

## CONDUCTING AN EXPULSION TRIAL

One of the more unfortunate set of circumstances that arises in a fraternity setting is when an expulsion becomes necessary. But expulsions do become necessary, and Delta Chi Law mandates that a specific procedure be followed to ensure due process for all involved. This publication is designed to help your chapter through the procedure, should the need ever arise. Expulsion is from The Delta Chi Fraternity, not just the local chapter. Once expelled, a man will no longer be considered a member of the Fraternity. Three types of expulsion proceedings exist. The first is initiated by an undergraduate chapter and the trial conducted by the chapter. The second is initiated by the Board of Regents of the Fraternity with the trial ordered to be conducted by the undergraduate chapter. The third is initiated by the Board of Regents with the trial conducted by the Board through the filing of briefs and papers. While expulsions are fairly rare, the first and third type are the most prevalent, with the second type very rare.

It is important to realize that an expulsion should be a last resort. It is to permanently remove from the Fraternity a man guilty of particularly egregious conduct. It is not to be used to deal with personality conflicts or the like. Problems with individuals should be resolved through chapter judicial board or, when necessary, inactivation of a member. Procedures for inactivation are outlined in Delta Chi Law (although it is best when inactivation is a mutual decision of the man and the chapter, it can be done without the individual's consent). These alternatives should be considered and used if possible. If a chapter votes to hold a trial, the provisions for a trial in Delta Chi Law must be followed *to the letter* in order to provide due process.

Expulsion proceedings can be started by *any* member of the fraternity, not just the "A" or the "F". It states in Article V, Section 3 of the Constitution of the Delta Chi Fraternity that "if any member of the fraternity shall violate his oath, Delta Chi Law or be guilty of unworthy conduct, it shall be the duty of *any* member who knows of that conduct to immediately notify an officer of the member's undergraduate chapter of such violation or conduct."

### WHAT IS AN EXPELLABLE OFFENSE?

Several things can lead to a trial, including (but not limited to) any violation of the membership oath, persistent financial indebtedness, violation of moral standards that are generally accepted and enforced, illegal activities (using or possessing illegal drugs, gambling, hazing, etc.) or any other unworthy conduct. Hazing and any other illegal conduct is considered a violation of oath as well as unworthy conduct. Financial indebtedness to the chapter is unworthy conduct as specifically defined in Delta Chi Law (Article V, Section 2 of the By-Laws).

### PRE-TRIAL PREPARATIONS

There must first be a vote on whether to hold a trial. The chapter must decide whether *reasonable* evidence is available that would indicate a member has committed a violation of his oath or unworthy conduct, and that the violation is an expellable offense. If a majority votes to hold a trial, then the chapter decides when to hold the trial, again by majority vote. Only after this is a summons prepared and served, either personally by the "F" or by certified mail. A good faith attempt at personal service must be attempted

before using mail service. The summons MUST follow the format in Delta Chi Law (By-Laws, Article V, Section 2). The charges must be specified and the day, date and time of the trial must be shown. The charges must be specific enough for the accused to know what the conduct he is accused of is and so he can prepare a defense. If there is more than one charge, they must relate to different conduct or actions. The summons must be served before the trial may be held and with time for a defense to be prepared. The summons should include any written material to be introduced as evidence at the trial, such as house bills, etc. There must be proof that the summons was served before the trial can begin. Keep in mind when scheduling the trial that it may take two weeks to receive the receipt of certified mail, or notice that the accused failed to claim the letter. If the accused refuses to accept the summons, the attempted service is not invalidated. To insure that the accused does receive the summons, a copy should be sent through regular postal service at the same time the certified letter is sent. To verify that you sent a letter to the accused, you should pay for and obtain a certificate of mailing from the postal service.

#### THE TRIAL

The trial is not a simple procedure and reference should be made often to Delta Chi Law to make sure the trial takes place correctly. The trial should not be performed in a ritualistic manner because it is beneficial to tape-record the proceedings. Non-members of The Fraternity should be excluded from a trial.

A trial may be conducted even if the accused refuses to attend or to defend himself. There *must* be two prosecutors, appointed by the presiding officer. Any member of the Fraternity may prosecute. If the "F" is prosecuting, an acting "F" should be appointed to help keep order during the trial. The accused may defend himself, or he may be represented by one or two defense counsel. This is entirely the choice of the accused.

