

No.

IN THE
Supreme Court of the United States

WILBUR S. VEASY, WILL S. TWIGG
and JERMAINE T. DAVIS,

Petitioners,

v.

FRATERNAL ORDER OF POLICE
JIM FOGLEMAN LODGE #50, INC.,
Respondent.

**On Petition for a Writ of Certiorari to the
Florida Fourth District
Court of Appeal**

APPENDIX

Nicole A. Milson MILSON LAW, PA 201 S. Biscayne Blvd., Suite 2700 Miami, FL 33131	Robert N. Harris <i>Counsel of Record</i> THE HARRIS LAW FIRM GROUP, P.A. 201 S. Biscayne Blvd., Suite 2700 Miami, FL 33131 (305) 536-6131 robert@harrislawinfo.com
---	---

Counsel for Petitioners

APPENDIX

TABLE OF CONTENTS

Order of the Fourth District Court of Appeal.....	0001
Order of the Fourth District Denying Rehearing	0002
Trial Court Final Judgment Against Petitioners.....	0003
Trial Court Order on Summary Judgment.....	0005
Amended Complaint	0007
Answer and Affirmative Defenses	0011
Motion for Summary Judgment and Protective Order	0014
Affidavit of Patrick Yoes	0023
Declaration of Thomas Hannigan	0027
Declaration of Jermaine Davis.....	0040
Declaration of Mark Johnson	0055
Plaintiff's First Request to Produce.....	0058
Plaintiff's First Set of Interrogatories	0063
Emergency Motion to Not Enter Summary Judgment.....	0104
Affidavit of Edward J. Manak.....	0108
Order on Plaintiffs' Emergency Motion	0120
Supplement to Motion for Summary Judgment.....	0122
Plaintiffs' Response to Court Order.....	0173
Order Denying Summary Judgment for Edward Manak.....	0189
Motion for Reconsideration	0191
Order Denying Motion for Reconsideration	0202
Appellants' Initial Brief	0203
Appellants' Motion for Rehearing	0229

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

WILBUR S. VEASY, WILL S. TWIGG and JERMAINE T. DAVIS,
Appellants,

v.

FRATERNAL ORDER OF POLICE JIM FOGLEMAN LODGE #50 INC.
and **EDWARD J. MANAK,**
Appellees.

No. 4D19-2152

[May 14, 2020]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Lisa S. Small, Judge; L.T. Case No. 50-2014-CA-009494-XXXX-MB.

Nicole Milson of Milson Law P.A., Miami, for appellants.

Robert C. Buschel and Eugene G. Gibbons of Buschel Gibbons, P.A., Fort Lauderdale, for appellee Fraternal Order of Police Jim Fogelman Lodge #50 Inc.

PER CURIAM.

Affirmed.

LEVINE, C.J., DAMOORGIAN and KUNTZ, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

July 07, 2020

CASE NO.: 4D19-2152

L.T. No.: 502014CA009494XXXXMB

WILBUR S. VEASY, WILL S. TWIGG
and JERMAINE T. DAVIS

v. FRATERNAL ORDER OF POLICE JIM
FOGLEMAN LODGE #50, INC.

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that appellants' May 29, 2020 "motion for issuance of a written opinion, rehearing, rehearing en banc, and certification" is denied.

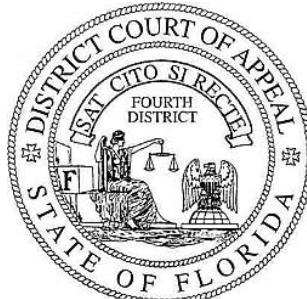
Served:

cc: Eugene George Gibbons Nicole Milson Robert C. Buschel

kr

Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

EDWARD J MANAK,
JERMAINE T DAVIS,
WILBUR S VEASY,
and WILL S TWIGG

CASE NO.:
502014CA009494XXXXMB

Plaintiffs,

v.

FRATERNAL ORDER OF POLICE JIM
FOGLEMAN LODGE #50 INC

Defendant.

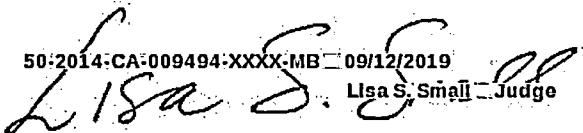
PARTIAL FINAL JUDGMENT

THIS CAUSE having come on to be heard on Defendant's Motion for Summary Judgment heard on August 28, 2018 and the Court having granted Summary Judgment in favor of Defendant, it is thereupon

ORDERED AND ADJUDGED as follows:

Final Judgment is entered against Plaintiffs WILBUR S. VEASY, WILL S. TWIGG and JERMAINE T. DAVIS in this action.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida.


50-2014-CA-009494-XXXX-MB 09/12/2019
Lisa S. Small Judge

50-2014-CA-009494-XXXX-MB 09/12/2019
Lisa S. Small
Judge

COPIES TO:

JERMAINE T. DAVIS	No Address Available	jayd045@yahoo.com
ROBERT C. BUSCHEL, ESQ	201 S.E 9TH STREET FT LAUDERDALE, FL 33316	buschel@bglaw-pa.com indira@bglaw-pa.com
ROBET BUSCHEL	No Address Available	buschel@bglaw-pa.com
WILBUR S. VEASY	No Address Available	jlopezwils@msn.com
WILL S. TWIGG	No Address Available	willstwigg@yahoo.com
EDWARD MANAK	No Address Available	edwardmanak@att.net

IN THE FIFTEENTH JUDICIAL
CIRCUIT IN AND FOR PALM BEACH
COUNTY, FLORIDA

EDWARD J. MANAK, et. al.
Plaintiff,

v.

Case No. 14-CA-9494

FRATERNAL ORDER OF POLICE,
JIM FOGLEMAN LODGE #50, INC.
Defendant.

/

ORDER ON DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

THIS CAUSE came before this Court on Defendant's Motion for Summary Judgment heard on August 28, 2018. The Court, having reviewed the moving papers and being otherwise duly advised in the premises, does hereby rule as follows:

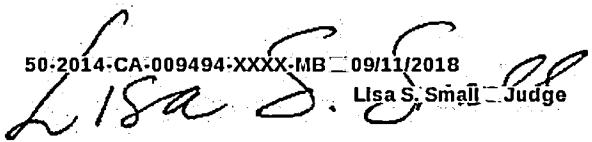
ORDERED AND ADJUDGED that Defendant's Motion for Summary Judgment is GRANTED as to Plaintiffs JERMAINE DAVIS, WILBUR VEASY and WILL S. TWIGG based upon the Court having found that there are no genuine issues of material fact as to these Plaintiffs not having standing to proceed with the claims against Defendant.

IT IS FURTHER ORDERED that the Court RESERVED ruling on Defendant's Motion for Summary Judgment as to Plaintiff EDWARD J. MANAK.

The Court DIRECTED counsel to perform additional research on the issues relating to application of Florida Statute Section 617.0607 to this case. In particular, the Court directed counsel to research whether Section 617.0607 can provide a basis for a civil cause of action.

Plaintiff Manak and Defendant Fraternal Order of Police shall have until September 13, 2018 to provide the Court with additional research and memoranda on this matter.

DONE and ORDERED in Chambers in West Palm Beach, Palm Beach County, Florida.


50-2014-CA-009494-XXXX-MB 09/11/2018
Lisa S. Small Judge

50-2014-CA-009494-XXXX-MB 09/11/2018
Lisa S. Small
Judge

Isidro M. Garcia, 120 South Olive Avenue, Suite 401, West Palm Beach, Florida, 33401

Robert C. Buschel, 100 S.E. Third Avenue, Suite 1300, Ft. Lauderdale, FL 33394

**IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

EDWARD J. MANAK,)	
JERMAINE T. DAVIS,)	
WILBUR S. VEASY AND)	
WILL S. TWIGG,)	
)	CASE NO.: 50-2014-CA-009494-XXXX-MB AH
Plaintiff(s),)	
)	
vs.)	
)	
FRATERNAL ORDER OF)	
POLICE JIM FOGLEMAN)	
LODGE #50 INC.,)	
)	
Defendant(s).)	
	/	

**FIRST AMENDED VERIFIED COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND AN ACCOUNTING**

Plaintiffs, by and through undersigned counsel, sue Defendant and allege:

1. Plaintiffs are natural persons who reside in Palm Beach County, Florida, and are former dues paying members of the Defendant.
2. Defendant is a Florida not for profit corporation doing business in Palm Beach County, Florida.
3. Plaintiffs were unlawfully removed and or expelled from the Defendant's board and/or membership rolls after Plaintiff EDWARD J. MANAK objected to what he reasonably believed to be misuse and/or misappropriation of funds by new treasurer Carlos Dorta.
4. Manak was improperly removed as treasurer of the Defendant on or about August 26, 2014 , after he refused to resign as treasurer and turn over all records to a new treasurer. Manak later objected to the movement of the funds from five (5) PNC Bank accounts that the Defendant owned

to personal accounts of the new treasurer of the Defendant, Carlos Dorta, which took place on or about September 16, 2014.

5. After Manak was improperly ousted by the Board in retaliation for objecting to improper removal and in violation of Defendant's bylaws, he appealed to the Fraternal Order of Police Florida State Lodge which ordered him reinstated as Treasurer on or about October 1, 2014. Despite this, Manak was then expelled by the Defendant as a member on or about January 13, 2015; was denied a hearing on said expulsion by the Chairman of trustees of the Florida State Lodge, Rob Robertson on or about June 11, 2015, and was prevented from seeking an appeal to the national Grand Lodge by David Frazier.

6. Plaintiffs JERMAINE T. DAVIS, WILBUR S. VEASY and WILL S. TWIGG objected to Manak's planned removal as treasurer and the apparent planned misuse and/or misappropriation of funds by the new treasurer and were expelled from the Defendant in retaliation and in violation of Defendant's bylaws for same on or about July 8, 2014 (Davis and Twigg) and on or about July 29, 2014 (Veasy).

7. As a result of the unlawful expulsion, all Plaintiffs suffered the following damages, losses and/ or injuries: loss of membership in the FOP; loss of benefit of Legal Aid provided as a benefit for all members of the Defendant; loss of association with the membership at meetings in the lodge of the Defendant; loss of standing and reputation in the law enforcement community.

8. Manak also lost his Board position as treasurer, an elected Board member, when he was removed without just cause and in retaliation for objecting to what he reasonably believed to be improper demands for reimbursement of expenses by the Board and misuse or misappropriation of funds by the new treasurer. Manak also was removed from the FOP State Memorial committee.

