

- - -FOR INFORMATION AND REFERENCE ONLY- - -

O R I G I N A L

FOR CONSIDERATION

Petition on Member Expulsion

Bylaw I, Sec. 5

Petition

We, the undersigned Councilors of the American Chemical Society, hereby petition to amend the SOCIETY Bylaws as follows (additions **underlined**; deletions ~~struck through~~):

**Bylaw I
Membership
Sec. 5.**

a. Proceedings

~~(1) Charges. Charges of conduct injurious to the SOCIETY (Constitution, Article IV, Sec. 3) shall be entertained against one or more members of the SOCIETY only when the specific charges and reasonable substantiating evidence are submitted in writing to the President of the SOCIETY by at least five members of the SOCIETY. (6/11/83)~~

~~(2) Statement of the Charges. Upon receipt of such charges, the President shall determine that the members bringing charges are aware of the gravity of their action and the procedures to be followed. The charges may be withdrawn at this time. If the charges are not withdrawn, they shall be referred to a panel of three, comprising the Chair of the Council Committee on Membership Affairs, who shall be the Chair of the Panel, the Chair of the Council Committee on Constitution and Bylaws, and the Vice Chair of the Council Policy Committee. This Panel, with the advice of the President and the SOCIETY's General Counsel, shall act promptly, either dismissing the charges if considered to be ill founded or submitting a statement of the charges to the member charged, along with the procedure for handling such charges (including copies of pertinent SOCIETY documents). (6/11/83)~~

~~(3) Response to the Charges. Upon receiving the statement of the charges, the member charged shall have three options: (6/11/83)~~

~~(a) Within sixty days of receipt of the statement of the charges from the Chair of the Council Committee on Membership Affairs, the member may present to the President a written answer to the charges, along with a request that the proceedings continue to a review by the Council Committee on Membership Affairs. (6/11/83)~~

~~(b) The member may resign. (6/11/83)~~

- ~~(c) The member may choose not to answer the charges within sixty days of receipt of the statement, or may answer the charges without requesting that the proceedings continue. In either instance, the process shall go forward. (6/11/83)~~
- ~~(4) Review by the Council Committee on Membership Affairs. The President shall instruct the Council Committee on Membership Affairs to review both the charges and any answer to the charges at a regularly scheduled meeting of the Committee, no more than nine months after the instructions are received from the President. By a majority vote of its membership, the Committee shall order the process to go forward and offer the member charged the opportunity to be heard before a Commission of Nine Councilors to be appointed by the President. Lacking such a majority vote, the charges shall be dismissed. Within thirty days after the meeting of the Committee, the Chair of the Committee shall notify the President and the member charged of the Committee's action. (6/11/83)~~
- ~~(5) Response to the Offered Opportunity to be Heard. Upon notification by the Chair of the Council Committee on Membership Affairs of the opportunity to be heard before a Commission of Nine Councilors, the member charged shall have three options: (6/11/83)~~
- ~~(a) The member may request a hearing before a Commission of Nine Councilors. Such request must be made to the President within sixty days after receipt of the notification. (6/11/83)~~
- ~~(b) The member may resign. (6/11/83)~~
- ~~(c) The member may choose not to answer the notification. In this instance, the member shall be dropped from membership, effective the first day after the sixty-day period has elapsed. (6/11/83)~~
- ~~(6) Selection of the Commission of Nine Councilors. The Commission of Nine Councilors shall be chosen according to the following procedure: Within thirty days after the President receives the request for a hearing from the member charged, the President shall submit the names of fifteen Councilors, not previously involved in the proceedings, to the member charged, who shall have the right to excuse as many as three persons from the list of fifteen. Action to excuse must be made within thirty days following the receipt of the list from the President. The President shall promptly appoint nine unchallenged Councilors from the list of fifteen to serve as the Commission of Nine Councilors. The Commission shall elect a Chair, Vice Chair, and a Secretary from among its members. (6/11/83)~~
- ~~(7) Hearing by the Commission of Nine Councilors. Within thirty days after the date of appointment, the President shall set the date and location for the hearing by the Commission of Nine Councilors. A quorum for the hearing shall be seven members. The hearing shall be held within one hundred twenty days after the date of appointment. Immediately following the hearing, the Commission may have the member dropped from membership by a two-thirds (2/3) vote of those Commission members present at the hearing, subject to the provisions of this Bylaw. Otherwise the charges shall be dismissed. The Chair of the Commission of Nine Councilors shall notify the member charged, the President, and the Chair of the Council Committee on Membership Affairs of the Commission's decision within~~

