless if the Justice has a pre-existing relationship with a party, he/she should be recused from the case. [GF 1118, 1060, 801, 781, 758]. The relationship could be by family relationship to a party, or a business relationship. For example, the Presiding Justice was disqualified where he and defense counsel shared the same law office [GF 1060]; where the Presiding Justice represented the accused as an attorney in an unrelated matter [GF 801]; where the Presiding Justice had represented the accused in a prior Local Forum proceeding [GF 1165]; and where the Presiding Justice renders professional services to the accused's family members [GF 676].

If those standards are not adhered to by the Presiding Justice, then it is probable that any decision made by the Justice, or by the Local Forum, will be reversed and set aside by the Grand Forum on appeal, as has happened many times. [GF 1118, 1082, 997, 790, 781].

## **C. LOCAL FORUM MEMBERS.**

Once a formal complaint to the Local Forum has been properly filed (*see below*), it is the duty of the Exalted Ruler to appoint four Local Forum members to serve in the case.

If the Exalted Ruler is the accuser or accused, or is a probable material witness, the Exalted Ruler will be disqualified from making appointments or otherwise serving in connection with the Local Forum proceeding, with the duties for that purpose required to devolve upon other disinterested Chair Officers in order of rank. [GF 1212, 512]. (*For similar rule for the Secretary, see section F below.*)

GLS §8.040 prescribes the manner of appointing the members of the Local Forum, as follows:

At the next regular meeting after the filing of a complaint a Local Forum shall be appointed in the following manner:

- a. Under the order of "New Business," the Local Forum Box (*GLS § 1.210*) shall be opened by the Exalted Ruler as custodian of the key, and the Lodge Secretary shall draw therefrom twenty-five slips of paper each listing the name of a Member in good standing, or in the alternative, select the first twenty-five names from the Drawing Roster obtained from CLMS. The Secretary shall record the names so drawn or selected in the minutes of the meeting, numbering them consecutively.

Officers of the Lodge and members of the managing body of the club, and other members unable to serve for good reason shall be excused from service on the Local Forum, in which case the Secretary shall draw additional names from the Forum Box or select additional names until sufficient names are drawn and numbered as specified above.

- b.* The Secretary shall send a list of names drawn to the Accused and the Accuser within three days after the names are drawn.
- c.* The Accused and the Accuser each has the right to strike six names from the list by written notice to the Secretary to be received by the Secretary within seven days after the date when the names were mailed. Failure to strike shall be considered as a waiver.
- d.* Under the order of “New Business” at the next regular meeting after seven days have expired, the Exalted Ruler shall appoint four of the unchallenged names as members of the Local Forum. The Secretary shall immediately notify the members of their appointment.
- e.* Members appointed to the Local Forum shall serve unless excused for cause by the Presiding Justice.
- f.* Any vacancy occurring in a Local Forum shall be filled by the Exalted Ruler from the remaining unchallenged names on the list in the order in which they were drawn.
- g.* If, after all challenges filed and excuses allowed, an insufficient number of names remain from which to appoint the Local Forum, ten additional names shall be drawn or selected from the same Drawing Roster in the order in which they are listed. The Accused and Accuser may at that meeting each challenge three of the ten members. Unchallenged members shall then be subject to appointment in the order in which their names were drawn.
- h.* No challenge shall be allowed by reason of any informality in procedure in preparing the Local Forum Box or in drawing the names therefrom.
- i.* After the appointment of the Local Forum, all names drawn from the Local Forum Box shall be returned to it.

The Local Forum box should be kept current by the Trustees and Secretary in the manner prescribed in GLS §1.210. In the event it is not current at the time a Local Forum proceeding has been commenced, it should immediately be brought current to ensure that only names of members in good standing are in the box.

It is mandatory that Local Forum members be appointed in accordance with the requirements of the Statute, and it must be so documented in the Lodge minutes. [GF 1097, 1009, 922].

There must be a separate Local Forum panel drawn and appointed for each complaint. [GF 1170]. But if two or more complaints are consolidated by the Presiding Justice, only one Local Forum panel should be drawn and appointed to hear the consolidated complaints. [GF 1172]. (*See III(J) regarding consolidation of complaints*).

The members of the Local Forum must be appointed in the order in which the unchallenged names were drawn. [GF 1211, 1170]. A conviction will be reversed by Grand Forum for failure to appoint Local Forum members in the order in which the unchallenged names are drawn. [GF 1262].

Where the accused was not allowed an adequate opportunity to strike names from the list of Local Forum prospects drawn, the accused was improperly deprived of his/her right. [GF 1009, 846, 829].

The failure of a party to object to members on the list of the Local Forum constitutes a waiver of the right to thereafter object to the appointment of an unchallenged member. [GF 883].

The Presiding Justice may excuse a Local Forum member for cause. GLS 8.040(e). Until trial, a Local Forum Justice may excuse a member from serving on the Local Forum at anytime for cause, should he/she become aware of a juror's bias or prejudice. [GF 1097]. When it appears after the appointment of the Local Forum that a conflict of interest of an appointed Local Forum member transpires or is first discovered, that member should be disqualified and it is error to serve at the trial. [GF 1138, 781].

There is no provision permitting appointment of alternate members to a Local Forum. [GF 679]. In the event a vacancy arises for any reason after the appointment of the four Local Forum members, the Exalted Ruler shall simply appoint as a replacement the next unchallenged name on the list. [GF 1170].

*For necessity of timely objections to appointment of Local Forum, refer to section T below. As to Local Forum deliberation and decision, see sections U and V below.*

#### **D. SUBJECTS OF LOCAL FORUM PROCEEDING.**

The subject of complaint must be breach of duties that a member owes to the Lodge and fellow members. The Local Forum is not designed to accommodate personal grievances, such as financial debts. The Order will not entertain charges between members arising out of transactions or matters for which there is no nexus to the Order where conduct did not take place in the Lodge or club or during a program or other matter sponsored by the Order. [GF 691].

The violations that may be brought to a Local Forum are set forth in GLS §9.060 and §9.070.

§9.060 prescribes five violations for which expulsion from the Order is *mandatory* upon a finding of violation.

§9.070 prescribes ten violations for which the penalties are *variable*, depending upon the particular violation. Included in §9.070 are two categories which cover duties of a general nature, namely: "Violation of Obligation" (§9.070(h)), and "Conduct Unbecoming An Elk" (§9.070(j)). Violation of one or both of those provisions are most often cited in Local Forum filings.

A Local Forum complaint must cite the violation of one or more of the statutory duties. The listed violations are each separate offenses which must be alleged in the complaint and proven at trial. [GF 995, 711]. But a single act of misconduct could constitute both violation of obligation and conduct unbecoming an Elk. [GF 560].

The Laws of the Order solely govern, and it is not necessary to allege that conduct would violate any State law. [GF 892, 720].

A Local Forum complaint is not precluded because the same conduct has been penalized by Executive Order of the Grand Exalted Ruler. The two proceedings are separate and distinct actions. An Executive Order is an administrative action, whereas the action of a Local Forum is judicial in nature. [GF 898, 714].

Similarly, a member can be charged in a Local Forum proceeding in addition to being suspended from club privileges by the supervising body under §16.041 for the same conduct. A violation can be tried and punished before either or both of the supervising body and the Local Forum. [GF 1044, 899, 860].

This Guide will not discuss in detail the substance of the various violations that may be brought to the Local Forum. For those, reference is made to §9.060 and §9.070, quoted above, and the annotations in Statutes Annotated. The focus here rather will be on procedural aspects of proceedings.

#### **E. TIME LIMITATIONS FOR BRINGING CHARGES**

No charge shall be prosecuted after four years have elapsed from the date of the commission of any alleged offense, or from the date of the final resolution of a federal, state or local court criminal proceeding resulting in a determination of guilt. See, generally, GLS §9.190. A charge attacking election to membership in the Lodge is not allowable after four years after initiation. [GLS 9.180; GF 1037].

Neither section, however, shall apply to charges based upon false statements made in an application for membership, nor to constitutional qualifications for membership. For those charges, there is no statute of limitations. GLS §9.180, §9.190.

In the case of criminal conviction, the date of commission is when a plea was entered or conviction made final, which is only when any appeal has been concluded. [GF 675].

The four year limitation period is counted back from the date of filing of notice of intent of the charge. [GF 1152].

#### **F. NOTICES TO PARTIES**

Notice is a requirement in a number of aspects of Local Forum proceedings. GLS §8.200 provides:

The Secretary of the Lodge shall act as clerk of the Local Forum and shall serve any pleading, process, notice, order or other document, and service thereof shall be deemed complete upon delivering a copy thereof as follows:

- a.* Personally to the party to be served therewith.
- b.* By depositing such pleading, notice or other paper in the United States certified mail, return receipt requested, in a sealed envelope, postage prepaid, addressed to the person upon whom it is to be served, at one's address of record. It is suggested, but not mandated, that a second copy of such documents be also served by regular first-class mail.

Service by mail is complete upon mailing the notice. [GFR 1.1.6; GF 1004]. Mailing of a notice creates a presumption of service, which can only be overcome by clear and convincing evidence to the contrary. [GF 975, 641, 640, 637].

Failure or neglect by the accused to accept mail does not overcome the presumption of service of the complaint. [GF 641, 640, 637].

If the Lodge Secretary is the accuser or accused, or is a probable material witness, the Exalted Ruler must appoint another impartial member temporarily to perform the duties of the Secretary in the particular case. [§8.210; GF 1211, 512].

### **G. NOTICE OF INTENT TO FILE COMPLAINT.**

A Local Forum proceeding begins with a notice of intent to file a complaint.

GLS§ 8.015 sets forth the requirement for a notice of intent, as follows:

A written “Notice of Intent” to file a complaint shall be served upon the Secretary prior to the filing of any Complaint. The Member preferring the charges shall be the “Accuser,” and the Member charged shall be the “Accused.” The Notice of Intent will contain the name of the Accused and the Accuser, and a brief factual statement of the conduct upon which the alleged offense is predicated. The Accuser shall sign and verify the Notice of Intent under the Obligation of the Order.

...

Once the notice of intent is filed, it becomes the responsibility of the Secretary to promptly serve a copy of the notice of intent on the accused and notify the Mediator of the filing of the notice of intent. [GLS §8.015(a)] (*See subsection F above for procedures for service of notice of intent.*)

The form of notice of intent is set forth in Exhibit “A” to Forum Rules in the Statutes Annotated.

The notice of intent should be prepared and documented in the same manner as a formal complaint. If the notice of intent fails to include all charges that the accuser desires to present to the Local Forum, the accuser may lose the opportunity to present those charges in a later complaint. [GF 910; see also GF 1082]. But the notice of intent need set forth only a brief statement of the conduct on which the alleged offense is based. The complaint may not be dismissed if it involves the same general facts contained in the notice of intent and the same dispute or offense arising from those facts. [GF 1303].

The notice of intent provided by Section 8.015 of the Laws of the Order must be complied with, cannot be waived, is mandatory, requiring compliance, reversal, and possibly a new trial. [GF 888]. Unless the notice of intent is complied with, the complaint must be dismissed and the Local Forum acquires no jurisdiction in the case. [GF 888, 886, 877, 873, 849, 846].

### **H. MEDIATION**

GLS§ 8.015 requires that, following the filing of a notice of intent, the parties must attend mediation before a Lodge mediator.

GLS §13.020 states, “The Exalted Ruler, at the first meeting after his installation, shall appoint ... a Mediator from his or another Lodge...” An Exalted Ruler may appoint multiple Mediators and thereafter assign a specific Mediator to each case as needed. [GLS §13.020].

If for any reason the appointment has not already been made when a notice of intent is filed, it should be done promptly.

The mediator may not be the same person as the Presiding Justice. [GF 1083, 967, 938].

The intent of the Statute, 8.015, is to provide a separate and well-defined procedure to be followed whereby there is an opportunity for the parties to attempt to resolve their disputes without the necessity of proceeding with a formal Local forum proceeding. [GF 889, 873].

GLS §8.015 prescribes the mediation procedures, as follows:

Upon receipt of the Notice of Intent, a mediation session shall commence as follows:

- a.* The Secretary shall promptly serve a copy of the Notice of Intent on the Accused and, within two (2) business days of receipt, notify the Mediator of the filing of the Notice of Intent. If the Mediator cannot be contacted within two (2) days, the Exalted Ruler shall appoint another Member to act as Mediator for the purpose of this hearing only.
- b.* The Mediator shall immediately contact the Accused and Accuser and arrange an informal mediation session within five (5) business days of the filing of the Notice of Intent.
- c.* The Mediation session shall only be attended by the Mediator, the Accused, the Accuser, and, if desired, a Member designated by each as counsel. By July 2014 amendment to GLS §8.015(c), a Mediator, in his/her absolute discretion, may allow other persons to attend and participate in a mediation session if it is believed the other person has meaningful information that will assist in resolving the case. No person attending a mediation session shall disclose to anyone any matter discussed during the mediation. The Mediator shall have the authority to limit or prohibit any questioning of that person by any party or counsel during the course of the mediation.
- d.* No record of the mediation session shall be made except as hereinafter provided. No reference to the proceedings, nor any statement or occurrence at said proceeding, shall be introduced for any purpose in any subsequent Local Forum proceeding against the Accused based upon the same or similar charges.
- e.* At the conclusion of the mediation, a simple written mediation statement shall be prepared by the Mediator and filed with the Secretary.  
The statement shall state either,
  - (1) that the Accused and Accuser have resolved their differences and provide a brief description of how the dispute was resolved, or
  - (2) that the Accused and Accuser were unable to resolve the dispute. The statement will be signed by the Mediator, the Accused and the Accuser.
- f.* The time for mediation may be continued, as necessary, by the Mediator but only with the consent of the Accused and Accuser.
- g.* If the Mediator is unable to resolve the dispute, a written Complaint may be filed as provided in Section 8.030 within ten (10) business days of the filing of the statement required in subdivision (e) of this Section.



*h.* If the Accuser does not appear without good cause at the mediation session, then, in that event, the Complaint cannot be filed as provided in Section 8.030 and the Accuser cannot again file a Notice of Intent stating the same alleged offense. The Presiding Justice shall determine if the Accuser's failure to appear is excused for good cause.

*i.* Any other procedural issues concerning this Section may be raised by written application to the Presiding Justice.

Mediation is mandatory, and unless complied with, the Local Forum is without jurisdiction and may not act further in the case. [GF 1096, 940, 933, 846].

The parties must be given notice of the time and place of a mediation session. Where it was not shown by the record that the accuser received notice of the mediation session, the case will be remanded. [GF 1117].

No one other than the mediator, the parties, and their counsel may attend a mediation session. [GF 1103]. However, see also GLS 8.015(c), set out above.

Mediation must be conducted in the physical presence of all parties and may not be conducted by telephonic conference call. [GF 967].

Group mediation of multiple cases at the same time is not permissible. [GF 1096].

The Grand Forum has said: "Absence from the scheduled Mediation by either the Accused or the Accuser will be deemed lack of good faith and if the Accuser, it will prohibit the Member from signing a Complaint to continue the process. Absence of the Accused will be just the opposite and will permit the Complaint to be filed." [GF 1069].

The Grand Forum has held, accordingly, that a complaint must be dismissed where the accuser does not appear for mediation. [GF 1103, 1069, 940].

A mediation session is adequate if the parties appear for mediation and a mediation statement is signed and filed. Thus, if the accuser is present during mediation which does not result in a settlement, the accuser will be permitted to file a complaint. [GF 1159; to similar effect, see also GF 1168, 1163].

At the conclusion of the mediation session, a mediation statement signed by the mediator and all parties must be prepared and filed with the Lodge Secretary. [§8.015(e); GF 1097, 905]. The form of mediation statement is set forth in Exhibit "B" to the Forum Rules in the Statutes Annotated. (*See Appendix A.*)

If the mediation statement is not signed by the mediator and the parties in attendance, it is error which will nullify subsequent proceedings. [GF 1097, 1096, 1009].

Disclosure to other persons which does not go beyond the contents of the mediation statement is not prohibited by GLS § 8.015c. [GF 1251].

Mediation will be conducted before the filing of a complaint. The failure to hold mediation before filing a complaint cannot be cured by a later mediation, even though agreed by the accused, because "when a dispute has progressed to this point in time, the probability of the matter being successfully resolved between the parties through mediation has been severely diminished, thereby in fact defeating the purpose and intent of the Statute." [GF 873; but see GF 889 allowing post-complaint mediation in special circumstances].



Once mediation has been successful, and the accuser has received his/her remedy, no new complaint covering the same issue is valid. [GF 1198, 1001]. Grand Forum has no jurisdiction of an appeal sought to be made by a party alleging duress and misrepresentation in obtaining one's consent to a mediation agreement. [GF 1290, 1218].

The Presiding Justice may enter a final decision upon the stipulation of the Accused and Accuser after mediation or after the filing of a complaint. [§8.050].

## **I. FILING COMPLAINT.**

A written Complaint may be filed as provided in Section 8.030 within ten (10) business days after the mediation statement has been filed with the Lodge Secretary. [GLS §8.015(g)]. The complaint must be dismissed if it is not properly filed within the ten business days allowed [GF 1013], not counting weekend or holiday days [GF 911].

GLS §8.030, par. 1 prescribes the manner of filing the complaint, as follows:

Every action against a Member charging an offense against the Laws of the Order is instituted by filing three copies of a complaint thereof with the Secretary of the Lodge of which the Accused is a Member. The complaint shall be entitled “\_\_\_\_\_ Lodge No. \_\_\_\_\_ vs. \_\_\_\_\_.” The Member preferring the charges shall be the “Accuser” and the Member charged shall be the “Accused.”

A check or money order in the amount of \$250 shall be paid by the accuser to the Secretary at the time of the filing of the complaint as a deposit against the costs of the Lodge. The accuser will be entitled to receive a refund of the deposit if the decision of the Local Forum is in favor of the accuser. [§8.020].

A failure to pay the deposit against costs prescribed by GLS §8.020 when timely filing a Local Forum complaint does not by itself invalidate the complaint. The Accuser must be given notice by the Lodge Secretary and opportunity to pay the deposit against costs before a timely-filed complaint can be dismissed. [GF 1211].

When a complaint is filed, it becomes the responsibility of the Secretary to serve a copy upon the accused, and also to notify the Exalted Ruler and the Presiding Justice. [GLS §8.020]. (*See section F above for service procedures for complaint.*)

A complaint is not properly filed if it is delivered only to a Lodge officer other than the Secretary. [GF 715].

It must be sufficiently shown that the complaint was properly served upon the accused. [GF 835, 781]. But mailing of the complaint to the accused creates a presumption of service, which can only be overcome by clear and convincing evidence to the contrary. [GF 640].

Only a Member in good standing may file a complaint. [§8.020]. An unaffiliated Elk has no right to institute a Local Forum proceeding [GF 1100].

A complaint must be filed under the name of a member, and may not be filed in the name of “Board of Trustees.” [GF 784].

A complaint can be filed by the Esteemed Loyal Knight, who “is charged with the duties of (1) prosecuting alleged offenders and (2) if necessary instituting complaints in proper cases. Neither duty disqualifies him from performing the other.” [COJ Op. 01 to §8.090].

Since improper conduct of a member impacts the reputation of the Lodge and the image of its members in the community, any member has standing to bring a Local Forum complaint alleging conduct unbecoming an Elk. It is not necessary that the accuser personally witness the conduct complained of. [GF 1159].

The jurisdiction of the Local Lodge extends to any member of the Lodge in which the proceeding is begun. [§8.010]. An unaffiliated Elk for this purpose is considered to be a member of the Lodge with which he/she was last affiliated. If such Lodge is not in existence, the Complaint shall be filed in the Grand Forum. [§9.080].

The Local Forum does not have jurisdiction over a complaint against a member of a different Lodge. To bring charges against a member of a different Lodge, the charges must be brought in that member’s home Lodge. [GF 1200; COJ Op. 02 to §8.020].

The accuser may, at any time up to the start of a trial, withdraw the complaint by filing a written motion to withdraw the complaint with the Secretary or Presiding Justice. [§8.020].

Where the accused files a complaint against the accuser or any other Member of the Order (whether in the same or another Lodge) during the pendency of the original proceeding, action on the second complaint must be stayed until final disposition of the original complaint. [§8.020; GF 1200, 1069, 899]. This does not apply to stay a Local Forum proceeding where the other matter involves only a complaint made to the managing body under §16.041. [GF 1005D]. The stay does not preclude the accuser from filing an additional Local Forum complaint against the accused or another member.

## **J. FORM OF COMPLAINT**

GLS §8.030 prescribes the form of the complaint, as follows:

Every complaint must be in writing and may be upon information and belief. The facts and circumstances, with the date, place and particulars of occurrence of the alleged offense, must be specified in concise terms with reasonable certainty. The Accuser shall sign and verify the complaint under the obligation of the Order.

The form of complaint is set forth in Exhibit “C” to the Forum Rules in the Statutes Annotated. (*See Appendix A.*) Addition of exhibits to written allegations does not render a complaint defective. [GF 968].

Not more than one accused person may be charged in a single complaint. [LFR 2.2].

Different offenses may be charged in the same complaint, with each offense stated in a separate count, only if they are of the same or similar character, or are based upon the same conduct or on a series of acts connected together or constituting parts of single scheme or plan. [LFR 2.3].

The Presiding Justice may consolidate for trial two or more complaints charging related offenses based on the same conduct, provided such consolidation will not prevent a fair determination of the guilt or innocence of each accused of each offense. [LFR 2.4]. (*See III(C) regarding appointing Local Forum for consolidated complaints*).

A complaint not signed and verified under the obligation of the Order is insufficient and is subject to dismissal. [GF 1104, 1013, 740, 725, 702]. But the accuser should be given opportunity to cure the defect of lack of signature or verification. [GF 995, 846]. Failure to verify a complaint may be cured by amendment even during progress of the trial and before submission of the case to the Local Forum. [GF 323]. A Grand Forum reversal of a conviction for lack of a verified complaint is without prejudice to amendment of the complaint or filing a new complaint. [GF 911, 417].

A member may verify a complaint based upon information and belief, without having personal knowledge of the contents. [GF 1159].

A complaint must state the facts and circumstances with date, place, and particulars of the occurrence of the alleged offense in concise terms with reasonable certainty, or it will be dismissed. [GF 985, 787A, 776, 747, 709, 677]. The failure of the accused to move to dismiss or make more specific waives objections to specificity. [GF 301, 294].

It is not necessary that a complaint allege that a violation of obligation was “willful” where the allegations themselves portray willful conduct. [GF 726, 560; see also GF 1191-B, where allegations found insufficient].

A complaint cannot be based on statements or actions of the accused at a mediation session, if arising out of the same or similar facts and circumstances. [§8.015(d); GF 1008].

A complaint cannot properly make a charge for an act which occurred subsequent to the notice of intent and was not part of the mediation process. [GF 910].

As described in *section N* below, a complaint can be amended by the accuser to cure insufficiency or uncertainty if the Presiding Justice enters an order to make the complaint more specific. [§8.070(b)]. Also, before the Presiding Justice rules on a motion to dismiss a complaint which otherwise alleges conduct that constitutes an offense against the Laws of the Order, the complaint can be amended by the accuser on his/her own to correct technical error, such as an incorrect citation of the statutes involved. [GF 684]. There is no authority to amend a Complaint at time of trial which has the effect of charging new offenses or to cure a defective complaint. [GF 775].

## **K. PRELIMINARY HEARING.**

Once a formal complaint is filed, the Presiding Justice shall conduct a preliminary hearing at which the Justice will receive the plea of the accused. [§8.050]. At the preliminary hearing, the accused may file a plea of guilty or not guilty, and is allowed to present motions to dismiss or make more specific (*as discussed in the following sections*). [§8.060]. The preliminary hearing may be conducted by the Presiding Justice without the attendance of other Local Forum members. [§8.050].

In accordance with GLS 8.050 the preliminary hearing needs to be recorded to create a record in the event an appeal is taken to the Grand Forum.

By GLS §8.050, the preliminary hearing is to be held at a place designated by the Presiding Justice between five to ten days after the appointment of the Local Forum. The Presiding Justice has discretion to vary the time of the preliminary hearing so long as it does not unduly prejudice the rights of the accused. Justices of our Order must timely set matters before them, in light of the realistic and practical problems that surround volunteer organizations. [GF 1121].

The Lodge Secretary shall give notice to the accused and the accuser of the time and place of the preliminary hearing. [§8.050]. Failure to give to both the accuser and the accused written notice of time, date, and place of the preliminary hearing is grounds for reversal. [§8.050; GF 1005B, 996, 944C, 944E, 784, 685]. The notice must state specifically the purpose of the hearing. [GF 775].

A preliminary hearing is mandatory and failure to conduct the hearing is reversible error. [GF 886, 733, 731, 682].

Neither the accuser nor the accused is required by Statute to attend the preliminary hearing if they choose not to do so. [§8.050; GF 1005B, 996, 944E, 944C, 751, 748]. Failure to appear is not grounds for dismissal of the complaint. [GF 748].

If the accused does not enter a plea, the Presiding Justice is to enter a not guilty plea on his/her behalf. [§8.080; GF 751].

If the accused pleads guilty to an offense in violation of §9.070, for which penalties are variable, the Presiding Justice must fix a time for testimony to be taken before the Local Forum, which is to determine the penalty to be imposed. [§8.080]. But if the plea is guilty to an offense in violation of §9.060, requiring mandatory expulsion, the Presiding Justice should enter an order of expulsion without further proceedings. [GF 1150].

#### **L. MOTION BY ACCUSED TO MAKE CHARGES MORE SPECIFIC.**

The motion to make more specific may be filed when the allegations contained in the complaint are stated uncertainly, and the Accused is not sufficiently informed to enable one to properly defend oneself. The motion must be filed not later than the time of the preliminary hearing.

The form of motion is set forth in Exhibit “D” to the Forum Rules in the Statutes Annotated. (*See Appendix A*). The motion should be made in writing [LFR 3.1], and filed with the Lodge Secretary with a copy sent to the Presiding Justice and the accuser.

It will be up to the Presiding Justice to rule whether the allegations in the complaint are stated uncertainly or inadequately. If the Presiding Justice rules against the motion, then the case will go forward based on the complaint as filed, and the accused will be required within 7 days to enter a plea. [§8.070b].

The Presiding Justice is required to grant a motion for greater specificity where the charges are plainly insufficient for proper notice to the accused. [GF 863].