Only factual information, not opinion, may be admitted as evidence. Opinions may only be expressed during the arguments that come after all evidence has been introduced. This means that each side may give closing arguments and statements. The chapter should wait until after the closing arguments and statements to debate the merits of the case. There is no requirement that a violation of the oath or unworthy conduct be proved "beyond a reasonable doubt." The more appropriate standard is a preponderance of the evidence." In other words, according to the evidence, is it more reasonable to conclude than not that the accused violated his oath or is guilty of unworthy conduct? It is up to each individual member to decide.

There is no requirement to swear the witnesses, although the "A" or the "C" may administer an oath in which the witness promises to tell the truth. (Do you promise to tell the truth, the whole truth and nothing but the truth?) False testimony at a trial, whether under oath or not, would itself constitute unworthy conduct, and perhaps invalidate the results of the trial if reviewed by the Board of Regents.

If the "A" is on trial, the "B" or the next highest ranking officer (the ranking is from "A" to "F") should preside. If the "C" is unavailable to record the proceedings, an acting "C" should be appointed by the presiding officer. If more than one member is to be tried, there should be separate trials. A trial of more than one man at a time is appropriate

only when involvement in the same incident (such as a hazing incident) is involved. If tried at the same time, there must be separate votes for each of the accused. If a member is tried on more than one charge, there must be a separate vote on each charge. Conviction on any one charge results in expulsion. Acquittal of all charges is necessary for retention.

It is beneficial to tape record the proceeding as well as essential for the "C" to take accurate notes. If the Board reviews the trial, these items will be the only records they will have of the trial.

#### THE VOTE

After the evidence has been presented and the closing arguments made, the accused shall leave the room, and there shall be an immediate vote. There is not to be a motion to vote (Article V, Section 4, Subsection 2 of the Constitution). The vote should be guilty or not guilty and **a two-thirds majority vote of those present is needed for expulsion**. There must be a quorum present and the vote is to be by secret ballot. Abstentions are allowed but do not count either way in figuring whether a two-thirds majority has voted to expel. It is as if abstentions have also left the room. For example: If there are 65 members present, five abstain and 40 vote to expel:  $40/(65-5) = 40/60 = 2/3 =$  guilty and expulsion. If there are 65 members present, five abstain and 39 vote to expel:  $39/(65-5) = 39/60 < 2/3 =$  acquittal and retention. The "A" may vote if he wishes. He, nor any other member, is required to vote. Because the vote is by secret ballot, the "A" must vote at the same time as all other members. Under no circumstances does the "A" vote after the ballots are counted to either make or defeat a 2/3 vote.

#### AFTER THE TRIAL

If the trial results in an expulsion, the "C" should immediately send the written report and the tape recording, if one was made, to the International Headquarters. The "C" must pay careful attention to the By-Laws' requirements for the record (Article V, Section 2). The record must include the notice of the violation, information on the service of the summons, information on the counsel and as full a report as possible of the testimony and arguments. An expulsion is *not* considered effective until the report of the "C", signed by the "A", is received in the International Headquarters. The most common reasons for the Fraternity to not recognize an expulsion is that the record of the proceedings is incomplete or is never submitted.

Whether an expelled member may be forced to move out of the chapter house can be affected by a housing contract. If there is a written contract, unless it requires residents to be members or provides for eviction in the event of expulsion, the man may have the right to stay in the chapter house for the remainder of his lease or rental agreement. If there is no written contract, and only members have been allowed to live in the house in the past, then there may be an implied right to evict in the event of an expulsion. Before any action is taken, the chapter should contact a local attorney.

A member who has been found guilty has the right to appeal to the Board of Regents. After the receipt of the trial transcript by the International Headquarters, the member will be notified of his expulsion by the Headquarters and his appeal rights and deadlines will be outlined. He will be provided a copy of the trial transcript.

As you can see, an expulsion proceeding can be a complicated procedure. It should always be done with the best interests of the Fraternity in mind. We hope your chapter will never have to go through this process, but if it does, take care to do it correctly. If that is done, a lot of problems may be avoided. If a chapter officer or the accused has questions about an expulsion proceeding, these questions should be directed to the International Headquarters, P.O. Box 1817, Iowa City, Iowa 52244, (319) 337-4811.