WHEREFORE, Plaintiffs respectfully request this Court to:

- I. Award Plaintiffs damages and injunctive relief to restore their memberships in the FOP;
- ii. Reinstate Manak as Treasurer of the Defendant;
- iii. Order an accounting of all expenditures made since Manak's removal as treasurer, and of the accounts controlled by Doria to which FOP funds were unlawfully transferred to, and any subsequent account(s) said funds were transferred to;
- iv. Any other relief deemed just and necessary.

TRIAL BY JURY ON ALL ISSUES SO TRIABLE IS HEREBY DEMANDED.

UNDER PENALTY OF PERJURY, WE DECLARE THAT THE FACTS SET FORTH HEREIN ARE TRUE AND CORRECT TO THE BEST OF OUR KNOWLEDGE AND BELIEF.

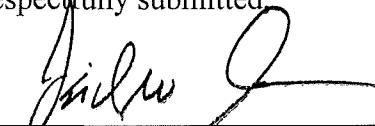
Edward J. Manak
EDWARD J. MANAK

Jermaine T. Davis
JERMAINE T. DAVIS

Wilbur S. Veasy
WILBUR S. VEASY

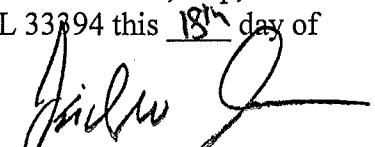
Will S. Twigg
WILL S. TWIGG

Respectfully submitted


ISIDRO M. GARCIA
Florida Bar No. 437883
GARCIA LAW FIRM, P.A.
120 South Olive Avenue Suite 401
West Palm Beach, FL 33401
Telephone: (561) 832-7732
Telecopier: (561) 832-7137
E-mail: isidrogarcia@garcialaborlaw.com
COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was furnished **VIA FLORIDA E-FILING PORTAL** (buschel@bglaw-pa.com) to: Robert C. Buschel, Esq., Buschel Gibbons, P.A., 100 S.E. Third Avenue, Suite 1300, Fort Lauderdale, FL 33394 this 18th day of August, 2017.


ISIDRO M. GARCIA

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

EDWARD J. MANAK, et. al.,

Plaintiff,

v.

Case No. 14-CA-9494

FRATERNAL ORDER OF POLICE,
JIM FOGLEMAN LODGE #50, INC.

Defendant.

/

DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

The Defendant, FRATERNAL ORDER OF POLICE, JIM FOGLEMAN LODGE #50, INC, through counsel, files this answer and affirmative defenses to the "First Amended Verified Complaint" filed on August 18, 2017.

1. Defendant is without knowledge as to where Plaintiffs reside. Admit Plaintiffs were dues paying members.
2. Admit.
3. Denied.
4. Denied.
5. Denied.
6. Denied.
7. Denied.
8. Admit Manak is no longer Treasurer of the FOP. Denied as to all allegations.

AFFIRMATIVE DEFENSES

1. Circuit Court does not have jurisdiction or authority to restore Plaintiffs' membership in

the FOP.

2. Circuit Court does not have jurisdiction or authority to restore Plaintiff Manak as Treasurer in the FOP.

3. Even if Circuit Court had jurisdiction and authority to restore Plaintiffs as members, Plaintiff Davis, Veasy, and Twigg do not otherwise meet the requirements of membership.

4. Plaintiffs exhausted all administrative remedies within the Fraternal Order of Police and their claims have been denied.

5. Plaintiffs' complaint is vague and does not specify the causes of actions it seeks.

6. Plaintiffs fail to state a claim upon which relief can be granted.

7. Plaintiffs have no right to an accounting.

8. Plaintiffs have no right to damages under § 617.0607, Fla. Stat. (2017).

9. Plaintiffs do not have a First Amendment right to associate with a private organization such as the FOP. First Amendment requires state action.

10. Court cannot award injunctive relief for behavior that has all ready occurred. When a plaintiff seeks to enjoin an action that has already occurred, the cause of action for injunction is moot. *Boatman v. Florida Dept. of Corr.*, 924 So. 2d 906, 907 (Fla. 1st DCA 2006) (citation omitted).

11. Plaintiffs do not have a right to injunctive relief for any future conduct as they do not meet the elements of injunctive relief.

12. Plaintiff was properly removed as Treasurer of the FOP for violating the by-laws for failing to turn over bank records of the FOP as requested and required by the Board.

WHEREFORE this Court should dismiss the lawsuit with prejudice.

Respectfully submitted,

Robert C. Buschel, Esq.
BUSCHEL GIBBONS, P.A.
One Financial Plaza
100 S.E. Third Avenue, Suite 1300
Fort Lauderdale, Florida 33394
Tele: (954) 530-5301
Email: Buschel@BGLaw-pa.com

By: /s/ Robert C. Buschel
ROBERT C. BUSCHEL
Florida Bar No. 0063436

CERTIFICATE OF SERVICE

I hereby certify that on December 11, 2017 a copy of this filing to opposing counsel via the Florida efilng system.

BUSCHEL GIBBONS, P.A.

BY: /s/ Robert Buschel
ROBERT C. BUSCHEL

Garcia Law Firm, P.A.
120 South Olive Ave. Suite 401
West Palm Beach, FL, 33401
Tel. (561) 832-7732
Fax (561) 832-7137
www.garcialaborlaw.com
Mark.Johnson@garcialaborlaw.com

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

EDWARD J. MANAK,
JERMAINE T. DAVIS,
WILBUR S VEASY AND
WILL S. TWIGG,

Plaintiffs,

v.

Case No. 14-CA-9494

FRATERNAL ORDER OF POLICE,
JIM FOGLEMAN LODGE #50, INC.

Defendant.

/

**MOTION FOR SUMMARY JUDGMENT
and MOTION FOR PROTECTIVE ORDER**

The Defendant, FRATERNAL ORDER OF POLICE, JIM FOGLEMAN LODGE #50, INC, through counsel, files this motion for summary judgment against the “first amended verified complaint for damages injunctive relief and an accounting” filed on August 18, 2017. As grounds for the motion state:

FACTUAL BACKGROUND

1. The first amended verified complaint was filed on September 10, 2014. But the Plaintiff added plaintiffs and filed another “first amended verified complaint” on August 18, 2017. All references to the Amended Complaint refer to the August 18, 2017 complaint.

2. Plaintiffs’ claims are for injunctive relief (it is now unclear whether it is for temporary and permanent).

3. The newest version of the complaint abandoned the request for a judgment for attorney’s fees and costs pursuant to Florida Statute Section 448.08. (Cf. September 10, 2014, ¶

1, Am. Compl. and “wherefore” clause *with* latest version of the complaint filed August 18, 2017).

4. In short, the Plaintiff Manak complains that he was removed as Treasurer of a fraternal organization without following its by-laws.

5. The other Plaintiffs Jermain Davis, Wilbur Veasy, and Will Twigg have standing to sue for any cause of action at all. They were not officers of the FOP and cannot be and never could be members in good standing.

6. Jurisdictional allegations are not alleged.

7. Venue allegations are not alleged.

8. There are no allegations why an accounting is allowed or required.

9. Formal causes of action are not alleged.

10. Plaintiffs did not file exhibits with the latest version of the complaint that were filed in previous versions of the complaint. Article IX “Recall of Officer,” Section 1, filed as Exhibit A to the first amended complaint September 10, 2014.

11. Plaintiff Manak was properly removed as Treasurer of the private organization. (Decl. Hannigan).

12. Merely attaching a “verification” page to the lawsuit is not sworn evidence and does not circumvent summary judgment.

13. Plaintiffs’ lawsuit is defamatory. Without evidence and without a cause of action alleged in paragraph 3 they allege a scandalous allegation that the current Treasurer was misusing or misappropriating funds.

14. The Plaintiffs have not alleged any cause of action outside of the entitlement of their lawsuit. No causes of action are labeled. No elements of any causes of action are

enumerated. This Amended Complaint barely accomplished anything except to meet the deadline that the Court imposed which compelled Plaintiff Manak to file an amended complaint or the Court would dismiss the claim for lack of prosecution. (Order, July 20, 2017).

15. Plaintiff Manak is not paid or employed by the Defendant Fraternal Order of Police (“FOP”) for services as Treasurer. It is a voluntary position in a fraternal organization.

16. Plaintiff Manak was removed as Treasurer on August 12, 2014. Plaintiff filed suit after the FOP removed him as Treasurer.

17. Plaintiffs seek injunctive relief after the action they seek to enjoin occurred. When a plaintiff seeks to enjoin an action that has already occurred, the cause of action for injunction is moot. *Boatman v. Florida Dept. of Corr.*, 924 So. 2d 906, 907 (Fla. 1st DCA 2006) (citing *Black v. Rouse*, 587 So.2d 1359 (Fla. 4th DCA 1991)); *City of Apalachicola v. Bd. of County Com'rs of Franklin County*, 567 So. 2d 22, 23 (Fla. 1st DCA 1990) (even various statutory violations were present in the process; mandamus was not an option since action sought occurred). Thus, any claim to have Plaintiff Manak placed back as Treasurer during the pendency of this case is moot.

18. Plaintiff Manak is no longer a member of the Fraternal Order of Police. His membership has been revoked. (Aff. Yoes).

19. Plaintiff Manak cannot be Treasurer of an organization he is no longer a member.

20. Plaintiffs are asking the court to intervene in a fraternal organization’s private meetings and procedures. In this FOP lodge, the FOP is merely fraternal and is not the collective bargaining agent of the Palm Beach County Sheriff’s Office.

21. Plaintiff Manak was given notice and a hearing. Plaintiff complains that the subtle niceties of the notice were not met, but it is not required even if such a distinction is parsed out. *See Boca W. Club, Inc. v. Levine*, 578 So. 2d 14, 15 (Fla. 4th DCA 1991).

22. "Even if there were factual allegations, however, it is difficult to see how a justiciable issue could be made. The governing body of a private, social club 'is the final arbiter of the sufficiency of causes for expulsion.' *Everglades Protective Syndicate, Inc. v. Makinney*, 391 So. 2d 262, 265 (Fla. 4th DCA 1980) (citation omitted)).

23. Plaintiffs do not have an ownership right in an officer's position or membership in the FOP. They did not pay for an ownership interest like some country club membership. There is no justiciable issue because courts must not get involved in the internal workings of a fraternal organization. The law does not provide for such remedy.