The accuser must be given an opportunity to amend the complaint to cure insufficiencies in specifications or other technical errors, and it is erroneous for the Presiding Justice to dismiss a complaint without first allowing that opportunity. [GF 1177, 1166, 1008, 1001, 998, 997].

Where an order to make more specific is entered, an amended complaint must be filed by the accuser within seven days after the order of the Presiding Justice, or the complaint must be dismissed. [§8.070(b); GF 1029, 979, 944C, 649]. Failure to allow the accuser time to amend the complaint is error. [GF 801].

When an amended complaint is filed, the accused must be given the opportunity to enter a plea or to file motions against the amended complaint which must be considered by the Presiding Justice. [GF 1104, 911]. The accused is allowed ten days to respond to the amended complaint by plea or motion. [§8.070(b)].

A complaint cannot be amended at trial to cure insufficient specifications. [GF 775].

#### **M. MOTION BY ACCUSED TO DISMISS COMPLAINT.**

A motion to dismiss may be filed when the allegations contained in the complaint would not, if proven, constitute an offense. [GLS § 8.060].

A motion to dismiss may be filed at any time after the filing of the complaint, and may be acted upon by the Presiding Justice without awaiting completion of any other procedures in the case. [GLS §8.060]. This means that the motion to dismiss the Complaint may be filed at any time during the Local Forum proceeding.

The form of motion is set forth in Exhibit “E” to the Forum Rules in Statutes Annotated. (*See Appendix A.*) The motion should be made in writing [GF 1096; LFR 3.1], and filed with the Lodge Secretary with a copy sent to the Presiding Justice and the accuser.

The Presiding Justice may not on his/her own initiative dismiss a complaint without a properly prepared and submitted motion to dismiss. [GF 1234, 1083, 1075].

The accuser must be given notice and opportunity to respond to a motion to dismiss. [GF 1239, 1190C, 1165, 1081].

The Presiding Justice alone decides upon a motion to dismiss, without participation of other Local Forum members. [GF 851A, 668].

In considering a motion to dismiss the complaint, the Presiding Justice must assume that all facts alleged in the complaint are true. A motion to dismiss can be sustained only when it appears that, after admitting all the facts alleged or that can by reasonable and fair intendment be implied from them, the complaint still fails to state a cause of action, and deficiencies cannot be cured by amendment. [§8.060; GF 1190A, 1165, 1123, 1118, 1109, 1012].

A motion to dismiss only reaches the sufficiency of the complaint and any attempt to hold an evidentiary hearing, or to take testimony of witnesses, or to consider any facts outside the complaint, is inappropriate and requires reversal. [GF 1245, 1165, 1123, 1109, 1080, 1060]. However, where a complaint is based on an alleged violation of the express terms of a written document, that document is deemed to be incorporated into the complaint and may be considered on a motion to dismiss; for example, where the terms of a mediation agreement are breached. [GF 1251].

Dismissal of a complaint cannot be based on an allegation of “prosecutorial misconduct” since it did not relate to the sufficiency of the charges in the complaint. [GF 1253].

A Presiding Justice may grant a summary decision upon motion by a party who can show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. The motion can be submitted at any time after the filing of the complaint, and the opposing party will have ten days to file an opposition to the motion. Parties may file authenticated documents and sworn affidavits in support of or in opposition to the motion. The procedures are set forth in GLS §8.075.

The Presiding Justice errs in dismissing a complaint where the Justice concludes as a factual matter that the accused was not guilty of the charges brought by the accuser [GF 1101], or where the Justice concludes erroneously that the conduct alleged in the complaint would not, if proven, constitute an offense [GF 1093, 1016, 734, 690].

Where the facts alleged in the complaint could not constitute a statutory violation, then the Presiding Justice acts properly in dismissing the complaint as insufficient. [GF 1045, 952, 949, 945B, 876, 819].

Where a complaint is found to lack specificity, or is defective in form only, the complaint should not be dismissed without first giving the accuser leave to file an amended complaint to cure the deficiencies. [GF 1177, 1166, 1109, 1012, 1001, 998]. But an accuser may not amend the complaint after a motion to dismiss has been granted on the ground the facts stated therein, if proven, would not constitute an offense under the Laws of the Order. [GF 644].

An order of dismissal must be reported at the next regular Lodge meeting. [§8.070(c)].

*Dismissal of a complaint can be appealed by the accuser to the Grand Forum, as discussed in Part IV.*

## **N. DISCOVERY OF INFORMATION.**

Under general law, parties to a case usually are allowed to obtain mandatory discovery of information from the opposing party, or from other persons, which is relevant to the case.

The Statutes of the Order **do not** make specific provision for pre-trial discovery procedures to obtain evidence from the opposing party or other persons. (As set forth in *subpart L* above, the accuser can be ordered to expand the complaint to make it more specific.)

The Grand Forum has held that a Presiding Justice has no authority to order a party to disclose, in advance of trial, the identities and summary of testimony of witnesses. [GF 818].

However, when necessary in the interests of due process, the Courts of the Order have authority to order that a party in a Local Forum proceeding be given access to such Lodge records as are relevant and material to presenting his/her case. [GF 1159, 1123]. Accordingly, an order to produce such records would be appropriate. [GF 1109, 1082]. Alternatively, the Presiding Justice can properly deny access to Lodge records which the Justice reasonably determines are not relevant and material to the case at hand. [GF 1159].

**O. PROSECUTION OF CASE.**

GLS §8.090 provides:

The Esteemed Loyal Knight shall conduct the prosecution of the case and may be assisted by others who are Members of the Order. The Esteemed Loyal Knight may be assisted by counsel, who must be a Member of the Order unless otherwise ordered by the Presiding Justice. Should the Esteemed Loyal Knight be disqualified, the Exalted Ruler shall appoint a Member to prosecute the charge.

Another member cannot be appointed to prosecute the charge where the Loyal Knight was not disqualified. [GF 858, 792]. When another member has been appointed due to disqualification of the Loyal Knight, the appointed member is to continue to serve until the case is completed. [GF 1286].

GLS §8.090 allows the Loyal Knight to be assisted by other members of the Order or by counsel. The Loyal Knight may have assistance, but to so have assistance does not mean that another member take over the prosecution. [GF 792]. Where the record did not show that the Loyal Knight was even present at the trial, it was improper for the prosecution to be conducted solely by another member. [GF 1137].

A prosecutor who had been charged in a prior Local Forum complaint by the present accused, which was one of the acts referred to in the present case, is disqualified from prosecution for conflict of interest and as being a potential witness. [GF 1138, 792].

An accuser should not participate in a Local Forum trial except as a witness. [GF 748, 480]. However, participation by the Accuser in motions and, hearings before trial is not prohibited, although it is subject to control of the Presiding Justice to prevent duplication and irrelevant and immaterial information. [GF 1294].

The Loyal Knight has no authority to initiate or agree to dismissal of charges of the complaint without the consent of the Accuser. [GF 1294].

**P. TRIAL**

Under GLS 8.080, when a plea of not guilty is entered by or for the accused, the Presiding Justice shall fix a trial date not less than ten days after the plea is filed. The trial itself shall be set to commence within 30 days of the entry of the not guilty plea. The Presiding Justice must give written notice to the parties not later than five days after he or she sets the trial date, and not less than 10 days prior to the trial date.

The Presiding Justice has discretion to continue the trial date so long as it does not otherwise unduly prejudice the rights of the accused. [GF 1121].

GLS §8.100 specifies the trial procedure as follows:

Unless otherwise directed by the Presiding Justice the trial shall proceed in the following manner:

- a.* The Esteemed Loyal Knight, or his/her counsel, shall offer the evidence in support of the charges.
- b.* The Accused or his/her counsel may present the defense, examine and cross examine witnesses and offer evidence in support of the defense.



- c. The parties may then offer rebutting testimony only, unless the Presiding Justice, for good reason in the furtherance of justice, permits them to offer additional direct evidence.
- d. At the conclusion of the testimony the Esteemed Loyal Knight or other counsel for the Accuser and the defense counsel may make final arguments or may elect to submit the case without argument. The Esteemed Loyal Knight or other counsel for the Accuser, shall have the right to open and close.

GLS §8.090 provides:

The Accused shall be entitled to be personally present at all proceedings until the case is submitted for decision. The Accused may be represented by counsel, who must be a Member of the Order unless otherwise ordered by the Presiding Justice.

Although there is no absolute right to be represented by non-Elk counsel [GF 844], nevertheless the Presiding Justice should allow the accused to be represented by non-Elk counsel when it was shown that a member was not readily available to serve as counsel in the case [GF 781, 677].

However, the accused cannot be represented by an unaffiliated Elk. [GF 1060].

The accused must be given sufficient notice of trial, or it is error which nullifies the trial. [GF 775].

Failure of the accused to appear at trial does not prohibit the holding of the trial as long as the charges are supported by competent evidence. Absence of the accused must not prejudice any decision by the Local Forum. [GF 926, 751, 749].

An accuser is not required to attend trial, and unless subpoenaed, the accused cannot complain of denial of the right to cross examine the accuser. [GF 873].

A Local Forum trial must be conducted in a manner to assure all parties their constitutional and statutory rights, including the right to call witnesses. The trial must be recessed if witnesses for either party become unavailable due to the late hour of the trial. [GF 1172].

Elks who are members in good standing should be allowed to witness the proceedings of the Local Forum. [GF 1052, 745]. But non-members cannot be permitted to view and hear the trial. [GF 798].

## **Q. OATHS FOR WITNESSES**

Witnesses who are Members of the Order shall testify under the Obligation of the Order. Witnesses who are not Members, if willing, shall be sworn. If such witness declines to be sworn, a record of such fact shall be made in the minutes of the trial, and the testimony of such witness shall be heard. [GLS 8.110].

All witnesses shall be sworn prior to giving testimony, which said oath shall be administered to each witness individually. The trial record must affirmatively show compliance with this Rule. [LFR §4.6.1].

The form of oath for witnesses is shown in Exhibit “F-1” to the Forum Rules in Statutes Annotated. (*See Appendix A*).



Witnesses must be sworn in the form of oath prescribed by LFR 4.6.1, and it is error to use a different form of oath. [GF 1170].

The trial record must show that each witness was properly sworn, and testimony of all unsworn [Member] witnesses must be discarded. [GF 1087, 1050, 902, 863, 831, 821].

The Presiding Justice's admonition or instructions to witnesses that they will be testifying under the Obligation of the Order, without the actual administration of the oath, is not sufficient. [GF 831, 800, 751]. Proper trial procedure requires that the oath be administered to each witness by the Presiding Justice. [GF 708].

## **R. TESTIMONY OF WITNESSES**

Each side is entitled to call witnesses to testify on their behalf.

Although witnesses in a Local Forum proceeding usually are members of the Order, nevertheless a witness who is not a member may testify at trial. [GF 693].

It is not permissible for witnesses to testify by telephone [GF 1009], or by written affidavit [GF 783, 663, 249].

GLS §8.090 authorizes the Presiding Justice to issue subpoenas to witnesses residing within the jurisdiction of the Lodge, as follows:

The Presiding Justice shall have the power to issue subpoenas and other process to compel attendance of witnesses and the production of evidence. Either party shall be entitled to subpoenas to compel attendance at the trial of any witnesses residing within a 50-mile radius of the Lodge or within the jurisdiction of the Lodge. Subpoenas must be issued by the Presiding Justice and shall be personally served upon a witness. Any Member not a party to the case may serve a subpoena.

Members of the Order who are served with a lawful subpoena in a Local Forum case are under obligation to obey the subpoena and attend the trial and give testimony. Failure to fulfill that obligation can result in penalty under §8.090.

Objection to failure by the Presiding Justice to issue a subpoena for a witness must be made before the conclusion of the trial. [GF 560].

GLS §8.120 provides a procedure to obtain written testimony of a material witness residing outside the jurisdiction of the Lodge, if the Presiding Justice determines the testimony is not cumulative and if not presented would prevent the Local Forum from having all pertinent facts. The parties may agree upon the testimony of the witness and reduce it to writing, to be filed with the Secretary to become part of the record of the case. Alternatively, the deposition of the witness can be taken upon written interrogatories which may be propounded by both parties. The deposition is to be taken before a member of the Order and at a time and place designated by the Presiding Justice. The interrogatories are to be answered by the witness and a record made of the answers, to be then returned to the Secretary. The deposition can be introduced in evidence at trial by either party.

**S. EVIDENCE**

GLS §8.130 states:

The Presiding Justice shall rule upon the competency, materiality or relevancy of evidence offered. Technical objections to the form of questions shall not be entertained.

Evidence must be competent as judged by ordinary legal standards. [GF 260]. Where the record fails to provide any competent and admissible evidence to sustain the finding of guilty of the charge, the conviction will not stand. [GF 1131].

A conviction based solely on hearsay evidence, or opinions and speculation, cannot be sustained. [GF 1286, 807, 787B, 783, 751, 750, 747, 260].

Evidence should be material and relevant to the specific charge of the complaint. [GF 562].

It is error to deny to the accused opportunity for adequate cross examination of witnesses. [GF 1082, 1060].

When a party fails to call a witness whom it would be natural under the circumstances to call in support of one's case, the "missing witness" presumption allows the inference that the testimony, if produced, would be unfavorable to that party. [GF 1199].

Additional testimony or other evidence should not be allowed after the Local Forum has retired into executive session. [GF 751].

An admission or confession of the accused in a court of the land, or elsewhere, may be received, if in writing. [§8.130].

It is not a defense to allegations of misconduct that other members are guilty of the same transgressions. Each member will be judged individually on the facts and circumstances particularly involved in the proceeding against the member. [GF 1121, 672].

**T. OBJECTIONS NECESSARY**

The general rule in law is that a party must first make procedural objections to the trial tribunal so that any errors can be considered and acted upon promptly and correction made if need be. The rule in the Courts of the Order is the same.

An appellant to the Grand Forum cannot raise on appeal pre-trial errors which were not raised in the Local Forum proceeding. [GF 1121, 995, 892, 858]. Objections raising questions of procedure must be made at or before the time of trial, and not in the first instance on appeal. [GF 882, 842, 661, 656, 640, 637].

Objection to appointment of the Local Forum must be made prior to commencement of trial. [GF 883, 882, 875, 844, 802, 774]. The same is true for objection to the Presiding Justice [GF 875, 873, 775], or for objection to the appointment of a substitute prosecutor [GF 858].

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**U. DELIBERATION BY LOCAL FORUM**

Members appointed to the Local Forum shall serve unless excused for cause by the Presiding Justice. [GLS §8.040(e)]. If a member who has been appointed to the Local Forum fails to attend the trial, after proper notice, he/she can be subject to penalty under §8.090, the same as a witness. (*See section S above.*)

LFR 4.6.3 states, “All Local Forum members shall be sworn prior to the commencement of the Local Forum trial. The trial record must affirmatively show compliance with this Rule.” The form of oath for Local Forum members is shown in Exhibit “F-2” to the Forum Rules in Statutes Annotated. (*See Appendix A*).

Local Forum members must be sworn in the form of oath prescribed by LFR 4.6.3, and it is error to use a different form of oath. [GF 1170].

If the trial record does not affirmatively show that the members of the Local Forum were sworn, the decision of the Local Forum will be reversed. [GF 1156, 1153, 1131, 1115].

All members of the Local Forum must be present during the trial. [GLS §8.0130; GF 1115]. If all members of the Local Forum are not present during trial, a conviction by the Local Forum will be reversed. [GF 1115, 1062, 1009, 960, 687]. If a Local Forum member does not appear for trial, the proper procedure is to continue the trial to a subsequent date to ensure attendance of all Local Forum members. [GF 1115, 1062].

The Presiding Justice cannot dismiss a complaint for lack of attendance of Local Forum members at trial. [GF 883]. The parties cannot stipulate to proceed with trial when a member of the Local Forum is absent. [GF 1115].

The Presiding Justice cannot appoint a replacement for an appointed Local Forum member who is absent. [GF 1009]. That can be done only by the Exalted Ruler under §8.040(f).

The Presiding Justice, together with other members of the Local Forum, must participate in Local Forum deliberations and vote, or the Local Forum decision will be reversed. [GF 1103, 1062, 992, 963, 960, 831].

**V. DECISION AND SENTENCE.**

GLS 8.140 states:

Upon conclusion of the testimony, the Local Forum without adjournment shall go into executive session and decide the guilt or innocence of the Accused by secret ballot. The votes of three members of the Local Forum shall be required to decide the case and determine the sentence. If the Accused is found guilty the sentence shall be imposed by the Local Forum. The decision shall be signed by the Presiding Justice, reported to and entered in the minutes of the Lodge by the Secretary at the first regular Lodge meeting after the conclusion of the trial. The report of the decision and sentence fixed by the Local Forum shall constitute the pronouncement of sentence.

Conviction and sentence must be based upon competent evidence as judged by ordinary legal standards. [GF 661].

The Local Forum must make specific findings as to provisions of law found to be violated and of acts the accused has been found guilty of committing. [GF 831].

The Local Forum cannot find the accused guilty of an offense which is not charged in the complaint. [GF 775; GF Dec. 20 to Sec. 83, 1981 Stats. Annot.].

The penalty which can be set by a Local Forum is set forth in the Statutes, depending upon the nature of the offense found. The offenses defined in §9.060 require expulsion from the Order. The offenses defined in §9.070 range from a minimum suspension from membership from 1 month to 3 years, or expulsion from the Order.

The Local Forum has no authority to go beyond the statutory penalties. The Local Forum has no authority to impose a fine [GF 757]; to order restitution [GF 745]; to issue a reprimand [GF 1170]; or to remove a Lodge officer from office [GF 1306, 995].

A sentence must be definite and cannot be open ended. [GF1171, 194]. A sentence cannot be made conditional on future behavior. [GF 1172].

The Local Forum cannot order multiple sentences to run consecutively. [GF 823, 802, 757]. An accused cannot be sentenced for multiple charges arising out of the same offense. [GF 828, 641]. The test to be applied to determine whether there is more than one offense is whether each provision requires proof of a fact which the others do not. [GF 641].

The Grand Forum can and must revise any penalty that does not comply with the Statutes. It will increase a penalty that is less than the statutory minimum, or reduce any penalty that exceeds the statutory maximum. [§7.090; GF 1125, 713, 670]. However, the Grand Forum has no authority to change a legal sentence properly imposed by the Local Forum. [GF 1142, 1125, 1078, 1038].

GLS §8.150 provides that it is the duty of the Exalted Ruler and the Lodge to enforce the sentence imposed, unless upon appeal the sentence be stayed or suspended by order of a Grand Justice.

If a member is expelled, his/her membership card must be confiscated. If is suspended, he/she must surrender the membership card to the Secretary, and may not participate in the Lodge or club during the period of suspension, but is still obligated to pay dues. [§8.190].

## **W. RECORD OF PROCEEDINGS; DUTIES OF LODGE SECRETARY.**

In a Local Forum preliminary hearing or trial, the Presiding Justice shall appoint a stenographer to take testimony produced at the preliminary hearing or trial or shall cause a recording device to be used. [§8.090].

If a Local Forum verdict of guilty is appealed by the accused to the Grand Forum, the testimony introduced at the preliminary hearing and trial shall be transcribed and together with all exhibits offered in evidence shall be sent to the Grand Secretary as part of the record of the proceedings. [§8.090]. The recorded testimony must be transcribed within thirty days after the notice of appeal, and must be certified by the Presiding Justice.

For an appeal, the Lodge Secretary is required to send to the Grand Secretary a copy of all pleadings and minutes of the case, including the transcribed testimony. [§8.240a]. On appeal from an order of dismissal by the Presiding Justice, the record to be submitted must consist of a copy of the pleadings, minutes, and order of dismissal. [§8.240b]. The record shall be transmitted by the Lodge Secretary to the Grand Secretary within thirty days after copy of the notice of appeal is received by the Lodge Secretary, and must be certified as to accuracy by the Lodge Secretary. [GFR 2.8].

Testimony of witnesses and proceedings of Local Forum must be taken down verbatim or by recorder and transcribed to produce a clear and accurate report of the testimony produced at trial. [GF 1103]. If the transcript is not certified as to accuracy by the Presiding Justice, the transcript will not be accepted for appeal to Grand Forum. [GF 1096].

An untranscribed tape recording is not sufficient as a transcript. [GF 1026].

Minutes or notes of proceeding are not an allowable substitute. [§8.090; GF 1103, 1087, 652, 648]. This is true even if minutes are taken by the Lodge Secretary and certified as accurate by the Presiding Justice. [GF 652, 648].

If a written transcript of testimony is not taken and provided by the Lodge Secretary, the Grand Forum will reverse a Local Forum conviction and either remand the case for retrial [GF 1232, 1096, 1026, 927, 844], or dismiss the case [GF 1103, 969, 904].

The Lodge Secretary has no duty to have a transcript prepared until the Secretary receives notice of appeal [GF 823], together with \$250 deposit for cost of transcription as discussed in *Part IV(A)*.

If either the accused or accuser desires to have a copy of the transcript for their own use, they must order a copy from the transcriber of the testimony or arrange to have the Lodge Secretary make a copy for them. In either case, the party requesting a copy of the transcript will be responsible to pay the costs of copying same, separate from the cost of the original transcript.

The Lodge Secretary has the following additional responsibilities upon conclusion of any Local Forum proceeding, whether or not an appeal is taken:

- (1) Under GLS § 12.050j, the Lodge Secretary has the duty to report all expulsions and suspensions to the Grand Secretary.
- (2) The Lodge Secretary is required to send to the Grand Secretary a brief summary of each Local Forum proceeding, including the names of the parties, summary of the nature of the charges, and the disposition of the case. [LFR 5.1].
- (3) Where an accused member has been acquitted by a Local Forum, it is the duty of the Lodge Secretary to send to the Grand Exalted Ruler a copy of all pleadings and minutes of the trial. [§8.170].

**X. COSTS OF LOCAL FORUM PROCEEDINGS.**

There can be expenses associated with a Local Forum case.

GLS §8.140 states:

All reasonable costs and expenses incurred by the Lodge in connection with the Local Forum shall be assessed to the non-prevailing party, at the discretion of the Presiding Justice.

There is no statutory definition of what may be included in the reasonable costs and expenses which may be assessed. Under GLS §8.140, assessment for costs and expenses in connection with the Local Forum is to be based on actual out of pocket expenses to the Lodge. [GF 1161].

A fee charged by a prosecuting attorney for a Local Forum case is not an allowable expense under §8.140. [GF 1142]. Costs and expenses to be assessed must be necessary as well as reasonable in amount. [GF 1179].

The cost to record and transcribe the testimony taken at trial are proper expenses which may be assessed. However, there is no need to transcribe the testimony in written form unless an appeal is taken to the Grand Forum; and if no appeal is taken, costs or expenses for transcribing the recorded testimony cannot be assessed to a party. [GF 1179].

Costs and expenses can be assessed against the Accuser as the non-prevailing party when the Local Forum decision is in favor of the Accused. [GF 1179].

In some circumstances, the Grand Forum holds that costs and expenses must be borne by the Lodge where the procedures in the Local Forum proceeding failed to comply with statutory requirements. [GF 1172, 1171, 1170, 1165, 978, 969].

*For costs and expenses for an appeal to the Grand Forum, see Part IV(A).*

## \* PART IV \*

### APPEAL OF LOCAL FORUM DECISION

#### **A. APPEAL BY ACCUSED OR ACCUSER.**

GLS §8.220 states that appeals to the Grand Forum from decisions of Local Forums may be made by:

- a.* A Member found guilty and sentenced.
- b.* The Accuser when an order to dismiss has been granted by the Presiding Justice.
- c.* The Grand Exalted Ruler from any judgment [*see subsection D below*].

An appeal from a Local Forum is begun with a notice of appeal. The form of notice of appeal is set forth in Exhibit “G” to the Forum Rules in Statutes Annotated, and must be accompanied by the Information Sheet set forth in Exhibit “O.” (*See Appendix A.*) The “Respondent” to be identified in the notice of appeal must be the opposing party (accuser or accused) in the Local Forum case. It cannot be the Lodge itself, or the Exalted Ruler, Secretary, or other Lodge officer who was not a party to the case.

The notice of appeal must be sent by the appealing party to both the Lodge Secretary and the Grand Secretary (as Clerk of the Grand Forum) within thirty days after a judgment of guilty is entered in the Lodge minutes, or an order of dismissal is reported to or entered in the Lodge. [§8.230]. A notice of appeal is “sent” when it is mailed. [GF 985.]

At the same time, the appealing party must serve a copy of the notice of appeal to the opposing party or parties in the Local Forum proceedings. [§8.230]. The notice of appeal shall contain a certificate of service of a copy thereof upon all parties. [GFR 2.7].

The time for appeal cannot be extended. [§8.230; GF 1052, 1024, 1017, 987B]. If an appeal is not timely sent to the Grand Secretary, the appeal must be dismissed by the Grand Forum. [GF 984, 856, 839, 811, 803, 798]. “The Grand Forum can only acquire jurisdiction over a matter before a Local Forum when that matter is properly appealed in a timely fashion to the Grand Forum as required by the Laws of the Order.” [GF 1017. Accord, GF 1052, 798, 762]. It is not sufficient to send the notice of appeal only to the Lodge Secretary, without also timely sending the notice to the Grand Secretary. In that case, the notice of appeal will not be considered to be timely filed, and the appeal will be dismissed by the Grand Forum. [GF 1017, 984, 811, 803, 798].

Similarly, failure to timely send a copy of the notice of appeal to the opposing party or parties in the Local Forum proceedings will nullify the appeal and it will be dismissed. [GF 728, 719, 694].

**The duties of the Lodge Secretary upon receiving a notice of appeal are set forth in §8.240 and GFR 2.8, providing that, within 30 days, the Lodge Secretary shall send to the Grand Secretary the complete record of proceedings in the matter in the Local Lodge, including pleadings, minutes, orders, transcripts of any testimony, exhibits and any other relevant papers.**

Notice of appeal by the accused from a Local Forum guilty judgment shall be accompanied by a \$250 payment to the Lodge as deposit to cover the costs of transcription of the recorded testimony, and the balance of that cost shall be paid within 30 days after completion of the transcript. [§8.230(a); §8.240(a)]. If the appealing party does not pay the deposit and balance after receiving notice to do so, the Grand Forum may dismiss the appeal [§8.240(a); GF 1022, 1011, 999, 994, 893, 696], and can order suspension of membership to continue until the full costs are paid [GF 1044, 969, 938].

