



This guide is intended as a “walk – through” of the provisions of the Rules of most Rotary Clubs in District 9800.

It assumes that the Club’s constitution was modified by McKean Park following the 2016 Council on Legislation.

If your Club’s Rules were not updated, the processes outlined here will not work, and the Rules you have are inconsistent with your obligations under the Associations Incorporation Reform Act.

David Whiting – Governance – March 2018

Section 1: Suspension

Only the Board has the right to suspend a member. The process is found in Article 15 Section 10

Before a member can be suspended the Board must be satisfied of EACH of Parts 1, 2 3 and 4:

1. Credible accusations have been made that a member:
 - a. has refused or neglected to comply with the Club Rules; or
 - b. has been guilty of conduct unbecoming a member or prejudicial to the interests of the Club

Comment:

The accusations must be made. That is they must be clear and either made in writing or recorded in writing and accepted by the accuser. They should appear in full in the Board minutes. You cannot be satisfied about what you have not recorded. The member suspended also has the right to know why. In full.

To refuse to comply with Club Rules there must be a demand to comply made by a person who is entitled to require compliance. That would be the Board or a person with properly delegated power to insist on compliance.

For there to be a credible accusation of guilt, it is preferred that there be either:

A formal finding of guilt by a Court or Tribunal; or

The laying of a charge for an offence that if proved would be conduct unbecoming.

But these are not strictly necessary. Conduct unbecoming a member or prejudicial to the Club might not have a parallel in the criminal law.

But you have to be clear about and articulate the conduct. And the accuser and the Board need to be mindful about defamation, but remember, truth is an complete defence.

2. Those accusations, if proved, constitute good cause for terminating the membership of the member.

3. It is desirable that no action should be taken in respect of the membership of the member pending the outcome of a matter or an event that the Board considers should properly occur before such action is taken by the Board.

Comment:

This could be anything. In a sense it's a reason for not immediately moving to termination, but in another it provides the member an opportunity to address the issues or concerns.

It could be waiting for the outcome of a court case. It could be to enable a meeting to take place, or for counselling to occur. It's really an explanation as to why you are not moving to the formal consideration of termination

4. That in the best interests of the Club the member's membership should be temporarily suspended for a reasonable period not exceeding 90 days and during this period:
 - a. The member should be excluded from attendance at meetings and other activities of this Club
 - b. The member should be excluded from any office or position the member holds within the Club
5. NOTE: It must be "by a vote of not less than two-thirds of the Board"

Comment: I can give no definitive answer as to what that phrase means.

It could be:

that that two thirds of the total Board membership must vote in favour or suspension.

That two thirds of the Board present at the Board meeting vote in favour of suspension.

I think the better answer is the first option, taking into account other provisions of the Rules with different wording. Remember the Rules make no provision for proxies at Board meetings.

What might a Board Resolution look like:

That the following accusations have been made against [member name]:

[list the accusations]

That the accusations are credible

That the accusations, if proved, would constitute good cause for terminating the membership of the member.

That it is desirable that no action be taken in respect of [member's name] membership pending (here you need to describe what it is that you are going to do or wait for before making another decision)

That it is in the best interest of the club that [member's name] membership be temporarily suspended for a period of XX days, and during the period of suspension he/she be excluded from attendance at meetings and other activities of the club and from the offices or positions he/she holds with the club for the period of suspension.

What next

The member has the right to appeal, to seek mediation, or to seek arbitration in accordance with article 15 section 6. The process is exactly the

same as the process that would apply to a termination. See Section 3 of this document.

Regardless of the decision made by the member, or anything that might flow from it (other than perhaps a resignation) the board is required to reconsider the suspension before the end of the suspension. And do one of two things. Proceed to termination, or lift the suspension and reinstate the member.

Section 2 – Termination

The Board starts the termination process but may delegate the decision to terminate. The termination process is found in Article 15 Section 5

Grounds for termination:

The membership of any member may be terminated if that member ceases to have the qualifications for membership of the Club or for any other cause.

Qualifications for membership (Article 10 Section 1):

A member must be and adult person who:

- a. Demonstrates: good character, integrity and leadership
- b. Possesses: good reputation within their business profession and / or community; and
- c. Is willing to serve in their community and / or around the world.

