

LOCAL FORUM OF SAN FRANCISCO LODGE NO. 3
BENEVOLENT AND PROTECTIVE ORDER OF ELKS
UNITED STATES OF AMERICA

ARTHUR BRUNWASSER,
Accuser

Case No. 3c

vs.

FACTORS IN AGGRAVATION
AGAINST ACCUSED DARR

WILLIAM B. DARR, JR.,
Accused.

Prosecutor/Loyal Knight Chris Robison submits the following factors in aggravation of the sentence/punishment of Accused William Darr, as supported by previous submissions in this case or as otherwise identified herein:

APPLICABLE TO ALL CONVICTIONS OF ACCUSED

1. The Accused knew the Statutes. William Darr was Exalted Ruler in 2002-2003, and is a long time Member. Even as a junior Lodge Officer, he was charged to learn the Statutes. As an Exalted Ruler, he was charged to know the Laws of the Order and to enforce them.¹ After becoming a PER, he served as a Lodge Trustee and continued to be active in leadership positions within our Order, including as a State Vice President, Deputy District Grand Exalted Ruler, and now District Leader. During the course of his leadership tenure, the Accused was also required to attend leadership clinics where statutory requirements were discussed. In fact, the Accused has presented and even presided over such clinics.
2. The Accused had easy access to others who knew the Statutes. The Statutory sections which the Accused has been convicted for violating are clear on their face. However, even if the plain language in the Statutes created any uncertainty in the mind of the Accused, he had easy access to senior leaders within our Order who did understand the Order's statutory requirements. Chief among these resources was the Area 7 Representative on the Grand Lodge Judiciary Committee, a person charged to give advice to the leaders within our state. If required, the Accused could even have requested advice from any of the Justices of the Grand Forum. There is no evidence that the Accused bothered to avail himself of these Elk resources prior to committing the violations for which he has been convicted.

¹ See attached true and correct page copies of the Exalted Ruler–Lodge Officers–Committee Members Manual.

3. The Accused's purported reliance on Non-Elk outside counsel is not credible. Instead of consulting with the Area 7 Judiciary or even a Justice of the Grand Forum on these issues, the Accused expended funds that would have otherwise been available to our Lodge to engage a non-Elk attorney to advise him. Creating "legal cover" by using a person who was unfamiliar with our Statutes is suspect on its face. Doing so however when there were Elk lawyers available, who both knew the Statutes and would offer their opinion free of charge, makes the Accused's purported reliance even less credible. Where the Accused knew the Statutes, was capable of researching them on his own, and where a fully knowledgeable source was but a phone call or email away should there still have been any question, the logical inference is that the Accused sought an interpretation more to his liking, one that could only be given to him by someone who was not an Elk.
4. The Accused did nothing to mitigate his Statutory violations even after they were known. Even after the Accused was formally made aware of the specific Statutory provisions related to his unlawful actions, the Accused refused to acknowledge their illegality and made no attempt to mitigate their effects. The Accused took no corrective measures nor changed his behavior with regard to those violations which were continuing.
5. The Accused has refused to accept any responsibility for his actions. At no time has the Accused acknowledged the illegality of his actions, or expressed any remorse over their consequences suffered by the Members of our Lodge. To this time, and only when pressed, the Accused has simply offered excuses. Where excuses are but mere evasions as to the underlying reasons why an Accused committed violations of his Obligation, they are not expressions of repentance. Therefore, thus far, the Accused remains unrepentant.
6. The Accused, as a leader within our Order, had a higher duty. The Accused has worked his way up the ranks within our Order. His dedication to what is commonly known as his "Elk's career" is undisputed. But as a leader within our Order, charged with not only knowing our Statutes but with guiding others in complying with them, a violation of our Laws is a greater matter than one committed by Members. Even for regular Members, ignorance of our Statutes offers no excuse. But a violation by someone in Leadership, and a willful violation –and in some cases, a continuous violation, at that- represents a grave breach of trust deserving greater penalty.
7. The Accused, as a Lodge fiduciary at the time, had a personal duty to our Members. All Lodge officers are servants of the Members. The Accused's attitude in committing the violations for which he has been convicted was one of privilege and disregard to the principles of transparency and full disclosure. This does not demonstrate an attitude of service to the Lodge or to the Order.

Conviction for Not Allowing Inspection of Records

1. In participating in the denial of a Member inspecting the Articles of Incorporation, By-Laws and Minutes of Directors' meetings of the Building Association, and in later denying the inspection of financial documents of the Building Association by a Member,

the Accused adopted the reasoning that they should not be produced because of a “fiduciary duty.”

The relevant statutory provisions are simple and straightforward:

GLS §12.050, Opinion 08: “All Lodge records should be open for inspection by a Member at all reasonable times.”

GLS §16.110, Opinion 01: “...all Lodge records should be open for inspection by any Member at all reasonable times...”

GLS §16.030, Opinion 02, relating specifically to the Building Association: “All separate corporations, regardless of when organized, are subject to all provisions of the Laws of the Order.”

GLS §16.030, Opinion 03, again, relating specifically to the Building Association: “A separate corporation must comply with the Laws of the Order.”

All word-games and non-Elk lawyer “spins” aside, the Statutes speak for themselves. The requirement being clear, a violation should carry more than the minimum sentence.

2. Responding to a comment that the Articles were a matter of public record filed with the California Secretary of State, Josh Hachadourian told the affected Member to get them from Sacramento himself. By remaining silent, the Accused adopted this attitude and regard for a Member of our Lodge as his own. In this the Accused was rude and disrespectful, and acted as though these fundamental records were private to everyone except Building Association directors. The Accused also said nothing about having an opinion letter from a private, non-Elk attorney, who apparently failed to read or understand the four citations above.

The Accused’s conduct was arrogant, indefensible and unworthy of an Elk, let alone an officer of many years charged with knowing the Statutes. For this reason, his violation should result in more than the minimum sentence.

3. The Accused was made specifically aware of the above statutory citations when the inspection request was made, and again when the Notice of Intent was filed against him. For all of the ensuing months when the Accused was in a position to comply with the Statutory requirements, he callously continued to ignore them.

Under our Laws, neither the Building Association nor the Lodge can harbor secrets from the Members. The Accused knew that. But even if he had any doubts, he could have consulted with an Elk attorney who actually had a working knowledge of our Statutes: our Area 7 Judiciary. Instead, the Accused chose to obtain the advice he wanted from a non-Elk lawyer, whose clear unfamiliarity with the Laws of the Order prevented any reasonable reliance on his opinions. For all of these reasons, the Accused’s violation should result in significantly more than the minimum sentence.