24. Plaintiffs served interrogatories and request for production of documents. All of the interrogatories and documents seek information Plaintiffs are not entitled to possess or review. They are not and cannot be a member of the FOP. They are not members and could never be a member of the organization again. They also seek information about deputy sheriffs that are protected under

25. Plaintiff Manak cannot be the Treasurer of an organization for which he was expelled. Manak cannot be force placed as an officer in an organization because it's an elected position. There have been several elections since Manak was expelled from the organization.

26. Plaintiffs seek to disrupt a fraternal organization because they are disgruntled. The relief Plaintiffs seek is impossible for the Court to award. The Court cannot force membership or make someone an officer of the FOP. The Court does not have the authority to do so.

27. Plaintiffs cannot be members of the FOP. They do not qualify as members.

28. Plaintiff Manak was expelled from the FOP. Manak exhausted his administrative remedies and cannot seek reentry as a member of the FOP. A court cannot order him to be

Treasurer of an organization he is not a member. A court cannot order that he be admitted as a member that expelled him for violations of its bylaws. (Decl. Hannigan).

29. Plaintiff Davis cannot be a member of the FOP. He waived his administrative hearing regarding his expulsion by failing to appear. (Decl. Hannigan). Davis was terminated from PBSO. He cannot be a member of the FOP, a police union.

30. Plaintiff Twigg is a convicted felon. He cannot be a member of the FOP, a police union. He is also not a member of the PBSO. Twigg did not retire in good standing from PBSO, he was terminated. He cannot be a member of the FOP. This Court cannot order his membership. Twigg does not have standing to seek obtain a remedy for Manak.

31. Plaintiff Veasy is not an employee of PBSO. He was terminated from PBSO. Veasy cannot be a member of the FOP if he was terminated from PBSO. (Decl. Hannigan).

32. Plaintiffs filed this lawsuit and has let it languish in the court system in order to punish and drain the resources of the FOP. They are not entitled to the discovery they seek since they are not members of the organization, can never be members of the organization, and have no standing to remediate their rights and rights of each other.

33. Plaintiffs rely upon Section 617.0607, Fla. Stat. to support their case. A procedure that is fair and reasonable is administrative review outlined in the declaration of Hannigan and the expulsion of the Plaintiffs after this private fraternal organization deemed them unworthy to be members.

LAW ON SUMMARY JUDGMENT

“Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law.” *Curci Vill. Condo. Ass'n v. Maria*, 14 So.3d 1175, 1177 (Fla. 4th DCA 2009) (citing *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*,

760 So.2d 126, 130 (Fla.2000)). “All doubts and inferences must be resolved against the moving party, and if there is the slightest doubt or conflict in the evidence, then summary judgment is not available.” *Reeves v. N. Broward Hosp. Dist.*, 821 So.2d 319, 321 (Fla. 4th DCA 2002). “The burden of proving the absence of a genuine issue of material fact is upon the moving party. This burden is shifted to the nonmoving party once the movant has successfully met his burden.” *Palm Beach Pain Mgmt., Inc. v. Carroll*, 7 So. 3d 1144, 1145 (Fla. 4th DCA 2009) (citations and internal quotation marks omitted).

SUMMARY JUDGMENT MUST BE GRANTED

Plaintiffs’ purpose in bringing this lawsuit that has been pending since 2014 is to be an albatross around the neck of a fraternal organization that expelled them. They do not qualify to be members, nor can they maintain membership.

They are not seeking monetary damages. They cannot seek injunctive relief. They believe the Court can force seat them as members in a private organization. They cannot cite to one case where this has ever happened.

In fact, this Court cannot interfere with a fraternal organization or private club. It is not the place for the judiciary to intervene in private matters or manage the affairs of an organization. “Even if there were factual allegations, however, it is difficult to see how a justiciable issue could be made. The governing body of a private, social club ‘is the final arbiter of the sufficiency of causes for expulsion.’ *Everglades Protective Syndicate, Inc. v. Makinney*, 391 So. 2d 262, 265 (Fla. 4th DCA 1980) (citation omitted)). Otherwise, the Court would be adjudicating private matters of social clubs all the time. The southern reporters would be replete with precedent on how to handle matters such as this case. There is no precedence in this District other than to say not to interfere.

Plaintiffs rely on Section 617.0607 of the Florida Statutes. There is not one case that interprets this statute as a private right of action. Nor, does the statute suggest a remedy. Because there is no precedent and the statute does not proscribe a remedy that plaintiffs could obtain, this Court must conclude there is no cause of action in common law or by statute to support any of Plaintiffs claims.

Lastly, every plaintiff besides Manak cannot be members of a law enforcement union when they are not law enforcement officers, nor did they retire in good standing. The FOP has presented an affidavit from Secretary Patrick Yoes of the National FOP that outlines that all Plaintiffs were not members of the FOP and cannot be members of the FOP. Plaintiff Twigg is a convicted felon from this Circuit. He cannot be a member of the FOP. The other Plaintiffs misrepresented their status as corrections officers and were expelled for other reasons. This Court cannot force their membership status upon this private union.

Manak was properly expelled. The Court cannot get into the nuances or details of whether Manak's expulsion was unfair. He exhausted his administrative remedies within the FOP on a state and national level. This "injustice" is not rectified in our court system. There have been several elections over the years. Manak cannot subvert the election system of the FOP by seeking to have a court order the FOP force seat him as an officer of the union. This Court does not have the power to install an officer of a private organization.

PROTECTIVE ORDER

Plaintiffs served interrogatories and request for production. They seek the accounting they are not entitled to and have requested discovery that can never lead to admissible evidence because they are not members of the FOP. Nonmembers are not entitled to books and records. There is no independent cause of action that would make them entitled to those records. Nothing

about those records could prove any fact that Plaintiffs seek to prove or any conceivable cause of action they have or have not alleged. A protective order is justified based upon the fact Plaintiffs have no standing to sue the FOP and are not otherwise entitled to discovery.

CONCLUSION

This Court needs to rule. Plaintiffs have been given great discretion to allege a complaint that would survive the lack of prosecution and poor pleading allegations. The Court cannot compel membership nor can it compel seating an unelected officer. This Court does not have subject matter jurisdiction to interfere in an organization's private matters.

This Court should grant summary judgment and dismiss this case with prejudice. Summary judgment should be granted without any further discovery.

Respectfully submitted,

Robert C. Buschel, Esq.
BUSCHEL GIBBONS, P.A.
One Financial Plaza
100 S.E. Third Avenue, Suite 1300
Fort Lauderdale, Florida 33394
Tele: (954) 530-5301
Email: Buschel@BGlaw-pa.com

By: /s/ Robert C. Buschel
ROBERT C. BUSCHEL
Florida Bar No. 0063436

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2018 a copy of this filing to opposing counsel via the Florida efilng system.

BUSCHEL GIBBONS, P.A.

BY: /s/ Robert Buschel
ROBERT C. BUSCHEL

Isidro M. Garcia
Garcia Law Firm, P.A.
120 S. Olive Avenue, Suite 401
West Palm Beach, FL 33401
isidrogarcia@garcialaborlaw.com
Counsel for Plaintiffs

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

EDWARD J. MANAK,
JERMAIN T. DAVIS,
WILBUR S. VEASY, AND
WILL S. TWIGG,

Plaintiffs,

10

Case No. 14-CA-9494

FRATERNAL ORDER OF POLICE,
JIM FOGLEMAN LODGE #50, INC.

Defendant.

**AFFIDAVIT OF PATRICK YOES, NATIONAL SECRETARY
FOR THE NATIONAL FRATERNAL ORDER OF POLICE**

I, Patrick Yoes, being first duly sworn, do hereby state under oath and under penalty of perjury that the following facts are true:

1. I am over 18 years of age. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would testify competently as follows.
2. My name is Patrick Yoes. I currently serve as National Secretary of the National Fraternal Order of Police (“FOP”).
3. I have been an active member of the FOP for over 33 years, including over 14 years as National Secretary.

4. My duties and responsibilities as National Secretary include having custody of the books, records, documents, Seal, office and equipment of the Grand Lodge under the general authority and order of the National President and the National Board of Trustees. Additionally, I am the official custodian of the FOP Constitution and By-Laws and amendments thereto and am responsible for publication of the FOP Constitution and By-Laws.

5. Pursuant to Article 4, Section 2 of the FOP Constitution and By-Laws, each state and subordinate lodge shall be the judge of its membership. Each state and subordinate lodge shall establish requirements for membership in good standing of its respective membership, which requirements shall not be inconsistent herewith.

6. Pursuant to Article 3, Section 1.E. of the FOP Constitution and By-Laws, any member belonging to a state or subordinate lodge that is delinquent or has been suspended shall not be a member in good standing.

7. Fraternal Order of Police, Jim Fogelman Lodge #50, Inc. ("Lodge 50") is a subordinate lodge organized in the state of Florida, Palm Beach county.

8. Pursuant to my duties and responsibilities I have reviewed and am familiar with the files pertaining to Edward J. Manak, Jermaine T. Davis, Wilbur S. Veasy, and Will S. Twigg. The files show Manak, Davis, Veasy, and Twigg are not considered members in good standing with the FOP.

Edward J. Manak

9. Edward J. Manak ("Manak") is the former Treasurer of Lodge #50. He was removed as Treasurer on August 8, 2014 for violating Lodge #50 by-laws.

10. On January 13, 2015, Manak was expelled by Lodge #50 and its members.

11. Pursuant to Article 3, Section 1.E. of the FOP Constitution and By-Laws, Manak is not a member in good standing with the FOP.

Jermaine T. Davis

12. On August 23, 2012 Jermaine T. Davis ("Davis") was terminated as a Palm Beach County Sheriff's Corrections Deputy. Davis has not been a member of the FOP since 2012.

13. Pursuant to Article 3, Section 1.E. of the FOP Constitution and By-Laws, Davis is not a member in good standing with the FOP.

Wilbur S. Veasy

14. On April 19, 2013 Wilbur S. Veasy ("Veasy") was terminated as a Palm Beach County Sheriff's Corrections Deputy. Veasy has not been a member of the FOP since 2013.

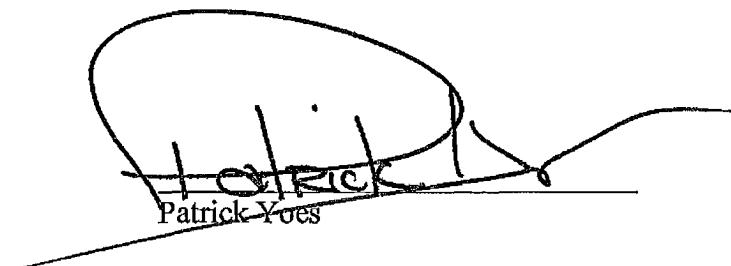
15. Pursuant to Article 3, Section 1.E. of the FOP Constitution and By-Laws, Veasy is not a member in good standing with the FOP.