When an accuser appeals from a dismissal of his complaint by the Presiding Justice, no advance deposit for costs is required from the accuser. However, an accuser who appeals still has responsibility to pay the costs of the appeal [§8.240(b); GF 1100, 1005A], and the appeal can be dismissed by the Grand Forum for failure or refusal to pay those costs [GF 760].

The Grand Forum holds that the costs of appeal can be assessed against the non-prevailing party [GF 1198], or against the Lodge itself where the procedures followed were improper [GF 1211, 1172].

There is no provision in the Statutes for an accuser to appeal from a Local Forum acquittal of the accused, and such attempted appeals ordinarily will be dismissed by the Grand Forum. [GF 1122, 1017, 987B, 976, 964A, 943]. However, the Grand Forum has also stated, “Where an accused has been found not guilty by a Local Forum and the accuser appeals to the Grand Forum alleging gross irregularities in the trial below which could render that trial a nullity, the Grand Forum will examine the record to ascertain whether substantial justice has been administered.” [GF 697]. In another case, an acquittal was reversed where one of the Local Forum members was absent and the verdict was rendered by the remaining members. [GF 1115]. But it must appear on the face of the record that there were errors of law or procedure, or failure to comply with statutory requirements, of such magnitude that the accuser was deprived of due process in presenting his complaint against the accused. [GF 1169].

*For interlocutory appeal from an intermediate step in a Local Forum proceeding, see Part XI(F).*

## **B. STANDARDS OF REVIEW.**

On an appeal, the Grand Forum considers only the record from the Local Forum decision as supplied by the Lodge Secretary, and briefs of the parties. *(See Part XI (B) and XI(C) for description of the record on appeal and filing of briefs).*

“The Local Forum shall be the sole judge of the facts proven.” [§8.130; GF 672].

The scope of review by the Grand Forum is stated in Const. Art. VI, Sec. 6:

**The Appellate Forum shall review and determine errors of law occurring upon the trial, including the question of whether there was any legal evidence to sustain the findings of facts, and shall affirm or reverse the decision, or remand the same for a new trial or other proceedings in accordance with the opinion.**



Many Grand Forum appeals involve claimed errors of law. When the Grand Forum concludes that procedural errors were so substantial as to deny the accused a fair trial, or there was otherwise a denial of due process during the conduct of the proceeding, a judgment of guilty by the Local Forum will be reversed and set aside. [GF 1172, 1153, 1137, 1087, 1082, 1050].

Likewise, if the Grand Forum concludes that the charges made in the complaint do not constitute an offense under the Laws of the Order, a guilty judgment will be reversed and the complaint dismissed. [GF 821, 775].

With respect to the merits of the case, the issue before the Grand Forum is only whether there was “any legal evidence” to sustain a Local Forum guilty judgment. [Const. Art. VI, Sec. 6; GF 294, 194].

Legal evidence means competent and admissible evidence as judged by ordinary legal standards. [GF 970, 848, 747, 672, 661].

The question of the weight of the evidence cannot be considered by the Grand Forum when sitting as an appellate court. [GF 1159, 934, 840, 294, 194]; [GFR 2.20(1)]. Nor can the Grand Forum “substitute [its] judgment for that of the Local Forum.” [GF 1159].

But the sufficiency of the evidence to support a finding is a matter of law to be determined by the Grand Forum. [GF 1250].

The burden is on the accuser to support his/her charge by presenting competent and admissible evidence. [GF 807, 708, 693, 691].

Some competent and admissible evidence must be found in the record in support of the charge to sustain a finding against the accused. [GF 693, 562].

If there is some competent and admissible evidence as judged by ordinary legal standards to sustain the verdict, it will be upheld. [GF 1130, 1125, 1018, 970, 926, 848].

Conversely, a Local Forum conviction cannot be sustained where there is a lack of competent and admissible evidence to support the charge. [GF 1286, 1250, 1131, 915, 858, 835, 813, 807].

### **C. DISPOSITION BY GRAND FORUM.**

On an appeal by an accused found guilty by a Local Forum, the Grand Forum is authorized to affirm the decision, or to reverse the decision and either (1) set it aside or (2) remand the matter for retrial with instructions. The Grand Forum can also increase a sentence if less than the statutory minimum, or reduce a sentence if it exceeds the statutory maximum. [§7.090].

When a Local Forum decision and sentence is reversed by the Grand Forum, the disposition of the case will depend upon the grounds of the Grand Forum ruling.

When the reversal is due to procedural irregularities that occurred before or during the Local Forum trial, the usual remedy is remand to the Lodge for a new trial to be held before the Local Forum in accordance with the provisions of Chapter 8 of the Statutes of the Order. For retrial of the case, a new Local Forum must be appointed, with the members of the preceding Local Forum (except the Presiding Justice) to be ineligible for appointment to the new Local Forum. [§8.160].

In some cases, rather than remand a case for retrial, the Grand Forum may dismiss the complaint in its entirety, for example: where the complaint was not filed by a proper party [GF 784]; where there was failure to file a notice of intent [GF 886]; failure to provide sufficient specificity in the complaint [GF 1029, 787B]; or failure to follow instructions of the Grand Forum on a prior remand [GF 969].

The Grand Forum has also held that it is fully warranted in reversing a conviction by a Local Forum, and in dismissing the complaint with prejudice, based on procedural irregularities, when it is apparent that substantial justice has not been done and where no useful purpose would be served by subjecting the accused to a second trial. [GF 1156, 1153, 1103, 816, 747, 702]. When that is the result, retrial in the Local Forum would not be permissible.

When the Grand Forum concludes that the complaint did not state a valid cause of action for violation of the Laws of the Order, notwithstanding that the Local Forum made a finding of guilt, the Grand Forum will reverse and dismiss the complaint in its entirety without provision for retrial. [GF 1104, 1097, 1006, 992, 963, 858].

Where the Grand Forum finds there was not sufficient competent evidence on which the Local Forum could find the accused guilty, the conviction will be reversed, and the case will be dismissed with no provision for retrial. [GF 1170, 1131, 995, 932, 915, 835].

When a Local Forum conviction is reversed, the accused member is automatically restored to all rights and privileges of membership in the Order, subject to any further decision by the Local Forum if the case is remanded for a new trial.

The Grand Forum has continuing supervisory authority over a Local Forum proceeding. [GF 1323]. Failure or refusal to obey a process or order of the Grand Forum may constitute contempt punishable by suspension of membership for a period not to exceed three years. [§7.150].

The equitable principles of *res judicata* bar an action where it is shown: (1) A final judgment on the merits in a prior suit by a competent court; (2) The claims in the second matter are based on the same cause of action involved in the prior proceeding; and (3) The parties are identical in the two actions. [GF 1483, 2020]

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**D. APPEAL BY GRAND EXALTED RULER.**

The Grand Exalted Ruler can appeal from a decision in any Local Forum proceeding in any Lodge. [Const. VI(6); §8.220(c)]. This authority may be exercised where a Local Forum decision is considered by the Grand Exalted Ruler to be contrary to the best interests of the Order.

Retrial on appeal by the Grand Exalted Ruler does not violate any legal principle of “double jeopardy.” The rights and liabilities of members of the Order are governed solely by the Constitution and Statutes of the Order. [GF 898, 749, 657]. The accused may be found guilty in the retrial notwithstanding that he/she had been acquitted by the Local Forum. [GF 961, 753].

The time for appeal by the Grand Exalted Ruler is different than for a party to the proceeding. The Grand Exalted Ruler may file notice of appeal within thirty days after receipt of written notice of the judgment of the Local Forum but in no case more than 240 days from the date the judgment was entered upon the minutes of the Lodge. A copy of the notice of appeal must be sent to the parties in the Local Forum proceeding. [§8.230(c)].

The accused is entitled to file motions, for example, to dismiss or make more specific, within fifteen days after service of the notice of appeal. [§7.030]. After ruling on motions (unless dispositive), the Grand Forum Justice is to set a trial date as expeditiously as possible, at a time agreeable to all parties, no later than 90 days after ruling on the last motion. [§7.050].

On an appeal by the Grand Exalted Ruler, the case will be retried on its merits before a single Justice of the Grand Forum who is designated by the Chief Justice. [§8.240(c)]. However, the decision of the appeal will be made by the Grand Forum en banc based on the transcribed testimony at the trial. [GFR 4.1.1].

The Grand Forum alone will determine the guilt or innocence of the accused. The Grand Forum is the judge of the facts in the trial. [GF 764].

A complete new trial de novo before the Grand Forum Justice is ordinarily required. [GF 657]. However, where the Grand Forum determines that there is no additional relevant evidence to be presented by either side, and a party is entitled to judgment as a matter of law, the case can be decided upon the record of the trial before the Local Forum. [GF 1073, 1040, 888]. (*See Part XI(D) regarding procedure for summary judgment.*)

The same trial procedures applicable to a Local Forum case will apply to the trial of the appeal by the Grand Exalted Ruler. [§7.080].

The burden is on the Grand Exalted Ruler to prove the allegations of the original complaint, and if not proven the action of the Local Forum will be upheld. [GF 903A/B, 888].

Failure or refusal by the accused to appear for the trial after due notice does not nullify proceeding to trial so long as proceeding without the accused does not prejudice the decision. [GF 749].

Where the Grand Forum on retrial reverses the Local Forum and finds the accused guilty, the Grand Forum will determine the sentence to be applied. [GF 1040]. No further proceedings before a Local Forum are necessary or permissible.

The Grand Exalted Ruler can appeal from a Local Forum conviction of guilty where the Local Forum did not set an appropriate sentence, and the Grand Forum can impose the appropriate sentence. [GF 814, 754, 713].

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## \* PART V \*

### EXPULSION OF MEMBER FOR CRIMINAL CONVICTION

Criminal conviction of a member is of particular importance in the Order so the topic will be covered separately here.

#### **A. CONVICTION WHILE A MEMBER**

GLS §9.060*d* states that a member shall be expelled from the Order upon being found guilty by a Local Forum of, “Having plead guilty, entered a plea of nolo contendere or been finally convicted of a felony (*Section 1.030*) or a misdemeanor involving moral turpitude (*Section 1.110*).”

Expulsion under that section would require the same Local Forum complaint and procedures as for any other offense, and the provisions described previously for Local Forum proceedings would be applicable.

But another section, GLS §9.090, prescribes a short form of proceedings for expulsion of a member who has “been finally convicted of or entered a plea of guilty or nolo contendere to a felony or misdemeanor involving moral turpitude.” Under that section, upon being informed of the conviction, the Lodge Secretary shall thereupon obtain and file in his office a certified court record of the final judgment or the entry of such plea and sentence imposed. He shall then immediately give thirty days’ written notice to the Member by personal service or by Certified Mail, Return Receipt Requested, and simultaneously by regular first-class mail, in a sealed envelope, postage prepaid, addressed to the person upon whom it is to be served, at his address of record. The notice will include a copy of the certified court record and notify the Member that he will be expelled from the Benevolent and Protective Order of Elks unless he is able to dispute the criminal records in question, by showing that they are inaccurate, currently under appeal, have been reversed on appeal or that he did not fail to disclose the conviction on his application. A dispute in writing must be filed with the Lodge Secretary within 30 days of the date of this notice.

If a dispute is not filed, the Secretary shall provide a copy of the certified court record of the final conviction or entry of a plea of guilty or Nolo Contendere to the Presiding Justice who shall enter an Order expelling the member from membership in the Order.

If a dispute is filed, the Secretary shall provide a copy of the certified court record of the final conviction or entry of a plea of guilty or Nolo Contendere together with a copy of the application of the member and a copy of the dispute filed by the member to the Presiding Justice. The Presiding Justice of the Lodge will hold a hearing to determine if the dispute is valid and if not, an Order will be entered permanently expelling the member from membership in the Order.

A written appeal of the expulsion may be filed by the member to the Grand Forum within Thirty (30) days of the entry of the Order of Expulsion. The notice of appeal shall be accompanied by a certified check or money order payable to the Grand Secretary in the amount of \$250.00.

This order shall be entered in the minutes of the Lodge and shall have the same force and effect as a final decision and sentence of the Local Forum.

Amended July 3, 2024

**[NOTE:** The suggested form for notice to member to be served is shown in Exhibit “L” in exhibits to the Forum Rules and in Appendix A to Guide to the Courts of the Order.]

**[NOTE:** The suggested form for notice of appeal from an Order of Expulsion issued pursuant to 9.090 is shown in Exhibit “H” in exhibits to the Forum Rules and in Appendix A to Guide to the Courts of the Order.]

No formal complaint is required for proceeding under §9.090 because the 30-days letter is sufficient notice. [GF 906].

But notice to the accused member is required. An order of expulsion under §9.090 was vacated where there was no showing that notice was given to the accused by personal service or certified mail. [GF 907].

If the accused member does not contest the notice, the Presiding Justice must enter an order of expulsion, and the Grand Forum has no jurisdiction over an appeal from that order. [GF 852, 830]. The formal order of expulsion must be entered by the Presiding Justice. [GF 907]. The order cannot be entered by the Exalted Ruler or the Secretary. [GF 853].

In a Local Forum hearing under §9.090, the issues are: (1) Was the person charged in the criminal complaint the same person as the member? (2) If so, was the member finally convicted? (3) If so, was the conviction for a felony or a misdemeanor involving moral turpitude? [GF 906, 879; GFR 6.5].

The Local Forum cannot inquire into the guilt or innocence of the accused for the offense of which the accused stands convicted. [GF 510, 332].

Where the accused plead nolo contendere and was found guilty of a felony but the court suspended imposition of sentence and placed the accused on probation with special conditions, that did not relieve the accused from charges under §9.090, as it is the anti-social conduct of the member that the Statute seeks to condemn. It is immaterial that the State law may not consider the accused to be a convicted felon. [GF 864].

Where the criminal conviction or plea was for a misdemeanor, the issue whether it involved moral turpitude is a question of law. [GF 879].

“The phrase ‘moral turpitude’ means moral turpitude as recognized by civil law. Crimes are divided according to their nature into crimes of ‘mala in se’ and ‘mala prohibita.’ The former comprises those acts which are inherently immoral and wrong such as murder, rape, arson, burglary, theft, etc. and are crimes of ‘moral turpitude.’ The latter are made crimes because they are prohibited by statute such as driving offenses, licensing violations, etc. and therefore are generally not crimes of moral turpitude.” [COJ Opinion 01 to GLS §1.110].

The Grand Forum holds that under the laws of the Order, any form of larceny, theft, fraud, embezzlement, or bribery is an offense involving moral turpitude and expulsion is required. [GF 920, 879, 874, 688]. The Grand Forum has also said that a misdemeanor involves moral turpitude “where it involves conduct of a base, degrading and immoral nature.” [GF 510].

## **B. CONVICTION BEFORE MEMBERSHIP.**

If an applicant falsely omits disclosure of a prior criminal conviction in an application for membership, and is voted into membership, the applicant will be subject to charges under GLS §9.060(b). [GF 608]. That section requires expulsion for, “Any willful material misrepresentation with respect to initiation or admission.”

An applicant for membership who answers “no” to the question in the application whether the applicant has ever pleaded guilty or been convicted of a felony, or a misdemeanor involving moral turpitude, when in fact the evidence reveals such conviction, is guilty of violation of GLS §9.060(b) requiring a verdict of guilty and expulsion from the Order. [GF 1162, 1073, 944A, 935, 843]. It is not a meritorious defense that the proposer and investigating committee knew about the prior conviction. [GF 944A, 935].

The GLS §9.090 short form proceeding for expulsion of a member for criminal conviction, described in Part V(A) above, applies also to a member who falsely failed to disclose on the application a prior criminal conviction or plea of guilty or nolo contendere to a felony or misdemeanor involving moral turpitude. Upon being informed of such a conviction, the Lodge Secretary is to follow the same procedures described in Part V(A) for criminal conviction of a member.

If the applicant fully discloses a prior criminal conviction, the Lodge must determine whether the applicant meets the prescribed standards of eligibility set forth in Const. Art. VII, Sec. 4 and GLS §14.010. [See COJ Op. 14 to §14.010].

**\* PART VI \*****LODGE ACTIONS AGAINST OFFICERS OR MEMBERS****A. LODGE ACTION AGAINST OFFICER.****1. Removal from office for misconduct or abuses**

GLS §12.141 allows a Lodge to remove an officer, including a Trustee, for “immoral conduct, abuses in office, or actions which may dishonor the Order.”

The Grand Forum has outlined the requirements of GLS §12.141 to be followed in removing an Officer as follows [GF 1092]:

1. A written complaint must be filed with the Lodge Secretary setting forth specific facts constituting the alleged immoral conduct, abuses in office or dishonorable acts.
2. At the next Lodge meeting, the Exalted Ruler shall set a hearing date at the next regularly scheduled Lodge meeting to consider the complaint.
3. The accused officer shall be given at least 5 days written notice of the specific charges and date of hearing.
4. At the initial hearing, formal charges shall be read and presented to the Lodge without argument for or against the charges.
5. A vote of the members present at the initial hearing to proceed with a formal hearing shall then be taken, with two-thirds of those voting required in order to proceed to a formal hearing.
6. If the formal hearing is approved, the Exalted Ruler shall immediately set a hearing date at a regular Lodge session not more than 30 days thereafter.
7. The Secretary shall give written notice to the accused and to the Lodge members not less than 5 days prior to the hearing date, stating that a vote will be taken at the formal hearing to remove or not remove the accused officer.
8. The accused officer has the right to be present at the formal hearing and defend against the complaint.
9. Two-thirds of those voting shall be required to remove the accused officer.

The complaint must set forth with reasonable particularity the acts constituting the alleged violation. [GF 683].

The Secretary must give notice to the officer not less than five days before the initial hearing of the specific charges and the date of the initial hearing. Failure to provide the accused officer with five days prior notice of the initial hearing is a violation of due process for which Lodge action must be reversed. [GF 1189, 1092, 683].



At the meeting for the initial hearing, the charges in their entirety must be read to the members present so they may know the particulars of the complaint. [GF 1158]. At that meeting, there is to be only a vote to decide whether to proceed to a formal hearing (i.e., impeachment), without argument for or against the charges. [GF 683].

If the Exalted Ruler at the initial hearing fails to set a specific formal hearing date within the next thirty days for the Lodge to vote on removal, that is error requiring reversal of any subsequent Lodge action. [GF 1158, 1092].

Failure to allow the accused officer full opportunity to defend oneself against the allegations of misconduct at the formal hearing is a violation of the accused officer's due process rights. [GF 1158].

All votes under §12.141 are to be taken in open meeting by voting sign of an Elk. [Statutes Annotated, App. I(D)(2); GF 1158]. But the Lodge, by majority vote, can choose to have a particular vote taken by secret ballot. [GLS §15.080].

Notices served in connection with a proceeding under §12.141 are to be served personally or by regular mail to the address of record of the accused officer. [GLS §16.130].

A written complaint for removal of an officer under §12.141 is not immediately a Lodge record subject to inspection by members. Until formal charges are read and presented to the Lodge, the complaint can be withdrawn by the complaining member. [GF 1181].

## **2. Removal from office for absences**

GLS §12.140 allows a Lodge to remove an officer, including a Trustee, who "is absent from meetings of the Lodge, or duty, during two consecutive months without good cause." Under this section, the Lodge is to give at least five days written notice to the officer to appear at the next regular Lodge meeting and give good cause, if any, why he/she should not be replaced. This section requires only a single Lodge meeting for the action of the Lodge.

If the officer cannot show good cause for absence, or why he/she should not be replaced, the Lodge shall vacate the office. [GF 1004].

There is no prescribed definition for good cause, so it is up to the Lodge to determine whether or not to accept the explanation.

There is no requirement for advance notice to Lodge members that removal will be considered at the Lodge meeting.

Removal of the accused officer requires the affirmative vote of a majority of those voting at the meeting. The vote is to be taken in open meeting by voting sign of an Elk. [Statutes Annotated, App. I(A)(11)]. But the Lodge by majority vote can choose to have a particular vote taken by secret ballot. [GLS §15.080].

Notices served in connection with a proceeding under §12.140 are to be served personally or by regular mail to the address of record of the accused officer. [§16.130].

### **3. Appeal to Grand Forum by removed officer**

The Grand Forum has jurisdiction of an appeal by a removed officer “for review of compliance with the procedural provisions of Sections 12.140 and §12.141 in applicable cases.” [GLS §7.020(c)].

The Grand Forum cannot review the propriety of the Lodge vote for removal. The Grand Forum is only charged with the responsibility of seeing that the procedural provisions of the Statute are complied with and there has not been a failure of due process. [GF 1319, 1158, 1092, 896, 837].

If the Grand Forum finds failure to comply with the procedural requirements and failure of due process, it will set aside the Lodge removal of the officer and restore him/her to office. [GF 1158, 683].

The Statutes do not specify the time for filing an appeal from action under §12.140 or §12.141. The Grand Forum has dismissed an appeal which was filed sixty days after the Lodge voted to remove the officer. [GF 686]. To assure that an appeal will not be denied for untimely filing, the notice of appeal should be sent to the Grand Secretary and the Lodge Secretary within thirty days after the date of the Lodge action (the same as required for appeal from a Local Forum decision).

The form of notice of appeal from a Lodge action is set forth in Exhibit “H” to the Forum Rules in Statutes Annotated, and must be accompanied by the Information Sheet set forth in Exhibit “O.” (*See Appendix A.*)

Notice of appeal must be sent both to the Grand Secretary and the Lodge Secretary.

No deposit for costs or fees is required for an appeal by an officer from one’s removal from office by the Lodge.

## **B. LODGE ACTION AGAINST MEMBER FOR INDEBTEDNESS.**

### **1. Dropping member from rolls for indebtedness.**

GLS §14.170 allows a Lodge to drop a member from the Lodge rolls for unpaid indebtedness to the Lodge or Club.

This provision does not apply to nonpayment of annual dues (which separately requires suspension of membership privileges under §14.160), but rather to additional obligations such as money owed for use of club or dining facilities, or for any other money owed to the club or Lodge. It can also be used where it is alleged that a member owes for unaccounted expense advances or misuse of Lodge funds.

The Lodge Secretary is to report the alleged indebtedness at a regular Lodge meeting, and the Exalted Ruler shall then set a hearing and Lodge vote on the matter at a regular Lodge meeting not less than thirty nor more than sixty days thereafter. The Secretary must provide the accused member with thirty days written notice of the scheduled hearing. At the hearing, evidence may be presented and the member may be dropped from the rolls by vote of two-thirds of members present at the meeting.

The vote is to be taken in open meeting by voting sign of an Elk. [Statutes Annotated, App. I(E)(8)]. But the Lodge, by majority vote, can choose to have a particular vote taken by secret ballot. [GLS §15.080].

Notices served in connection with a proceeding under §14.170 are to be served personally or by regular mail to the address of record of the member. [§16.130].

The Lodge action will be reversed where there was failure to give thirty days prior written notice of the meeting at which the Lodge voted to drop the member. [GF 1041].

A dropped member may apply for reinstatement in the Lodge by making payment of his/her indebtedness in addition to the reinstatement fee provided in the Lodge By-Laws. [§14.170].

## **2. Appeal to Grand Forum by dropped member.**

A member who is dropped from the rolls may lodge an appeal to the Grand Forum within thirty days after the Lodge vote. [§14.170].

The form of notice of appeal from a Lodge action is set forth in Exhibit “H” to the Forum Rules in Statutes Annotated, and must be accompanied by the Information Sheet set forth in Exhibit “O.” (*See Appendix A.*)

Notice of appeal must be sent both to the Grand Secretary and the Lodge Secretary.

No deposit for costs or fees is required for an appeal by a member who is dropped from the Lodge rolls for indebtedness.

There must be competent and admissible evidence in the record that the member was in fact indebted to the Lodge, or else the Lodge action will be reversed by the Grand Forum. [GF 891].

## **\* PART VII \***

### **CLUB MANAGING BODY SUSPENSION ORDERS**

#### **A. AUTHORITY OF MANAGING BODY.**

Each Lodge is to have a managing body for “the Club, social parlor, or other facility established in connection with the Lodge.” [§16.040].

The composition of that body must be established by a Lodge in its By-Laws in one of the forms prescribed by §16.040, pars. a, b, c, or d.

GLS §16.041 provides:

The supervising or managing body of the Club, social parlor or other facility shall have power to suspend a Member from Club, social parlor, or other facility privileges for a period not exceeding one (1) year, for violation of rules duly adopted by the Lodge and approved by the Committee on Judiciary for such Club, social parlor or other facility, or Conduct Unbecoming an Elk on such premises, after ten days written notice to the Member served personally or by regular first-class mail and after a hearing before the supervising or managing body.

A complaint can be made by any member having knowledge of the alleged violations. The managing body itself can initiate charges where an allegation of violation is made by a non-Elk. [GF 1135, 1110].

In order for a managing body to have jurisdiction, conduct unbecoming an Elk must be on the premises of the Club, social parlor, or other facility. [GF 1280, 1188, 1140, 897; COJ Opinion 03 to GLS §16.041]. A suspension proceeding cannot be based on alleged misconduct on the Lodge floor [GF 897], or conduct that takes place completely outside the Club premises [GF 1140]. For alleged misconduct that does not occur on Club premises, the proper remedy is by complaint to the Local Forum.

The Grand Forum [in GF 978 and 1002] has set forth the necessary procedures to follow for a managing body suspension proceeding as follows.

1. A Hearing is held after giving the Member ten days written notice served either personally or by regular first-class mail. Said notice should specifically state the charges.

[NOTE: A proposed form of notice of hearing is set forth as Exhibit “I” in exhibits to the Forum Rules and in Appendix A to Guide to the Courts of the Order.]

2. The Hearing is before the managing or supervisory body.
3. At the Hearing before the managing or supervisory body, the Member must be given his or her due process of law which will include but not be limited to the managing or supervising body of the Lodge strictly following the provisions of Section 16.041 if there is an intention to suspend a Member from privileges of the Club or home.