Conviction for Violation of §16.030

1. The Building Association has the statutory duty “to present to the Lodge for approval, not later than the final regular Lodge meeting in April, a separate and comprehensive budget for the proposed operation of the corporation.” It is also mandated to “submit a monthly written report to the Lodge showing the financial condition of the corporation and the condition of the budget.”

As with the previous violation, the relevant statutory provisions are simple and straightforward. Again, all of the word-games and non-Elk lawyer “spins” are but feeble excuses, indicative of a person unwilling to take responsibility for his actions. The requirements being clear, a violation should carry more than the minimum sentence.

2. The Accused did not comply with these requirements and had no legitimate excuse for not doing so. His stated reason for not complying, that Lodge Members were free to attend Building Association meetings and hear the financial information, obviously falls far short of the statutory requirements.² At the regularly monthly Building Association meetings, only directors have a vote. Thus, it was impossible for “the Lodge” to approve the Building Association’s budget, for such approval can only occur on the Lodge floor during a Lodge meeting. Likewise, the point of the requirement for the monthly *written* financial report “to the Lodge” is so that the report can be subject to inspection by any Member at any reasonable later time. At the end of all Building Association meetings, all financial documents under review by the directors were routinely collected back, so that they would not be available to anyone not in attendance.

The excuse offered by the Accused thus only further exemplifies an evasiveness and artificial barrier of secrecy around Building Association financial information while under the direction of the Accused. Arguably, it is this secrecy which one of the reasons necessitating the coming 3-year *forensic* audit of the Building Association and the Lodge, which will come at a cost in the tens of thousands of dollars.

This is not merely a technical violation of our Statutes. Not only did this conduct show a lack of respect for our Members and a disregard for their rights, it has also resulted in tangible financial consequences to our Lodge. For these reasons, the violation should carry significantly more than the minimum sentence.

² In his Declaration in Opposition to Motion for Summary Judgment, the Accused states “That while Treasurer of the Building Association, I attended monthly meetings which were open to all Elk’s Lodge members and attended by an *incalculable* number of Lodge members” (page 3, ¶17, emphasis added). This does not meet the plain language of the Statute. Moreover, it is intentionally misleading. Included in the Meeting Minutes of the Building Association are the names of everyone in attendance, both Directors and everyone who was *not* a director.

In that same Declaration, the Accuser states: “That while Treasurer of the Building Association a budget was annually presented at one of the Building Association meetings which were attended by Elk’s Lodge members” (page 3, ¶18). He further states: “That while Treasurer of the Building Association financial records and reports were presented at each of the Building Association meetings which were attended by Elk’s Lodge members” (page 3, ¶19). These statements are also intentionally misleading. BA Directors are all required to be Lodge Members.

Conviction for Violation of §16.050

1. As with the above violations, the relevant Statutory provisions relating to the Building Association, for which the Accused was convicted, are simple and straightforward:

GLS §16.050: "...any corporation...under the control of the Lodge, must obtain a permit from the Board of Grand Trustees before it may: ...(g) Lease its real property...for a term of more than five (5) years, whether it be an original term...or extension."

For reasons already stated above, it is beyond believability that the Accused was unaware of this Statute. As with the other statutes involved in this case, nowhere in the records of this case has the Accused denied knowing them.

For this particular violation however, knowledge of the unqualified mandate of §16.050 is undeniable, because the Accused was a signatory in a §16.050 permit application for work on the Lodge balcony (under §16.050(d)).

Thus, by participating in extending the master lease on our building until August 31, 2035, the Accused knowingly and willfully violated §16.050. For this reason, the Accused deserves far more than the minimum penalty for his violation.

2. By violating the clear requirements of §16.050, the Accused denied the Members of our Lodge their right to participate in the process of determining whether or not to enter into the subject lease extension to August 31, 2035. The business soundness of the subject deal has been highly questioned, not only for the provisions of the deal itself (which have been deemed very bad by our new Building Association officers and by expert counsel), but also because it was entered into in with a veil of secrecy, it being done with the Lodge knowing any of the details.³

The Accused has made no denial that, as a Director and Treasurer of the Building Association, he knew fully well what was going on with the lease extension, entered into in contravention of the Statutes.⁴ Certainly, as a fiduciary, the Accused should have known and made it his business to know. But his lack of denial knowing aside, the Accused has also done nothing to explain why he allowed (if not actively participated in) what amounted to a secret negotiation with the Master Leaseholder done behind the back of the Lodge and of Grand Lodge. Regardless, his participation in these events, however passive he may later affirmatively claim, supports heightened sentencing.

³ §16.050 requires that, prior to making the permit application to the Board of Grand Trustees, that the details of the proposed transaction be explained in written form sent to all Members of the Lodge, it be read on the Lodge Floor at a regular meeting, and that it be adopted by a two-thirds vote of the Lodge Membership in attendance at such meeting. If that is accomplished, the Grand Trustees conduct an investigation, and will refuse to issue a permit "if the proposed project is financially unsound and otherwise not in the best interest of the Lodge or the Order." By acting outside the view of the Lodge and of the Grand Trustees, the Accused denied the Lodge the benefit of added review of the lease extension.

⁴ On these points, the Accused carefully states in his Declaration that "I am informed and believe," language designed to suggest personal ignorance of these facts. Still, this is not a denial of knowledge, and so such knowledge should be deemed admitted, unless and until the Accused affirmatively throws Brother Hachadourian under the bus.

3. By violating the clear requirements of §16.050, the Accused also needlessly put the continued existence of our Lodge at risk.

GLS §16.050 provides, in relevant part: “If a Lodge shall permit a violation of this Section, the Grand Exalted Ruler, with the consent of the Board of Grand Trustees, shall have the power to suspend or revoke its Charter.”

The loss of our Lodge Charter would automatically terminate our existence as a Lodge. Such a loss would be catastrophic to all that we have as a Lodge. Under GLS §9.170, this could lead to a subsequent appointment of Grand Lodge trustees with the power, among other things, to sell our “450 Post Street” building if, in their best business judgment as fiduciaries, such a sale is prudent. That the Accused would risk condemning us all, for what can be at best described as a questionable financial deal,⁵ done without proper authorization and done purposely outside the view of the Lodge and of Grand Lodge, warrants the highest penalty: Expulsion from our Order.