~~thirty days. If a quorum is not present, the President shall reschedule the hearing for the earliest practical date. (9/21/90)~~

~~(8) Appeal to the President. The decision of the Commission of Nine Councilors shall be final unless the member charged addresses an appeal to the President of the SOCIETY, requesting a hearing before the Council. The request must be received by the President within sixty days after the notification of the decision of the Commission of Nine Councilors is received by the member charged. The date of the hearing before the Council shall be set by the President, and shall be no more than nine months after the last day of the sixty day period. If no appeal is received, the member charged shall be dropped from membership, effective the first day after the sixty day period has elapsed. (6/11/83)~~

~~(9) Hearing before the Council. The hearing before the Council shall be open only to voting Councilors, necessary SOCIETY staff, and others as specified in (c) below. The proceedings shall be comprised of four parts in the following order:~~

~~(a) The President, or the President's designate, shall introduce the subject and provide necessary information on Bylaw procedures and responsibilities of the Council. (6/11/83)~~

~~(b) The Chair of the Commission of Nine Councilors, or the Chair's designate, shall present background information on the case, and explain the decision of the Commission. This presentation shall not exceed one hour. (6/11/83)~~

~~(c) The appeal of the charged member before the Council shall be made by the member, and/or a designate of the member. This appeal shall not exceed one hour. (6/11/83)~~

~~(d) A vote shall be taken in executive session. The member charged shall be dropped from membership by a two thirds (2/3) vote of the voting Councilors present; termination of membership shall be immediate. Otherwise the charges shall be dismissed. In either instance, the Commission of Nine Councilors then shall be dissolved by the President. If a quorum is not present, the hearing shall be rescheduled by the President for the earliest practical date. (6/11/83)~~

a. Grounds for expulsion

Members of the SOCIETY shall be dropped from membership (hereinafter referred to as "expelled") for conduct that tends to injure the SOCIETY or to affect adversely its reputation, or which is contrary to or destructive of its objects as described in the SOCIETY's Constitution.

[FYI: the original subsection b on Readmission was moved to subsection g, below.]

b. Due process

Procedures for considering expulsions shall be promulgated by the Council Committee on Membership Affairs. Such procedures shall provide for quick resolution, fairness, confidentiality, and due process, including an opportunity for charged members to be heard.

c. Advisors

~~It is the intent of this Bylaw that the member charged be present at the hearings before the Commission of Nine Councilors and before the Council. The member may be excused from attending either hearing by the President of the SOCIETY for reasons of extreme exigency or circumstances beyond the control of the member. In either the hearing before the Commission of Nine Councilors or the Council, the~~ **The member charged member** ~~may be assisted by one~~ **an** ~~advisor who may act on behalf of the member. The~~ **Such** ~~advisor may be an attorney if~~ **the charged member provides the** ~~President~~ **Chair of the Council Committee on Membership Affairs with** ~~if-written notice of the~~ **attorney's name and office address of the attorney is given to the President at least ten working days prior to any** ~~before the date of the hearing. An attorney for the SOCIETY may be selected by the SOCIETY's General Counsel to be present~~ **and speak at any such** ~~the hearing(s).~~ (6/11/83)

d. Confidentiality

~~Until resolution of the case, which shall be announced by the President, all allegations,~~ **All charges, evidence, correspondence, findings, and recommendations pertaining to the case any such expulsion matter shall be deemed confidential,** ~~with all~~ **All expulsion** ~~proceedings and hearings shall be closed to the public.~~ (6/11/83)

e. Appeal

The charged member may appeal an adverse decision of the Council Committee on Membership Affairs to the Council Policy Committee, which shall consider the appeal at its next regularly scheduled meeting, or at an earlier meeting specially called for the purpose of considering the appeal. Decisions of the Council Policy Committee shall be final.

f. Dissemination of outcome

Upon disposition of the charges, the Chair of the Council Committee on Membership Affairs shall be responsible for communicating the outcome to the charged member, the Society's Executive Director, the Chair of the Board of Directors, and the members who submitted the initial statement of charges. In the event the Council Committee on Membership Affairs determines to expel the charged member, the Chair of the Council Committee on Membership Affairs shall also inform the chairs of the local section, and of any division(s) to which the charged member belongs. In addition, the Chair of the Board may also inform any additional people who, in the Chair's discretion, have a need to know of the decision.