4. The managing or supervisory body would then decide whether or not suspension is appropriate. A notice of suspension in writing must be served personally or by registered first class mail to the Member.  
[NOTE: A proposed form of Notice of Suspension is set forth as Exhibit “J” in exhibits to the Forum Rules and in Appendix A to Guide to the Courts of the Order.]
5. The Member may Appeal the Suspension to the Lodge if done so within ten days of receipt of the Notice of Suspension by filing a Notice of Appeal either by personal service or first class mail to the Lodge Secretary.  
[NOTE: The suggested form for an appeal of a Club suspension order to the Lodge is shown in Exhibit “K-1” in exhibits to the Forum Rules and in Appendix A to Guide to the Courts of the Order.]
6. If the Member Appeals a Suspension to the Lodge, the suspension is stayed until the appeal to the Lodge has been completed.
7. After a Notice of Appeal has been filed with the Secretary, the Secretary reports the Appeal to the Exalted Ruler and to the Lodge at the next regular meeting.
8. The Exalted Ruler at that meeting shall then order a hearing of appeal, the hearing to be held at a regular meeting of the Lodge within 45 days.
9. Notice in writing must be sent to all Lodge Members not less than ten days prior to the Hearing on Appeal.
10. At the Hearing, the managing or supervisory body of the Club must present the evidence and the Appealing Member then has an opportunity to defend or refute the charges.
11. After the Hearing portion is completed, a Motion to Modify or reverse the action of the supervisory or managing body must pass by an affirmative secret ballot of two-thirds vote of the Members present. The Secretary should be prepared to distribute paper ballots in the event a motion is made.
12. If no motion is made, the decision of the supervisory or managing body is affirmed.

*(These procedures are reproduced in Appendix II to Statutes Annotated.)*

The managing body is required to strictly follow the procedures of Section §16.041 if there is an intention to suspend a member from privileges of the club or home. [GF 1145, 1110, 1046, 1042, 1039, 1036]. The managing body cannot vote to suspend a member without first giving that member a full and fair hearing. [GF 1213, 1145].

A claim of emergency circumstances will not excuse a failure of compliance with those procedures. “No matter how pressing an emergency may appear, the provisions of that section must be strictly followed.” [GF 1036; see also GF 1046].

Numerous Grand Forum decisions have held that the requirement of ten days written notice to a member before the hearing of the managing body is essential to due process. The failure to provide written notice of not less than the full ten days constitutes a violation of due process and will require reversal of the suspension decision. Such failure renders all subsequent proceedings a nullity. [GF 1450, 1248, 1240, 1193, 1187, 1145, 1046, 1042, 1039]. Oral notice is not sufficient. [GF 1276, 986].

To meet the notice requirements of Grand Lodge Statute §16.041, in addition to giving notice not less than ten (10) full days prior to the hearing by personal service or regular first-class mail, it is necessary to describe in the notice the conduct which is the basis for the proposed suspension, including the date, behavior, and circumstances, in such detail that the member can know the charges and be able to prepare and present a defense to those charges. Grand Forum Case 1562, 1584.

A change in the scheduled date for the hearing of the managing body cannot be made without sending a new written notice to the accused member at least ten days prior to the rescheduled date. [GF 1318, 1240].

Notices served in connection with a suspension proceeding under §16.041 are to be served personally or by regular mail to the address of record of the officer. [§16.130].

“The notice to the Member facing a House Committee hearing must be specific.” [GF 1192]. The member must know the charges with sufficient specificity to defend oneself. [GF 1242, 1228, 1146]. A charge was insufficient that on a specified date House Rules were allegedly breached by “‘Conduct unbecoming an Elk’ — Numerous allegations including but not limited to contumacy, intimidation, bullying, coercion and willfully making unjustified or untruthful charges against a member.” [GF 1146].

Suspension of Club privileges cannot be based upon a ground not cited in the notice of hearing. [GF 1192].

The hearing must be open to all members without exception. [GF 1427, 1280].

In the disciplinary hearing, the material witnesses on a factual issue must appear to testify in person and be subject to cross-examination by the accused member. The absence of any material witness to testify in person against Appellant violates due process rights. [GF 1431, 1244, 1242].

The managing body upon conclusion of the hearing, and without adjournment, can go into closed executive session to discuss, deliberate, consider, and vote upon the matter in issue. But following such closed session the managing body in open session must announce their votes, both in total and by each member of the managing body, and render their final decision and penalty if any. [GF 1244, modifying GF 1110].

If the alleged violation involves the Exalted Ruler or a member of the managing body, that person must be disqualified from participation in the matter until final disposition of the alleged violation. Further, the Exalted Ruler in such

event cannot appoint or remove members of a House Committee pending final disposition. [GLS §16.041].

Similarly, if a member of the managing body is a witness to the conduct for which complaint is made, or a family member is a complainant or witness, the managing body member should recuse oneself. [GF 1242; COJ Opinion 16 to GLS §16.040].

The managing body can only suspend Club privileges, and not Lodge membership. [GF 1240, 1135].

The managing body cannot impose sanctions which either require or prohibit actions to be taken or not taken in the future. The suspension order cannot include provision for future suspension of club and social privileges for violation of the provisions of the order. [GF 1244]. The managing body has no authority to impose a period of probation. [GF 1046].

Suspension of the Club privileges of a visiting Elk from another Lodge requires compliance with GLS §16.041 procedures the same as for a member of the home Lodge. [GF 1182].

## **B. APPEAL TO LODGE.**

GLS §16.041 states that a member who is suspended by the managing body can appeal to the Lodge. The suspended member must file notice of appeal with the Lodge Secretary, by personal service or mail, not later than ten days after receipt of notice of suspension. The notice of appeal is to be reported by the Secretary at the next regular Lodge meeting. At that time, the Exalted Ruler is to order a hearing on the appeal to be held at a regular Lodge meeting not later than forty-five days thereafter.

While the order is on appeal to the Lodge, the suspension order is automatically stayed pending disposition of the appeal by the Lodge, and the member retains Club privileges until the Lodge makes a decision. It is improper for the managing body to order suspension of club privileges either prior to its hearing date or during the pendency of an appeal to the Lodge. [GF 1228].

Notice in writing of the Lodge meeting to hear the appeal must be given by the Secretary to all members not less than ten days prior to the date specified for the hearing. Notice less than ten days before the hearing requires reversal of the suspension order. [GF 897].

At the Lodge meeting, the managing body must present the evidence against the member who is suspended, and the appealing member then has an opportunity to defend or rebut the charge. [GF 978].

A motion may be made by any member, including the suspended member, to modify or reverse a managing body suspension, but if no such motion is made and passed the suspension stands. [GF 845]. The vote required to modify or reverse the managing body is two-thirds of the members present, voting by secret ballot. No action is necessary to affirm the decision of the managing body.

The Grand Forum has held that bringing a complaint in a Local Forum against the managing body members for denial of due process is not an appropriate way to proceed, and has affirmed dismissal of such complaints. The Grand Forum has stated: “The Local Forum is not an appropriate vehicle for a Lodge member to exercise his or her disagreement with the official actions of a House Committee.” [GF 959. In accord GF 1143, 1072, 1069, 771].

### **C. APPEAL TO GRAND FORUM.**

There is no provision in the Grand Lodge Constitution or Statutes providing for an appeal to the Grand Forum from a suspension of club privileges by a managing body. [GF 897].

Because of the absence of specific statutory authority, the Grand Forum has said many times that it has no jurisdiction to review the propriety of a suspension order properly made under §16.041. [See, e.g., GF 1110, 1106, 1047, 1025, 1002, 978].

But the Grand Forum has held that it can and will intervene and grant relief upon proper petition if it clearly appears that in a club suspension proceeding a member has been deprived of a substantial right of membership without due process of law. [GF 1412, 1110, 1046, 1042, 1036, 1002, 978].

A member suspended from Club privileges may appeal to the Grand Forum, based on the contention that the managing body and/or Lodge proceedings deprived the member of due process.[GF 1244, 1002]. If due process is found to be lacking, the Grand Forum will not sustain the suspension order.

The Grand Forum cannot and will not consider the sufficiency of the grounds on which the suspension was based; that can only be raised in an appeal to the Lodge. [GF 1240].

The member cannot appeal both to the Lodge and the Grand Forum at the same time, and if an unresolved appeal to the Lodge is pending the Grand Forum will dismiss an appeal to the Grand Forum. [GFR 2.2.2, GF 1226].

Due process of law implies the right of the accused to receive notice of the hearing, to be present before the tribunal, to be heard by testimony, and to have the right if possible of controverting the proof which bears on the question of right in the matter involved. [GF 1048, 1047, 1046, 1042, 1036, 1035].

Upon reversal of a suspension order for lack of jurisdiction in the managing body (*i.e.*, the conduct complained of did not occur on the Club premises), the Grand Forum will vacate the suspension order without allowance for further proceedings by the managing body. [GF 1188, 1140, 897].

When reversal of a suspension order is for lack of due process in the proceeding (*e.g.*, failure to give notice and hearing), the Grand Forum will similarly vacate the suspension order, but the matter can be remanded to the managing body for further proceedings to be conducted with the necessary due process. [GF 1157, 1146, 1145, 1046, 986]. In some cases, however, the Grand Forum directs that the proceeding be terminated without allowing any further action by the managing body. [GF 1213, 978].



If the Grand Forum reverses a suspension order, it may also order that costs of appeal must be paid by the Lodge. [GF 978].

An appeal to the Grand Forum from a managing body suspension order claiming violation of due process must be sent to the Grand Secretary and the Lodge Secretary within thirty days after the suspension becomes final. [GF 986, GFR 2.2.2].

The form of notice of appeal from a managing body suspension order is set forth in Exhibit “K-2” to the Forum Rules in Statutes Annotated, and must be accompanied by the Information Sheet set forth in Exhibit “O.” (*See Appendix A.*)

The “Respondent” to be identified in the notice of appeal should be the particular managing body (using its proper name). The notice of appeal must be sent both to the Grand Secretary and the Lodge Secretary, and a copy must be served upon the respondent managing body.

No deposit for costs or fees is required for an appeal from a club suspension by a member who alleges a violation of due process of law.

**\* PART VIII \***  
**EXECUTIVE ORDERS AGAINST OFFICERS  
AND MEMBERS**

**A. DISQUALIFICATION AND SUSPENSION.**

**1. Statutory basis**

GLS §9.010 states: “The Grand Exalted Ruler, by written Executive Order specifying the grounds, may remove any Lodge Officer who neglects the duties of his office, is guilty of contumacy or of conduct Injurious to the Order.” It is not required that the Member still be an officer at the time of issuance of the Executive Order, but only at the time of the violation alleged. [GF 990-B].

§9.010 also allows for removal of an officer of a separate corporation formed pursuant to §16.030 for any club, home real property, or other facility owned by the Lodge.

GLS §9.011 states: “The Grand Exalted Ruler, by written Executive Order specifying the grounds, may suspend a Member from being a Lodge Officer and from club privileges when that Member has neglected the duties of an office, or is guilty of Contumacy or Conduct Injurious to the Order.” On its face, that provision appears to be applicable to any member and not just those who held an office at the time of the violation alleged.

The discussion hereafter is applicable to both §9.010 and §9.011.

The Executive Order may provide for suspension from club privileges for a period not to exceed three years and/or ineligibility to hold office for a period not to exceed three years.

The Grand Exalted Ruler is not required to give a hearing or other opportunity to respond to the allegations prior to issuance of an Executive Order of removal. [GF 901, 427].

An Executive Order under §9.010 or §9.011 cannot suspend membership but rather only Club privileges. [GF 1254, 1221, 1102].

By GLS §9.012, the Grand Exalted Ruler, by written Executive Order specifying the grounds, may suspend any member from membership for violating an existing Executive Order, or may expel the member for a willful violation of an existing Executive Order. The order for suspension or expulsion may be appealed to the Grand Forum within 30 days of its receipt.

An Executive Order to an officer or member is to be served personally or by certified mail return receipt, except that an order issued under §9.010 may also be served by regular mail supported by a certificate of mailing.

**2. Fair Process**

GLS §9.005 provides that an Officer or Member subject to an Executive order shall receive 15 days written notice of the charges to be levied, which charges shall be contained within a proposed Executive Order. The Member may object to the issuance of the proposed Executive Order by filing a written response with the Grand Secretary setting forth in detail good cause why the proposed Executive Order should not be issued.

Upon receipt of a written objection to a proposed Executive Order, a review shall be conducted by the Grand Exalted Ruler, or his designee, of the facts and information set forth in the written objection, and thereafter the proposed Executive Order shall either be withdrawn, issued without changes, or issued with modification.

In the event a written objection is not received, such proposed Executive Order shall become final on its effective date. Refer to Grand Lodge Statute 9.005 for more details.

### **3. Application of Statute**

Conduct injurious to the Order need not be connected with an official function of the Lodge or Order, but may occur entirely independent of an official Elks function. [GF 539].

The issuance of an Executive Order is not precluded because there has been a prior Local Forum trial of the same member for the same conduct. It makes no difference whether the accused was convicted or acquitted by the Local Forum. [GF 1134, 729, 714]. The authority vested in the Grand Exalted Ruler to issue an Executive Order, and the authority vested in the Local Forum, are separate and distinct from each other. Action by either authority does not constitute a bar prohibiting action by the other. [GF 1134, 898]. Also the fact that the Lodge may remove an officer under §12.130 or §12.141 does not preclude the same action by the Grand Exalted Ruler. [GF 1105, 1067].

It is not a defense to allegations of misconduct or neglect that current or officers in the same or other Lodges in the Order are guilty of the same transgressions. Each officer, when entrusted with the duties of office, is charged with responsibilities of the office, and will be judged individually when allegations of misconduct or neglect of duties are involved. [GF 1119, 1088, 1071, 1067, 955]. Nor does reliance on the erroneous advice of other persons provide a defense for neglect of duties. [GF 955].

But the Grand Forum has stated that equal protection of law is implicit in GLS §9.010 and §9.011. Where there are multiple members who are equally responsible for the conduct in question, and who have acted together, it is not proper to place the sole blame on only one of those members. [GF 1065, 654].

Neither good intentions nor ignorance of the Laws of the Order will excuse improper performance of the duties of office. [GF 990B, 779].

However, the Grand Forum generally requires that the conduct of the officer must have been “willful” to sustain an Executive Order of removal. Willful behavior has been defined as “the intentional violation of a known duty; willful acts occur where one intends a result, which actually comes to pass. It is intentional, it is not accidental, and is not involuntary.” [GF 1066. Accord, GF 1217, 990-A, 817].

Where the evidence does not show willful conduct (*e.g.*, only shows a non-willful error in judgment, mistake, or unintentional misunderstanding on the part of an officer), it is insufficient to support a finding of contumacy or neglect of duties justifying removal from office where there is no showing of conduct injurious to the Order. [GF 1217, 1199, 1116, 1074, 990A, 865].

There is also provision in §9.070(g) that a willful violation of §16.050 (requiring a Grand Lodge permit for specified financial transactions) by any member of a Lodge is an offense against the Laws of the Order and shall be grounds for immediate removal by the Grand Exalted Ruler from any office or committee.

## **B. APPEAL TO GRAND FORUM.**

### **1. Procedure for appeal**

§9.010 and §9.011 say that, “Within ten (10) days of its receipt the Order may be appealed to the Grand Forum by filing a notice of appeal with the Grand Secretary.” A copy of the notice of appeal must also be sent to the Grand Exalted Ruler.

If the notice of appeal is not filed within ten days after receipt of the Executive Order, then the appeal will be dismissed for lack of jurisdiction in the Grand Forum. [See GF 1203, 1099, 833.]

The ten days period to file an appeal is counted beginning with the next day after receipt by the suspended member of the Executive Order. [GFR 1.7]. The notice of appeal is timely if mailed on or before the due date (with adequate proof of such mailing). [GF 1227].

GLS §9.012 allows thirty days after receipt for appeal of an Executive Order suspending or expelling a member for violation of a prior Executive Order

The form of notice of appeal from an Executive Order is set forth in Exhibit “M” to the Forum Rules in Statutes Annotated, and must be accompanied by the Information Sheet set forth in Exhibit “O”. (*See Appendix A.*)

A notice of appeal must be accompanied by \$1,000 deposit for costs of recording and transcribing the testimony at trial. [§7.070; GFR 4.4]. The appeal may be dismissed if the appellant fails to pay the required deposit for costs after notice that the deposit must be paid. [GF 1249, 794]. Upon conclusion of the case, the full costs will be assessed against the non-prevailing party, which may result in an additional amount to be paid if that is the removed officer. [§7.070; GF 779, 777]. If the removed officer does not pay the balance of the costs assessed, the Grand Forum may order that the officer’s membership in the Order be suspended until the amount is paid. [GF 1201].

### **2. Trial of appeal**

The trial of an appeal from an Executive Order will be held before a single Justice of the Grand Forum who is designated by the Chief Justice. [§7.030]. However, the decision of the appeal will be made by the Grand Forum en banc based on the transcribed testimony at the trial. [§7.070; GFR 4.1.1]. The removed officer is entitled to a de novo trial. [§7.020(b)(1); GF 884, 654].

Motions to dismiss or make more specific shall be filed within fifteen days after the filing of the notice of appeal. [§7.040]. (*See GFR 1.2.0 and 1.2.1 regarding procedures for motions.*)

After ruling on motions (unless dispositive), the Grand Justice is to set a trial date within not more than ninety days. [§7.050].

The order of proceeding for the trial of an appeal from an Executive Order is set forth in §7.070.

The trial procedures on appeal of an Executive Order are generally the same as applicable for a Local Forum proceeding. [§7.080]. Therefore, the discussion above in Part III (*especially sections L through T*) should be referred to for appeal of an Executive Order. Grand Forum Rules allow for issuance of subpoenas for witnesses and documents [GFR 4.9], and for taking testimony by electronic means (telephonic or visual) at the discretion of the presiding Grand Justice [GFR 4.8].

The Grand Exalted Ruler, by his/her representative, must present evidence in support of the Executive Order, and the appealing member is entitled to present evidence on his/her behalf.

The appealing member is entitled to rebut that evidence, and present any other desired evidence. The appealing member may be represented by counsel, who must be a member of the Order unless otherwise ordered by the Chief Justice. [§7.070].

The “four corners” of the Executive Order establish the basis for the relevance of evidence offered in a trial. The Grand Forum will not accept evidence for a charge for which was not listed as a factual basis in the Executive Order. [GF 1129].

Counsel for the Grand Exalted Ruler is entitled to call the appealing member as a witness since this is in the nature of a civil case. [GF 901].

Letters of non-appearing witnesses are not admissible in evidence because it would violate the constitutional requirement of confrontation and cross-examination. [GF 663].

When a party fails to call a witness whom it would be natural under the circumstances to call in support of the case, the “missing witness” presumption allows the inference that the testimony, if produced, would be unfavorable to that party. [GF 1199].

The case cannot be decided based upon the record of any prior Local Forum proceeding. But instead of having a trial, the parties by agreement can submit the case on a written stipulation of facts. [GF 1084]. Also, the Grand Forum can decide the case by summary judgment without trial *de novo* where when there is no genuine issue as to any material fact, and the facts show a party is entitled to judgment as a matter of law. [GFR 1.2.0; GF 1073, 1070]. (*See Part XI(D) regarding procedure for summary judgment.*)

### **3. Standards of review**

The manner in which the Grand Exalted Ruler exercises discretionary authority is subject to review by the Grand Forum. [GF 665, 660]

It is the duty of the Grand Forum on appeal from an Executive Order to weigh the evidence at trial to determine whether the Executive Order can be sustained. [GF 1134, 1119, 1113, 1105, 1088].

The Grand Exalted Ruler has the burden to present evidence sufficient to show a factual basis for the action taken in the Executive Order. [GF 1199,

1129]. The standard of proof to be applied is “clear and convincing” evidence to establish one or more material allegations. The evidence must be sufficient to persuade the trier of fact it is highly probable that the matter asserted is true. This is a higher burden than “preponderance of the evidence,” but less than “beyond a reasonable doubt.” [GF 1230].

If no evidence is offered in support of an allegation, the allegation will not be considered by the Grand Forum in determining the validity of the Executive Order. [GF 1129].

The extent of authority of the Grand Forum on appeal from an order of the Grand Exalted Ruler removing a Lodge Officer is to determine whether the Order was issued in accordance with the Law, and whether or not there was an abuse of discretion (by acting arbitrarily or capriciously). [GF 1134, 1113, 1105, 1088].

An Executive Order of the Grand Exalted Ruler will be sustained on appeal where one or more of the grounds stated in the Executive Order are proven (even if some of the other allegations are not proven). [GF 1223, 1173, 1129, 1119, 1107, 1102, 1074].

An Executive Order is not issued in accordance with the Law unless it contains sufficient reasonable specifications both of the statutory violations alleged and the bases of the Order. [GF 1129, 669, 665, 663, 619]. Mere recital of statutory reasons is not sufficient. [GF 1252, 710]. An Executive Order that does not set forth adequate and specific grounds is not issued in accordance with law. [GF 710, 619]. An Executive Order saying only it was issued for “conduct injurious to his Lodge” is insufficient specification of grounds and is not in accordance with Law and constitutional due process requirements embedded in our Laws. [GF 619].

But insufficiency of specifications in an Executive Order of removal will not be considered where it is raised for the first time at trial and the appealing member did not timely file a motion to dismiss or make more specific under §7.040. [GF 1134].

When the evidence shows that the Executive Order was issued in accordance with law, and the Grand Exalted Ruler did not act arbitrarily or capriciously, the order of removal must be sustained. [GF 1209, 1207, 1201, 1134, 1129, 1119].

In July 2013, the Grand Forum, reversing previous policy, ruled that penalties imposed by an Executive Order which are materially disproportionate to the severity of the offense are deemed to be arbitrary and capricious. In such case, the Grand Forum may reduce the penalties. [GF 1269].

But an Executive Order will not be sustained in the absence of factual proof supporting the exercise of discretionary authority. [GF 1252, 1227, 1199, 1116, 990A, 865, 660, 654].

Where an Executive Order is not sustained, the Grand Forum will restore the suspended member to all rights and privileges of membership in the Order, including the right to hold office. [GF 1217, 1199, 1116]. In some (but not all) cases, the Grand Forum also orders the officer restored to the office from which the member was removed. [GF 1225, 654].

## \* PART IX \*

### EXECUTIVE ORDERS AGAINST LODGES

GLS §9.130 defines offenses by a Lodge. GLS §9.160 specifies penalties which may be imposed upon a Lodge. Those penalties include: reprimand or censure; fines; probation under specified conditions; or suspension or revocation of the Lodge charter. The Grand Exalted Ruler has authority to order those penalties, except that for suspension or revocation of a Lodge charter the consent of a majority of the Grand Trustees is also required. If a Lodge charter is suspended or revoked, §9.170 provides that, upon the final adjudication by the Courts of the Order, the Grand Exalted Ruler may appoint trustees to take over the Lodge property.

GLS § 9.005 provides that a Lodge subject to an Executive order shall receive 15 days written notice of the charges to be levied, which charges shall be contained within a proposed Executive Order. The Lodge may object to the issuance of the proposed Executive Order by filing a written response with the Grand Secretary setting forth in detail good cause why the proposed Executive Order should not be issued.

Upon receipt of a written objection to a proposed Executive Order, a review shall be conducted by the Grand Exalted Ruler, or his designee, of the facts and information set forth in the written objection, and thereafter the proposed Executive Order shall either be withdrawn, issued without changes, or issued with modification.

In the event a written objection is not received, such proposed Executive Order shall become final on its effective date. Refer to Grand Lodge Statute 9.005 for more details.

An Executive Order for probation, suspension, or revocation becomes effective upon being served upon the Exalted Ruler or any other officer of the Lodge. [GLS §9.160].

The timely filing of request for appeal stays execution of any portion of the Executive Order that relates to the appointment of trustees, except as otherwise ordered by the Grand Forum upon a showing of necessity of immediate execution of the Executive Order.

§9.160 provides that, "The Order may be appealed to the Grand Forum by a majority of the Officers of the Lodge filing a written request therefore with the Grand Secretary within ten days after the service of the Executive Order." The form of notice of appeal is set forth in Exhibit "M" to the Forum Rules in Statutes Annotated, and must be accompanied by the Information Sheet set forth in Exhibit "O". (*See Appendix A.*) A copy of the notice of appeal must also be sent to the Grand Exalted Ruler.

The notice of appeal must be accompanied by a \$1,000 deposit for costs of transcription of the testimony. [§7.070; GF 1099]. Upon conclusion of the case, the full costs will be assessed against the non-prevailing party, which may result in an additional amount to be paid if that is the appellant. [§7.070; GF 779, 777, 765].

If a notice of appeal is not timely filed within the ten days allowed, the appeal will be dismissed. [GF 1099, 833]. The appeal may also be dismissed if the appellant fails to pay the required deposit for costs after receiving notice that the deposit must be paid. [GF 794]. (*See Part VIII(B)(1) above as to time of filing.*)

The notice of appeal must be signed by a majority of the Lodge officers, which includes both elected and appointed officers (a minimum of thirteen) designated in Constitution Art. VII, Sec. 2. If the notice of appeal is not signed by a majority of the officers, “the Grand Forum has no jurisdiction over said matter except to dismiss the same” [GF 650], and the appeal will be dismissed by the Grand Forum [GF 1247, 1208, 1099, 1010, 881, 794, 752]. A recital that the appeal was approved by a majority of the officers is not effective to comply with the signature requirement; rather the actual signatures are required. [GF 1160]. Nor can a notice of appeal be amended to supply officers’ signatures after the ten days time period for appeal has expired. [GF 1160].

The notice of appeal by a Lodge is invalid when executed by officers who have not been properly installed as shown in Lodge minutes or records. [GF 1063].

When a proper appeal is made, the Grand Forum is required to consider the matter de novo upon the merits. [GLS §7.020(b)(1)]; [GF 1509, 884, 654]. The procedures that apply for an appeal by a Lodge are the same as for appeal of an Executive Order removing an officer, as described in Part VIII above.

On appeal, the Grand Forum will examine the facts to see if they support the Grand Exalted Ruler in the exercise of discretionary power to issue the Executive Order. [GF 1085].

The extent of the authority of the Grand Forum on appeal from an Executive Order against a Lodge is (a) to determine whether the Order was issued in accordance with the Law, and (b) whether or not there was an abuse of discretion. If the Executive Order has not been issued arbitrarily or capriciously, the Executive Order must be sustained. [GF 1509, 1085, 887, 881, 765].

It is not a defense to an Executive Order against a Lodge that other Lodges of the Order may have engaged in the same conduct or may fall under the same circumstances. [GF 765].

An Executive Order against a Lodge will be sustained on appeal where one or more of the allegations are proven, even if other allegations are not proven. [GF 1509, 1119, 1085]. The burden of proof is upon the Grand Exalted Ruler to prove an allegation contained in the Executive Order by a preponderance of the evidence. [GLS §9.210]. “Preponderance of the evidence” means that it is more likely than not that the allegation is true. [GF 1509].