4. In his carefully worded Declaration for Opposition to Summary Judgment, the Accused prefaces a number of assertions with the words “I am informed and believe.” While clearly designed to suggest that the Accused lacked/lacks his own knowledge of these events, it would have been a simple thing to make such a declaration directly. That such a declaration would have the effect of placing all responsibility related to these events on Brother Hachadourian, who actually signed the lease extension, should not be ignored.

Unless and until the Accused makes such a denial of knowledge however, it should be deemed admitted that he had such knowledge, and was a willing participant in these events. Certainly the Accused had a fiduciary duty to investigate these matters if he did not know, and surely he knew enough to be on notice of the need for any clarification.

It is therefore urged that the assertions referred to below be deemed as being directly made by the Accused, without the “escape-hatch” that might otherwise be argued with the “I am informed and believe” language.

This said, the Accused has declared that the reason for violating GLS 16.050(g), by extending the master lease on the Lodge building until August 31, 2035, was because “on August 16, 2010 a stipulation for entry of judgment was filed by the plaintiff *against* the Elks Lodge and Building Association and entered by the court” (page 4, ¶23, line 11).

This statement was intentionally misleading, in that it sets up the suggestion that entering into the lease extension was somehow against the will of the Accused. What the Accused fails to acknowledge is that a stipulated judgment can only be entered by a court pursuant to a stipulated agreement. In order words, the stipulated judgment only came about because the judgment *had already been agreed upon* by stipulation.

The assertion that the stipulated judgment was “*against* the Elks Lodge and Building Association” is a falsehood.

⁵ The cost to our Lodge from this deal is estimated to be in excess of \$25,000,000.00.

In the August 16, 2010 Stipulated Judgment (attached), the Master Lease “Tenant” being charged to maintain and repair all exterior and structural elements of the Lodge building, including the balcony, is the plaintiff in the case, TCC (§§1 and 2). This is because, under the *Master Lease*, the Building Association is the Landlord. The “Landlord” in the Lodge *Sublease* being charged to maintain and repair the exterior walls of the Building, including the balcony (§§3 and 4), is also the plaintiff in the case, TCC. This is because the Lodge subleases back from TCC the third floor and other areas it occupies.

Thus, to the extent the stipulated judgment is “against” anyone, it is against the plaintiff, TCC, not the Lodge or Building Association, as the Accused had declared.

In his same Declaration, the Accused stated that “(a)s a result of remaining outstanding issues regarding the declaratory relief...a stipulated amended judgment on November 30, 2010 was entered by the court whereby plaintiff recovered for all three causes of action *against* the Elks Lodge, Building Association and the subtenant” (page 4, §24, line 14).

Again, the assertion that this stipulated judgment was *against* the Elks Lodge and Building Association is a falsehood.

This amendment to the first stipulated judgment (also attached), was a judgment “against” defendant Frank E. Lembi, allowing TCC to hold him responsible for its obligations to the Lodge and Building Association, as provided for in the August 2010 stipulated judgment.

The Accused finally states in his Declaration that, in order “(t)o *resolve and satisfy the judgment*, a settlement agreement was entered into by the Elks Lodge and Building Association” (page 4, §25, line 18), and “(t)hat rather [than] being bound by a similar terms as those contained in a judgment, one of the terms of the settlement agreement was Amendment No. 8 to the lease” (page 4, §27, line 23), and so, in conclusion, “the settlement agreement was entered into and the lease was executed in order to *mitigate the impact of the judgment*” (page 4, §28, line 26).

In other words, the Master Lease *had* to be extended to August 31, 2035.

But this is patently untrue.

Nowhere in either stipulated judgment is the lease extension to August 2035 mentioned, let alone required. And even if this lease extension had been mentioned, entry of both *stipulated* judgments required the Accused’s prior consent. Further, there is no basis for the claim that the October 2010 settlement agreement was signed in order “to resolve and satisfy the judgment,” such stipulated judgment affecting the Lodge and the Building Association being entered two months earlier in August 2010. Given these facts, the statement that the October 2010 settlement agreement and the lease extension to August 2035 were entered into “in order to mitigate the impact of the judgment [‘against’]” the Lodge and the Building Association is simply untrue.

These explanations, inherently misleading where not outright false, made as representations before the Local Forum in an attempt to justify the actions of the Accused and made under penalty of perjury, constitute an action in aggravation touching on the very character of the Accused, and supporting a penalty of Expulsion from the Order.

Conviction for Violation of §9.070(c)

1. Violations of our Obligation to obey Grand Lodge Statutes are treated very, very seriously. It is considered bad enough to have a single conviction in the Local Forum for one offense. But to have a second conviction in the Local Forum, whether or not the convictions are related to the same matter, constitutes a wholly separate and independent Offense against the Laws of the Order under §9.070(c).

Thus, a second conviction by the Local Forum is itself a violation of §9.070(c), necessitating a sentence of suspension from membership for not less than six (6) months nor more than three (3) years *or expulsion*.

Here the Accused does not just have a second conviction, but has been convicted of several violations, including one or more counts under GLS §§12.050, 16.030, 16.050(g), 16.110, Contumacy (§9.070(d)), and Conduct Unbecoming An Elk (§9.070(j)). Given the multiplicity of offenses, their degree of seriousness, their impact on the Members and on our Lodge, the fact that many were continuous, and were done with any attempt at mitigation, a penalty of Expulsion from the Order is well supported.

2. Attached herewith is a listing of Examples of Expulsion, taken from the Annotated B.P.O.E. Constitution and Grand Lodge Statutes. Some are rather technical, while some involve dishonesty on one level or another.

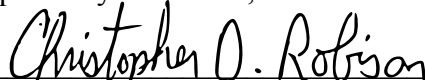
Comparing the singular examples in the attached List, each one grounds for Expulsion from the Order, with the multiple violations in the instant case, it is clear that a penalty of Expulsion from the Order is appropriate.

CONCLUSION

For all of the reasons stated above, it is urged that the Accused, having been convicted on all counts, and such convictions accompanied by the aforesaid factors in aggravation, should be Expelled from the Order.

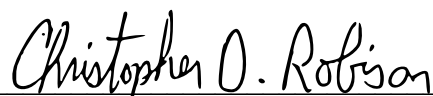
DATED: September 10, 2014

Respectfully submitted,


Chris Robison, Prosecutor/Loyal Knight

I, Chris Robison, under the Obligation of the Order, says that he has read the foregoing submission to the Local Forum, knows the contents thereof, and believes the same to be true.