Comment:

A person who demonstrates good character integrity and leadership does not necessarily possess those attributes.

A person with a good reputation is not automatically a good person

A person who is willing to serve is not necessarily able to serve, and there might be conditions on their willingness.

Who decides:

The board, or a subcommittee appointed by the Board to hear and determine the matter. The better option is a sub-committee of persons external to the Club, because of the perception of bias, pre-judgment or lack of procedural fairness.

Process:

1. A submission must be made to the Board by a person (who could be a member of the Board) that the membership of an individual should be terminated on the grounds set out in the submission. The submission should be clear and unambiguous as it contains the WHOLE of the case that the member is called to respond to.

The member making the decision should not attend the Board meeting at which the decision is made to appoint a sub committee

The board's response should be one of the following:

Make a decision not to terminate on the basis of the submission as presented

Invite the submitter to withdraw the submission

Invite the submitter to withdraw the submission and resubmit

Accept that a prima facie case for termination has been made out and decide whether the Board should hear and determine the matter or appoint a subcommittee for the purpose of determining the matter.

It is recommended that the Board not hear and determine the matter. If the Board does elect to hear and determine the matter, then the question of bias does not arise at this point.

2. If the Board determines that a subcommittee ought to be appointed to determine the matter then the Board needs to be satisfied that the members of the subcommittee that are appointed are not biased against or in favour of the member concerned.

Comment: The District Governor could be asked to nominate persons suitable to sit on the subcommittee, or the Board could choose them. Either way it will take time.

The members of the subcommittee do not need to be members of the Club, or Rotarians.

When the Board has notice of the submission (and before the meeting) the Board could approach the DG to nominate persons to who might be on the subcommittee.

Once nominated they could be approached to see if they would sit on a subcommittee to decide an issue that might lead to termination of the membership of [name of member]. They would also need to know the name of the accuser and the principal witnesses as the credit/believability of the parties/witnesses might be an issue and goes to bias. The Board also needs to know/understand the terms on which appointment might be accepted.

3. Regardless of the number of nominees, the number appointed should be three.

Comment: The decision to terminate must be by a two thirds majority. Three members is the minimum capable of achieving that outcome. Four members requires three to vote in favour. Five members requires four to vote in favour.

The members of the subcommittee would need to be appointed at a Board meeting so there are a number of steps to get there, all of which need to follow the decision of the Board to appoint the sub-committee:

At that point the Board needs to resolve:

That an allegation had been made against member [member name] that if found proved might lead to the termination of the membership of [member name].

The Board appoints X Y & Z as a subcommittee to determine the matter in accordance with Article 15 Section 5 of the Rules.

The Board is satisfied, on the basis of the information available to it, that the members of the subcommittee are not biased against or in favour of the member.

The members of the subcommittee be advised that the guiding principles for the meetings and deliberations of the subcommittee be Article 10, section 1. The Four-Way Test; and the high ethical standards that one should hold as a Rotary club member.

Notice of Hearing

4. The member is given at least ten days' written notice of:
 - a. The grounds of the pending action – a copy of the submission
 - b. The date time and place of the meeting of the subcommittee
5. At the same time the member should be:

- a. Advised that the member may appear before the subcommittee to respond; and
 - b. Invited to submit a written answer to the subcommittee whether or not the member chooses to appear.
6. The notice should be given personally or by registered mail to the member's home or business address.

Hearing

7. The Rules do not prescribe how the hearing / determination be conducted, explained or reported.

Procedural fairness dictates that:

- a. The allegations be put (hence the need to have them clearly articulated)
- b. The member has the right to:
 - i. Respond
 - ii. Test the allegations
 - iii. Put his or her own material by way of answer or rebuttal
 - iv. Put his or her own material as to the decision.

Remember the subcommittee is to determine the appropriateness or otherwise of termination. Acceptance of the allegations does not automatically lead to termination.

Outcome.

If two thirds of the subcommittee vote in favour of termination, the membership is terminated immediately.

Notice of the decision must be given to the member within seven days of the decision by the Secretary. The Rules do not specify how notice is given, but if called on to do so, the Club must prove service. It is suggested that service be personal or by registered mail to the home or business address of the member.