The powers of the Grand Exalted Ruler under §9.160 are broad, and include implied powers that are necessary or incidental to make the express powers effective; thus, the Grand Exalted Ruler may properly appoint a special committee to have authority for the operation and management of a Lodge placed on probation. [GF 887].

A Lodge may appeal the appointment of a Special Representative. To appeal, a majority of the Officers of the Lodge must file a written request with the Grand Secretary within ten days after service of the Executive Order. [GLS §4.510].



## \* PART X \*

### ORIGINAL ACTIONS BEFORE GRAND FORUM

GLS §7.020(a), subsections (1) and (2), grant the Grand Forum “original jurisdiction” over “Complaints against a Lodge by another Lodge,” or “Complaints against a Lodge by a Member of the Order.”

An original complaint against a Lodge is to be filed with the Grand Secretary, with a copy to be served upon the Lodge against which the complaint is filed. [GLS §7.030]; [GFR 3:2]. The complaint must specify in concise terms with reasonable certainty the facts and circumstances, with the date, place, and particulars of the alleged offense. [GFR 3.2.1].

The form for an original complaint is set forth in Exhibit “N” to the Forum Rules in the Statutes Annotated, and must be accompanied by the Information Sheet set forth in Exhibit “O.” (*See Appendix A.*)

An original complaint will require a trial before a single Justice of the Grand Forum who is designated by the Chief Justice. The procedures for the trial are set forth in GLS §7.060. Any motions made by the parties must be filed within fifteen days after service of the complaint. [§7.030]. (*See GFR 1.2.1 regarding procedures for motions.*)

The Lodge or Member who files the Complaint will be responsible to obtain and pay the cost of a court reporter to record the testimony at the trial. [GFR 3.6]. The Grand Forum Justice will not schedule the case for trial until proof of compliance with that requirement is provided.

Decision of the case is made initially by the designated Grand Justice who presides at the trial. That decision is subject to rehearing by the entire Grand Forum on motion of the non-prevailing party made within thirty days after the decision was rendered. If a motion for rehearing is made, the testimony must be transcribed, with the cost of transcription to be paid by the party requesting rehearing. The procedures to be followed by the parties in the rehearing are set forth in GLS §7.060 and GFR 3.8.

Summary judgment can be granted by the Grand Forum without trial where there is no genuine issue as to any material fact and a party is entitled to judgment as matter of law. [GFR 1.2.0; GF 1200, 1194.] (*See Part XI(D) regarding procedures for summary judgment.*)

The offenses that can be committed by a Lodge are set forth in GLS §9.130, paragraphs (a) through (k). If the complaint does not allege violation of one of those provisions of §9.130 [GF 929, 908], or is not sufficiently specific as to such charges [GF 1059], the complainant has not stated a legal cause of action against a Lodge, and the Grand Forum is without jurisdiction to proceed and will dismiss the complaint.

The Grand Forum does not have original jurisdiction to decide questions arising out of alleged irregularities in nomination or election of Lodge officers, and under GLS §3.100 such questions must be submitted to the Grand Exalted Ruler. [GF 576]. Also, the Grand Forum does not have original jurisdiction over (a) actions to contest Club managing body suspensions [GF 1005E], or (b) an action by a member to recover payment for breach of contract for services provided to a Lodge [GF 1184].

The Grand Forum does not have original jurisdiction in a petition of a member against the Officers and Committees of a Lodge, but which is not against the Lodge itself. [GF 1030, 1019, 1005E]. Rather, such charges must be made to the Local Forum of the Lodge. [GF 1256, 521].

A Lodge violates §9.130(i) by refusing without good cause to select and assemble a Local Forum to consider a complaint filed by a member, and the Grand Forum can issue a mandate to compel the Lodge to proceed with the hearing and determination of the charges in the complaint. [GF 1196, 1194, 1190B, 1155, 298].

The provisions of GLS §7.020(a) are not often used in practice, and on those occasions where such complaints have been filed, they have usually been unsuccessful.

The problem that the Grand Forum has perceived is that such complaints require an investigation which the Grand Forum is not empowered to conduct; the penalties that can be imposed upon a Lodge are almost exclusively to be imposed by the Grand Exalted Ruler; the charges are better addressed to the Grand Exalted Ruler as more effective; and Grand Forum consideration would not be in the best interest of the Order. Therefore, the Grand Forum has generally declined jurisdiction over such original actions against Lodges. [GF 951, 929, 928. See also GF 768 (Grand Forum has no authority to order that a Lodge be placed on probation)].

Under GLS §7.020(a)(3) and §9.080, the Grand Forum also has original jurisdiction over any complaint brought against an unaffiliated Elk whose Lodge of prior affiliation is no longer in existence. [See GF 852].

## \* PART XI \*

### OTHER GRAND FORUM PROCEDURES

In this Part XI, there will be discussed particular matters of procedures before the Grand Forum which are prescribed by Statutes or by Grand Forum Rules.

#### **A. STAY OF PENALTY.**

GLS §7.100 allows an appellant to request the Chief Justice of the Grand Forum to stay execution of a penalty assessed by a Local Forum, or the provisions of an Executive Order.

Under GFR 2.1.9(4), a request for stay can be made also in other cases, such as appeals from Lodge actions against officers or members, or from managing body suspension orders alleging denial of due process. [GF 1042, 1002].

The request should be forwarded in writing or by email to the Chief Justice with a copy sent to the Grand Secretary. For a Local Forum (or other Lodge) penalty, a copy of the request also must be served upon the Lodge Secretary. For an Executive Order penalty, a copy must be served upon the Grand Exalted Ruler. The party served with the request has ten days after receipt of the request to oppose the stay. The Chief Justice within seven days thereafter shall grant or deny the request. [§7.100.].

An appellant who requests a stay should provide a statement of the specific reasons supporting the request.

#### **B. RECORD BEFORE GRAND FORUM.**

In any case before the Grand Forum, that body must arrive at its decision based on the information properly provided to it. That information is known as the “record” before the Grand Forum. [GFR 2.8]. “The Grand Forum cannot pass upon an appeal without being furnished with a record of the Local Forum proceedings.” [GF 760].

What constitutes the record can vary according to the type of proceeding before the Grand Forum, but invariably will consist only of documents generated in the trial or other proceedings in the Local Lodge, and the briefs of the parties properly filed. (*See Part XI(C) below*).

Upon receiving a copy of notice of appeal to the Grand Forum, the Lodge Secretary, within thirty days thereafter, must transmit to the Grand Secretary the complete record of the proceedings in the Lodge, including pleadings, minutes, orders, transcript of any testimony taken, exhibits, and other relevant papers in the Lodge records. [GLS §8.240; GFR 2.8]. The Lodge Secretary must certify to the accuracy of the submission, and must notify all parties in writing of the date on which the record of proceedings was sent to the Grand Secretary. [GFR 2.8].

If the Lodge Secretary fails to provide the necessary documents and information, the Grand Forum may rely wholly upon information and documents provided by the appealing party. [GF 1318, 1193, 1157].

The record before the Grand Forum does not include any other communications, unsolicited letters, or additional testimony or documents that are not part of the original record on appeal. [GF 1177, 1137, 1132, 1121, 1097, 892]. Any such submissions are inappropriate and will be disregarded by the Grand Forum. (However, a party can move the Grand Forum to re-open the record for taking additional evidence (see §7.110)).

### **C. BRIEFS TO GRAND FORUM.**

In an appeal from a Local Forum conviction, or from other Lodge action, each party is entitled to file a brief to the Grand Forum. [§8.250]. The proper form of brief is set forth in GFR 2.1.3 to 2.1.6. The appellant's brief is to be filed within fourteen days after the filing with the Grand Secretary by the Lodge Secretary of the record of the proceedings in the Lodge. The respondent may serve an answering brief within fourteen days after receipt of the appellant's brief. Finally, the appellant may serve a reply brief within ten days after service of the respondent's brief. The schedule for briefs, however, may be modified by the Grand Forum in a particular case. [GFR 2.1.7(4)].

Copies of all briefs are to be sent to the Grand Secretary and to the opposing party.

For all briefs (or any other documents) filed with Grand Secretary, the submission must be accompanied by a certificate that the submission has been sent to the opposing party. [GFR 1.1.5].

If either one or both of the parties fail to file briefs, the Grand Forum may proceed to consider the case on the record received from the Lodge Secretary and any brief received from a party. [GF 1115, 1044, 1038, 1009].

A party may make a request for oral argument, by filing a request with the Grand Secretary, which it will be within the discretion of the Grand Forum whether or not to grant. [GFR 2.2.1(1)]. Grand Forum cases are almost always decided without oral argument from the parties.

### **D. SUMMARY JUDGMENT.**

Summary judgment is a method generally allowed in court cases to permit a judge to determine and decide a case before trial where there is no genuine issue as to any material fact and a party is entitled to judgment as matter of law. In a case where summary judgment is entered, the need for a full trial with witnesses and testimony is eliminated.

Grand Forum Rules allow for summary judgment. This procedure is particularly applicable in cases involving appeals from an Executive Order entered against a Lodge officer or member (*see Part VIII*) or against a Lodge (*see Part IX*); an original action against a Lodge (*see Part X*); or a decision of a Local Forum appealed by the Grand Exalted Ruler (*see Part IV, subsection D*).

Summary judgment is not generally appropriate in cases involving the appellate jurisdiction of the Grand Forum (*i.e.*, appeals from a Local Forum,

Lodge removal of an officer, suspension of member for indebtedness, or suspension of club privileges). Those appeals are usually decided based upon the record and the briefs of the parties.

Grand Forum Rule 1.2.0 sets forth the procedures and bases for summary judgment. A party may file a written motion for summary judgment setting forth the grounds upon which it is made and the nature of the relief sought. There must also be filed a memorandum showing there is no genuine issue as to any material fact, and that the moving party is entitled to judgment as a matter of law. The opposing party may file an opposition to the motion. If the motion or response thereto relies on facts not of record or not subject of judicial notice, it shall be supported by affidavit made on personal knowledge setting forth any facts which are admissible in evidence to which the affiant is competent to testify, and which may have annexed thereto certified copies of papers or parts thereof referred to therein. Motions shall be deemed uncontested unless responsive papers are timely filed and served stating with particularity the basis of the opposition to the relief sought. [GFR 1.2.1].

The motion is submitted and decided by the Grand Forum without oral argument, unless otherwise ordered by the Grand Forum. If the documents of record, discovery materials, and affidavits show there is no genuine issue as to any material fact and that a party is entitled to judgment as matter of law, the Grand Forum can enter summary judgment in favor of that party.

#### **E. REQUEST FOR REHEARING OF GRAND FORUM DECISION.**

After the Grand Forum has issued its decision in a case before it, a party may apply for rehearing and recall of the decision by filing and serving a motion for such purpose, stating the ground relied upon and supported by a brief. The motion must be filed with the Grand Secretary within thirty days after entry of the decision, with a copy of the motion to be sent to the opposing party. The moving party must certify in its motion that it is submitted in good faith and not for purposes of delay. [GFR 2.2.1(3)].

The opposing party may file an answering brief within ten days of service of the motion, and the moving party may file a reply brief within ten days thereafter. The Grand Forum will then determine whether or not to grant rehearing.

A motion for rehearing will be denied: (a) if not filed within thirty days after the decision was entered, or (b) if no certificate of good faith is included in the filing. [GF 1065, 954].

#### **F. INTERLOCUTORY APPEALS; CERTIFICATION.**

An interlocutory appeal is taken from an intermediate step in a Lodge proceeding, rather than from a final verdict or order. An example would be denial by a Presiding Justice of a motion to disqualify the Presiding Justice, or of a motion by the accused to dismiss the complaint; or the Presiding Justice granting a motion to dismiss one count of a complaint. If a party desires to appeal from that ruling, that would be an interlocutory appeal. [See GF 1186, 1029, and 1474 where Grand Forum reversed Presiding Justice rulings on interlocutory appeal].

The Grand Forum Rules provide a means for interlocutory appeals but only with leave of the Grand Forum. GFR 2.1(c) states that an interlocutory appeal can be entertained when necessary to prevent irreparable injury, and on certification by the Grand Forum to the Local Forum. A request to the Grand Forum is to be made by a motion for leave to appeal from interlocutory order within ten days after the entry of the order from which appeal is taken, to be filed with the Grand Secretary with a copy sent to the opposing party and the Presiding Justice. [GFR 2.11 and 2.12]. The motion is to state the grounds upon which it is made and the nature of the relief sought. The adverse party to the motion shall have fifteen days after service of the motion to file an answer stating with particularity the basis of the opposition to the relief sought. [GFR 1.2.1].

*Certification* may be granted in “an action or proceeding pending in any Local Forum, Local Lodge or Department of the Order.” [GFR 5.2].

Certification can be granted by the Grand Forum on its own or upon motion of an interested party. The grounds and procedures for certification are set forth in GFR 5.1 to 5.6.

Certification will be granted only if the request presents a question or issue of general importance to the Order which has not been but should be settled by the Grand Forum; a conflict with any other decision of the Grand Forum; calls for the exercise of Grand Forum supervision; or the interest of justice requires. [GFR 5.3].

If certification is granted, the matter proceeds to hearing or appeal procedures in the same manner as for other Grand Forum cases.

The Grand Forum has declined to grant certification where the applicant had another available remedy [GF 1210, 942], or where it was considered that the issue should best be left to administrative consideration and determination [GF 1238]. But the Grand Forum has held that by certification it has authority to review and reverse denial by the Committee on Judiciary of a requested Lodge By-Laws amendment. [GF 1292]. The Grand Forum has also held by certification that it has authority to hear an unacted upon motion of accused to dismiss. [GF 1463].

## **G. PARDONS FOR EXPELLED OR SUSPENDED MEMBERS.**

A member who has been expelled from membership in the Order (by decision of a Local Forum or the Grand Forum, or by order of the Grand Exalted Ruler under §9.012) can only be restored to membership by pardon of the Grand Exalted Ruler. [§10.030].

Application for pardon must be made to the Board of Pardon Commissioners which has the responsibility to hear applications for pardons and make recommendations to the Grand Exalted Ruler. [Const. Art. VI, Sec.7; §10.020]. The Chief Justice of the Grand Forum is Chairman of the Board of Pardon Commissioners.

Chapter 10 of Statutes Annotated sets forth the procedures for an expelled member to apply for a pardon. The necessary steps are summarized as follows:

1. The expelled member must give to the Lodge Secretary written notice of intention to request a pardon at least thirty days before filing application, with copy to be sent to the Chairman of the Board of Pardon Commissioners.
2. The expelled member must fully complete the prescribed form of application for pardon and send to the Lodge Secretary with a copy sent to the Chairman of the Board of Pardon Commissioners. The prescribed form of application is available from the Chairman of the Board of Pardon Commissioners, and that form should be obtained and used by the applicant.
3. After it is received by the Lodge Secretary, the request for pardon is to be reported at the next regular Lodge meeting. The Exalted Ruler must then order a hearing to be held on the request for pardon at a regular Lodge meeting within the following 30 days.
4. The Lodge must send written notice of the hearing to all Lodge members not less than 10 days before the scheduled hearing.
5. At the Lodge meeting for the hearing, the request for pardon is to be considered. The expelled member can provide a written statement of the reasons he/she should be pardoned which should be put before the Lodge by the presiding officer. Members at the meeting may speak in support of, or in opposition to, the proposed request for pardon.
6. The request for pardon should be put to vote of the members present. The members may vote to support the request for pardon, or to oppose it. The number of votes for and against should be recorded.
7. The Lodge must send to the Chairman of the Board of Pardon Commissioners a report of the action taken by the Lodge upon the pardon application. A form for that report can be obtained from the Chairman of the Board of Pardon Commissioners.

The expelled member must follow all the steps outlined above, or else an application for pardon will not be considered to be complete and cannot be accepted. A report of action voted by the Lodge is mandatory, and without it the application will be dismissed.

By GLS §10.050, the action voted by the Lodge shall not be binding on the Board of Pardon Commissioners. But, as stated by the Committee on Judiciary “The recommendation of the Local Lodge is in no sense binding on the Board of Pardon Commissioners, but such a recommendation may carry considerable weight, and it is to be desired.” [COJ Op. 7 to Sec. 166, Stats. 1981].

The applicant and the Lodge will be notified of the time and place for the Board of Pardon Commissioners’ hearing on the application for pardon (which normally will be at the next Grand Lodge Session), and both the applicant and a lodge representative shall be entitled to appear before the Board of Pardon Commissioners and be heard in person. [§10.060]. It will be up to the applicant to present facts and circumstances supporting the application.

It is discretionary with the Board of Pardon Commissioners whether or not to recommend pardon, and with the Grand Exalted Ruler whether or not to grant pardon. There is no provision for appeal from any decision on application for pardon.

“The effect of a pardon being granted is that said member automatically and without further action, excepting only payment of dues, becomes again a member in good standing in his Lodge.” [COJ Op. 2 to Sec. 166, Stats. 1981].

If pardon is denied, another application will not be considered until the expiration of two years after denial of the pardon. [§10.070].

GLS §10.040 also allows a member to make application for “commutation,” which in legal terms is defined as the change of a punishment from a greater to a lesser one – for example, to reduce an expulsion to a suspension, or to shorten the term of a suspension. To apply for a commutation, a member must follow the same procedures described above for a pardon.

The Board of Pardon Commissioners cannot entertain an application for pardon or commutation for a removal from or ineligibility to hold a Lodge office, or a suspension from club privileges. The Board can only entertain an application of a member who has been expelled or suspended from membership in the Order. [Ruling of Pardon Board, 2012].



# APPENDICES

- A. Forms for Forum Proceedings
- B. Local Forum Process Guidelines
- C. List of Grand Forum Decisions (cited in Guide)
- D. Digest of selected cases (cited/uncited in Guide)

## FORMS FOR FORUM PROCEEDINGS

The following are reproductions of the forms set forth in the Exhibits to the Forum Rules in Statutes Annotated. (The parenthetical references in the list below are to the main statutory provisions to which the Form relates.) Explanatory notes have been added to the Forms.

- A. NOTICE OF INTENT TO FILE COMPLAINT [GLS §8.015]
- B. WRITTEN MEDIATION STATEMENT [GLS §8.015]
- C. COMPLAINT IN LOCAL FORUM [GLS §8.020, 8.030]
- D. MOTION TO MAKE MORE SPECIFIC [GLS §8.060, 8.070]
- E. MOTION TO DISMISS [GLS §8.060, 8.070]
- F-1. OATHS FOR WITNESSES [GLS §8.110]
- F-2. OATH FOR LOCAL FORUM MEMBERS [LFR 4.6.3]
- G. NOTICE OF APPEAL FROM LOCAL FORUM DECISION [GLS §8.220, 8.230]
- H. NOTICE OF APPEAL FROM LODGE ACTION [GLS §12.140, 12.141; 14.170, 9.090]
- I. NOTICE TO APPEAR BEFORE THE HOUSE COMMITTEE AT A SUSPENSION HEARING PURSUANT TO GLS 16.041
- J. NOTICE OF SUSPENSION OF YOUR CLUB PRIVILEGES PURSUANT TO GLS 16.041
- K-1. NOTICE OF APPEAL OF CLUB SUSPENSION TO THE LODGE [GLS §16.041]
- K-2. NOTICE OF APPEAL OF CLUB SUSPENSION TO THE GRAND FORUM [Grand Forum Rule 2.2.2]
- L. NOTICE OF PROPOSED EXPULSION FROM MEMBERSHIP IN THE BENEVOLENT and PROTECTIVE ORDER OF ELKS PURSUANT TO GLS 9.090
- M. NOTICE OF APPEAL FROM EXECUTIVE ORDER [GLS §9.010, 9.011, 9.012, 9.160]
- N. COMPLAINT IN ORIGINAL ACTION AGAINST LODGE [GLS §7.020(a); GFR Part III]
- O. INFORMATION SHEET FOR APPEAL TO GRAND FORUM

**EXHIBIT "A"****FORM OF NOTICE OF INTENT TO FILE COMPLAINT**

\_\_\_\_\_ LODGE NO. \_\_\_\_\_  
 BENEVOLENT AND PROTECTIVE ORDER OF ELKS U.S.A.

_____	Accuser	NOTICE OF INTENT TO
	vs.	FILE COMPLAINT
_____	Accused	Pursuant to Sec. 8.015, Laws of the Order

\_\_\_\_\_, Accuser, a Member in good standing in  
 \_\_\_\_\_ Lodge No. \_\_\_\_, B.P.O. Elks, under the Obligation  
 of the Order, hereby serves upon the Secretary and gives \_\_\_\_\_,  
 a Member of \_\_\_\_\_ Lodge No. \_\_\_\_, B.P.O. Elks, notice  
 of his/her intent to prefer charges by filing a Complaint against the Accused  
 charging him/her with the offense(s) of

*[here, set forth the text and section of the Statute allegedly  
 violated, as for example: "Violation of his Obligation, Sec.  
 9.070(h), Laws of the Order ... in that he, the Accused did,  
 on or about ..." (here specify the date, place and the specific  
 facts constituting the offense to be charged).]*

DATED: \_\_\_\_\_

(Signed) \_\_\_\_\_  
 Accuser

\_\_\_\_\_, under the Obligation of the Order, says  
 that he/she is the above named Accuser, that he/she has read the foregoing  
 Notice of Intent to File Complaint, knows the contents thereof, and believes the  
 same to be true.

(Signed) \_\_\_\_\_  
 Accuser

**Note:** The Notice of Intent is to be filed (*three copies*) by the Accuser  
 with the Lodge Secretary.

EXHIBIT “B”

FORM OF WRITTEN MEDIATION STATEMENT  
REQUIRED BY SEC. 8.015(e.),  
LAWS OF THE ORDER

\_\_\_\_\_ LODGE NO. \_\_\_\_\_  
BENEVOLENT AND PROTECTIVE ORDER OF ELKS U.S.A.

_____	Accuser	FORM OF MEDIATION STATEMENT Pursuant to Sec. 8.015(e.), Laws of the Order
	vs.	
_____	Accused	

\_\_\_\_\_, the Mediator, a Member in good standing in \_\_\_\_\_ Lodge No. \_\_\_\_\_, B.P.O. Elks, under the reporting requirements of Sec. 8.015 of the Laws of the Order, hereby reports as follows:

- 1. Accuser’s name and address:
- 2. Accused’s name and address:
- 3. Date Notice of Intent filed with Lodge Secretary:
- 4. Date Lodge Secretary served copy of Notice of Intent on Accused:
- 5. Date Mediator was notified of filing of Notice of Intent:
- 6. Date Mediator contacted Accused and Accuser:
- 7. Date Mediation actually held:
- 8. If Mediation continued, date continued to:
- 9. Results of mediation: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

_____	_____
Dated	Lodge Mediator
_____	_____
Accuser	Accused

**Note:** The mediation statement is to be filed by the Mediator with the Lodge Secretary.

**EXHIBIT “C”****FORM OF COMPLAINT IN LOCAL FORUM**

LOCAL FORUM OF \_\_\_\_\_ LODGE, NO. \_\_\_\_\_  
BENEVOLENT AND PROTECTIVE ORDER OF ELKS U.S.A.

\_\_\_\_\_  
Accuser  
vs. COMPLAINT  
\_\_\_\_\_  
Accused

\_\_\_\_\_, Accuser, a Member in good standing in  
\_\_\_\_\_ Lodge No. \_\_\_\_\_, B.P.O. Elks, under the  
Obligation of the Order, hereby accuses \_\_\_\_\_, a Member  
of \_\_\_\_\_ Lodge No. \_\_\_\_\_, B.P.O. Elks, with the  
offense(s) of

*[here set forth the text and section of the Statute allegedly violated,  
as for example: “Violation of his Obligation — Sec. 9.070(h),  
Laws of the Order”]*

in that the Accused did on or about

*[here specify the date, place and particulars constituting the  
offense charged]*

DATED: \_\_\_\_\_

(Signed) \_\_\_\_\_

Accuser

\_\_\_\_\_, under the Obligation of the Order, says  
that he/she is the above named Accuser, that he/she has read the foregoing  
Complaint, knows the contents thereof, and believes the same to be true. I am  
submitting to the Lodge Secretary a check or money order in the amount of  
\$250.00 as a deposit against the costs of the Lodge.

(Signed) \_\_\_\_\_

Accuser

**Note:** The complaint is to be filed (*three copies*) by the Accuser with  
the Lodge Secretary.

EXHIBIT “D”

FORM OF MOTION TO MAKE MORE SPECIFIC

LOCAL FORUM OF \_\_\_\_\_ LODGE, NO. \_\_\_\_\_  
BENEVOLENT AND PROTECTIVE ORDER OF ELKS U.S.A.

_____	Accuser	MOTION TO MAKE COMPLAINT MORE SPECIFIC BY AMENDMENT
	vs.	
_____	Accused	

\_\_\_\_\_, the Accused, moves for an order requiring the following allegations of the Complaint herein

*[here specify the allegations by reference thereto, the defects complained of, and the details desired]*

be made more definite and certain by amendment for the reason that the Complaint does not sufficiently inform the undersigned to enable me to properly defend myself.

DATED: \_\_\_\_\_

(Signed) \_\_\_\_\_  
Accused

**Note:** The motion should be filed with the Lodge Secretary with copies sent to the Presiding Justice and the Accuser

**EXHIBIT “E”****FORM OF MOTION TO DISMISS**

LOCAL FORUM OF \_\_\_\_\_ LODGE, NO. \_\_\_\_\_  
 BENEVOLENT AND PROTECTIVE ORDER OF ELKS U.S.A.

\_\_\_\_\_  
 Accuser

vs.

MOTION TO DISMISS

\_\_\_\_\_  
 Accused

\_\_\_\_\_, the Accused, moves that the Complaint be  
 Dismissed on the following grounds:

*[here set forth the specific facts that the accused says support dismissal]*

DATED: \_\_\_\_\_

(Signed)

\_\_\_\_\_  
 Accused

**Note:** The motion should be filed with the Lodge Secretary with  
 copies sent to the Presiding Justice and the Accuser

**EXHIBIT “F-1”****FORM OF OATHS FOR WITNESSES*****Oath to be administered to an Elk Member:***

“Do you solemnly promise and swear, under your Obligation as an Elk, that the testimony you are about to give is the truth and nothing but the truth?”

***Oath to be administered to a Non-Elk:***

“Do you solemnly swear that the testimony you are about to give is the truth, the whole truth and nothing but the truth, so help you God?”

***Affirmation for a Non-Elk who declines to take an oath:***

“Do you affirm that the testimony you are about to give is the truth and nothing but the truth?”