Will S. Twigg

16. On July 8, 2014 Will S. Twigg ("Twigg") was expelled from membership with Lodge #50.

17. Pursuant to Article 3, Section 1.E. of the FOP Constitution and By-Laws, Twigg is not a member in good standing with the FOP.

Further Affiant sayeth naught.

A handwritten signature in black ink, appearing to read "PATRICK YOES", is written over a horizontal line. The signature is somewhat stylized and includes a large, rounded flourish at the top.

Sworn to before me and subscribed in my presence by Patrick Yoes, whom I know to be
that person, this 20 day of June 2018.



Notary Public
#04005
Greg Champagne

Declaration of Thomas Hannigan

My name is Thomas Hannigan. I am over eighteen years of age and can swear to the below facts from my own personal knowledge.

I am the Vice President and former Secretary of the Fraternal Order of Police Lodge #50.

Edward Manak

Each member who joins the Fraternal Order of Police takes an oath and obligation to "... comply with all the Laws and Rules of this Order" and that he would "recognize the authority of his legally elected officers and obey all orders there from." Additionally, each member solemnly swears they will "not cheat, wrong or defraud this Order or any member thereof..." If a member violates their solemn oath and obligation he/she "hereby consent to be expelled from this Order." This oath and obligation is administered annually as well to all elected officers at the start of the calendar year.

Mr. Manak served as Treasurer of FOP Lodge 50 for nearly two decades. The treasurer as with all officers of the board is an elected position. Officers of the board volunteer their time and receive no compensation for their service. Mr. Manak had also been the long time chairperson of the Legal Aid Committee, fielding and facilitating all requests and funding for legal assistance for sworn Sheriff's Office members who became targets of an internal investigation, involved in an on-duty shooting or accused of a crime.

In January of 2013, a newly elected board of directors took office. The board was moving in a new direction seeking to increase membership that had been dramatically lost due to poor member-management in the past. The board was also tasked in seeking solutions to reduce costs associated with the upkeep of three properties owned by the Lodge on its nearly 7 acres of land as well as increase revenues from the annual Children's Christmas Show solicitation. The board was also eager to learn how business was conducted in the past to see if there were any areas in need of improvement.

One of the first issues the board encountered was discovering the tenants of one of the rental properties were in arrears in excess of four-thousand dollars. The board learned that Mr. Manak had assumed the responsibility of personally collecting and managing rent monies from the tenants. The board learned that Mr. Manak was collecting whatever funds the tenants could pay each month but he never properly informed the board they were in arrears. Mr. Manak was later found to have reported misleading and inaccurate financial reports regarding a payment plan adopted and agreed upon by the board and the tenants. Mr. Manak's continued pattern of withholding information subsequently led to further inquiries into his fiscal management. Mr. Manak became resistant as the board continued to inquire and make suggestions for improvement. This led to the board's decision to appoint a lodge member to act as the property manager thus relieving Mr. Manak of his duty to collect rent.

As the months followed, Mr. Manak's resistant and defiant behavior towards his fellow board members was becoming increasingly alarming. Some of the issues that troubled the board included:

Mr. Manak resisted in obtaining a lodge credit card

- *Mr. Manak's practice of using his personal credit card to pay for hotel reservations for quarterly state board of trustees meetings and annual conferences was under scrutiny. The board discovered Mr. Manak was receiving "honors points" from the hotel (s) in which the rooms were reserved and suggested he discontinue this practice as it would appear he was using his position as treasurer for personal gain. As a solution, the board voted on and subsequently instructed Mr. Manak to obtain a credit card issued solely to Lodge 50 but was met with resistance from him. He continually delayed in attaining one.*

Mr. Manak was storing financial data reports on the Palm Beach County Sheriff's Office computer system main network drive and divulging lodge information using the Sheriff's Office email server

- *Mr. Manak had to be reminded several times to discontinue this practice of using the Sheriff's Office computer hard drives as it was not only a Sheriff's Office policy violation, but no one would be able to retrieve the information in the event he was fired or died unexpectedly. A board officer even offered to assist Mr. Manak and show him how to properly retrieve the data but he failed to accept the offer*
- *Mr. Manak sent an email to an addressee that contained privileged lodge information from his Sheriff's Office email account*

Mr. Manak refused to switch to online banking and use accounting software

- *Mr. Manak failed to comply with the board's directive and became argumentative each monthly meeting when asked for a follow-up report. The board questioned his willingness and capabilities and subsequently was placed on notice to respond to the lodge president by the next monthly board meeting if he wishes to continue his duties as treasurer*

Mr. Manak defied direct orders from the lodge president and trustees

- *On June 4, 2014 Manak refused a direct order from the lodge president to return all checkbooks, ledgers, records, papers and receipts to the trustees in order to conduct an audit*
- *At the June 24, 2014 board of directors meeting, Manak had yet to return the financial records and was ordered once more by the lodge president to return the items. His outright refusal prompted the initiation of a petition to recall Mr. Manak from office*

On August 12, 2014, the members voted to recall Mr. Manak as treasurer for violating his oath of office. He subsequently appealed the decision to the Florida State FOP Lodge Board of Trustees who overturned the decision in October citing he was not afforded due process due to the fact that he was not properly served with the charges; however, he was not immune from expulsion. After the appeal, he returned to the position as lodge treasurer. He was nominated as an incumbent but lost in the annual officer elections held in November of 2014 at the general membership meeting. During that meeting, formal charges against Mr. Manak as a member were presented to the board.

A hearing was held on January 15, 2015. In accordance to the bylaws, the members in attendance voted to expel Mr. Manak from the order. He unsuccessfully appealed the members' decision before the Florida State FOP Lodge Board of Trustees in June of 2015. He later failed to file his final appeal before the Fraternal Order of Police Grand Lodge within the allotted time frame.

Jermaine Davis, Will Twigg and Wilbur Veasy

Mr. Jermaine Davis and Mr. Will Twigg deliberately and knowingly disrupted an official closed meeting of the legally elected board of directors on April 29th, 2014. They failed to obey all orders to leave the room by the members of the board. Formal charges were brought against both Mr. Davis and Mr. Twigg at a general membership meeting on May 13, 2014.

At a hearing held on July 8th, 2014, Mr. Davis and Mr. Twigg were found guilty of violating the lodge's constitution and by-laws and were expelled. Mr. Davis failed to attend the hearing. Mr. Davis later appealed his expulsion to the Florida State FOP Lodge Board of Trustees who overturned the decision however, when Mr. Davis re-applied for membership, he was found to have been terminated as a Palm Beach County Sheriff's Corrections Deputy on August 23, 2012 and therefore did not meet the requirements to be a member of the Fraternal Order of Police as a whole. Based on this fact, the general membership voted to deny his application in accordance to the lodge by-laws.

Mr. Twigg exhausted all his appeals to the Fraternal Order of Police Grand Lodge which upheld his expulsion. During his appeals to both the State and Grand Lodge, Mr. Twigg had been arrested and convicted of the charge of Felony Battery on an Emergency Medical Care Provider and Battery and was placed on probation. He was also terminated as a Palm Beach County Sheriff's Correction Deputy and clearly does not meet the requirements to become a member of the Fraternal Order of Police.

Mr. Wilbur Veasy applied for and obtained membership on April 9, 2013 at the recommendation of Mr. Edward Manak who sponsored and personally accompanied him at that evening's membership meeting. During my interview with Mr. Veasy he failed to disclose to me that he was on administrative leave, pending termination as a Palm Beach County Sheriff's Office Corrections Deputy. He later failed to disclose the fact that he was terminated on April 19th,

2013 thus making him ineligible to maintain his membership in the Fraternal Order of Police. He subsequently had personally resigned from Lodge 50.

I, Thomas Hannigan, under the penalty of perjury sign the above declaration under oath, on this 20th day of June, 2018.



Thomas Hannigan

FOP JIM FOGLEMAN LODGE #50
MEMBER CHARGING DOCUMENT

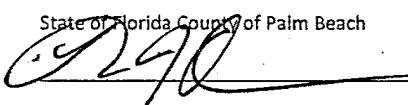
On June 24th 2014 at the Jim Fogleman FOP lodge 50 located at 885 62nd Drive North in the unincorporated area of West Palm Beach, Palm Beach County, Florida during the Executive Board Meeting, I was present in the meeting in my capacity as Vice President for FOP Jim Fogleman Lodge 50 when during the meeting I observed Lodge President Bill Williams order Brother Ed Manak, who was the Lodge Treasurer, to turn over all books and keys belonging to FOP Jim Fogleman Lodge 50. I observed Brother Manak openly refuse to comply with the order that President Williams had just given to him. President Williams told Brother Manak a second time that as President of the Lodge, President Williams requested for Brother Manak to turn over the Ledger, checkbooks, the keys to the lodge. President Williams reminded Brother Manak that the property belonged to the lodge and that he was to turn in the lodge property to the board. Brother Manak stated that he was not going to turn anything over and that he was not going to comply as he is the treasurer of the lodge. The meeting adjourned and Brother Manak left the lodge without returning any lodge property.

Sworn witness statements were obtained by the board members, who were present for the meeting.

I find probable cause exist to find Brother Ed Manak in violation of FOP Jim Fogleman Lodge 50 bylaws Article 2 duties of Treasurer Section 1 subsection E whereas at any time, when ordered by the Board of Directors, he shall deliver all monies, books and papers to the Board of Trustees. I also find that Brother Manak also violated his Oath to the Order and Office, which he reaffirmed and swore to on January 14, 2014, by, "failing to recognize the authority of his legally elected officers." In taking his Solemn Oath or Obligation of Office and to the Order Brother Manak bound himself "under no less a penalty than to be impeached from office and expelled from the Order."

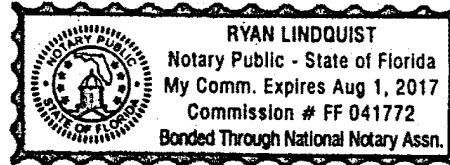
This shall serve as a charging document to formally charge Brother Ed Manak with violation of the listed bylaws and Oath of office.