DATED: September 10, 2014


Chris Robison, Prosecutor/Loyal Knight



EXALTED RULERS

LODGE OFFICERS

COMMITTEE MEMBERS

MANUAL

GRAND LODGE

Benevolent and Protective

ORDER OF ELKS

UNITED STATES OF AMERICA

— A SALUTE TO THE EXALTED RULER —

Congratulations on your election to the highest office in your Lodge. In this position you are one of the most important Members of the Order. On your shoulders rests much of the responsibility for the success of the Lodge during your term. In turn, the success of your Lodge is vital to the welfare of the Order.

Your term in office should be one of the most memorable years in your life. This is because you will have met the challenges of the position and made an outstanding contribution to the Order and to those it serves. As the year progresses, remember there are those ready and able to help. Let them share with you the rewards of service. And above all, be true to your obligation as an Elk and to the four great principles of the Order. Again, heartiest congratulations and best wishes for a year that your Lodge moves forward.

— EXALTED RULER — Duties and Responsibilities (Section 12.020 Laws of the Order)

PRELIMINARY PREPARATIONS: Your preparations for assuming the office should include:

- Study of the Laws of the Order, its rituals, the By-Laws of your Lodge, this and other manuals of the Order and Robert's Rules of Order. These publications, listed in the Appendix **EXHIBIT C**, are extremely valuable in the everyday operation of your Lodge. You will not be expected to become thoroughly familiar with all of them but enough so to permit you to refer to them when necessary.
- Discussions with other Officers-elect to get their input in selecting appointive Officers and Committee Members. Make certain that the appointees are qualified to perform their assignments, are thoroughly briefed on their responsibilities and willing to accept them.
- Careful planning of a program for the year, which will effectively meet the goals of the Grand Lodge, the State Association and your Lodge. In this process, consult with the elected and appointed Officers, Committee Chairpersons and former Lodge leaders. Proper discharge of this duty will be a giant step toward the eventual success of the program.
- Careful attention to plans for Lodge meetings, which will attract attendance. Such attendance is vital to involvement and continued interest of the membership.

SPECIFIC DUTIES ON ASSUMING OFFICE: They include:

- Appointing the Inner Guard, Chaplain and Esquire, and Members of the Committees required under Section 13.020 of the Laws of the Order. Lodges are now required to complete and file the Lodge Statutory Committee Chairpersons form (Appendix **EXHIBIT D**) at <http://Elks.org/clms2web/confirmcommittees.cfm> by April 15. A paper copy of the form will continue to be mailed to Lodges as a worksheet to assist in the online filing.
- Appointment of the Presiding Justice of the Subordinate Forum and the Local Lodge Mediator (Section 13.020 and Chapter 8 of the Laws of the Order).
- Reviewing the Opening, Closing and Initiatory Rituals applicable to your station and sufficient familiarization with other rituals to permit impressive rendition of your parts in them.
- Presiding at all meetings of the Lodge with appropriate attention to their agenda and enforcement of proper decorum.
- Attending all meetings of the Board of Trustees of the Lodge as an ex-officio member without vote.
- Attending the Clinics of the District Deputy Grand Exalted Ruler for the District in which your Lodge is located, unless excused for good cause. *(Every effort should be made to avoid any conflict with this duty.)*
- Attending the annual and other required meetings of the State Association to which your Lodge belongs.
- Preparing the official visit of the District Deputy to your Lodge, authorized under Section 4.460 of the Laws of the Order.
- Attending the Grand Lodge Session after your installation and participation in Grand Lodge proceedings as the official representative of your Lodge.

— EXALTED RULER —Duties and Responsibilities(Section 12.020 Laws of the Order)

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Detail of Pg. 3

The Monthly Checklist—Reporting and Activities Calendar (Appendix **EXHIBIT G**) itemizes the administrative requirements of your office. It should be your constant guide in discharging these responsibilities.

PROMOTIONAL DUTIES: As Chief Executive Officer of the Lodge, you are ultimately responsible for the performance of Lodge programs and the reaching its goals — your most important responsibility as Exalted Ruler. This will test your capacity to lead. You were selected for this position because of your qualities of leadership. If you did not have them, you would not have sought the position, and the membership would not have elected you.

Specific facets of strong leadership include:

- Setting challenging goals for Grand Lodge, State Association and Lodge programs.
- Formulating ways of attaining the goals.
- Selecting proper personnel to perform the required duties.
- Delegating responsibility for performing duties.
- Motivating personnel assigned to the duties.
- Ability to supervise without improper intervention.
- Willingness to give credit where credit is due.

The Grand Lodge Leadership Training Booklets (Code 511900) are excellent aids in these areas and should be carefully studied. Above all, is generating the respect of Members for the person and position. Respect is earned, not conferred.

— OTHER LODGE OFFICERS —

Each Member who accepts an office of the Lodge assumes the responsibilities of the position and obligation to perform its duties properly. The extent of involvement must be understood.

Each Officer has the primary responsibility of engaging in personal conduct that will reflect credit on the office and membership in the Lodge. His or her election or appointment evidences confidence that such conduct will be maintained. That confidence must not be betrayed.

Each Officer is responsible for dedicated service to the Lodge and position. These require a desire to advance Lodge programs and discharge the specific duties of the office.

THE KNIGHTS: Your responsibilities are set forth in Section 12.040 of the Laws of the Order. As Chair Officers, you are properly involved in the Lodge activities. Your duties include:

- Reviewing the Opening, Closing and Initiatory Rituals applicable to your stations and sufficient familiarization with other rituals to permit impressive rendition of them.
- Studying the Laws of the Order, its Rituals, the By-Laws of the Lodge, this and other manuals of the Order and Robert's Rules of Order.
- Assisting the Exalted Ruler in conducting the affairs of the Lodge.
- Acting in the absence of the Exalted Ruler in the order of your rank, including presiding at Lodge meetings, unless a Past Exalted Ruler has been designated for the occasions.
- Observing proper protocol as set forth in the Grand Lodge Protocol Manual (Code 510600).
- Proper discharge of duties assigned to you. Leading Knight must attend the Clinics of the District Deputy Grand Exalted Ruler for the District in which the Lodge is located unless excused for good cause. *(Every effort should be made to avoid any conflict with this duty).*

The Monthly Checklist—Reporting and Activities Calendar (Appendix **EXHIBIT G**) itemizes administrative requirements in conducting Lodge affairs. It should be a constant reference.