**EXHIBIT “F-2”****FORM OF OATH FOR LOCAL FORUM MEMBERS**

“Do each of you, as a designated member of this Local Forum, solemnly promise and declare, under your Obligation as an Elk, that you will truly try and determine the matter before this Local Forum and will make determination herein for the good of the Order?”



**EXHIBIT “G”****NOTICE OF APPEAL FROM DECISION  
IN LOCAL FORUM****[Important: Complete and file Information Sheet  
(Exhibit “O”) with your appeal]**\_\_\_\_\_  
Name Appellant

vs.

APPEAL FROM  
LOCAL FORUM\_\_\_\_\_  
Name Respondent

NOTICE IS GIVEN THAT \_\_\_\_\_, [Appellant-Accused] *or* [Appellant-Accuser] appeals to the Grand Forum of the Benevolent and Protective Order of Elks from the [verdict and sentence] *or* [the order dismissing the Complaint] of the Local Forum of \_\_\_\_\_ Lodge No. \_\_\_\_\_ B.P.O. Elks, in accordance with Sec. 8.220, Laws of the Order.

The Accused certifies that this Appeal is being filed with the Grand Secretary by him or her within 30 days after judgment is entered in the minutes of the Lodge, or the accuser certifies that this Appeal is being filed with the Grand Secretary within 30 days after the order to Dismiss the Complaint is reported to or entered in the minutes of the Lodge.

If applicable, I am submitting to the Lodge Secretary a certified check or money order payable to the Lodge in the amount of \$250.00 as a deposit toward the costs of transcription of the recorded testimony, and will pay any balance of those costs upon receipt of notice thereof.

\_\_\_\_\_  
Appellant

I CERTIFY that a copy of this Notice of Appeal has been served upon the Secretary of \_\_\_\_\_ Lodge No. \_\_\_\_\_ and upon the Respondent on \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Appellant

**Note:** The Respondent is the opposing party in the Local Forum. The original is to be sent to the Grand Secretary, with copies sent to the Lodge Secretary and the Respondent.

EXHIBIT “H”

NOTICE OF APPEAL FROM LODGE ACTION

[Important: Complete and file Information Sheet  
(Exhibit “O”) with your appeal]

Name

Appellant

vs.

APPEAL FROM  
LODGE ACTION

Name

Lodge No.

Name

Respondent

NOTICE IS GIVEN THAT \_\_\_\_\_, Appellant appeals to the Grand Forum of the Benevolent and Protective Order of Elks from the Lodge action shown below (select):

- ☐ (1) Removal from Office under Statutes 12.140 or 12.141; *OR*
- ☐ (2) Suspension of membership for indebtedness under Statutes 14.170.  
taken by \_\_\_\_\_ Lodge No. \_\_\_\_\_ B.P.O. Elks; *OR*
- ☐ (3) Expulsion from the Order under Statutes 9.090.

This Appeal is being filed with the Grand Secretary by the Appellant within 30 days after the effective date of the Lodge action.

\_\_\_\_\_  
Appellant

I CERTIFY that a copy of this Notice of Appeal has been served upon the Secretary of \_\_\_\_\_ Lodge No. \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Appellant

**Note:** The original is to be sent to the Grand Secretary, with copy sent to the Lodge Secretary. No deposit for costs is required.

**EXHIBIT “I”**

[Lodge letterhead]

[Date]

[Name and address of Member]

**NOTICE TO APPEAR BEFORE THE HOUSE COMMITTEE OF**  
**\_\_\_\_\_ LODGE # \_\_\_\_\_**  
**AT A SUSPENSION HEARING PURSUANT TO GLS 16.041**

**Dear (Name of Member),**

Pursuant to Grand Lodge Statute Section 16.041, the members of the house committee/Managing Body of (Lodge name) will hold a hearing on (date) at (time) at the Lodge to determine if your club privileges are to be suspended, and if so, for how long, which can be for up to one year.

The proposed suspension of your club privileges arises from an incident which occurred at the Lodge on (date) whereby you allegedly:

[Describe in detail the conduct that forms the basis for the proposed suspension.]

You are entitled to appear at the hearing to present any witnesses, facts, information, defenses or mitigating factors concerning the incident, which you want the house committee/Managing Body to be aware of before they decide whether to suspend your club privileges.

Please take notice that any suspension which may be imposed will be applicable to and enforced by all Lodges of the Order.

*Fraternally yours,*

[Name of person signing the letter;  
a contact phone number is optional]

**[Please note, the letter to the member must be served personally or sent by regular first class mail.]**

**EXHIBIT “J”**

[Lodge letterhead]

[Date]

[Name and address of Member]

**NOTICE OF SUSPENSION OF YOUR CLUB PRIVILEGES  
PURSUANT TO GLS 16.041****(Name of Member),**

PLEASE BE ADVISED THAT YOUR CLUB PRIVILEGES HAVE BEEN SUSPENDED FOR A PERIOD OF \_\_\_\_\_.

The suspension of your club privileges was decided by the house committee/Managing Body of the Lodge at the hearing held on (date) after careful consideration of all facts and information presented at the hearing.

THE SUSPENSION OF YOUR CLUB PRIVILEGES IS EFFECTIVE IMMEDIATELY AND APPLIES TO AND IS ENFORCIBLE IN ALL LODGES OF THE BENEVOLENT AND PROTECTIVE ORDER OF ELKS.

During the period of suspension, you are not permitted to attend any social functions of this or any other Elks Lodge or be present in, use or enjoy the social quarters, social parlor, lounge or bar area of this or any other Lodge of the Benevolent and Protective Order of Elks. To do so would be a violation of the suspension which may subject you to further disciplinary actions.

This is not a suspension of your membership in the Benevolent and Protective Order of Elks but rather a suspension of your “club privileges.” Therefore, during the period of suspension, you are allowed to attend Lodge meetings and be present in the Lodge for official Lodge business; however, you cannot at any time visit or be present in the social parlor, lounge or bar area of the Lodge before or after the meetings and may not attend any social functions of the Lodge.

If you disagree with this action you have the right to appeal this decision to the Lodge for consideration by the membership pursuant to G.L. Statue 16.041. If you wish to appeal, you must notify the Lodge Secretary in writing within ten (10) days of your receipt of this Notice of Suspension.

*Fraternally,*

[NOTE: This letter should be typed up on Lodge letterhead and be signed by the House Committee Chairperson, the Exalted Ruler, or Lodge Secretary. The letter to the member must be served personally or sent by regular first class mail.]

**EXHIBIT “K-1”****NOTICE OF APPEAL TO THE LODGE  
FROM CLUB SUSPENSION**

Name \_\_\_\_\_ Appellant,

vs.

**NOTICE OF APPEAL  
TO THE LODGE  
FROM CLUB SUSPENSION**

Name \_\_\_\_\_ Respondent.

NOTICE IS GIVEN THAT \_\_\_\_\_, Appellant,  
appeals to the Lodge from the suspension of his/her Club privileges in  
\_\_\_\_\_ Lodge No. \_\_\_\_\_ B.P.O. Elks.

**NOTE:** This Appeal to the Lodge may be taken by personal service or service by mail of this notice upon the Secretary of the Lodge, not later than ten (10) days after receipt of written notice of suspension. The execution of the suspension shall be automatically stayed upon service of this Notice of Appeal pending disposition of this Appeal to the Lodge. See Grand Lodge Statute §16.041.

\_\_\_\_\_  
Appellant

I CERTIFY that a copy of this Notice of Appeal has been served upon the Secretary of \_\_\_\_\_ Lodge No. \_\_\_\_\_ and upon the Respondent on \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Appellant

**EXHIBIT “K-2”**

**NOTICE OF APPEAL TO GRAND FORUM  
FROM CLUB SUSPENSION**

**[IMPORTANT: Complete and File Information Sheet  
(Exhibit “O”) with your appeal to the Grand Forum]**

\_\_\_\_\_  
Name Appellant,

vs.

NOTICE OF APPEAL  
TO GRAND FORUM  
FROM CLUB SUSPENSION

\_\_\_\_\_  
Name Respondent.

NOTICE IS GIVEN THAT \_\_\_\_\_, Appellant,  
appeals to the Grand Forum of the Benevolent and Protective Order of Elks  
from the suspension of his/her Club privileges in \_\_\_\_\_  
\_\_\_\_\_ Lodge No. \_\_\_\_\_ B.P.O. Elks in violation of his/her due process  
rights.

**NOTE:** This Appeal to the Grand Forum must be filed (a) within 30 days  
after receipt of the written notice of suspension by the supervising body;  
or (b) within 30 days after the date of the Lodge meeting to consider an  
appeal to the Lodge (whichever is applicable in the particular case). See  
Grand Forum Rule 2.2.2 (2). An appeal to the Grand Forum does not  
automatically stay the suspension order as it does in the case of an appeal  
to the Lodge. The Suspended Member may apply to the Chief Justice of  
the Grand Forum to receive a stay of the suspension during the appeal.  
See §7.100 and Grand Forum Rule 2.1.9 (4).

\_\_\_\_\_  
Appellant

I CERTIFY that a copy of this Notice of Appeal has been served upon the  
Secretary of \_\_\_\_\_ Lodge No. \_\_\_\_\_ and  
upon the Respondent on \_\_\_\_\_.

\_\_\_\_\_  
Appellant

**EXHIBIT “L”**

[Lodge letterhead]

[Date]

[Name and address of Member]

**NOTICE OF PROPOSED EXPULSION FROM MEMBERSHIP  
IN THE BENEVOLENT and PROTECTIVE ORDER OF ELKS  
PURSUANT TO GLS 9.090****Dear (Name of Member),**

It has been brought to the attention of the Lodge that you have pled guilty to or been convicted of misdemeanor involving Moral Turpitude or Felony *(Please find attached a complete copy of the criminal records and information in question.)* Grand Lodge Statute Section 9.090 specifically provides that any member who has been convicted of or pled guilty to a crime as defined by the statute, or one who has failed to disclose such conviction or plea of guilty on his application for membership, must be expelled from the Order.

THEREFORE, YOU ARE HEREBY NOTIFIED THAT YOU WILL BE EXPELLED FROM THE BENEVOLENT AND PROTECTIVE ORDER OF ELKS UNLESS YOU ARE ABLE TO DISPUTE THE CRIMINAL RECORDS IN QUESTION, BY SHOWING THAT THEY ARE UNTRUE, INACCURATE, CURRENTLY UNDER APPEAL, HAVE BEEN REVERSED ON APPEAL OR ARE OTHERWISE ERRONEOUS. YOU MUST FILE YOUR DISPUTE IN WRITING WITH THE LODGE SECRETARY WITHIN 30 DAYS OF THE DATE OF THIS NOTICE. IF YOU FAIL TO DO SO, AN ORDER WILL BE ENTERED PERMANENTLY EXPELLING YOU FROM MEMBERSHIP IN THE ORDER.

Once the Order of Expulsion is entered, you will no longer be a member, you will lose all membership rights and you will not be allowed to be present in or visit any Lodge of the Order for any purpose.

The only way you will be able to regain your membership is if you successfully appeal the expulsion to the Grand Forum or obtain a Pardon by following the procedures set forth in Chapter 10 of the Grand Lodge Statutes.

If you should have any questions, do not hesitate to contact me.

*Fraternally yours,*

(Secretary name)

Lodge Secretary

**[Please note,** the letter to the member must be served by personal service or be sent by Certified Mail, Return Receipt Requested. It is suggested that the letter also be sent by regular first class mail at the same time.]

**EXHIBIT “M”****NOTICE OF APPEAL FROM EXECUTIVE ORDER**

**[Important: Complete and file Information Sheet  
(Exhibit “O”) with your appeal]**

_____ Name	_____ Appellant	APPEAL FROM
	vs.	EXECUTIVE ORDER NO. _____
_____ Grand Exalted Ruler	_____ Respondent	

NOTICE IS GIVEN THAT \_\_\_\_\_, Appellant, appeals to the Grand Forum of the Benevolent and Protective Order of Elks from Executive Order No. \_\_\_\_\_.

This Appeal is being filed with the Grand Secretary within 10 days from the receipt of the Executive Order and attached hereto is check or money order in the amount of \$500.00 as a deposit toward the costs of transcription.

\_\_\_\_\_  
Appellant

[Any additional signatures necessary should be shown on an attached page.]

I CERTIFY that a copy of this Notice of Appeal has been served upon the Grand Exalted Ruler and upon the Secretary of \_\_\_\_\_ Lodge No. \_\_\_\_\_ on \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
Appellant

**Note:** The original is to be sent to the Grand Secretary, with copy sent to the Grand Exalted Ruler. An appeal by a Lodge under GLS §9.160 must be signed by a majority of the Lodge officers.



**EXHIBIT “N”****FORM OF COMPLAINT IN  
ORIGINAL ACTION AGAINST LODGE****[Important: Complete and file Information Sheet  
(Exhibit “O”) with your Complaint]****GRAND FORUM  
BENEVOLENT AND PROTECTIVE ORDER OF ELKS**\_\_\_\_\_  
Name Complainant

vs.

**COMPLAINT IN  
ORIGINAL ACTION**\_\_\_\_\_  
Name Lodge No. \_\_\_\_\_

Respondent

\_\_\_\_\_, Complainant (a Lodge of the Order) (a Member in good standing in \_\_\_\_\_ Lodge No. \_\_\_\_\_ B.P.O. Elks), under the Obligation of the Order, hereby accuses \_\_\_\_\_ Lodge No. \_\_\_\_\_, B.P.O. Elks, with the offense(s) of

*[here set forth the text and section of the Statute allegedly violated, as for example: “Violation of Sec. 9.130(i), Laws of the Order”]*

in that the Respondent did on or about

*[here specify the date, place and facts supporting the offense charged]*

DATED: \_\_\_\_\_

(Signed) \_\_\_\_\_

Complainant

\_\_\_\_\_, under the Obligation of the Order, says that he/she is the above named Complainant, that he/she has read the foregoing Complaint, knows the contents thereof, and believes the same to be true. I understand that I will be responsible to secure and pay the cost of a court reporter to record the testimony at the trial.

(Signed) \_\_\_\_\_

Complainant

**Note:** The complaint is to be filed by the Complainant with the Grand Secretary, with copy sent to the Secretary of the Respondent Lodge.

**EXHIBIT “O”****INFORMATION SHEET FOR  
APPEAL TO GRAND FORUM****APPELLANT**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No. (\_\_\_\_) \_\_\_\_\_

E-mail: \_\_\_\_\_  
\_\_\_\_\_

Lodge Name &amp; No.

**RESPONDENT**

Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone No. (\_\_\_\_) \_\_\_\_\_

E-mail: \_\_\_\_\_  
\_\_\_\_\_

Lodge Name &amp; No.

**TYPE OF APPEAL** (mark applicable type):

- ☐ Local Forum verdict
- ☐ Dismissal of Complaint in Local Forum
- ☐ Suspension from Club privileges
- ☐ Lodge action
- ☐ Executive Order
- ☐ Original Complaint

**INSTRUCTIONS TO APPELLANT:** You MUST complete and send this sheet with your appeal to the Clerk of the Grand Forum. Also send a copy to other parties to whom the notice is sent.

## LOCAL FORUM PROCESS GUIDELINE (GLS – CHAPTER 8)

<i>Occurrence</i>	<i>Duties</i>	<i>Time Frame</i>	<i>Notes</i>	<i>GLS Section</i>
<b>Offense</b>	<b>Start action</b>	<b>within 4 years of occurrence</b>		<b>GLS 9.190</b>
Notice of Intent	ACCUSER – files Notice with Secretary	→	2nd Notice of Intent cannot be filed while 1st Notice is pending between Accused and Accuser	GLS 8.015 see GLS Ex. A
	SECRETARY – serves the Accused	→ promptly		
	– notifies the Mediator	→ within 2 business days (if not done, ER appoints another mediator)		
	MEDIATOR – contacts Accused & Accuser	→	If no Mediation agreement is reached, proceed with Complaint within 10 days	see GLS Ex. B
	– arranges Mediation	→ within 5 days		
Complaint	– files Mediation Statement	→ at conclusion of Mediation		
	ACCUSER	→	file 3 copies of Complaint	GLS 8.020 see GLS Ex. C
	– files Complaint with Secretary	→ within 10 days after Mediation Statement		
	SECRETARY – serves the Accused	→ promptly		
	– notifies Exalted Ruler	→ promptly		
	– notifies Presiding Justice	→ promptly		
Local Forum Appointed	Local Forum appointed	→ at next regular meeting	see 8.040 if insufficient number remain	GLS 8.040
	SECRETARY – send list of Local Forum members to Accused & Accuser	→ within 3 days		
	ACCUSED and ACCUSER	→ within 7 days		
	– may strike 6 names each	→		
	EXALTED RULER – appoints 4 unchallenged names on list	→ at next regular meeting		
Preliminary Hearing	PRESIDING JUSTICE	→	Local Forum not present at Preliminary Hearing	GLS 8.050 GLS 8.060 GLS 8.070
	– sets time for Preliminary Hearing	→ promptly		
	– holds Preliminary Hearing	→ within 5-10 days		
	– may dismiss, or accept plea	→ at Hearing		

	<p>SECRETARY – notifies Accused and Accuser of Preliminary Hearing</p> <p>Accused – may file a <b>Motion to be More Specific</b></p> <p>– may file a <b>Motion to Dismiss</b></p> <p>– enters <b>Answer</b>, pleading guilty or not guilty</p> <p>Accuser – if Complaint is dismissed, may appeal</p> <p>– if Motion to be More Specific granted, must comply</p>	<p>→ promptly</p> <p>→ by time of Preliminary Hearing</p> <p>→ any time up to return of verdict by Local Forum</p> <p>→ at Hearing</p> <p>→ within 30 days</p> <p>→ within 7 days</p>		see GLS Exs. D & E
Answer	<p>PRESIDING JUSTICE – if Accused pleads not guilty, set time for Trial, to be held</p> <p>– notice for Trial</p> <p>– if Accused pleads guilty, set Sentencing Hearing, to be held</p>	<p>→ within 30 days</p> <p>→ no less than 10 days prior to Trial</p> <p>→ within 15 days</p>		see GLS 8.230
Trial	LOYAL KNIGHT – conducts prosecution		open to all Members in good standing	GLS 8.080
Decision	<p>PRESIDING JUSTICE – signs, and gives to Secretary</p> <p>SECRETARY – enters Decision in minutes</p> <p>– if acquitted, sends records by certified mail to GER</p>	<p>→ at next regular meeting</p> <p>→ promptly</p>	Presiding Justice is a Member of the Local Forum	GLS 8.090–8.140 GLS 8.140
Appeal	<p>– by Accused</p> <p>– by Accuser after Order to Dismiss has been granted by Presiding Justice</p>	<p>→ within 30 days</p> <p>→ within 30 days</p>		see GLS 8.220–8.250 see GLS Ex. G

## LIST OF GRAND FORUM DECISIONS *(cited in Guide)*

### [Number; First Party Name; Year; Result]

194	Los Angeles Lodge, 1919 (affirm conviction)	663	Mahoney, 1983 (affirm EO officer)
249	Conneaut Lodge, 1922 (reverse conviction)	665	Gordon, 1983 (affirm EO officer)
260	Danville Lodge, 1923 (reverse conviction)	668	Gregory, 1983 (reverse dismissal complaint)
294	Atlanta Lodge, 1925 (affirm conviction)	669	Miller, 1983 (affirm EO officer)
298	DeLamater, 1925 (order Local Forum proceed)	670	Hackett, 1983 (reverse LF penalty)
		672	Guist, 1983 (reverse conviction)
301	Santa Cruz Lodge, 1926 (affirm conviction)	674	Fling, 1983 (reverse 14.170 suspension)
323	Glendale Lodge, 1928 (affirm conviction)	675	St. John, 1984 (affirm expulsion 9.090)
332	Hattiesburg Lodge, 1929 (reverse acquittal)	676	Springer, 1984 (reverse conviction)
417	Wilkes-Barre Lodge, 1947 (reverse conviction)	677	McGann, 1984 (reverse conviction)
		679	Coleman, 1984 (reverse conviction)
427	Branscomb, 1950 (affirm EO officer)	682	Daraio, 1984 (reverse conviction)
456	Allentown Lodge, 1955 (dismiss appeal)	683	Cox, 1984 (reverse 12.141 removal officer)
480	Rehrmann, 1961 (affirm conviction)	684	Pelt, 1985 (reverse dismissal complaint)
510	Wilson Lodge, 1965 (reverse acquittal)	685	Gray, 1985 (reverse dismissal complaint)
512	Randolph Lodge, 1965 (disqualify ER, Sec.)	686	Depue, 1984 (dismiss appeal untimely)
521	Dixon, 1967 (dismiss original action)	687	McCarthy, 1985 (reverse sentence)
539	Wood, 1971 (affirm EO officer)	688	Beauchene, 1985 (affirm 9.090 expulsion)
560	Parker, 1973 (affirm conviction)	690	Briggs, 1985 (reverse dismissal complaint)
562	Acheson, 1974 (reverse conviction)	691	Chorney, 1985 (reverse conviction)
576	Gould, 1976 (dismiss appeal)	693	Presson, 1985 (affirm conviction)
608	Kavanaugh, 1979 (reverse conviction)	694	Girompiny, 1985 (dismiss appeal untimely)
619	Dennis, 1980 (reverse EO officer)	696	Melosky, 1985 (dismiss appeal)
637	Tuthill, 1982 (affirm conviction)	697	Johnston, 1985 (affirm acquittal)
640	Tuthill, 1982 (affirm conviction)	702	Johnson, 1985 (reverse conviction)
641	Tuthill, 1982 (reverse conviction)	703	Stewart, 1985 (reverse conviction)
644	Ward, 1982 (affirm dismiss complaint)	708	Leech, 1986 (reverse conviction)
648	Fairbanks, 1983 (reverse conviction)	709	Pearson, 1986 (affirm dismissal complaint)
649	Hanevik, 1982 (reverse conviction)	711	Tucker, 1986 (affirm conviction)
650	Yazoo City Lodge, 1982 (dismiss appeal)	713	Traynor Lodge, 1986 (reverse sentence)
651	Crawford, 1983 (reverse dismissal complaint)	714	DeLucca, 1986 (affirm conviction)
652	Presti, 1982 (reverse conviction)	715	Grant, 1986 (affirm conviction)
654	Ziemniak, 1982 (reverse EO officer)	719	Ebert, 1986 (dismiss appeal)
656	Murphy 1983 (affirm conviction)	720	Crosby, 1986 (reverse dismissal complaint)
657	Arnold/Menlow, 1983 (reverse acquittal)	724	Singewald, 1987 (affirm dismissal complaint)
660	Reyes, 1983 (reverse EO officer)	725	Oliver, (affirm dismissal complaint)
661	Presti, 1983 (affirm conviction)	726	Davis, 1987 (reverse dismissal complaint)

728	Stupple, 1987 (dismiss appeal)	792	Goodner, 1990 (reverse conviction)
729	Kaisner, 1987 (affirm EO officer)	794	Everett Lodge, 1990 (dismiss appeal EO)
731	James, 1987 (reverse conviction)	798	Yates, 1990 (dismiss appeal untimely)
733	Smith, 1987 (reverse conviction)	800	Crowder, 1990 (reverse conviction)
734	Battaglia, 1987 (reverse dismissal complaint)	801	Stooksbury, 1990 (reverse dismissal complaint)
740	Stone, 1987 (affirm dismissal complaint)	802	Bryant, 1990 (affirm conviction, mod. penalty)
742	Tyree, 1987 (affirm dismissal complaint)	803	Sousa, 1990 (dismiss appeal untimely)
743	Adams, 1987 (reverse dismissal complaint)	804	Dowling, 1990 (affirm dismissal complaint)
745	Paulaski, 1988 (reverse conviction)	807	Morris, 1991 (reverse conviction)
747	Coleman/Parker, 1988 (reverse conviction)	810	Hegarty, 1991 (affirm dismissal complaint)
748	Coleman/Reichman, 1988 (reverse dismissal)	811	Daub, 1991 (dismiss appeal untimely)
749	Callicott GER, 1988 (reverse acquittal)	813	Dindino, 1991 (reverse conviction)
750	Brown, 1988 (reverse conviction)	814	Damon GER, 1992 (reverse acquittal)
751	Lance, 1988 (reverse conviction)	815	Covel, 1991 (affirm dismissal of complaint)
752	Davis, 1988 (dismiss appeal EO Lodge)	816	Pope, 1991 (reverse conviction)
753	Callicott GER, 1988 (reverse acquittal)	817	Wehrley, 1991 (affirm conviction)
754	Callicott GER, 1988 (modify sentence)	818	Glovaas, 1991 (reverse dismissal complaint)
756	Dunaway, 1998 (reverse dismiss action)	819	Parham, 1991 (affirm dismissal complaint)
757	Callicott GER, 1998 (reverse acquittal)	821	Adams, 1991 (reverse conviction)
758	Clark, 1998 (reverse dismissal complaint)	823	McDonnell, 1991 (dismiss appeal untimely)
760	Cody, 1988 (dismiss appeal)	825	Hill, 1992 (affirm EO officer)
762	Landers, 1998 (dismiss appeal untimely)	828	Wortman, 1992 (affirm conviction)
764	Sabin GER, 1989 (reverse acquittal)	829	McClatchie, 1992 (reverse conviction)
765	Geneva Lodge, 1989 (affirm EO Lodge)	830	Meador, 1992 (dismiss appeal 9.090 expulsion)
767	Catalano, 1989 (reverse dismissal complaint)	831	Jenkins, 1992 (reverse conviction)
768	Rutzke, 1989 (dismiss original action)	833	Seattle Lodge, 1992 (dismiss appeal untimely)
771	Brothers, 1989 (affirm dismissal complaint)	835	Wilton, 1992 (reverse conviction)
773	Orrino, 1989 (affirm dismissal complaint)	837	Greer, 1992 (affirm 12.141 removal officer)
774	Goudreau, 1989 (affirm conviction)	839	Sheehy, 1992 (dismiss appeal untimely)
775	Thorne, 1989 (reverse conviction)	840	Hadsall, 1993 (affirm conviction)
776	Stagner, 1989 (affirm dismissal complaint)	842	White, 1992 (affirm conviction)
777	Hilliver, 1989 (affirm EO officer)	843	Madison, 1993 (affirm 9.090 expulsion)
779	Busby, 1990 (affirm EO officer)	844	Gill, 1993 (reverse conviction)
781	Witt, Oct. 1989 (reverse conviction)	845	Bucherie, 1993 (affirm Club suspension)
783	Wilson, 1990 (reverse conviction)	846	Wilson, 1993 (reverse conviction)
784	Harring, 1990 (reverse conviction)	848	Ofiesh, 1993 (affirm conviction)
787A	Cleveland, 1990 (affirm dismissal)	849	Flanagan, 1993 (reverse conviction)
787B	Snider, 1990 (reverse conviction)	851A	Stewart, 1993 (reverse dismissal complaint)
790	Watts, 1990 (order PJ disqualified)		