Section 3 – Member's rights post suspension or termination

Within fourteen (14) days after the date of the notice from the Secretary advising of the suspension or termination, the member may give written notice to the Secretary of the intention to appeal to the club, request mediation or to arbitrate as provided in article 19.

Note:

A response by the member out of time is ineffective

An election as to an option to appeal/mediate/arbitrate made out of time is ineffective

These are choices and they belong to the member. The member must choose for the Club to be able to take further action.

If the member seeks mediation and that fails, the member may then seek arbitration (Article 19 Sec 3(b))

Appeal

1. At law an appeal might be a review (an analysis of where the subcommittee went wrong or a new hearing. It is suggested that the better course is that an appeal under Article 15 Section 6 be a new hearing. The appeal is to the whole Club
2. The Board must
 - a. Set a date for the appeal, and the date must be within 21 days of the receipt of the written notice of the member seeking to appeal the decision of the subcommittee. The appeal must be heard at a regular club meeting.
 - b. Give each member written notice of the meeting and the special business to be conducted (ie the appeal)

It would not be necessary to give each member a copy of the allegations in the notice, but the allegations must be available at the meeting
3. When the appeal is heard only the members may be present.
4. The appeal is described as special business and it might be a Resolution "to terminate the membership of XX ". For the re-hearing to result in or confirm termination, it must be passed by 75% of the members attending and voting at the meeting. Proxies are not allowed.

Mediation

Mediation is a process that endeavours to resolve a dispute. It is focused on achieving an outcome that the parties can live with. It is not a determination of the rights or wrongs of the parties or the process, although a party might make formal concessions in the process or as part of the outcome.

It normally results in an agreed outcome, and the agreement is documented and formally acknowledged.

Timing

1. The Board sets a date for the mediation in conjunction with the member, and the mediation must at least start within 21 days of the request for mediation

The Board has an obligation to ensure that the member has the opportunity to be heard on the matter the subject of the dispute and should take that into account in fixing the date.

The Mediator

2. The mediator must be a member of a Rotary Club, but clearly not your Rotary Club. The Club might request the District Governor to appoint a mediator who has appropriate mediation skills and experience

Procedure

3. The procedure can be determined by the mediator but must meet the following:

The procedure shall be that recognized by an appropriate authority with national or state jurisdiction or be that recommended by a competent

professional body whose recognized expertise covers alternative dispute resolution or be that recommended by way of documented guidelines determined by the board of Rotary International or the trustees of The Rotary Foundation.

Positive Outcome

4. The outcomes or decisions agreed between the parties as a result of mediation shall be recorded and copies held by each party and the mediator. The Club's part shall be held by the secretary. A summary statement of outcomes acceptable to the parties involved shall be prepared for the information of the Club.
5. Either party through the president or secretary may call for further mediation if either party has retracted significantly from the mediated position.

Failure

6. If mediation fails, either party may seek arbitration.

Note: This gets messy.

If the mediation fails, there is no point in the Club doing anything as the termination stands. The member may seek mediation.

A further mediation is not a resumption of the first mediation. So if the outcome of the first mediation is membership with some behavioural promises, the further mediation cannot result in termination other than by agreement. The process might start again.

Arbitration

The outcome of an arbitration is a decision by the arbitrators. A decision, perhaps made by a majority and not unanimously. Not an agreement made by the Board and the member, although if the parties reach an agreement during the arbitration process, the arbitrators are likely to make a formal decision or order that reflects the agreement.

Timing

1. The Board sets a date for the arbitration in conjunction with the member, and the arbitration must at least start within 21 days of the request for arbitration.

The Board has an obligation to ensure that the member has the opportunity to be heard on the matter the subject of the dispute and should take that into account in fixing the date.

Note. This is messy. The logical process would be to appoint the arbitrators and have them fix the date. The result is that the arbitration might open/start and then be adjourned, so that it starts in time, even if not finished within the 21 days

Choosing the arbitrators

2. The Board and a member each appoint an arbitrator, and together they appoint an umpire. The umpire must be a member of a Rotary Club
The umpire must have no personal interest in the dispute and must not be biased in favour of or against any party

Procedure

3. Is determined by the arbitrators
4. the decision reached by the arbitrators or, if they disagree, by the umpire shall be final and binding on all parties and is not subject to appeal

Rotary District 9800
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