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Observing proper protocol as set forth in the Grand Lodge Protocol Manual (Code 510600).

Proper discharge of duties assigned to you. Leading Knight must attend the Clinics of the District Deputy Grand Exalted Ruler for the District in which the Lodge is located unless excused for good cause. *(Every effort should be made to avoid any conflict with this duty).*

The Monthly Checklist—Reporting and Activities Calendar (Appendix **EXHIBIT G**) itemizes administrative requirements in conducting Lodge affairs. It should be a constant reference

DETAIL OF PG. 5

SECRETARY: Your office is the hub of continuity for specified Lodge operations. While the Exalted Ruler is ultimately responsible for administering the affairs of the Order, the laws of the Order and Lodge give the Exalted Ruler the right to rely on your office to tend to much of the administrative details. Specific duties are detailed in Section 12.050 of the Laws of the Order and in the Secretary's Manual (Code 510800). That manual, and supplementary information furnished, should be referred to constantly as well as the Monthly Checklist—Reporting and Activities Calendar. (Appendix **EXHIBIT G**) You must be certain your office has copies of all of the manuals and other documents listed in the Appendix (**EXHIBIT C**).

Lodge membership tracking and reporting records are now backed up automatically in the Chicago Lodge Membership System 2. Check the status of CLMS backup files at <http://www.elks.org/grandlodge/reports/clms2StatusReport.cfm>.

The Secretary also is charged with attending the Clinics of the District Deputy Grand Exalted Ruler for the District in which your Lodge is situated unless excused for good cause. *(Every effort should be made to avoid a conflict with this duty).*

Also in January each year, Lodge Secretaries are asked to file their completed Local Lodge Directory forms (**EXHIBIT P**) at <http://www.elks.org/clms2web/rolodex.cfm?menu=true>. Deadline for filing the form is March 1 with a grace period through March 15. The directory will go to press on April 10 each year with or without Lodges' updated information.

TREASURER: Specific duties and responsibilities as set forth in Section 12.060 of the Laws of the Order are:

- To receive all monies of the Lodge from the Secretary giving him a receipt therefor.
- To pay all approved bills against the Lodge on vouchers signed by the Exalted Ruler and Secretary. The Lodge By-Laws may provide for payment of recurring bills after approval by the Board of Trustees (or Board of Directors as applicable) without obtaining prior Lodge approval. The payment shall be reported at the next Lodge meeting.
- To maintain an accurate record of receipts and disbursements.
- To act as Treasurer of all Committees unless otherwise provided in the By-Laws.
- To sign all checks unless the By-Laws also provide for a member of the Board of Trustees (or Board of Directors as applicable), designated by the Treasurer and approved by the Lodge, to sign.

BOARD OF TRUSTEES: The responsibilities of the Board and its members are set forth in Sections 12.070 and 16.050 of the Laws of the Order. Three or five members may serve as established in the Local Lodge By-Laws.

Subject to control by the Lodge, the Board shall have the powers:

- (a) to control the funds, investments and real and personal property of the Lodge, not otherwise provided by law, and collect the income and rents therefrom and (b) to execute all leases, contracts or other papers when ordered by the Lodge.

The Board's duties shall include: Maintaining a record of investments directed by the Lodge, showing original cost, due dates, income and disbursements therefrom; purchasing all supplies required by the Lodge; presenting written reports of its transactions at the first regular meetings of the Lodge in each month of the year; presenting a segregated budget to the Lodge, no later than its final meeting in April, containing separate appropriations for areas of expenditures for the Lodge during the ensuing year; establishing appropriate controls to ensure expenditures are within budget or those in excess are properly approved by the Lodge; establishing an Accident Prevention Program with one member of the Board designated to act as Accident Prevention Chairperson who will periodically review Lodge premises and complete the Self-Inspection Form (Appendix **EXHIBIT I**); and generally act as the Safety Inspector of the Lodge. The Chairperson of the Board must attend the Clinics of the District Deputy Grand Exalted Ruler for the District in which the Lodge is located unless excused for good cause. *(Every effort should be made to avoid any conflict with this duty).*

The Board must be aware of the obligations of the Lodge to pay taxes. This obligation is set forth in the Appendix (**EXHIBIT J**).

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- n To pay all approved bills against the Lodge on vouchers signed by the Exalted Ruler and Secretary. The Lodge By-Laws may provide for payment of recurring bills after approval by the Board of Trustees (or Board of Directors as applicable) without obtaining prior Lodge approval. The payment shall be reported at the next Lodge meeting.
- n To maintain an accurate record of receipts and disbursements.
- n To act as Treasurer of all Committees unless otherwise provided in the By-Laws.
- n To sign all checks unless the By-Laws also provide for a member of the Board of Trustees (or Board of Directors as applicable), designated by the Treasurer and approved by the Lodge, to sign.

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The Board must be aware of the obligations of the Lodge to pay taxes. This obligation is set forth in the Appendix (**EXHIBIT J**).

Detail of Pg. 6

To properly discharge its responsibilities, the Board must meet at least once every month and keep accurate minutes of each meeting. Each member must be familiar with the Laws of the Order pertaining to the functions of the Board. There should be constant reference to the Monthly Checklist—Reporting and Activities Calendar (Appendix **EXHIBIT G**).

TILER: You are responsible for guarding the outer door of the Lodge. You must be thoroughly familiar with the duties set forth in Section 12.080 of the Laws of the Order, and in the Ritual of the Local Lodges (Code 511500).

ESQUIRE: As set forth in Section 12.090 of the Laws of the Order and the Ritual of the Local Lodges (Code 511500), you are responsible for organizing the Lodge for meetings, preparing candidates for initiation, examining and introducing visiting members, supervising the ballot and transmitting official messages as directed by the Exalted Ruler. Upon assuming office, you must review the parts in the Opening and Closing and Initiatory rituals applicable to your office and be sufficiently familiar with other rituals to permit impressive rendition of your parts.

CHAPLAIN: Section 12.100 of the Laws of the Order governs your office. Upon assuming office, you must review the parts of the Opening and Closing and Initiatory rituals applicable to your office and be sufficiently familiar with other rituals to permit impressive rendition of your parts. And although not required by the Laws of the Order, it is customary in most Lodges, where invocations and benedictions are part of the various social activities, that the Chaplain performs this function with suitable words of his or her choice.