852	Rudy, 1993 (expulsion under 9.090)	907	Winn, 1996 (vacate 9.090 expulsion)
853	Bacon, 1993 (reverse 9.090 expulsion)	908	Bolk, et al., 1996 (dismiss original actions)
856	Walsh, 1993 (dismiss appeal untimely)	910	Tinnin, 1996 (reverse conviction)
858	Raffensperger, 1994 (reverse conviction)	911	McClain, 1996 (reverse conviction)
860	Ryon, 1994 (reverse dismissal complaint)	915	Cabbibo, 1997 (affirm conviction)
863	Flanagan, 1994 (reverse conviction)	920	Williams, 1997 (affirm 9.090 expulsion)
864	Eureka-Pac. Lodge, 1994 (reverse 9.090 dismissal)	921	Walsh, 1997 (reverse dismissal complaint)
865	Clark, 1994 (reverse EO officer)	922	Smith, 1997 (reverse conviction)
868	Taylor, 1994 (deny appeal Club suspension)	926	Walsh, 1997 (affirm conviction)
873	Stratton, 1994 (affirm conviction)	927	Riffle, 1997 (dismiss appeal for lack record)
874	Williams/Brandy, 1995 (reverse 9.090 acquittal)	928	Jacobs, 1997 (dismiss original action)
875	Burke, 1995 (affirm conviction)	929	Puchan, 1997 (dismiss original action)
876	Rishkowski, 1995 (affirm dismissal complaint)	932	Keller, 1997 (reverse conviction)
877	Miller, 1995 (affirm dismissal complaint)	933	Watts, 1997 (reverse conviction)
879	Moore GER, 1995 (reverse 9.090 acquittal)	934	Strong, 1997 (affirm conviction)
881	Henderson NV Lodge, 1995 (affirm EO Lodge)	935	Coates / Thomas, 1997 (reverse acquittal)
882	Stewart, 1995 (affirm conviction)	937	Wood, 1997 (affirm EO officer)
883	Rayburn, 1995 (reverse dismissal complaint)	938	Housman, 1998 (affirm conviction)
884	Metras, 1995 (affirm EO officer)	940	Ruano, 1998 (reverse dismissal complaint)
886	Baxter, 1995 (reverse conviction)	943	Morrell, 1998 (dismiss appeal acquittal)
887	Massena NY Lodge, 1995 (affirm EO Lodge)	944A	Nelson / Duncan, 1998 (affirm conviction)
888	Moore GER, 1995 (reverse acquittal)	944B	Massey, 1998 (reverse dismissal complaint)
889	Walsh, 1995 (reverse dismissal complaint)	944C	Shields, 1998 (reverse dismissal complaint)
891	Bolk, 1995 (reverse 14.170 suspension)	944E	Nelson, 1998 (reverse dismiss complaint)
892	Wolfe, 1996 (affirm conviction)	945B	Riffle, 1998 (affirm dismissal complaint)
893	Estrada, 1996 (dismiss appeal)	949	Collins, 1998 (affirm dismissal complaint)
896	Slonaker, 1995 (affirm 12.141 removal officer)	951	Brown, 1998 (dismiss original action)
897	Marianos, 1996 (reverse Club suspension)	952	Waterman, 1999 (affirm dismissal complaint)
898	Green, 1995 (reverse dismissal complaint)	954	Baldock, 1998 (deny rehearing)
899	Salazar, 1995 (reverse dismissal complaint)	955	Lemmon, 1999 (affirm EO officer)
901	Chavez, 1996 (affirm EO officer)	959	Nesbitt, 1999 (affirm dismissal complaint)
902	Madson, 1996 (reverse conviction)	960	Nesbitt, 1999 (reverse conviction)
903A/B	Mahon GER, 1996 (affirm acquittal)	961	Bates GER, 1999 (reverse acquittal)
904	Baker, 1996 (reverse conviction)	963	Duran, 1999 (reverse conviction)
905	Pulito, 1996 (reverse dismissal complaint)	964A	Price, 1999 (reverse dismissal complaint)
906	Williams, 1996 (vacate 9.090 expulsion)	967	Pannell, 1999 (reverse dismissal complaint)
		968	Stanford, 2000 (reverse dismissal complaint)
		969	Balamotis, 2000, (reverse conviction)
		970	Sollanek, 1999 (affirm conviction)

973	Hollar, 1999 (reverse in part dismissal complaint)	1019	Burger, 2002 (dismiss original complaint)
975	Ruggiero, 2000 (affirm conviction)	1022	Hill, 2002 (dismiss appeal)
976	Zacccone, 2000 (dismiss accuser appeal)	1024	Blanchard, 2002 (dismiss appeal as untimely)
978	Howard, 2000 (reverse Club suspension)	1025	Ferrandini, 2002 (affirm Club suspension)
979	Heeseman, 2000 (affirm dismissal complaint)	1026	Garcia, 2002 (reverse conviction)
984	Baustert, 2000 (affirm dismissal of complaint)	1029	Dreyer, 2002 (dismiss complaint)
985	Novosad, 2000 (affirm dismissal of complaint)	1030	Landey, 2002 (dismiss original action)
986	Heilig, 2001 (reverse Club suspension)	1035	Forbes, 2003 (reverse Club suspension)
987A	Boles, 2001 (reverse in part dismissal complaint)	1036	Hursh, 2003 (reverse Club suspension)
987B	Boles, 2001 (dismiss appeal of acquittal)	1037	Forbes, 2003 (affirm EO officer)
990A	Ballenger, 2001 (reverse EO officer)	1038	Garcia, 2003 (affirm conviction)
990B	Karr, 2001 (affirm EO officer)	1039	McQuade, 2003 (reverse Club suspension)
992	Russell, 2001 (reverse conviction)	1040	True GER, 2003 (reverse acquittal)
994	Reyes, 2001 (dismiss appeal)	1041	Adams, 2003 (reverse 14.170 drop from rolls)
995	Miller, 2001 (reverse conviction)	1042	McKinnon, 2003 (reverse Club suspension)
996	Autrey, 2001 (reverse dismissal complaint)	1044	Laquey, 1993 (affirm conviction)
997	Dawson, 2001 (reverse dismissal complaint)	1045	Valeri, 2003 (affirm dismissal complaint)
998	Jensen, 2001 (reverse dismissal complaint)	1046	Blake, 2003 (reverse Club suspension)
999	Brewer, 2001 (dismiss appeal)	1047	White, 2003 (affirm Club suspension)
1001	Kirks, 2001 (reverse in part dismissal complaint)	1048	Alden, 2003 (affirm Club suspension)
1002	Hubbard, 2001 (reverse Club suspension)	1050	Apley, 2003 (reverse conviction)
1004	Weber, 2001 (affirm 12.140 removal officer)	1052	Mulero, 2003 (dismiss appeal untimely)
1005A	Burger, 2001 (affirm dismissal of complaint)	1059	Lorz, 2004 (dismiss original action)
1005B	Burger, 2001 (reverse dismissal of complaint)	1060	Robertson, 2004 (reverse dismissal complaint)
1005D	Burger, 2001 (reverse dismissal complaint)	1062	Lightsey, 2004 (reverse penalty)
1005E	Burger, 2001 (dismiss original action)	1063	Savannah TN Lodge, 2004 (dismiss Lodge appeal)
1006	Eubanks, 2001 (reverse conviction)	1065	Pinter-Jones, 2004 (affirm EO officer)
1008	Davidson, 2001 (reverse dismissal complaint)	1067	Schubert, 2004 (affirm EO officer)
1009	Dollar, 2001 (reverse conviction)	1069	McCallum GER, 2004 (reverse acquittal)
1010	Hamilton OH Lodge, 2001 (dismiss appeal)	1070	Hall, 2004 (affirm EO officer)
1011	Simpson, 2001 (dismiss appeal)	1071	Hammons, 2004 (affirm EO officer)
1012	Davidson, 2002 (reverse dismissal complaint)	1072	McQuade, 2004 (affirm dismissal complaint)
1013	Valeri, 2002 (affirm dismissal complaint)	1073	McCallum GER, 2005 (reverse acquittal)
1016	Kirks, 2002 (affirm dismissal complaint)	1074	Pulis, 2004 (affirm EO officer)
1017	Collins, 2002 (affirm dismissal complaint)	1075	Paine, 2004 (reverse dismissal complaints)
1018	DeCrescenzo, 2002 (affirm conviction)	1078	Myers, 2004 (affirm sentence)
		1080	Graves, 2005 (reverse dismissal complaint)
		1081	Skarnes, 2004 (reverse dismissal complaint)
		1082	Graves, 2005 (reverse conviction)



1083	Strong, 2004 (reverse dismissal)	1140	Gill, 2008 (reverse Club suspension)
1084	Kohlhorst, 2005 (affirm EO officer)	1142	Bontempo, 2008 (affirm conviction)
1085	Albany OR Lodge, 2005 (affirm EO Lodge)	1143	Scott, 2008 (affirm dismissal complaint)
1087	Hager, 2005 (reverse conviction)	1145	Wimer, 2008 (reverse Club suspension)
1088	Tritz, 2005 (affirm EO officer)	1146	Albanese, 2008 (reverse Club suspension)
1092	Bequette, 2005 (reverse 12.141 removal officer)	1150	Rogers, 2008 (affirm sentence guilty plea)
1093	Goergen, 2005 (reverse dismissal complaints)	1152	Cantrell, 2008 (affirm dismissal some charges)
1096	Thorne, 2005 (reverse conviction)	1153	Scalise, 2008 (reverse conviction)
1097	Brannan, 2005 (reverse conviction)	1155	Hager, 2009 (dismiss original action)
1099	Billings MT Lodge, 2005 (dismiss appeal)	1156	Garcia, 2008 (reverse conviction)
1100	Gellatly, 2005 (affirm dismissal complaint)	1157	Brooks, 2008 (reverse Club suspension)
1101	Noyes, 2005 (reverse dismissal complaint)	1158	Miller, 2009 (reverse 12.141 removal officer)
1102	Peach, 2006 (affirm EO officer)	1159	Aparicio, 2009 (affirm conviction)
1103	Hilliard, 2005 (reverse conviction).	1160	West Shore PA Lodge, 2009 (dismiss Lodge appeal)
1104	Madden, 2005 (reverse conviction)	1161	Little, 2009 (reverse dismissal complaint)
1105	Geil, 2006 (affirm EO officer)	1162	Helsel GER, 2009 (reverse acquittal)
1106	Daughterty, 2005 (affirm Club suspension)	1163	Showstead, 2009 (reverse dismissal complaint)
1107	Esquibel, 2006 (affirm EO officer)	1165	Peterson, 2009 (reverse dismissal complaint)
1109	Barrett, 2006 (reverse dismissal complaint)	1166	Wentworth, 2009 (reverse dismissal complaint)
1110	Muldoon, 2006 (reverse Club suspension)	1168	Eiseman, 2009 (reverse dismissal complaint)
1113	Lund, 2007 (affirm EO officer)	1169	Hager, 2009 (affirm acquittal)
1115	Thebo, 2006 (reverse acquittal).	1170	F. Fimbres, 2009 (reverse conviction)
1116	Hill, 2007 (reverse EO officer)	1171	J. Fimbres, 2009 (reverse conviction)
1117	Borek, 2006 (order reschedule mediation)	1172	F. Fimbres, 2009 (reverse conviction)
1118	Wetherington, 2006 (reverse dismissal complaint)	1173	Lyles, 2010 (affirm EO officer)
1119	Dunham, 2007 (affirm EO officer)	1177	Franz, 2009 (reverse dismissal complaint)
1121	Williams, 2006 (affirm conviction)	1179	Little, 2010 (modify order for costs)
1122	Hunt, 2006 (dismiss accuser appeal acquittal)	1181	Graham, 2010 (affirm dismissal complaint)
1123	Hebbel, 2006 (reverse dismissal complaint)	1182	Van Dyke, 2010 (reverse Club suspension)
1125	Kirk, 2007 (affirm conviction)	1184	Iannelli, 2010 (dismiss original action)
1129	Tombs, 2007 (affirm EO officer)	1186	Eiseman, 2010 (reverse dismissal count of complaint)
1130	Borek, 2007 (affirm conviction)	1187	Myers, 2010 (reverse Club suspension)
1131	McKnight, 2007 (reverse conviction)	1188	Geller, 2010 (reverse Club suspension)
1134	Bourassa, 2007 (affirm EO officer)	1189	Figgs, 2010 (reverse 12.141 removal officer)
1135	Rinella, 2007 (affirm Club suspension)	1190A	Abbott, 2010 (dismiss complaint)
1137	Garcia, 2008 (reverse conviction)	1190B	Abbott, 2010 (deny compel mediation)
1138	Shewmaker, 2007 (reverse conviction)	1190C	Abbott, 2010 (reverse dismissal complaint)
1139	Albert Lea Lodge, 2007 (dismiss Lodge appeal)		

1191B	Abbott, 2010 (deny compel mediation)	1249	Pickarts, 2012 (dismiss appeal EO officer)
1192	Schaller, 2010 (reverse Club suspension)	1250	Wood, 2013 (reverse LF verdict)
1193	Fischer, 2010 (reverse Club suspension)	1251	Gerbers, 2012 (affirm dismissal complaint)
1194	Daume, 2010 (order Local Forum proceed)	1252	Broderick, 2013 (reverse EO officer)
1196	Runci, 2010 (order Local Forum proceed)	1253	Turner, 2013 (reverse dismissal complaint)
1198	Lloyd, 2011 (reverse, dismiss LF complaint)	1254	Ryan, 2013 (reverse EO expel member)
1199	Bell, 2011 (reverse EO officer)	1256	Munn, 2012 (dismiss original action)
1200	Daume, 2010 (stay complaint filed by accused)	1262	Ryan, 2013 (reverse LF verdict)
1201	Witten, 2011 (affirm EO officer)	1269	Andrews, 2013 (affirm/modify EO officer)
1203	Ryan, 2011 (dismiss appeal EO as untimely)	1275	Lewis, 2013 (reverse Club suspension)
1207	Brown, 2011 (affirm EO officer)	1276	Hanson, 2013 (reverse Club suspension)
1208	Grants Pass Lodge, 2010 (dismiss appeal EO Lodge)	1280	Brunwasser, 2013 (reverse Club suspension)
1209	Collins, 2011 (affirm EO officer)	1286	Riner, 2013 (reverse LF verdict)
1211	Erickson, 2011 (reverse dismissal complaint)	1289	Buhl, 2013 (reverse 9.090 expulsion)
1213	Bailey, 2011 (dismiss appeal Club suspension)	1290	Boyle, 2013 (dismiss appeal mediation)
1217	Strong, 2011 (reverse EO officer)	1292	Yakima WA Lodge, 2014 (certification, reverse denial By-Laws amendment)
1218	Mangan, 2011 (dismiss appeal mediation settlement)	1294	Norville, 2013 (reverse dismissal complaint)
1221	Griffith, 2011 (affirm EO officers)	1303	Brunwasser, 2014 (reverse dismissal complaint)
1223	Bishop, 2011 (affirm EO officer)	1306	Barnes, 2014 (reverse LF penalty)
1224	Wiesner, 2012 (affirm EO officer)	1309	Spence 2014 (reverse LF verdict)
1225	Davies, 2012 (reverse EO officer)	1318	Rialti, 2014 (reverse Club suspension)
1226	Fischer (dismiss appeal Club suspension)	1319	Kneese, 2014 (affirm officer removal under §12.141)
1227	McCafferty, 2011 (deny dismiss appeal)	1323	Norville, 2014 (reverse dismissal complaint)
1227	McCafferty, 2012 (reverse EO officer)		
1228	Bettano, 2012 (reverse Club suspension)		
1229	Davies, 2012 (reverse EO expel member)		
1238	Damon, 2012 (dismiss certification request)		
1230	Lentine, 2012 (reverse EO officer)		
1232	Amy, 2012 (reverse conviction)		
1234	Peck, 2012 (reverse dismissal complaint)		
1239	Frazier, 2012 (reverse dismissal complaint)		
1240	Smith, 2012 (reverse Club suspension)		
1242	Whysong, 2012 (reverse Club suspension)		
1244	Heiden, 2012 (reverse Club suspension)		
1245	Manross, 2012 (reverse dismissal complaint)		
1247	Sandpoint Lodge, 2012 (dismiss appeal EO)		
1248	Smaldon, 2012 (reverse Club suspension)		

*CONTINUED IN DIGEST, CITED & UNCITED*

**DIGEST OF SELECTED CASES (2014-2024)****CASE #1324-1593 • 2014-2024**

9.070 (e, I, & j)

1324 & 1325 **Monti and B. Zigarelli v. S. Zigarelli** (Nov 15, 2014)

(Confirm conviction) Inappropriate physical touching in Lodge or club is sufficient to sustain conviction when proven by direct testimony though witnesses not in complete agreement.

12.150

1326 **Chang v. Lush** (Nov. 15, 2014)

(Confirm Complaint dismissed upon Summary Decision) It is proper to dismiss a Complaint which does not set forth a basis to find any statutory violation.

16.040

1327 **McNamara v. Hse Com'tee Fullerton Lodge No. 1993** (Nov. 15, 2014)

(Reverse House Committee suspension) Improper hearing violated right of due process because there was no hearing; no witnesses, and no cross examination. The meeting doesn't show any semblance of a hearing.

16.040

1328 **Fuller v. Fudge (Hse Com'tee Chairman, Winthrop Lodge No. 1078)** (Nov. 15, 2014)

(Confirm House Committee suspension) Appellant's suspension upheld as he was afforded due process, in that, his request to play a video tape to describe the correct tape at original hearing and failed to request same tape at his appeal to the Lodge.

16.040

1331 **Wallis v. Marshall, KY Lodge No. 27 Hse Com'tee** (Nov 15, 2014)

(Reverse House Committee) A substantial deprivation of a right of membership without due process of law because there was no notice given the Appellant of a hearing, no hearing, no witness presented, and no cross-examination of the accusers.

16.040

1335 **Schaub v. Burke, Weymouth, MA Lodge No. 2232, House Committee** (Apr 11, 2015)

(Reverse House Committee) A substantial deprivation of a right of membership without due process of law because there was no notice given the Appellant of a hearing, no hearing, no witness presented, and no cross-examination of the accusers.

9.011

1336 **Madden v. John Amen GER** (July 4, 2015)

(Affirm Executive Order) Member held ineligible to hold office and other prohibitions for stated period because of sexual harassment testified to by three witnesses unrefuted by accused, who failed to testify.

CONST. ART. VI., SEC. 6

1338 **King v. Geis** (Apr 11, 2015)

(Reverse Local Forum verdict) There was no legal evidence to sustain the facts because the conduct complained of by the accused did not constitute an offense, and access to the Courts of the Order is a basic right of membership which will not be abridged by Executive Order.

16040

1339 **Wright v. San Francisco Lodge No. 3, Hse Com'tee** (Apr 11, 2015)

(Reverse House Committee) Lodge Secretary failed to provide information and documents to the Clerk or Administrative Justice which deprives the Appellant of due process of law. The ruling of the House Committee cannot be sustained.

16.040

1340 **Ramser v. San Francisco Lodge No. 3, Hse Com'tee** (Apr 11, 2015)

(Reverse House Committee) Lodge Secretary failed to provide information and documents to the Clerk or Administrative Justice which deprives the Appellant of due process of law. The ruling of the House Committee cannot be sustained.

9.169, 7.070

1341 **Officers of Medford, OR Lodge No. 1168 v. John Amen, GER**

(Apr 11, 2015)

(Appeal dismissed, majority of Officers signatures required but did not sign and deposit not paid) There were 11 Officers in this Lodge and only 3 signed the Appeal, majority required. Also, \$1,000 appeal costs required upon filing which remain unpaid after notice by Grand Forum Clerk.

14.130

1342 **Mell v. Las Vegas, NV Lodge No. 1468** (April 11, 2015)

(Affirm decision of Governing Body) Termination of Associate membership of Appellant by the Governing Body which granted it. An appeal of the termination was accepted by the Lodge and upheld by (unnecessary) vote of Lodge.

7.090 Op. 06

1343 **McGrath v. Mauro et. al** (May 13, 2015)

(Reverse Local Forum decision) Accused was not afforded due process. Accused was unable to attend hearing due to personal injury sustained from a ladder fall and trial was held without his presence although pictures of his injury and emergency room report were part of record.

ART. VI, SEC. 6, CONST, 9.070(f), 9.120

1344 **Norville v. Eisenman** (July 4, 2015)

(Affirm Local Forum decision) Accused found not guilty of solicitation of votes or use of a list of membership for commercial purposes limiting their consideration on appeal to whether the evidence adduced at trial supports the findings of the Local Forum

16.040

1345 **Crepeau v. Milford CT Lodge No. 1589, Hse Com'tee** (Apr 11, 2015)

(Affirm action of House Committee) House Committee followed procedural guidelines per statute and no material breaches of due process were found by the Grand Forum upon appeal.

7.020(a), 9.070(h)(2)(iv)

1347 **Marcontell v. Dallas Lodge No. 71** (July 4, 2015)

(Decline Jurisdiction) Grand Forum is vested with jurisdiction to conduct a trial, but must consider whether it is in the best interest of the Order. Accuser has alleged has alleged fraud, contumacy, and acting without authority against the interests of the Lodge. These allegations require investigation and perhaps penalties beyond the scope and powers of the Grand Forum. Best suited to the office of the Executive, to wit, the Grand Exalted Ruler and is referred for that purpose.

8.015

1348 **Roseen v. DuMond** (July 4, 2015)

(Dismissal of Local Forum Appeal) Accuser must make a good faith effort to complete a meaningful mediation before filing a Complaint. Although the Complaint was dismissed, the "Notice of Intent to File a Complaint" was reinstated further mediation required.

9.010

1349 **McGrath v Amen** GER (Mar 30, 2015)

(Affirm Executive Order) Executive Order stated three violations statute and only one of which was sustained by clear and convincing proof at hearing. Sufficient to affirm Order and enforce penalty.

## • 2015-2016 •

9.010, 12.070, 1.010

1350 **Paradise v. Amen, GER** (Nov 14, 2015)

(Affirm Executive Order) Proof at hearing established that Appellant willfully failed to notify the steering committee of a specially called board meeting. A second charge failed because no secret meeting occurred outside the Lodge as stated in that allegation, however only necessary to prove one charge to sustain the Order.

ART I, SEC. 1, 9.070(e)

1353 **Grubb v. Cook** (Nov 14, 2015)

(Reverse Local Forum decision) Proof showed that the accused requested the City Council de-annex a tract of land adjoining the Lodge, owned by an Officer of the Lodge. Mistakenly, the accuser believed that another Lodge member at the Council meeting heard that the accused stated that the land would be incorporated with the Lodge. In actuality the statement was that the plan was to incorporate cart paths and a common fence.

Interlocutory Order

1354 **Muller v. McCrisken** (July 4, 2015)

(Remand for further action) Copy of transcript prepared by Appellant's Counsel wouldn't be approved by opposing party, and Lodge Secretary retains a copy of the recording. Presiding Justice to hear objections in writing from opposing party to resolve differences.

9.010

1355 **Conrad v. Amen GER** (Nov 9, 2015)

(Order approving Settlement) Executive Order removing Officer and suspending him from Club privileges for three years settled by parties, both represented by Counsel, with Appellant agreeing to term of lesser penalties and return of appeal deposit.

1356 **Dunmire v Amen** (Jan 2016)

(Order Dismissing Appeals and Refunding Deposits)

1357 **Haney v Amen** (Jan 2016)

(Combined with 1356)

1358 **Fox III v. Amen** (Jan 2106)

(Combined with 1356)

1359 **Fox IV v Amen** (Jan 2016)

(Combined with 1356)

9.070(f); 9.070(h)

1360 **Gray v Williams** (Nov 2015)

(Affirming Local Forum suspension) On appeal of a Local Forum decision the Grand Forum cannot pass upon the weight of the evidence, but is limited to determining whether there is an legal evidence to sustain the finding of fact.

8.220

1361 **Lane v Hatfield** (Jul 2015)

(Appeal from Local Forum dismissal/pretrial order) Order issued reversing Local Forum decision dismissing complaint.

8.220

1362 **Hatcher v Mabe** (Nov 2015)

(Dismissing appeal) The Grand Forum does not have jurisdiction to review the correctness of a Local Forum verdict of not guilty after trial.

16.041

1363 **Monreal v Alhambra-San Gabriel House Committee** (Jul 2015)

(Appeal from Local Forum) House Committee held a proper suspension hearing but tabled imposition of sentence until a later time. No notice to the accused Member was given as to the later hearing at which she was assessed a year club suspension. Reversed because the second hearing was held without her being notified.

8.060; 8.220

1364 **Hynson v Agnew** (Nov 2014)

(Appeal from Local Forum) Grand Forum reversed order of dismissal issued by Local Forum Presiding Justice at preliminary/motion to dismiss hearing because the allegations of conduct unbecoming might be sufficient for consideration by a Local Forum panel at trial.

8.060; 8.220

1365 **Faiella v. Agnew** (Nov 2014)

(Combined with 1364)

8.130; LFR 4.6.3

1366 **Curry v Cooke** (Nov 2015)

(Appeal from Local Forum) When there is no showing in the record on appeal that a Local Forum panel has been sworn in, then any resulting conviction must be reversed.

16.041

1367 **Morgan v Alvarez** (Jan 2016)

(House Committee suspension appeals) In cases of multiple house committee suspensions against one Member, the sentences may not be ordered to run consecutively.

1368 **LeCouvre v Mission Viejo-Saddleback Valley Lodge No. 2444 House Committee** (Jan 2016)

(Combined with 1367)

8.220

1369 **Waldren v Hatcher** (Nov 2015)

(Motion to appeal pre-trial orders) In light of resolution of Local Forum case there was no reason for the Grand Forum to entertain an appeal of pre-trial orders issued by the Local Forum Presiding Justice.