State of Florida County of Palm Beach


The Foregoing instrument was sworn to or affirmed and subscribed before me this 21 of November 2014 By Luis Blasco

Type of Identification produced FL Drivers License


Notary Public



FOP JIM FOGLEMAN LODGE #50
MEMBER WITNESS STATEMENT

On June 24th 2014 at the Jim Fogleman FOP lodge 50 located at 885 62nd Drive North in the unincorporated area of West Palm Beach, Palm Beach County, Florida during the Executive Board Meeting, I was present in the meeting in my capacity as Vice President for FOP Jim Fogleman Lodge 50 when during the meeting I observed Lodge President Bill Williams order Brother Ed Manak, who was the Lodge Treasurer, to turn over all books and keys belonging to FOP Jim Fogleman Lodge 50. I observed Brother Manak openly refuse to comply with the order that President Williams had just given to him. President Williams told Brother Manak a second time that as President of the Lodge, President Williams requested for Brother Manak to turn over the Ledger, checkbooks, the keys to the lodge. President Williams reminded Brother Manak that the property belonged to the lodge and that he was to turn in the lodge property to the board. Brother Manak stated that he was not going to turn anything over and that he was not going to comply as he is the treasurer of the lodge. The meeting adjourned and Brother Manak left the lodge without returning any lodge property.

On August 12th 2014 a recall election was held at the FOP Jim Fogleman Lodge reference the recall of FOP Lodge 50 Treasurer Ed Manak. The members in a 2/3 vote for recall had voted to recall Brother Manak as Treasurer. Before the meeting adjourned and after the vote, President Williams again asked Brother Manak to return all lodge property and he refused to do so. FOP District 4 director Mike Kelly was present and also informed Brother Manak that the lodge President was giving him an order and that the books and keys were property

of Lodge 50 and that he needed to comply. Brother Manak refused to comply and stated that he was not going to relinquish any property of the lodge.

Sworn witness statements were obtained by the board members, who were present for the meetings.

I find probable cause exist to find Brother Ed Manak in violation of FOP Jim Fogleman Lodge 50 bylaws Article 2 duties of Treasurer Section 1 subsection E whereas at any time, when ordered by the Board of Directors, he shall deliver all monies, books and papers to the Board of Trustees.

This shall serve as a charging document to formally charge Brother Ed Manak with violation of the listed bylaws.

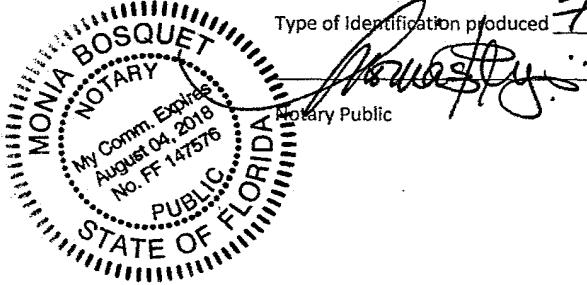
M. Louise Rubar
M. Louise Rubar

State of Florida County of Palm Beach

The Foregoing instrument was sworn to or affirmed and subscribed before me this 31 of October 2014 By M Louise Rubar, Trustee

Type of Identification produced

Florida Drivers License



Rendon-Olivo, Jose M

From: Rendon-Olivo, Jose M
Sent: Monday, October 27, 2014 10:39 AM
To: Rendon-Olivo, Jose M
Subject: FOP

I, Jose Rendon attended an FOP meeting on June 24th and August 12th. Ed Manich was asked By Bill Williams to return all books, treasures property to Lodge property, Ed Manich refuse Both times to do so.

Jose Rendon
Jose Rendon

FL DL
R 535-433-49-290-0
exp: 8/10/18

 STEPHNEY THOMPSON
MY COMMISSION # FF 159031
EXPIRES: September 26, 2018
Bonded Thru Budget Notary Services

Stephney Thompson

WITNESS STATEMENT FROM APPOINTED TREASURER CARLOS DORTA

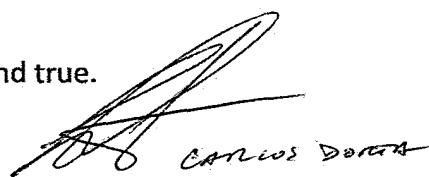
To whom it may concern,

My name is Carlos Dorta, and I am currently the appointed treasurer for the FOP Jim Fogleman Lodge 50 located at 885 62nd Drive North in West Palm Beach, FL 33413, in Palm Beach County, FL.

On June 24th, 2014, I attended an executive board meeting for the lodge to report on an issue from the Ways and Means Committee. During the meeting, I observed Lodge President Bill Williams order Brother Ed Manak, who was the Lodge Treasurer, to turn over all books and keys belonging to FOP Jim Fogleman Lodge 50. I observed Brother Manak openly refuse to comply with the order that President Williams had just given him. President Williams again requested Brother Manak a second time and Brother Manak refused to comply with the order. President Williams requested for Brother Manak to turn over the Ledger, checkbooks and the keys to the lodge. President Williams reminded Brother Manak that the property belonged to the lodge, and that he was to turn in the lodge property to the board. Brother Manak stated that he was not going to turn anything over, and that he was not going to comply as he is the treasurer of the lodge. The meeting adjourned and Brother Manak left the lodge without returning any lodge property.

This request by President Williams came after the discovery of misleading statements, inappropriate actions on behalf of Brother Manak and thousands of dollars of unexplained and misappropriated expenses.

I swear and affirm this statement is correct and true.

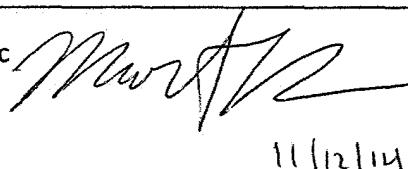


State of Florida County of Palm Beach

The Foregoing instrument was sworn to or affirmed and subscribed before me this 12 day of November, 2014, by Carlos Dorta.

Type of Identification produced PL DL 1630-101-77-337-0

Notary Public


11/12/14

Martin Rico
State of Florida
My Commission Expires 02/12/2018
Commission No. FF 92429

FRATERNAL ORDER OF POLICE JIM FOGLEMAN LODGE #50

3rd Yr. Trustee Rafael Padilla-Rodriguez

To whom it may concern,

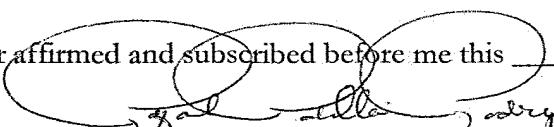
I am a Third-year Board of Trustee member for the Jim Fogleman FOP lodge 50 located at 885 62nd Drive North, West Palm Beach, Florida 33413.

While in attendance at an Executive Board Meeting on the evening of June 24, 2014, I observed lodge President, William Williams, request and subsequently order Treasurer Edward Manak, turn over all keys, documents, and properties belonging to the Lodge. This request came after months of numerous unsuccessful attempts for Mr. Manak to abide by the Board's decision to cease costly accounting practices. This, along with blatant and unauthorized decisions on Mr. Manak's behalf, have resulted in thousands of dollars in unexplained expenses and lost revenue to our organization. After the request by Williams, Mr. Manak became agitated and shouted he would not relinquish any of the aforementioned items, stating no one had the right to question him because he was the lodge's Treasurer. Mr. Manak further advised, "He would continue storing lodge documents at his residence because it was the safest place to keep them, and did not care what anyone had to say."

It should be noted prior to this incident I have observed this same explosive response on numerous occasions by Mr. Manak, regarding similar inquiries. This Board has spent the better part of the 2014 fiscal year, making amends for Mr. Manak's unauthorized actions, which have resulted in unwarranted expenses and mired the evolution of this Board and its membership.

I swear and affirm this statement is correct and true.

State of Florida County of Palm Beach

The Foregoing instrument was sworn to or affirmed and subscribed before me this 6th of
~~November~~
October 2014 By Rafael Padilla-Rodriguez 

Type of Identification produced Personally Known

Notary Public

Karen Andrews

Karen Andrews

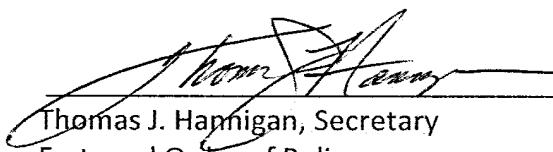
November 6, 2014

NOTARY PUBLIC STATE OF FLORIDA
Karen Andrews
Commission # EE044502
Expires: NOV. 22, 2014
BONDED THRU ATLANTIC BONDING CO., INC.

APPENDIX 0035

Statement of Secretary Thomas J. Hannigan regarding the misconduct of Treasurer Edward Manak

At the June 24th, 2014 meeting of the Elected Board of Directors of FOP Lodge #50, I was present and serving in the capacity as the Lodge Secretary. During this meeting, President Williams, at the request of the Board of Trustees, ordered Treasurer Manak to relinquish all checkbooks, ledgers, papers, receipts and post office box key to the Board. Manak emphatically stated he would not do it and refused again when ordered to do so by President Williams a second time.



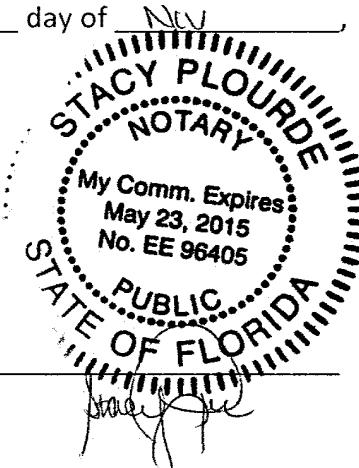
Thomas J. Hannigan, Secretary
Fraternal Order of Police
Jim Fogleman Lodge #50, Inc

State of Florida
County of Monroe

Sworn to (or affirmed) and subscribed before me this 10 day of May, 2014, by Thomas J. Hannigan.

(Notary Seal)

Personally Known _____ OR Produced Identification X
Type of Identification
Produced FL Drivers License



Witness Statement of Lodge President William F. Williams

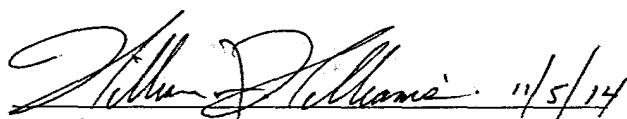
On June 3, 2014, I, the Undersigned President of the Fraternal Order of Police, Jim Fogleman Lodge # 50 ordered Brother Edward Manak to bring in all checkbooks, ledgers, records, papers and receipts, to the FOP lodge because the board of trustees wanted to conduct their annual audit which is required by our Lodge's constitution and by-Laws. Brother Manak had been keeping all the check books, receipts and papers at his house. My order to do so was sent to him electronically via email because I wanted to have a record of my direct order. I did this because I had previously ordered Brother Manak to do so several times in the past and he never complied. Brother Manak did receive my email on June 3, 2014 which was confirmed via a read receipt.