INNER GUARD: Section 12.100 of the Laws of the Order and the Ritual of the Local Lodges (Code 511500) govern your office. Upon assuming office you must review the parts of the Opening and Closing and Initiatory rituals applicable to your office and be sufficiently familiar with other rituals to permit impressive rendition of your parts.

ORGANIST: You shall provide the music prescribed by the rituals of the Order and perform such other duties as assigned to you.

VOCALIST: You shall provide the vocals prescribed by the rituals of the Order and perform such other duties as assigned to you.

— BUILDING AND/OR FINANCIAL TRANSACTION APPLICATION —

The Exalted Ruler and Board of Trustees of Lodges contemplating a building purchase, sale, remodeling or financial transaction should be familiar with Section 16.050 of the Laws of the Order. The Board of Grand Trustees' approval of such project or transaction requires compliance with this Section. Local Lodges must submit – in duplicate and signed individually – a Building Application to obtain a permit from the Board of Grand Trustees for permission to build, buy, sell, remodel or lease property, or borrow money. Copies of the Application also are required to be given to the sponsoring Past Grand Exalted Ruler(s) of the state. This Application is not available by fax due to unsatisfactory reproduction of its seven pages and small print.

Questions concerning Building Applications should be directed to the appropriate Building Applications Member (East or West) of the Board of Grand Trustees. Contact information appears in the annual Grand Lodge and State Associations Directory (Code 553800) and in the instructions that accompany the Building Application sent by the Grand Secretary upon request.

To obtain the Building Application, please contact:

Office of the Grand Secretary
2750 North Lakeview Avenue
Chicago, Illinois 60614-1889
Phone: (773) 755-4708

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Chicago, Illinois 60614-1889

Phone: (773) 755-4708

DETAIL OF PG. 7



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Document Scanning Lead Sheet

Aug-20-2010 4:04 pm

Case Number: CGC-09-492478

Filing Date: Aug-16-2010 3:58

Juke Box: 001 Image: 02947439

STIPULATED JUDGMENT - GENERAL

TCC UNION SQUARE, L.P. VS. SAN FRANCISCO ELKS LODGE NO.3, B.P.O.E. et al

001C02947439

Instructions:

Please place this sheet on top of the document to be scanned.

1 Jeffrey S. Schoppert (SBN 116674)
2 J. Hank Edson (SBN 233016)
3 KEEGIN HARRISON SCHOPPERT
4 SMITH & KARNER LLP
5 1000 Fourth Street, Suite 600
6 San Rafael, California 94901
7 Telephone: (415) 456-4000
8 Facsimile: (415) 456-1921

9 Attorneys for defendants
10 San Francisco Lodge No. 3, B.P.O.E. and
11 San Francisco Elks No. 3 Building Association

FILED
San Francisco County Superior Court

AUG 16 2010

CLERK OF THE COURT

BY: Deputy Clerk

12 SUPERIOR COURT OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO

14 TCC UNION SQUARE, L.P.,

15 Plaintiff,

16 vs.

17 SAN FRANCISCO ELKS LODGE NO. 3,
18 B.P.O.E.; SAN FRANCISCO ELKS NO.
19 3 BUILDING ASSOCIATION; FRANK
20 E. LEMBI; and DOE 1 through DOE 100,
21 inclusive,

22 Defendants.

23 AND RELATED CROSS-ACTION

No. CGC-09-492478

**DECLARATORY JUDGMENT
PURSUANT TO STIPULATION ON
FIRST AND SECOND CAUSES OF
ACTION OF COMPLAINT**

UNLIMITED CIVIL CASE

Trial Date: August 16, 2010

24 Pursuant to the Stipulation for Entry of Judgment on Plaintiff TCC Union Square,
25 L.P.'s First Cause of Action for Declaratory Relief Against Defendant San Francisco
26 Lodge No. 3, B.P.O.E. and Second Cause of Action for Declaratory Relief Against
27 Defendant San Francisco Elks No. 3 Building Association (the "Stipulation"), filed in the
28 above-entitled matter, and other good cause appearing,

IT IS HEREBY ADJUDGED, ORDERED AND DECREED with respect to the

1
**DECLARATORY JUDGMENT PURSUANT TO STIPULATION
ON FIRST AND SECOND CAUSES OF ACTION OF COMPLAINT**

1 First and Second Causes of Action of the Complaint filed in the within action that:

2 1. Tenant, as defined in the hereinafter described Master Lease, of the building
3 commonly known as the Elks Building located at 450 Post Street, San Francisco, California
4 (the "Building"), under the Lease dated October 1, 1981, entered into between the San
5 Francisco Elks No. 3 Building Association and 450 Post Investment Company ("450
6 Post"), a California general partnership, as amended (the "Master Lease"), is obligated
7 under paragraph 5(a) of the Master Lease, in addition to all other obligations not
8 specifically described in this judgment, to maintain and repair all exterior and structural
9 elements of the portion of the Building facing Post Street commonly referred to as the third
10 floor balcony, including: the structural portions of the third floor balcony; the third floor
11 balcony deck; the third floor balcony railing and balustrade; the terra cotta façade attached
12 to the third floor balcony; all drains, waterproofing membranes, and surfaces required to
13 protect and preserve the third floor balcony and the rest of the Building; the exterior wall of
14 the Building to which the third floor balcony is attached and of which the third floor
15 balcony is below adjudged to be a part; and the terra cotta façade on the vertical portions of
16 the exterior wall adjacent to the third balcony. The portions of the Building described
17 above are hereinafter referred to as the "Balcony Areas."

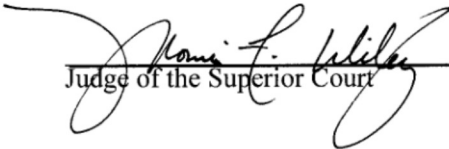
18 2. The Balcony Areas, as defined in the preceding paragraph, are part of the
19 exterior walls of the Building.

20 3. Landlord under the written agreement entitled "Sublease of Space in
21 Building," dated October 1, 1981, entered into between 450 Post and San Francisco Lodge
22 No. 3, B.P.O.E., as amended ("the Lodge Sublease"), is obligated under Section 9.1 of the
23 Lodge Sublease to maintain and repair the exterior walls of the Building, including the
24 Balcony Areas.

