

Conducting an Expulsion Trial

One of the more unfortunate circumstances that arises in a fraternity setting is when an expulsion becomes necessary. Delta Chi Law mandates a specific procedure to be followed to ensure due process for all involved. This resource 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, an individual will no longer be considered a member of the Fraternity.

TYPES OF PROCEEDINGS

There are three types of proceedings that exist. The first is initiated by an undergraduate chapter, and the trial is conducted by the chapter. The second is initiated by the Board of Regents 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 types are the most prevalent.

It is important to realize that an expulsion trial should be a last resort, as it would permanently remove from the Fraternity someone found guilty of particularly egregious conduct. It should not be used in matters of personal conflicts, which should be resolved through a Judicial Board. If a chapter votes to hold a trial, the provisions listed in Delta Chi Law must be explicitly followed in order to ensure due process.

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
- Any other unworthy conduct

PRE-TRIAL PREPARATIONS

Expulsion proceedings can be started by any member of the Fraternity. 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 their oath or unworthy conduct, and that the violation is an expellable offense.

If a majority votes to hold a trial, then the chapter must again by majority vote decide when the trial should occur. Only after these two votes occur may a summons be prepared and served, either personally by the "F" or by certified mail.

A good faith attempt at personal service should be made before using mail service.

THE SUMMONS

The summons must follow the format in Delta Chi Law. 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 is that they are accused of, so that they may 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 (ex. financial statements). 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 a receipt of certified mail, or a notice that the accused failed to claim a letter. If the accused refuses to accept the summons, the attempted service is not invalidated. It ensures 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 ensure that the trial takes place correctly. The trial should not be performed in a ritualistic manner because it may be beneficial to record the proceedings, and the "C" should take accurate notes. If the Board of Regents needs to review the trial, the recording and notes will be the only records they will have of the trial. However, non-members of the fraternity should be excluded from the trial.

A trial may be conducted even if the accused refuses to attend or defend themselves. 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 themselves, or they 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/provisional 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, consider if it is more reasonable than not to conclude that the accused violated their oath or that they are guilty of unworthy conduct. It is up to each member to decide.

SPECIAL CONSIDERATIONS

There is no requirement to swear the witnesses, although the "A" or the "C" may administer in oath in which the witnesses promise to tell 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 lettered officer 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 member at a time is appropriate only when involvement in the same incident deems it necessary. 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.

THE VOTE

After evidence has been presented and the closing arguments are made, the accused shall leave the room and there shall be an immediate vote. There is not to be a motion to vote. A quorum is needed, and the vote should be by secret ballot of guilty or not guilty. A two thirds ($2/3$) majority vote of those present is needed for expulsion. Abstention is allowed, but do not count either way in determining if a two-thirds ($2/3$) majority has voted to expel. It is as if abstentions have left the room.

For example:

- If there are 65 members present, five abstain, and 39 vote to expel: $39/(65-5) = 0.65$
As the result is less than $2/3$, the outcome is acquittal and retention.
- If there are 65 members present, five abstain, and 40 vote to expel: $40/(65-5) = 0.66$
As the result is $2/3$, the outcome is guilty and expulsion.

The "A" may also vote and should do so at the same time as all other members via secret ballot. Under no circumstances should the "A" vote after ballots are counted to either make or defeat a two-thirds vote.

AFTER THE TRIAL

If the trial results in an expulsion, the "C" should immediately send the written report and trial recording, if one was made, to the International Headquarters. The "C" must pay careful attention to the Delta Chi Law requirements for the record, and must include the notice of the violation, information on the service of the summons, information on the counsel, and a full 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 at International Headquarters. The most common reason for the Fraternity to not recognize and expulsion is that the record of the proceedings is incomplete or never submitted.

HOUSING CONSIDERATIONS

If housing is involved, whether an expelled member may be forced to move out of the facility can be impacted by the 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 expelled member may have the right to live in the facility for the remainder of their lease or rental agreement. If there is no written housing contract, and only members have been allowed to live in the facility in the past, 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.

APPEALS

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

FINAL THOUGHTS

As you can see, an expulsion proceeding can be complicated. It should always be done with the best interests of the Fraternity in mind. Should the chapter ever have to go through this process, it is essential that care is taken so it is done correctly.

For any questions about the process, please contact your Area Counselor or Regent for support and guidance.