On June 4, 2014, I met with Brother Manak in person at Lake Lytal Park in West Palm Beach and I asked him if he received my email from yesterday. He said yes he did. I asked him if he had the books & papers with him. He said no they are at his house. I asked him if he was going to bring them to the lodge and he told me no, he wasn't going to. I then made it perfectly clear to Brother Manak that I was the President of Lodge 50 and I was not asking him to bring in the books & papers and the post office box key to the lodge but I was giving him a direct order to do so. Brother Manak became red in the face and raised his voice and yelled "No I won't do it." Brother Manak started accusing me and other board members of wanting to steal money from the lodge. I asked Brother Manak why he was thinking that. He told me they are all part of a P.B.A. plan to steal the FOP's money. I asked if he had any evidence of that and he said no.

On June 24, 2014 Brother Manak did attend the elected board meeting and was again ordered by the board of trustees to bring in all checkbooks, ledgers, records, papers and receipts to the board of trustees so that our annual audit could be conducted by the board of trustees. I also directly ordered Manak to turn over the books, papers and post office box key. Manak told me and the members of the elected board of directors that were in attendance that he will not do it.

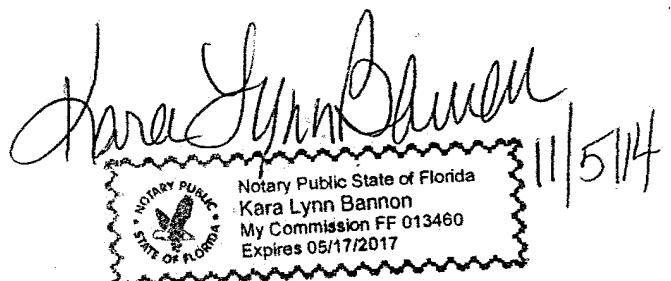
Brother Edward Manak was insubordinate by not recognizing the authority of his superior officers and he deliberately refused to comply with lawful orders therefrom. Brother Manak violated his oath /obligation for his office as the elected lodge treasurer and he violated his oath / obligation for the order.

Sworn to by Affiant:

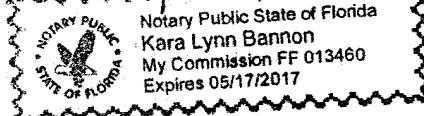


11/5/14

President William F. Williams
Fraternal Order of Police,
Jim Fogleman Lodge #50



11/5/14



Notary Public State of Florida
Kara Lynn Bannon
My Commission FF 013460
Expires 05/17/2017

INSTALLATION OF OFFICERS

(The newly elected Officers may be installed by any Past President or by the retiring President, who will be called the Installing Officer.)

INSTALLING OFFICER - My Brothers (and Sisters), you have been legally and duly elected to the office you have chosen. A vast amount of confidence and trust has been placed in you, and a great responsibility rests upon you. It is your duty to guard well the honor and dignity of this Lodge and of your office.

It is your privilege to use the authority of your office, not for personal gain, but for the best interest and welfare of this Lodge and all its members, and it is your duty to use any and all honorable means toward that end; to all of which the obligation you are about to take will bind you under no less penalty than that of being impeached and expelled from the Order for violation of the same. With this knowledge, are you willing to proceed?

(Each one answers) - I AM.

INSTALLING OFFICER - Then hold up your right hand, pronounce your name in full and repeat after me.

(Installing Officer gives three raps of the gavel which raises the entire Lodge.)

Obligation

I, _____, in the presence of the Creator of the Universe, and the members of the Fraternal Order of Police here assembled, do most solemnly and sincerely promise and swear, that I will, to the best of my ability, comply with all the laws and rules of this Order; that I will recognize the authority of my superior officers, obeying all the laws, rules and edicts of the Grand Lodge; that I will abide by and support the Constitution and By-Laws of this Order; that I will be fair in all my dealings with this Lodge during my term of office; that I will not use the authority invested in me for personal gain, or for any other cause, except for the best interests and welfare of this Lodge and its members.

Should I violate this, my solemn oath or obligation, I hereby bind myself under no less a penalty than that of being impeached from office and expelled from the Order.

To all of which I solemnly and sincerely promise and swear, so help me God, and keep me steadfast.

(The Installing Officer gives one rap of the gavel which seats the Lodge.)

Article II

Duties of the Treasurer

Section 1. It shall be the duty of the Treasurer to:

- (A) Receive from the Secretary all monies belonging to the lodge and issue receipt for same.
- (B) Pay all orders drawn on him, signed by the President and the Secretary.
- (C) Keep an accurate account of all monies received and expended and credit each special account with such sums as they occur.
- (D) Provide the audit committee with a correct account of all monies in his possession, together with the books, papers and receipts belonging to his office.
- (E) At any time, when ordered by the Board of Directors, he shall deliver all monies, books and papers to the Board of Trustees.
- (F) Deposit all monies belonging to the lodge in a financial institution chosen by the Board of Directors to the credit of the lodge.
- (G) Deliver to his successor in office, all books and property belonging to the lodge, within ten (10) days of the expiration of his term.
- (H) Perform such other duties as are usual and incident to his office.
- (I) At each session of the Board of Directors, submit a full and complete report of official business transacted by him subsequent to the last meeting of the Board of Directors, together with recommendations as he may deem advisable.

**IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

EDWARD MANAK,)
JERMAINE DAVIS,)
WILBUR VEASY AND)
WILL S. TWIGG,)
) CASE NO.: 50-2014-CA-009494-XXXX-MB AH
Plaintiff(s),)
)
vs.)
)
FRATERNAL ORDER OF)
POLICE JIM FOGLEMAN)
LODGE #50 INC.,)
)
Defendant(s).)
/

DECLARATION OF JERMAINE DAVIS

1. My name is Jermaine Davis, I am one of the Plaintiff's in this action, and I have personal knowledge of the facts herein.
2. As a result of the unlawful expulsion, Plaintiff Manak, the other Plaintiff's, and myself have suffered the following damages, losses and/ or injuries: loss of membership in the FOP; loss of benefit of Legal Aid provided as a benefit for all members of the Defendant; loss of association with the membership at meetings in the lodge of the Defendant; loss of standing and reputation in the law enforcement community. Further, Plaintiff Manak also lost his Board position as treasurer, an elected Board member, when he was removed without just cause and in retaliation for objecting to what he reasonably believed to be improper demands for reimbursement of expenses by the Board and misuse or misappropriation of funds by the new treasurer. Manak also was removed from the FOP State Memorial committee.

3. The other Plaintiff's and myself have standing to sue in accordance with Florida Supreme Court case law and the facts of this case.

4. Manak was the lawful treasurer and his removal was an act of bad faith surrounded with criminal intent on the part of the Defendant.

5. Plaintiff Manak was not properly removed as treasurer from FOP Lodge #50, but was removed because the FOP Lodge #50 Board Members wanted unlawful access to lodge funds. On or about September 1, 2014, at the PGA National Resort and Spa, Manak was reinstated as treasurer by the Florida State Lodge after which Manak said aloud that he would have a forensic audit done as was his right. The FOP Executive Board sought to expel Manak to stop him from conducting such an audit.

6. Manak was improperly removed as treasurer of the Defendant on or about August 26, 2014, after he refused to resign as treasurer and turn over all records to a new treasurer. Manak later objected to the movement of the funds from five (5) PNC Bank accounts that the Defendant owned to personal accounts of the new treasurer of the Defendant, Carlos Dorta, which took place on or about September 16, 2014. After Manak was improperly ousted by the Board in retaliation for objecting to improper removal and in violation of Defendant's bylaws, he appealed to the Fraternal Order of Police Florida State Lodge which ordered him reinstated as Treasurer on or about October 1, 2014. Despite this, Manak was then expelled by the Defendant as a member on or about January 13, 2015; was denied a hearing on said expulsion by the Chairman of trustees of the Florida State Lodge, Rob Robertson on or about June 11, 2015, and was prevented from seeking an appeal to the national Grand Lodge by David Frazier. Manak was unlawfully expelled from the FOP due to the Lodge's bad faith and unfair play.

7. My unlawful expulsion from FOP Lodge #50 was overturned by the FOP Florida State Lodge Board of Trustees on February 13, 2015, at the Orlando, Florida conference/meeting. During this meeting it was finally admitted by an FOP Lodge #50 Executive Board member and the current FOP Lodge #50 secretary that the meeting halls doors were locked with the intention of locking out dues paying members who had a right to be present. On October 2, 2014, the FOP Florida State Lodge Grievance Committee advised FOP Lodge #50's Executive Board President, Vice President, and other FOP Lodge #50 Executive Board Members that FOP Lodge #50 is to be run by its members and not the Executive Board, and the Executive Board is not permitted to lock its members out of Executive Board Meetings. This is not the first time that FOP Lodge #50's Executive Board Members have been warned about not locking its members out of meetings, as the same thing happened during a meeting on April 29, 2014. The FOP Florida State Lodge Constitution and Bylaws, Article 20 (Discipline) and the FOP Grand Lodge Constitution and Bylaws, Article 23 (Discipline) state the non prevailing party may appeal the decision to the FOP Grand Lodge or the Biannual Conference, which FOP Lodge #50 failed to do when both Twigg's and my expulsions were overturned.

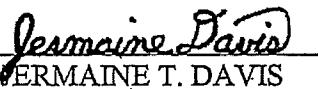
8. In spite of the same issues that Manak faced, Twigg was reinstated as a member by the Florida State Lodge. Subsequently FOP Lodge #50 charged him again with the same charges which should never have been done because the constitutions and bylaws only permitted FOP Lodge #50 to appeal the Grand Lodge when Twigg won his first appeal.

9. Veasy was expelled without notice and without a hearing as required. Veasy obtained valid membership in Lodge #50. He did nothing wrong. Veasy was unlawfully expelled because he objected to violations of Twigg's rights under the FOP Constitution and

Bylaws.

10. Contrary to Defendant's false allegations, Twigg is not a convicted felon. See August 1, 2018, decision from the Fourth District Court of Appeal in Will Twigg v. State of Florida, 4D17-1694, attached as **Exhibit 1**. Further, Defendant's attempted argument here would be false either way because FOP Lodge 50 has had a member in the past who was a convicted felon for years.