25 4. Tenant, as defined in the Lodge Sublease, has no duty under the Lodge
26 Sublease to maintain and repair the Balcony Areas.

1 5. The costs of maintaining and repairing the Balcony Areas constitute
2 "Operating Expenses" as provided in Section 5 of the Lodge Sublease entitled "Operating
3 Expenses."

4
5 Dated: August 16, 2010



Judge of the Superior Court

MONICA F. WILEY



SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Document Scanning Lead Sheet

Nov-19-2010 9:01 am

Case Number: CGC-09-492478

Filing Date: Nov-18-2010 9:00

Juke Box: 001 Image: 03037643

STIPULATED JUDGMENT - GENERAL

TCC UNION SQUARE, L.P. VS. SAN FRANCISCO ELKS LODGE NO.3, B.P.O.E. et al

001C03037643

Instructions:

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FILED
San Francisco County Superior Court

NOV 18 2010

CLERK OF THE COURT

BY: *[Signature]*
Deputy Clerk

1 ROBERT E. AUNE #60477
2 AUNE & ASSOCIATES
3 505 Sansome St., 6th Floor
San Francisco, CA 94111
Telephone: (415) 433-6400

4 Attorneys for Plaintiff/Cross-defendant
5 TCC UNION SQUARE, L.P.

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10

11 TCC UNION SQUARE, L.P.

12 Plaintiff,

13 vs.
14

15 SAN FRANCISCO ELKS LODGE NO. 3,
16 B.P.O.E.; SAN FRANCISCO ELKS NO. 3
17 BUILDING ASSOCIATION; FRANK E.
18 LEMBI; and DOE 1 through DOE 100, inclusive,

19 Defendants.
20
21

) Case No.: CGC-09-492478

22
23 **AMENDED DECLARATORY JUDGMENT**
24 **PURSUANT TO STIPULATION**

25 Trial Date: September 1, 2010
26 Dept: 624

27 This Court entered a Declaratory Judgment Pursuant to Stipulation on First and Second Causes
28 of Action on August 16, 2010. ("Judgment") (A true and correct copy of the Judgment is attached
hereto as Exhibit A). The Judgment entered on August 16, 2010 is amended, and incorporated by this
reference.

Pursuant to the Stipulation for Entry of Amended Declaratory Judgment on Plaintiff TCC Union
Square, L.P.'s Third Cause of Action for Declaratory Relief against Defendant Frank E. Lembi, as set

- 1 -

1 forth in the complaint filed in the within action on September 11, 2009, and filed in the above-entitled
2 matter, and other good cause appearing,

3 IT IS HEREBY ADJUDGED, ORDERED AND DECREED THAT:

4 1. The Judgment entered on August 16, 2010 is amended, incorporated by this reference, and this
5 Amended Declaratory Judgment is hereby entered as follows:

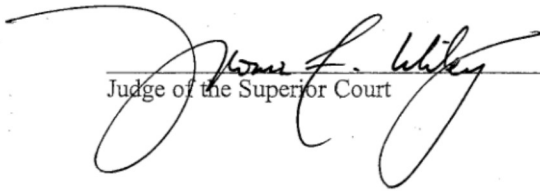
6 2. The Judgment entered on August 16, 2010 remains in full force and effect.

7 3. Pursuant to that certain Sublease of Space in the Building, dated June 28, 1983, between 450
8 Post Investment Company, and later assigned to TCC Union Square, L.P., that Frank E. Lembi,
9 pursuant to sections 5.1, 9.1. and 9.2, is responsible for the repair and maintenance of all portions of the
10 Building, including without limitation the third floor balcony as a portion of the Building.

11 4. Plaintiff and Defendant Lembi are to bear own attorneys fees and costs.

12 5. Plaintiff and Defendant Lembi are not releasing any other rights each of them may have as a
13 result of prior or future defaults under the Sublease between Lembi and TCC Union Square, L.P.

14
15 *November 17*
Dated: October 17, 2010


Judge of the Superior Court

AUG 16 2010

CLERK OF THE COURT

BY: [Signature] Deputy Clerk

THE ANNEXED INSTRUMENT IS A
CORRECT COPY OF THE ORIGINAL
ON FILE IN MY OFFICE.
ATTEST: CERTIFIED

AUG 16 2010

CLERK OF THE COURT
Superior Court of California, County of San Francisco
BY: [Signature] DEPUTY CLERK
Daniel Lemire

Jeffrey S. Schoppert (SBN 116674)
J. Hank Edson (SBN 233016)
KEEGIN HARRISON SCHOPPERT
SMITH & KARNER LLP
1000 Fourth Street, Suite 600
San Rafael, California 94901
Telephone: (415) 456-4000
Facsimile: (415) 456-1921

Attorneys for defendants
San Francisco Lodge No. 3, B.P.O.E. and
San Francisco Elks No. 3 Building Association

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

TCC UNION SQUARE, L.P.,
Plaintiff,

vs.

SAN FRANCISCO ELKS LODGE NO. 3,
B.P.O.E.; SAN FRANCISCO ELKS NO.
3 BUILDING ASSOCIATION; FRANK
E. LEMBI; and DOE 1 through DOE 100,
inclusive,

Defendants.

AND RELATED CROSS-ACTION

No. CGC-09-492478

**DECLARATORY JUDGMENT
PURSUANT TO STIPULATION ON
FIRST AND SECOND CAUSES OF
ACTION OF COMPLAINT**

UNLIMITED CIVIL CASE

Trial Date: August 16, 2010



Pursuant to the Stipulation for Entry of Judgment on Plaintiff TCC Union Square,
L.P.'s First Cause of Action for Declaratory Relief Against Defendant San Francisco
Lodge No. 3, B.P.O.E. and Second Cause of Action for Declaratory Relief Against
Defendant San Francisco Elks No. 3 Building Association (the "Stipulation"), filed in the
above-entitled matter, and other good cause appearing,

IT IS HEREBY ADJUDGED, ORDERED AND DECREED with respect to the

1 First and Second Causes of Action of the Complaint filed in the within action that:

2 1. Tenant, as defined in the hereinafter described Master Lease, of the building
3 commonly known as the Elks Building located at 450 Post Street, San Francisco, California
4 (the "Building"), under the Lease dated October 1, 1981, entered into between the San
5 Francisco Elks No. 3 Building Association and 450 Post Investment Company ("450
6 Post"), a California general partnership, as amended (the "Master Lease"), is obligated
7 under paragraph 5(a) of the Master Lease, in addition to all other obligations not
8 specifically described in this judgment, to maintain and repair all exterior and structural
9 elements of the portion of the Building facing Post Street commonly referred to as the third
10 floor balcony, including: the structural portions of the third floor balcony; the third floor
11 balcony deck; the third floor balcony railing and balustrade; the terra cotta façade attached
12 to the third floor balcony; all drains, waterproofing membranes, and surfaces required to
13 protect and preserve the third floor balcony and the rest of the Building; the exterior wall of
14 the Building to which the third floor balcony is attached and of which the third floor
15 balcony is below adjudged to be a part; and the terra cotta façade on the vertical portions of
16 the exterior wall adjacent to the third balcony. The portions of the Building described
17 above are hereinafter referred to as the "Balcony Areas."