8.060; 8.220

1370 **Zennersshine v Sleasman** (Nov 2015)

(Appeal from Local Forum) Order by Presiding Justice granting motion to dismiss at Local Forum preliminary hearing was properly granted. The failure to specify facts and circumstances of the occurrence of the alleged event in a concise form and with reasonable certainty (in a complaint) is grounds for a motion to dismiss.

8.075; 8.220

1371 **Brunwasser v Shakour** (Mar 2016)

(Appeal from Local Forum) Motions for summary judgment brought against an Accused must be narrowly construed and run the risk of depriving an Accused of due process. Reversal of summary judgment ordered against accused members. A motion to dismiss must be construed in a light most favorable to the non-moving party.

1372 **Kendrick v Shakour** (Mar 2016)

(Consolidated with 1371)

3.100; 7.020

1373 **Egen v. San Francisco Lodge No. 3** (Feb 2016)

(Order dismissing complaint against Lodge) Alleged irregularities in the election of Lodge officers that resulted in a complaint against a Lodge by a Member is not within the jurisdiction of the Grand Forum, but rather the Grand Exalted Ruler.

9.070(d); 9.070(j)

1374 **Cooke v Brunwasser, Murphy, Hoff, Kendrick** (Mar 2016)

(Consolidated cases affirming granting of summary decision)

16.041; GFR 2.22

1375 **Young v Denison TX House Committee** (Mar 2016)

(House Committee suspension appeal) One year club suspension affirmed as no basis for reversal presented. Findings of fact at a Local Lodge proceeding will not be overturned by the Grand Forum absent a complete lack of foundation therefore.

8.220

1376 **Zapalac v Deal** (Mar 2016)

(Appeal of dismissal of complaint) Reversal of order of dismissal of complaint by Local Presiding Justice and remand for trial where no notice of pending motion to dismiss was given to Accuser/Appellant.

9.160

1377 **Criscuolo v Hicks** (Nov 2016)

(Ruling on Motion to Dismiss) GER revoked charter of Lodge and Lodge appealed. Counsel for GER filed motion to dismiss alleging defects in number of officers who signed the notice of appeal. Upon showing that number of actual signatures was insufficient the motion to dismiss was granted and revocation of charter remained in effect.



9.160

1378 **Santa Fe Lodge v Hicks** (Nov 2016)

(Order dismissing appeal) On request of the Appellant Lodge to withdraw their appeal of Executive Order issued against the Lodge, there is an order so withdrawing it.

12.141

1379 **Oates v Gauper/Los Banos Lodge No 2510** (Mar 2016)

(Appeal of Lodge vote to remove Exalted Ruler under 12.141) Reversal of Lodge decision to remove Exalted Ruler under 12.141 due to vote irregularities.

9.070

1380 **McGrath v Mauro, et al** (July 2016)

(Appeal of Local Forum expulsion) Local Forum order expelling Appellant reversed because the charges the expulsion was based on were without adequate foundation.

16.041

1381 **Tucker v Caldwell Lodge House Committee** (Mar 2016)

(Appeal of House Committee suspension) Reversal of suspension. Accused must be given specific facts. Accusers must actually testify with Accused having a right to cross-examine. Hearing must be open to all Members and the Accused during the entire hearing.

16.041

1382 **Walker v Greensboro Lodge House Committee** (Mar 2016)

(House Committee Appeal affirmed) House Committee suspension hearing was initially held without notice, then remanded by the Lodge for a re-do. Second hearing was done properly. Result was to affirm the House Committee's second hearing. Grand Forum is limited to a review of procedural propriety in cases of a House Committee hearing.

16.041

1383 **Pittman v. Greensboro Lodge House Committee** (Mar 2016)

(Combined with 1382)

8.060; 8.075; 13.020

1384 **McDermott v Taylor** (Mar 2016)

(Appeal from order dismissing Local Forum complaint) Order dismissing count in complaint reversed. Double jeopardy addressed. Motions to dismiss are to be based solely on the contents of the complaint. Issue raised over Presiding Justice being an attorney.

9.070; 7.130

1385 **Shakour v Brunwasser, Murphy, Hoff, Kendrick** (Mar 2016)

(Consolidated appeals from Local Forum) Related to 1371 and 1372. Issue raised re abuse of judicial process. Dismissal ordered with prejudice.

8.220

1386 **DeRosa v Hicks** (Jun 2016)

(Appeal from Executive Order) Order dismissing appeal of the issuance of an Executive Order based on a letter to the Grand Forum from the Appellant.

8.060; 8.070; 8.220

1387 **Colon v Flaherty** (Jul 2016)

(Appeal of dismissal of complaint by Presiding Justice) Local Forum complaint was deemed insufficient despite several opportunities to make more specific. Motion to dismiss at preliminary stage granted, and affirmed by the Grand Forum.

7.070; 9.160

1388 **Officers and Members of Worchester Lodge v Hicks** (Mar 2016)

(Appeal of Executive Order placing Lodge on probation) Dismissal is appropriate when the appeal is submitted beyond the ten days limit and no funds are included as required.

8.230; 8.240

1389 **Yau v Howard** (Jul 2016)

(Appeal of dismissal of Local Forum complaint) Dismissal of appeal is appropriate when the service requirements of 8.230 are not complied with. In this case, Appellant failed to serve the Grand Secretary/Clerk of the Grand Forum.

### • 2016-2017 •

1390 **Askew v. Hicks** (March 2017)

(Order Dismissing Appeal and Refunding Deposit)

GFR 2.21(3)

1391 **Hicks v. Capehart**

(Final Order) Order sustaining original Grand Forum Decision and Denying Motion for Rehearing and Recall of Decision.

9.130

1394 **Ridgewood Lodge No. 1455 v. Hicks** ( November 2016) (Revocation of Charter Sustained)

The decision of the Grand Exalted Ruler to revoke the Charter of a Local Lodge will not be reversed unless clearly wrong.

GFR 2:7

1400 **Fernandez v. Chang** (November 2016)

(Order Denying Motion For Reconsideration Of Decision) An application to the Grand Forum is not to be taken lightly, and each person appealing a decision is solely responsible for statutory compliance.

1401 **Hoover v. Hicks** (November 2016)  
(Order Approving Stipulation)

15.060

1402 **Bryant v. House Committee Bartlesville, Lodge No. 1060**  
(November 2016)

(No Member of another Lodge has a right to visit another Lodge without its consent) The decision of a Lodge to deny access to a visiting Member makes the House Committee Suspension of that visiting Member a nullity.

16.041

1403 **Pittman v. Greensboro Lodge No. 1403** (November 2016)

(House Committee Decision Affirmed) A restriction on the purchase and consumption of alcohol is not a protected interest requiring compliance with GLS 16.041, the action of the House Committee was within its administrative authority, and absent subsequent action by the Lodge to overturn the decision, it is to remain in effect.

9.160

1404 **Las Vegas Lodge No. 1468 v. Zellen** (March 2017)

(Dismissal of Appeal of Executive Order) The Notice of Appeal appealing the probation of a Lodge must be signed by a majority of the Lodge Officers, both elected and appointed. If the Notice of Appeal is not signed by a majority of the officers, the Grand Forum has no jurisdiction over said matter except to dismiss the same, and the appeal will be dismissed by the Grand Forum. Moreover, a recital that the appeal was approved by a majority of the officers is not effective to comply with the signature requirement; rather the actual signatures are required.

9.300

1405 **Sorrells v. Zellen** (July 2017)

(Order Sustaining Executive Order) Appeal of an Executive Order removing a Lodge Officer for failure to follow directions of the Special Representatives appointed by Grand Lodge is sustained. The Lodge Officer continued authorizing cash payment to band of which the Officer is a member contrary to instruction from the Special Representatives.

1406 **Morgan v. Zellen** (July 2017)  
(Combined with 1405)

1407 **McDowell v. Zellen** (July 2017)

(Combined with 1405) Executive Order reversed and dismissed for failure to prove any of the allegations by clear and convincing evidence.

1408 **Lightsey v. Zellen**  
(Order Approving Stipulation)

1409 **Krejci v. Zellen** (January 2017)  
(Order Approving Stipulation)

16.040

1410 **Peacock v. Beck** (March 2017)  
(House Committee Suspension Appeal) Appeal of House Committee Suspension is sustained for failure to comply with GLS 16.041.

16.040; 16.041

1411 **Rebisz v. Boonton, NJ Lodge No. 1405 House Committee**  
(November 2016)  
(Appeal of House Committee Action) A distinction must be drawn between actions taken against a Member's rights as Member as opposed to those of a Member who is an employee or otherwise in service to the club operation. An action taken by the House Committee prohibiting a Member from tending bar was a valid exercise of power under 16.040. This action was not disciplinary in nature that require protections afforded under 16.041.

16.041

1412 **DePriest v. New Port Harbor, CA Lodge No. 1767 Board of Control**  
(March 2017)  
(Appeal of House Committee Action) The Grand Forum has consistently held it has neither appellate nor original jurisdiction to review the propriety of a suspension order issued under GLS 16.041, but this Forum can and will intervene and grant relief upon proper petition if it clearly appears a Member has been deprived of a substantial right of membership without due process of law. Here the Appellant was afforded substantial due process and the stay is vacated and suspension affirmed.

### • 2017-2018 •

8.220; 9.070

1414 **Rodriguez v. Rodriguez** (November 2017)  
(Affirming Local Forum Decision) On appeal of a Local Forum decision the Grand Forum cannot pass upon the weight of the evidence, but is limited to determining whether there is any legal evidence to sustain the findings of fact.

9.090

1415 **Swinford v. Keeter** (November 2017)  
(Appeal reversing Local Forum decision) Where the membership application form of 2010 inquired "Have you ever been convicted of a felony or a crime of moral turpitude?" did not comport with the current GLS 9.090, the Appellant did not violate the statute in his response.

9.012

1417 **Wilson v. Zellen** (November 2017)

(Appeal of Executive Order suspending a Member from Membership for violation of existing Executive Order) It was not a violation of a club suspension for the Appellant to have attended a Memorial Service at another Lodge; to have attended the Grand Lodge Session in Houston and socialize in the Washington State hospitality room; and to be initiated in the Tacoma, WA Lodge No. 174 Emblem Club and attend meetings thereof.

GFR 5.5

1418 **In the Matter of Request for Certification filed by Penny Rebisz**  
(August 2017)

(Denial of Request for Certification) The Request for Certification failed to receive the affirmative votes of two Justices of the Grand Forum.

8.220; 9.090

1419 **Mendoza v. Phillips** (March 2017)

(Appeal from Local Forum) Appellant had no standing to appeal the decision of the Local Forum as Appellant was not the Accuser in the Local forum Action, and where the Accused has been expelled from the Order for other reasons, the matter is moot.

8.220; 9.090

1420 **Barrett v. Phillips** (March 2017)  
(Combined with 1419)

8.220; 9.090

1421 **Field v. Phillips** (March 2017)  
(Combined with 1419)

16.041; 9.090

1422 **Donohue v. House Committee Clear Lake Lodge No. 2322**  
(November 2017)

(Appeal from House Committee Suspension) While Appellant made timely appeal to the Grand Forum concerning Appellant's House Committee Suspension, she was expelled from the order pursuant to GLS 9.090 for failure to disclose a prior felony conviction. Given that her membership rights have been terminated, she has no standing to prosecute this appeal. The appeal is moot.

16.041

1423 **Lutes v. Scottsdale AZ Lodge 2148** (March 2018)

(Denial of due process in suspension) Reversed suspension of Member who wasn't provided the opportunity to be present during hearing to hear evidence and controvert same.

14.170, 10.030

1424 **Saunders v. Golden Spike UT Lodge 719** (February 2018)

(Expelling Member for indebtedness to the Lodge) Action of Lodge in expelling Member after a finding of indebtedness was beyond the Lodge's authority and is reversed.

16.041

1425 **Dearborn v. Newport Harbor Lodge Board of Control** (February 2018)

(Penalty allowed under section 16.041) The only penalty allowed under section 16.041 is a suspension of a Member from certain privileges, and there's no authority for ordering an apology.

9.010

1426 **Martin v. McPherson v. McPherson** (June 2018)

(Order dismissing appeal) Exalted Ruler's Appeal of his removal from office by Executive Order settled by agreement.

16.041

1427 **Bultman v. Holland Lodge Board of Governors** (July 2018)

(Appeal by the Board of Governors of a suspension of a Member) A Member's suspension after a closed club hearing is reversed.

16.041

1428 **Horvath v. Tempe Lodge House Committee** (March 2018)

(Order reversing House Committee suspension of Member) Suspension reversed for failure of House Committee to hold hearing in open session; to allow an opportunity to present witnesses; and to record the vote of the House Committee.

12.020

1429 **Wood v. Escobedo** (March 2018)

(Order reversing removal of lodge officer) Failure to give a Lodge Officer proper notice of a hearing to remove him for his failure to attend Lodge meetings is a violation of the officer's due process.

16.041

1430 **Organ v. Port St Lucie House Committee** (July 2018)

(Order reversing House Committee suspension of Member) Suspension reversed for failure to give Member notice of suspension hearing even though House Committee alleged that the serious nature of the charges required immediate action.

16.041

1431 **Pinnell v. San Antonio House Committee** (July 2018)

(Order reversing House Committee suspension of Member) Suspension reversed for failure to allow Member to confront his Accuser(s). Letters of allegations presented to House Committee without actual testimony was a violation of the Member's due process.

8.030

1432 **Mertins v. McAvoy** (July 2018)

(Order reversing Local Forum suspension of Member) Local Forum suspension of Member reversed. The Local Forum Complaint lacked facts and circumstances designating the place and occurrence of the alleged offense(s) in concise terms and with reasonable certainty, causing a violation of the Member's due process.

12.141

1433 **Richardson v. Franklin Lodge** (July 2018)

(Lodge removal of Officers affirmed) Lodge complied with the provisions of section 12.141 of the Grand Lodge Statutes in the removal of Lodge Officers.

12.141

1434 **Austin v. Franklin Lodge** (July 2018)

(Combined with 1433)

• 2018-2019 •

1435 **Obaid v. McPherson** (Withdrawn)

1436 **Gassuan v. McPherson** (Withdrawn)

1437 **San Francisco Lodge v. McPherson** (Withdrawn)

1438 **Repp v. McPherson** (November 2018)

(Order accepting agreement amending Executive Order)

1439 **Moreno v. McPherson** (Withdrawn)

1440 **Neal v. McPherson** (Withdrawn)

8.060

1441 **Webb v. Threlkeld** (November 2018)

(Order dismissing complaint) Presiding Justice acted properly in granting Respondent's motion to dismiss for the failure of the complaint to state a cause of action.

1443 **Stoermer v. Moeller** (November 2018)

(Order affirming dismissal of complaint)

8.060

1444 **Trecartin v. House Committee** (March 2019)

At a suspension hearing, the witnesses on a factual issue must appear to testify in person. The absence of a material witness violates the appellant's due process.

16.041

1445 **Berginc v. House Committee** (November 2018)

(Order reversing the Member's suspension of club privileges) The House Committee failed to provide the Member meaningful due process on multiple levels.

8.075

1446 **Samples v. Lopez** (November 2018)

(Order affirming the granting of summary judgment by the Presiding Justice) Where there is no ill will or bad faith alleged, but only a mistaken application of the Rules, such action does not support a finding of a violation of obligation or conduct unbecoming an Elk.

1447 **Summit Lodge v. Luhr** (Withdrawn)

16.041

1450 **Bickford v. House Committee** (March 2019)

The failure of the supervising or managing body to give a member at least ten days written notice before a hearing on his alleged violation of rules or conduct renders all further disciplinary proceedings a nullity.

### • 2019-2020 •

1459 **Serrato v. Hanson** (July 2019)

An agreement reduced to writing must be strictly construed. When an Accused violates the agreement, the Accuser is within his/her right to proceed with the filing of the complaint in the local forum.

16.041

1462 **Durgin v. House Committee** (November 2019)

(Order affirming Member's suspension of club privileges) Where a Non-Elk makes a complaint against a Lodge Member and is not present for the House Committee Hearing; the suspension will be sustained when sufficient evidence is presented through other witnesses.

Grand Forum Rules, Rule 5, G.L.S. 8.080

1463 **Tony J. McCoy v. William J. Hartless** (November 2019)

(Motion by Accused to dismiss local forum action for lack of prosecution) Grand Forum grants certification under Section V of the Grand Forum Rules To hear motion of accused to dismiss.

9.010, 9.011

1466 **William L Schroepfer, Jr. v. Michael T. Luhr, GER** (November 2019)

(Order sustaining Executive order removing and suspending lodge officer) Action of Grand Exalter Ruler in suspending and removing a lodge officer for sexual misconduct was in accordance with the Laws of the Order and not arbitrary nor capricious.



7.020 & 16.041

- 1469 **Fuller v. Hse Com'ttee Winthrop MA No. 1078** (November 2019)  
 (Hse Committee Suspension appeal must not be to both Lodge and GF at same time) A member cannot appeal to the Lodge and the Grand Forum at the same time. If an unresolved appeal to the Lodge floor is pending, the member is required to allow the Local Lodge Appeal to conclude before Grand Forum review.

8.060

- 1474 **McGrail v. Hicks** (March 2020)  
 (Appeal of Dismissal by Presiding Justice)  
 A presiding justice may not on his own motion dismiss a local forum complaint without a properly prepared and submitind motion to dismiss.

16.041

- 1480 **Leek v. House Committee** (March 2020)  
 (Appeal of club suspension for lack of due process)  
 When a lodge fails in rneet: the standards required for due process, a member's subsequent suspension is a nullity even if the member failed to provide the lodge with her current address.

### • 2020-2021 •

- 1483 **Hanson v. Serrato** (July 2020)  
 The equitable principles of res judicata bar an action where it is shown: (1) A final judgment on the merits in a prior suit by a competent court; (2) The claims in the second matter are based on the same cause of action involved in the prior proceeding; and (3) The parties are identical in the two actions.

### • 2021-2022 •

12.140, 12.141

- 1499 **MacDonald v. Board of Directors** (July 2021)  
 (Appeal of removal of lodge officer)  
 Order dismissing Appeal of removal of local lodge officer when Appellant failed to file Notice of Appeal within the prescribed statutory time.

9.020

- 1487 **Barton v. Duitsman, GER** (July 2021)  
 (Appeal of Executive Order removing and expelling local lodge officer)  
 An Execudve Order removing and expelling a local lodge officer will be sustained where the Grand Exalted Ruler offers evidence causing a factual basis for the charge and one or more of the allegations are proven.

9.010, Grand Forum Rule 1.7

1501 **Griffey v. Ryan, GER** (July 2021)

(Time within which an appeal of Executive Order removing local lodge officer must be made)

In computing say period of time fixed by the Grand Lodge Statutes, the day of the act or event from which the designated period begins to run is not to be included. The last day of the period so computed is to be included.

8.230(b)

1469 **Ballou v. Tumminelli** (July 2021)

(Appeal from an Order dismissing the Accuser's complaint must be made within thirty days)

The appeal by the Appellant: to the dismissal of his or her complaint must be made within thirty days after the Order has been reported to or entered in the minutes of the Lodge. If the appeal is late, the Grand Forum is deprived of jurisdiction, and the appeal must be dismissed.

16.041

1498 **Capitan v. House Committee** (July 2021)

(Appeal from a club suspension of a member by the house committee)

The Grand Forum will intervene and grant proper relief if it appears that a member has been denied a substantial right of membership without due process of law. In doing so, the Grand Forum will review all relevant documents, including notices, lodge minutes, transcripts and pleadings.

16.041

1503 **Duffy v. House Committee** (July 2021)

(in suspending a member of a local lodge from club privileges, the House Committee must strictly observe the procedural requirements of section 16,041 of the Grand Lodge Statutes)

If the House Committee fails to hold a suspension hearing, or does not present direct testimony, or neglects to allow the accused to confront witnesses, this is a lack of due process that will cause the Grand Forum to reverse the member's suspension.

9.010

1497 **Kogler v. Ryan, GER** (July 2021)

(Appeal of an Executive Order removing a local lodge officer)

On appeal from an Executive Order removing a local lodge officer, the Grand Forum will determine if the Executive Order was issued in accordance with the Law; whether there was an abuse of discretion; or whether the Grand Exalted Ruler acted arbitrarily or capriciously.

16.041

1502 **Moralez v. House Committee** (March 2022)

(Procedure in the suspension of a local lodge member by the House Committee)

The House Committee must strictly follow the provisions of section 16.041 of the Grand Lodge Statutes in suspending a local lodge member from club privileges. The House Committee must specify in detail the date, behavior and circumstances of the alleged conduct, and permit the member to confront witnesses and offer evidence in his or her behalf.

8.080

1505 **Berginac v. Wallace** ( March 2022)

(Procedural errors in a local forum conviction)

In order for the Grand Forum to reverse a conviction by a Local Forum based on procedural errors, it must be found that the procedural errors were so substantial as to deny the accused a fair trial

16.041

1511 **Goupil v. Board of Directors** (March 2022)

(Suspension of club privileges relating to conduct on the lodge premises)

Suspension of club privileges must be directly related to conduct that occurs on the club premises. A house committee lacks jurisdiction over complaints regarding conduct that occurs at another location.

### • 2022-2023 •

8.110 , Local Forum Rule 4.6.1

1526 **Hover v. Davis** (July 2022)

(An objection to pretrial errors cannot be raised in the first instance on appeal)

An Appellant to the Grand Forum cannot raise on appeal pretrial errors which were not raised in the Local Forum proceeding. Such an objection cannot be raised in the first instance on appeal.

16.041, 7.020(a)(2)

1529 **Soffer v. Board of Directors** (July 2022)

(Imposition of future prohibited or required actions)

The managing body cannot impose sanctions which either require or prohibit action to be taken or not taken in the future. Nor does the managing body have authority to expel a member from the Order.

16.041

1532 **Norris v. House Committee** (July 2022)

(Lack of record of the proceedings)

Where there is an absence of a record of a suspension of a member wherein there is nothing to substantiate that there was an open hearing, minutes taken or the testimony of witnesses, the Grand Forum will declare the proceedings null and void.

16.041

1541 **Gouin v. House Committee** (March 2023)

It is a violation of Due Process to fail to give proper notice of hearing to the Accused or to impose a suspension for acts not mentioned in the notice of hearing or to impose a sanction not authorized in §16.041.

16.041

1546 **Westgate v. House Committee** (March 2023)

The managing body upon conclusion of the hearing, and without adjournment, can go into closed executive session to discuss, deliberate, consider, and vote upon the matter in issue. But following such closed session the managing body in open session must announce their votes, both in total and by each member of the managing body and render their final decision and penalty if any. GF 1244, 1110

8.020

1550 **Issacs v. Palmdale** (March 2023)

As the Complainant is an Unaffiliated Elk and is not a Member in Good Standing, he may not file a Complaint.

8.230

1552 **Looney v. House Committee** (March 2023)

Procedural requirements placed on a party relating to the prosecution of an appeal to the Grand Forum are jurisdictional. The failure of a party to follow those requirements will result in an appeal being denied. Grand Forum Case No. 1400.

## • 2023-2024 •

16.041

1566 **Robbins vs. House Committee** (August, 2023)

It is a violation of due process of law for the House Committee to suspend a member in a matter over which the House Committee has no subject matter jurisdiction. Grand Forum Case No.1569.

16.041

1569 **Gomez vs. House Committee** (July 2023)

Suspension of Club privileges for Conduct Unbecoming an Elk must be directly related to conduct that occurs on the premises of the club, social parlor or other facility. The House Committee lacks subject matter jurisdiction to adjudicate complaints that relate to conduct that occurs at a location not on the premises of the club, social parlor or other facility. Grand Forum Case No. 1479 (2020)

16.041

1571 **Martinez vs. House Committee** (September 2023)

The Grand Forum cannot and will not consider the sufficiency of the grounds on which the suspension was based; that can only be raised in an appeal to the Lodge. Grand Forum Case 1240.

16.041

1573 **Nichols vs. Board of Directors** (September 2023)

The Grand Forum may vacate a suspension order issued without giving the required notice even though the time period for an appeal long has expired. Grand Forum Case No.1046.

9.090

1577 **Mainwaring vs. Sunland-Tujunga Lodge** (January 2024)

If a lodge expels a member from the Order pursuant to Grand Lodge Statute Section 9.090, the lodge must strictly comply with the provisions of Section 9.090. Failure to strictly follow the provisions of Section 9.090 is a violation of due process of law. See Grand Forum Case No. 1289.

16.041 & GF Rule 2.2.2 (2)

1578 **Cosker v. House Committee** (February 2024)

The failure of the Lodge Secretary to provide information or documents to the Clerk of the Grand Forum or the Administrative Justice in a club suspension appeal is a deprivation of a substantial right of membership without due process of law and the suspension cannot be sustained and must be reversed with prejudice. Grand Forum Case 1340.

16.041 & GF Rule 2.2.2 (2)

1580 **Reker vs. Board of Directors** (January 2024)

Grand Lodge Statute § 16.041 provides that an appeal from a club suspension may be taken by a member suspended. There is no provision in the Grand Lodge Statutes for an appeal to the Grand Forum by a Member from a suspension of a non- member spouse by the governing body of the Club.

16.041 & GF Rule 2.2.2 (2)

1584 **Rice vs. House Committee** (February 2024)

To meet the notice requirements of Grand Lodge Statute §16.041, in addition to giving notice not less than ten (10) full days prior to the hearing by personal service or regular first-class mail, it is necessary to describe in the notice the conduct which is the basis for the proposed suspension, including the date, behavior, and circumstances, in such detail that the member can know the charges and be able to prepare and present a defense to those charges. Grand Forum Case 1562.

• 2024-2025 •

8.220 (b)

1590 **Martinez vs. Almanzan** (July 2024)

In considering a motion to dismiss the complaint, the Presiding Justice must assume that all facts alleged in the complaint are true. A motion to dismiss can be sustained only when it appears that, after admitting all the facts alleged or that can by reasonable and fair intendment be implied from them, the complaint still fails to state a cause of action, and deficiencies cannot be cured by amendment. [§8.060; *Grand Forum Cases 1190A, 1165, 1123, 1118, 1109, 1012*]

8.220 (b)

1593 **Smith vs. Maness** (July 2024)

Where a complaint is found to lack specificity, or is defective in form only, the complaint should not be dismissed without first giving the accuser leave to file an amended complaint to cure the deficiencies. [*Grand Forum Cases 1177, 1166, 1109, 1012, 1001, 998.*]