UNDER PENALTY OF PERJURY, I DECLARE THAT THE FACTS SET FORTH
HEREIN ARE TRUE AND CORRECT.

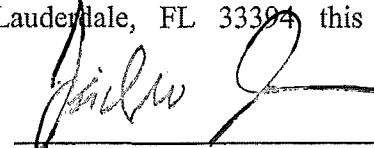

GERMAINE T. DAVIS

Respectfully submitted,


ISIDRO M. GARCIA
Florida Bar No. 437883
GARCIA LAW FIRM, P.A.
120 South Olive Avenue Suite 401
West Palm Beach, FL 33401
Telephone: (561) 832-7732
Telecopier: (561) 832-7137
E-mail: isidrogarcia@garcialaborlaw.com
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was furnished **VIA FLORIDA E-FILING PORTAL** (buschel@bglaw-pa.com) to: Robert C. Buschel, Esq., Buschel Gibbons, P.A., 100 S.E. Third Avenue, Suite 1300, Fort Lauderdale, FL 33301 this 23rd day of August, 2018.


ISIDRO M. GARCIA

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

WILL TWIGG,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D17-1694

[August 1, 2018]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Glenn D. Kelley, Judge; L.T. Case No. 50-2014-CF-010319-AXXX-MB.

David F. Pleasanton of David F. Pleasanton, P.A., West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Matthew Steven Ocksrider, Assistant Attorney General, West Palm Beach, for appellee.

DAMOORGIAN, J.

Appellant, Will Twigg, appeals his conviction and sentence for one count of battery on an emergency medical care provider and one count of battery following an altercation between Appellant and staff members at a Veteran's Administration hospital ("VA"). On appeal, Appellant argues that: 1) the State failed to prove that he committed the offense of battery on an emergency medical care provider; and 2) Appellant's trial counsel was ineffective on the face of the record for failing to request a self-defense jury instruction and failing to move for a judgment of acquittal on the battery on an emergency medical care provider charge. We agree with Appellant's arguments pertaining to the battery on an emergency medical care provider count and reverse that conviction. We affirm otherwise.

Background

Appellant was involuntarily brought to the emergency department of the VA pursuant to Florida's Baker Act¹ after his employer reported that Appellant was exhibiting erratic behavior. Appellant was subsequently admitted to the VA's inpatient psychiatric unit where, after learning that he was not being released, Appellant became combative and spit on a nurse and a VA law enforcement officer. Based on the foregoing, the State charged Appellant with one count of battery on an emergency medical care provider for spitting on the nurse, one count of battery for spitting on the VA officer, and one count of resisting an officer without violence. Appellant pled not guilty and filed a notice of intent to rely upon insanity as a defense.

The matter proceeded to a jury trial where the State presented evidence that the nurse victim was a Licensed Practical Nurse ("LPN") who, on the day in question, was working in the VA's inpatient psychiatric unit. The State's evidence also established that the psychiatric unit was a secure lockdown unit which was separate and distinct from the VA's other departments, including the emergency department. At the conclusion of the State's case, Appellant's counsel declined to move for a judgment of acquittal ("JOA") on any of the charges. Instead, counsel focused on an insanity defense, presenting evidence from a psychiatrist who opined that Appellant was not able to determine whether what he did was right or wrong when he spit on the nurse and VA officer.

Considering the evidence, the jury rejected Appellant's insanity affirmative defense and found him guilty of battery on an emergency medical care provider, guilty of battery, and not-guilty of resisting an officer without violence. The court adjudicated Appellant per the jury's verdict and sentenced Appellant to time served followed by eighteen months of probation.

Analysis

a) Sufficiency of the Evidence Proving Battery on an Emergency Medical Care Provider

Appellant contends that the State's evidence regarding the nurse victim was insufficient to support a conviction for battery on an emergency medical care provider. Appellant is correct.

Section 784.03 of the Florida Statutes provides that the offense of battery is a third degree misdemeanor and "occurs when a person: 1.

¹ §§ 394.451-.47892, Fla. Stat. (2015).

[a]ctually and intentionally touches or strikes another person against the will of the other; or 2. [i]ntentionally causes bodily harm to another person." § 784.03(1)(a)–(b), Fla. Stat. (2015). When a battery is committed on certain persons, including "an emergency medical care provider . . . while the . . . emergency medical care provider . . . is engaged in the lawful performance of his or her duties," section 784.07 of the Florida Statutes reclassifies the offense "of battery, from a misdemeanor of the first degree to a felony of the third degree." § 784.07(2), (2)(b), Fla. Stat. (2015).

Based on the foregoing, the elements of the offense of battery on an emergency medical care provider are: (1) the defendant intentionally touched or struck the victim or intentionally caused bodily harm to the victim; (2) the victim was an emergency medical care provider; (3) the defendant knew that the victim was an emergency medical care provider; and (4) the emergency medical care provider was engaged in the lawful performance of his or her duties when the battery was committed. Fla. Std. Jury Instr. (Crim.) 8.11; *State v. Granner*, 661 So. 2d 89, 90 (Fla. 5th DCA 1995). Therefore, in order to prove that Appellant committed the offense of battery on an emergency medical care provider with respect to the alleged nurse victim, the State was required to prove that the nurse was indeed "an emergency medical care provider."

The term "emergency medical care provider" is defined as:

- 1) [A]n ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, medical director as defined in s. 401.23, or any person authorized by an emergency medical service licensed under chapter 401 who is engaged in the performance of his or her duties.
- 2) The term "emergency medical care provider" also includes physicians, employees, agents, or volunteers of hospitals as defined in chapter 395, who are employed, under contract, or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital's emergency department or the security thereof.

§ 784.07(1)(a), Fla. Stat. (2015) (spacing and numbering added).

In *Spurgeon v. State*, 114 So. 3d 1042, 1045 (Fla. 5th DCA 2013), the Fifth District clarified that because section 784.07 is penal in nature, the definition of "emergency medical care provider" must be strictly construed in conjunction with its plain language. Accordingly, in order to meet the

first classification of persons outlined in the definition of “emergency medical care provider,” the State needed to establish that the nurse victim was a “registered nurse . . . or any person authorized by an emergency medical service license under chapter 401 who is engaged in the performance of his or her duties.” § 784.07(1)(a), Fla. Stat. (2015).

The definition section of chapter 401 defines a “registered nurse” as “a practitioner who is licensed to practice **professional** nursing pursuant to part I of chapter 464.” § 401.23(20), Fla. Stat. (2015) (emphasis added). Chapter 464 governs the regulation of nursing in Florida. Part I of Chapter 464 provides that an LPN is any “person licensed in this state or holding an active multistate license under s. 464.0095 to practice **practical** nursing.” § 464.003(16), Fla. Stat. (2015) (emphasis added). It further delineates that “the practice of **practical** nursing” is distinct from “the practice of **professional** nursing” and that only a “registered nurse” is licensed “to practice professional nursing.” § 464.003(19)–(20), (22), Fla. Stat. (2015) (emphasis added). As an LPN is only licensed to practice practical, not professional, nursing, an LPN does not meet the definition of a “registered nurse” under either chapter 401 or 464. Therefore, as an LPN, the nurse victim did not qualify as a “registered nurse” as used in the definition of “emergency medical care provider.”

Likewise, the evidence also did not establish that the nurse victim was “any person authorized by an emergency medical service license under chapter 401.” Chapter 401 provides for the licensure of emergency medical transportation services such as ambulances and air ambulances. §§ 401.25, .251, Fla. Stat. (2015). The nurse victim was working for a hospital, not a medical transportation service. Accordingly, based on both her license classification and who she worked for, the State did not prove that the nurse victim fell under the first class of persons defined as an “emergency medical care provider.”

To fall under the second classification of persons outlined in the definition of “emergency medical care provider,” the State was required to prove that the nurse victim was an “employee[], agent[], or volunteer[] of [a] hospital[] as defined in chapter 395, who [was] employed, under contract, or otherwise authorized by [the] hospital to perform duties directly associated with the care and treatment rendered by the hospital’s **emergency department** or the security thereof.” § 784.07(1)(a), Fla. Stat. (2015) (emphasis added). The evidence adduced at trial established that when she was spit upon, the nurse victim was performing LPN services in the VA’s inpatient psychiatric unit. The evidence also established that the VA’s inpatient psychiatric unit was separate and distinct from its emergency department. Accordingly, the evidence submitted at trial did

not establish that the nurse victim's duties were "directly associated with the care and treatment rendered by the hospital's emergency department." *Id.* Thus, the State also did not prove that the nurse victim qualified as an "emergency medical care provider" under either classification.

Despite the State's failure to prove that the nurse victim qualified as an "emergency medical care provider," Appellant failed to move for a JOA based on the insufficiency of the evidence and, therefore, failed to preserve the issue for anything other than a fundamental error review. *F.B. v. State*, 852 So. 2d 226, 229 (Fla. 2003).

[I]n order to be of such fundamental nature as to justify a reversal in the absence of timely objection the error must reach down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.

Id. (quoting *Brown v. State*, 124 So. 2d 481, 484 (Fla. 1960)). Based on this narrow application, the Florida Supreme Court has clearly delineated that unpreserved challenges to the sufficiency of the evidence may only be reviewed for fundamental error in two circumstances: "(1) the mandatory review by [the supreme court] of the evidence by which a capital defendant was convicted and sentenced to death; and (2) when there is insufficient evidence that a defendant committed *any* crime." *Monroe v. State*, 191 So. 3d 395, 401 (Fla. 2016). Accordingly, the insufficiency of the evidence to prove an element of a crime does not warrant fundamental error review. *Bagnara v. State*, 189 So. 3d 167, 171 (Fla. 4th DCA 2016) (state's failure to prove value element of grand theft was not fundamental error). Therefore, Appellant's insufficiency of the evidence argument is not cognizable on appeal. The issue is, however, cognizable as an ineffective assistance of counsel claim.

b) Ineffective Assistance of Counsel on the Face of the Record

"[I]neffective assistance of counsel claims should rarely be raised on direct appeal because they are generally fact-specific." *Michel v. State*, 989 So. 2d 679, 681 (Fla. 4th DCA 2008). As a result, "[a]ppellate courts do not ordinarily address ineffective assistance of counsel concerns until a defendant seeks postconviction relief because such courts are limited to reviewing the record directly before them." *Monroe*, 191 So. 3d at 403. "On rare occasions, the appellate courts make an exception to this rule when the ineffectiveness is obvious on the face of the appellate record, the prejudice caused by the conduct is indisputable, and a tactical explanation

for the conduct is inconceivable.” *Bagnara*, 189 So. 3d at 171 (quoting *Corzo v. State*, 806 So. 2d 642, 645 (Fla. 2d DCA 2002)).

i) Failure to Move for a JOA on the Battery on an Emergency Medical Care Provider Count

[F]ailure to move for a judgment of acquittal when the State has not proved an essential element of its case, when it is clear that the State could not reopen its case to prove that essential element, amounts to ineffective assistance of counsel that may sometimes be adequately assessed from the record on direct appeal.