18 2. The Balcony Areas, as defined in the preceding paragraph, are part of the
19 exterior walls of the Building.

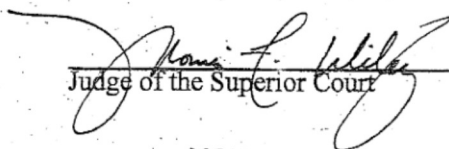
20 3. Landlord under the written agreement entitled "Sublease of Space in
21 Building," dated October 1, 1981, entered into between 450 Post and San Francisco Lodge
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23 Lodge Sublease to maintain and repair the exterior walls of the Building, including the
24 Balcony Areas.

25 4. Tenant, as defined in the Lodge Sublease, has no duty under the Lodge
Sublease to maintain and repair the Balcony Areas.



1 5. The costs of maintaining and repairing the Balcony Areas constitute
2 "Operating Expenses" as provided in Section 5 of the Lodge Sublease entitled "Operating
3 Expenses."

4
5 Dated: August 16, 2010

6 
Judge of the Superior Court

7 MONICA F. WILEY



Examples of Expulsion

(From Annotated B.P.O.E. Constitution and Grand Lodge Statutes)

Constitution, Article III, Section 18. There shall be no branches or degrees of membership in the Order, nor shall there be other adjuncts or auxiliaries other than Past Exalted Rulers Associations, separate non-profit corporations or charitable trusts, including those previously formed, and the optional organization and maintenance of State Associations...

Opinion 04 A degree team organized to select its own members, sponsor money-raising activities and pledged to vote as a unit in Lodge affairs, is a direct violation of the Laws of our Order and subjects its members to expulsion from our Order.

Article VII, Section 4. Opinion 04 A habitual bootlegger or other person who makes a business of violating the law is not a person of good moral character, and is therefore not eligible to membership in our Order. Anyone proposing such an applicant, knowingly, has violated his obligation, and should be expelled from the Order by the Local Forum.

Section 8.140. Decision 03 Evidence sustaining the fact that the Accused issued a bank check without sufficient funds to meet the same upon presentation is sufficient to sustain the charge against him of Violation of His Obligation as an Elk and the judgment of the Local Forum, after a trial duly and regularly had, of expulsion from the Order is proper.

Section 9.060. A Member shall be expelled from the Order upon being found guilty by a Local Forum of:

- (a) Any willful misrepresentation resulting in his improperly receiving aid or relief from the Order.
- (b) Any willful material misrepresentation with respect to initiation or admission or one who shall knowingly aid or abet another in such misrepresentation.
- (c) Being a member of or directly or indirectly participating in the activities of any group or organization, or supporting or adhering to beliefs or tenets advocating the overthrow of the Government of the United States or any of its political subdivisions by force or violence.
- (d) 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*).
- (e) Having violated his obligation to the injury of a Member in his family relations.

Decision 01 Forceful talk favorable to the practices of the Bolsheviki and derogatory to the Government of the United States, if established by ample evidence, justifies a verdict of guilty of willful violation of obligation and the imposition of sentence of expulsion.

Decision 03 Misrepresentation to a Lodge and concealment of material facts in an application for membership in the Order warrant expulsion.

Decision 08 A false answer to the question in the application as to previous applications for membership in the Order constitutes an offense punishable by expulsion.

Decision 20 An applicant for membership in the Benevolent and Protective Order of Elks who answers "No" to the question in the membership application as to whether such applicant has ever pleaded guilty to, or been convicted of a felony, when in fact the evidence reveals such convictions, such act constitutes an offense under the provisions of Section 9.060(b) of the Annotated Statutes requiring a verdict of guilty and expulsion from the Order.

Section 9.070. Decision 34 Any Member who publicly makes threats against his Lodge and his Lodge Officers, and/or who applies to a state court for a search warrant for the sole purpose in each instance of injuring his Lodge and his Lodge Officers, Violates his Obligation as an Elk, and engages in Conduct Unbecoming An Elk, and in such case a sentence of expulsion from the Order is justified.

Section 9.100. Should any Member at a Grand Lodge Session give his voting coupon to another, or vote or attempt to vote upon the coupon of another, it shall be the duty of the Grand Exalted Ruler and the Committee on Elections to cause charges to be preferred against the offending Member and on conviction the penalty shall be expulsion from the Order.

Section 9.120. Decision 04 The willful solicitation by a Member of this Order for votes in a State political contest by sending letters to other Members of the Order, appealing to them as Members of the Order, for support, constitutes a violation of the obligation and requires expulsion.

Section 9.170. Upon the final adjudication by the Courts of the Order, the revocation or suspension of a Dispensation or Charter, or the surrender of a Charter under the Laws of the Order shall be conclusive upon the Lodge and its Members. Property of the Lodge necessary to conduct the ceremonies prescribed by the Ritual, and its Dispensation or Charter, membership lists, books, papers, jewels, emblems, regalia and effects, must be surrendered on demand by the person or persons having custody thereof to the Grand Lodge, its agent or Trustees. Any Officer or Member, having custody of property, who shall refuse or fail to surrender same on demand, shall be expelled from the Order.

Section 14.030. If the applicant receives a number of white balls less than an amount equal to two-thirds (2/3rds) of the votes cast, he shall be declared rejected; but if he receives a number of white balls at least equal to two-thirds (2/3rds) of the votes cast, he shall be declared elected and entitled to initiation at that meeting or at any subsequent meeting within four months.

Decision 02 A Member may properly be expelled where he has been found guilty of making known the kind of a ballot he was about to cast upon the admission of a candidate for membership in the Order.