b-g. Readmission

Persons whose membership in the SOCIETY shall have been terminated by any SOCIETY action herein described, or by resignation after the initial statement of charges is received by the ~~member~~ **charged member**, shall not be readmitted upon subsequent application unless such application is approved by a two-thirds (2/3) vote of the Council Committee on Membership Affairs. (6/11/83)

Explanation

BYLAW I, Membership, Sec. 5 has a lengthy procedure for expelling a member from the SOCIETY for “conduct injurious to the SOCIETY.” This lengthy procedure, added or last amended in 1983, is cumbersome. There are several steps, each of which involves creation or use of an additional body to consider the charges. The length and cumbersome nature of the process is unfair both to the SOCIETY and to the member charged. Petitioners believe the intent of the Constitution (Article IV, Sec. 3) and the current Bylaw can be met, and due process maintained for the charged member, by using a procedure modeled after those currently recommended by the Committee on Constitution and Bylaws for removal of officers for neglect of duties. Petitioners further believe the intent of the Bylaws can be met by amending the Bylaw and delegating authority to the Council Committee on Membership Affairs to promulgate and amend such procedures as are necessary to implement this amendment separately from the Bylaws. Reference to the “Chemical Professional’s Code of Conduct” could provide a framework for determining “conduct injurious to the SOCIETY.”

Petitioners have developed an example of the type of the detailed procedures that could be adapted by the Council Committee on Membership Affairs to implement this amendment. These procedures have been reviewed by the Council Committee on Membership Affairs and the Council Policy Committee and we suggest that they be published as part of the ACS Governing Documents (Bulletin 5) after their formal adoption. They are available from these committees.

Signed:

Dr. Harmon B. Abrahamson	Mr. James M. Landis
Dr. Frank D. Blum	Dr. Lee H. Latimer
Dr. Mary K. Carroll	Dr. Melanie J. Lesko
Mr. Robert S. Cohen	Dr. Carolyn Ribes
Ms. Ella L. Davis	Dr. Eleanor D. Siebert
Dr. Alan M. Ehrlich	Dr. Herbert B. Silber
Dr. Peter C. Jurs	Dr. Angela K. Wilson

(This petition has been referred to the ***Committee on Membership Affairs**, Committee on Economic and Professional Affairs, Council Policy Committee, Society Committee on Budget and Finance, and Committee on Constitution and Bylaws.)

***Committee having primary substantive responsibility**

PRELIMINARY STATEMENT OF FINANCIAL IMPACT

The financial implications of this petition are still being assessed. The Final Statement of Financial Impact will be available per Article XVIII, Sec. 2, d, which states in part, “The Chair of the Society Committee on Budget and Finance shall prepare a financial impact statement which also shall appear in the Council agenda when action is to be taken on the petition.”

PRELIMINARY REPORT OF THE COMMITTEE ON CONSTITUTION AND BYLAWS

The Committee on Constitution and Bylaws has reviewed the petition and finds it to be legal and not inconsistent with the Constitution of the SOCIETY. The proposed Bylaw amendment states that

“Procedures for considering expulsions shall be promulgated by the Council Committee on Membership Affairs. Such procedures shall provide for quick resolution, fairness, confidentiality, and due process, including an opportunity for charged members to be heard.” This language appears to satisfy Article IV, Sec. 3 of the Constitution of the SOCIETY, which states, “No member shall be dropped except after opportunity to be heard as provided in the Bylaws.” However the Committee on Constitution and Bylaws suggests that this petition be amended to include that any procedure developed by the Committee on Membership Affairs, and/or any modification to any procedure developed by the Committee on Membership Affairs, shall be submitted to and approved by Council.

The explanation states that the petitioners believe that the current Bylaw on removal of members is too cumbersome and that a procedure to be developed by the Committee on Membership Affairs would be preferable. It is unclear if the purpose of this proposed Bylaw amendment will make the removal procedure any less cumbersome, but it appears that if approved, this amendment will streamline the Bylaws. Further, the explanation states that “the intent of the Constitution (Article IV, Sec. 3) and the current Bylaw can be met, and due process maintained for the charged member, by using a procedure modeled after those currently recommended by the Committee on Constitution and Bylaws for removal of officers for neglect of duties.” The Committee on Constitution and Bylaws concurs.

Comments and suggestions from committees, petitioners and other interested members on the substance of the petition should be directed to the Committee on Membership Affairs, which has primary substantive responsibility for the petition, the Committee on Economic and Professional Affairs, the Council Policy Committee, and the Society Committee on Budget and Finance. Other comments and suggestions may be directed to the Committee on Constitution and Bylaws.

Dr. James C. Carver
Chair