

Disciplining Fire & EMS Members

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Disciplining members is never a positive experience, but it is a necessity in fire and EMS organizations. It becomes more unpleasant however, if members do not receive the rights afforded to them and are able to successfully appeal and obtain a reversal of the discipline. Therefore, it is extremely important that the bylaws be carefully drafted and contain protections for the corporation and the member. The use of an attorney familiar with fire and EMS corporations can be extremely useful in this process.

Section 601 of the Not For Profit Law provides that a not for profit corporation has the power to discipline, suspend, or expel its members. However, the statute does not provide a method for punishing members or permissible reasons for punishment. The requirements for disciplining members can be gleaned from the multitude of cases where courts evaluated and criticized the processes used by corporations to impose discipline.

It should be noted that for firefighters, there is a second law that applies, that being section 209-I of the General Municipal Law. However, if the bylaws are structured as suggested below, the corporation will comply with that statute as well.

Although this article will not address reasons for discipline, suffice it to say that the reasons for discipline must be provided in the bylaws or policies, or the discipline may not be enforced by a court. A policy which provides general reasons, for example "unprofessional conduct", should be sufficient.

Let us first state that a member may be suspended before and during the hearing.

Understand also that discipline must be carried out in accordance with the bylaws. If a process is provided in the bylaws, and it is not followed, the discipline may not be enforceable. A court can order the discipline reversed and nullified. Similarly, if there is no process for discipline described in the bylaws, the discipline imposed may not be enforceable.

So, what rights and procedures must the bylaws contain to ensure that the discipline will withstand the review of a court?

Notice of hearing

First, all procedures must provide a member with notice of charges and an opportunity to be heard at a hearing. This means that the date and time for the hearing must be stated in the notice. The notice should be in writing and should specifically outline the hearing procedure to be followed and the members rights. The notice should be mailed to the members address on file with the corporation, by certified mail, return receipt requested. The notice should also state the possible outcomes of the hearing, such as suspension up to a certain amount of days, termination, and loss of privileges.

If the member is temporarily suspended until the hearing decision, the member should be advised of any limitations imposed upon him, such as a prohibition from attending calls, meetings, drills or social functions.

We suggest that a member be given an opportunity to waive the hearing and simply admit to the charges.

Hearing

The member facing punishment should be afforded a fair hearing before a neutral person(s) not involved and not a witness to the events in question. The neutral party could be a member, or could be a member of the public such as a lawyer, clergy or physician. Many lawyers are well suited for these tasks due to their familiarity with fair hearings. The lawyer should not be the corporation's lawyer. The board of directors or a committee of members is also permissible, so long as they were not involved in the incident(s).

The member must be able to attend the full hearing and ask questions of the witnesses. The member may even be provided the right to counsel, or be advised that he can represent himself, as is more common.

The hearing board or officer should render a written opinion stating the facts determined after the hearing. It should record who attended the hearing, who spoke, and that the member had the opportunity to interview the witnesses.

Imposing Discipline

Assuming that the fact finder believes punishment is warranted, the decision should be forwarded to another person, committee or body. An ideal method of imposing discipline is for the members to decide the punishment based upon the facts decided by the neutral party. The members should be advised that they may consider only those facts presented to them, and not other information, such as their own knowledge or allegations they might have heard elsewhere. The members should be advised of their discipline options, consistent with the bylaws, and then vote after discussing the possible discipline options. Majority votes are sufficient.

Discipline may also be imposed by the board of directors or another committee, but the discipline most likely to be upheld by a court will be the members' decision. Of course, the discipline imposed must be consistent with the violation. In other words, the punishment must fit the crime.

Appeals

Although not mandatory, the right to an appeal is a useful option to ensure that a member's rights are protected. Additionally, if a disciplined member fails to use the appeal method, he may not be entitled to appeal to a court. Another neutral party or committee not involved in any prior stage of the discipline process can serve as an appeal board to determine whether or not the discipline was consistent with the violation.

Conclusion

EMS services and fire departments have the right to discipline members. Still, a member has the right to be protected from unfair discipline processes or unjust discipline. Following the procedures in this article will help to ensure this protection. Of course, the bylaws must be carefully drafted and the procedures clearly outlined. Scicchitano & Pinsky, PLLC can

assist in drafting bylaw provisions and other documents necessary to protect the corporation and its members.