Corzo, 806 So. 2d at 645.

As discussed above, the State did not prove, and from our review of the record could not prove, that the nurse victim qualified as an “emergency medical care provider,” an essential element of the offense of battery on an emergency care provider. Therefore, had counsel made a proper motion, Appellant would have been entitled to a JOA on the battery on an emergency medical care provider count and a reduction of the charge to the lesser included offense of battery. The distinction between the two offenses is significant as battery is a misdemeanor while battery on an emergency care provider is a felony. Thus, it is plain from the face of the record that counsel’s failure to seek a JOA on the battery on an emergency care provider charge was prejudicial to Appellant and constituted ineffective assistance of counsel. See *Bagnara*, 189 So. 3d at 172 (counsel’s failure to properly move for JOA when state did not prove value element of grand theft constituted ineffective assistance of counsel on the face of the record); *Gordon v. State*, 126 So. 3d 292, 295–96 (Fla. 3d DCA 2011) (counsel’s failure to properly move for JOA when state did not prove all of the elements of charged crime constituted ineffective assistance of counsel on the face of the record).

Under these circumstances, “[i]t would be a waste of judicial resources to postpone addressing this issue until [Appellant] seeks post-conviction relief for ineffective assistance of counsel below.” *Lesovsky v. State*, 198 So. 3d 988, 992 (Fla. 4th DCA 2016). Accordingly, we reverse Appellant’s conviction for battery on an emergency medical care provider.

ii) Failure to Request a Self-Defense Instruction

Appellant also argues that his counsel was ineffective for failing to request a self-defense jury instruction which, according to Appellant,

would have been based on a theory that Appellant was protecting himself from being illegally detained under Florida's Baker Act. Appellant is correct that self-defense is a viable defense to the crimes of battery and battery on an emergency medical care provider. *See Spurgeon*, 114 So. 3d at 1047. Further, even though Appellant also asserted insanity as a defense, Appellant was entitled to assert self-defense as an alternate theory of defense regardless of whether the defenses may have been inconsistent. *See Martin v. State*, 110 So. 3d 936, 939 (Fla. 1st DCA 2013) (defendant was entitled to have jury instructed on self-defense in aggravated assault on a law enforcement officer case even though defendant also asserted that he was insane). Thus, had Appellant's counsel requested a self-defense instruction, it certainly would have been error for the court to deny the request. *Spurgeon*, 114 So. 3d at 1047.

However, this does not mean that counsel was necessarily ineffective on the face of the record for failing to make such a request. “[S]trategic decisions do not constitute ineffective assistance of counsel if alternative courses have been considered and rejected and counsel’s decision was reasonable under the norms of professional conduct.” *Occhicone v. State*, 768 So. 2d 1037, 1048 (Fla. 2000).

Here, Appellant's counsel primarily argued that Appellant was not guilty by way of insanity because Appellant did not know what he was doing or that what he was doing was wrong due to his mental condition. Arguing self-defense as proffered would have required Appellant's counsel to assert that, in the alternative, Appellant knew what he was doing but reasonably believed he needed to act to protect himself from being unlawfully detained. It is entirely possible and reasonable that counsel made a strategic decision not to pursue an alternate defense of self-defense in order not to undermine the credibility of the proffered insanity defense. *Compare Cole v. State*, 221 So. 3d 534, 543–44 (Fla. 2017) (counsel's decision to abandon duress defense and instead argue that the defendant did not knowingly participate in the crime was strategic and reasonable), with *Kruse v. State*, 222 So. 3d 13, 17 (Fla. 4th DCA 2017) (counsel was ineffective on the face of the record for failing to request a self-defense instruction when the evidence supported the instruction and there could be no strategic basis for not asking for the instruction as self-defense was the defendant's only proffered defense). Under the facts of this case, this issue of whether counsel was deficient for failing to request a self-defense instruction requires explanation from counsel and is, therefore, better suited for postconviction proceedings.

Conclusion

In conclusion, we hold that the State did not and could not prove the nurse victim was an “emergency medical care provider” and, therefore, did not prove that Appellant committed the offense of battery on an emergency medical care provider. Although Appellant’s trial counsel did not preserve this error for appeal by moving for a JOA and the error is not fundamental, counsel’s failure to move for a JOA constitutes ineffective assistance of counsel on the face of the record. Counsel was not, however, ineffective on the face of the record for failing to request a self-defense instruction when counsel also proffered a potentially inconsistent insanity defense. Based on the foregoing, we reverse Appellant’s conviction and sentence for battery on an emergency medical care provider and, on remand, direct the trial court to enter a judgment of guilt for the lesser-included offense of battery and proceed with a resentencing on that count. We otherwise affirm without prejudice for Appellant to file a motion for postconviction relief on the self-defense issue.

Affirmed in part, reversed in part and remanded.

LEVINE, J., concurs.

KUNTZ, J., concurs specially with opinion.

KUNTZ, J., concurring specially.

As Judge Winokur explains in his concurring opinion in *Latson v. State*, 193 So. 3d 1070, 1071-75 (Fla. 1st DCA 2016), direct appellate review of a criminal judgment should be limited to preserved arguments and fundamental error. Section 924.051(2), Florida Statutes (2017), states that “[t]he right to direct appeal . . . may only be implemented in strict accordance with the terms and conditions of this section,” and section 924.051(3) limits review on direct appeal to “prejudicial error” that “is properly preserved or, if not properly preserved, would constitute fundamental error.” So “[i]t seems clear that fundamental error is the ‘sole exception’ to the general rule that a party must preserve errors to raise them on appeal.” *Latson*, 193 So. 3d at 1072 (Winokur, J., concurring). Despite this statutory limit on our authority, a Florida Supreme Court decision compels reversal. Thus, I fully concur in the Court’s opinion.

In this case, the State failed to prove each element of the crime for which the Defendant was convicted. At the close of the State’s case, the circuit court asked defense counsel whether he intended to assert any motions. In response, defense counsel represented that the Defendant was not seeking a judgment of acquittal.

Similarly, in *Monroe v. State*, 191 So. 3d 395, 398 (Fla. 2016), “[a]fter the State rested, the trial court asked defense counsel if they intended to move for judgment of acquittal. Defense counsel declined.” The defendant argued on appeal that the state failed to introduce evidence to establish an element of the crime. *Id.* at 399-400. Conceding the issue was not preserved, the defendant argued it was fundamental error to convict him when the State failed to prove each element of the crime. *Id.*

Our supreme court reaffirmed its prior decisions, holding that unpreserved challenges to the sufficiency of the evidence cannot be reviewed on direct appeal when there is sufficient evidence to establish the defendant committed a crime. *Id.* at 401-02. Such unpreserved claims are only cognizable as fundamental error on direct appeal when the State fails to prove the defendant committed any crime at all. *Id.*

But the lack of preservation or fundamental error did not result in an affirmance. *Id.* The court continued and held “that the failure of Monroe’s trial counsel to preserve the sufficiency of the evidence issue for appellate review constitutes ineffective assistance of counsel that is apparent from the face of this record.” *Id.* at 402. Based upon the finding of ineffective assistance of counsel on the face of the record, the court reversed. *Id.* at 404.

The question presented in this case is nearly identical to that answered in *Monroe*. In both cases, the State failed to prove each element of the crime, but the defendant did not preserve the issue by moving for a judgment of acquittal. Further, in both, the State presented sufficient evidence to establish a lesser included offense thereby precluding fundamental error.

Based on *Monroe*, I agree that we must reverse the Defendant’s conviction for ineffective assistance of counsel on the face of the record. The circumstances are too similar. But absent the controlling opinion from the supreme court, I would question our authority to do so. The legislature limited direct appeal of a criminal judgment to preserved issues and fundamental error. Notwithstanding the statutory limits, claims of ineffective assistance of counsel on direct appeal are now commonly asserted. As Judge Winokur concluded, “the practice of permitting claims of ineffective assistance of counsel on direct appeal stemmed from a misreading of case law, and is directly contrary to controlling statutory law.” *Latson*, 193 So. 3d at 1074. Allowing a defendant to assert claims of ineffective assistance of counsel on direct appeal, absent fundamental error, allows the defendant to evade the strict requirements for fundamental error and “deprives trial counsel of the opportunity to defend

themselves against allegations of unprofessional conduct." *Id.* In the future, we should be careful to limit our review to that authorized by statute or, as here, mandated by supreme court precedent.

* * *

Not final until disposition of timely filed motion for rehearing.

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

EDWARD MANAK,)
JERMAINE DAVIS,)
WILBUR VEASY AND)
WILL S. TWIGG,)
) CASE NO.: 50-2014-CA-009494-XXXX-MB AH
Plaintiff(s),)
)
vs.)
)
FRATERNAL ORDER OF)
POLICE JIM FOGLEMAN)
LODGE #50 INC.,)
)
Defendant(s).)
 /

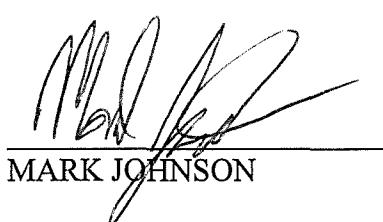
DECLARATION OF MARK JOHNSON

UNDER PENALTY OF PERJURY, I declare as follows:

1. My name is Mark Johnson. I am over the age of 18 and I am Plaintiff's counsel's paralegal and have personal knowledge of the facts herein.
2. On May 21, 2018, I e-filed Plaintiffs' First Request to Produce to Defendant, attached as **Exhibit 1**.
3. On May 22, 2018, I e-filed Plaintiffs' First Set of Interrogatories to Defendant, attached as **Exhibit 2**.
4. On June 22, 2018, the day after Defendant's responses to Plaintiffs' First Request to Produce were due and the day Defendant's answers to Plaintiffs' First Set of Interrogatories were due, instead of providing said responses and answers, Defendant filed a Motion for Summary Judgment and Protective Order, attached as **Exhibit 3**.

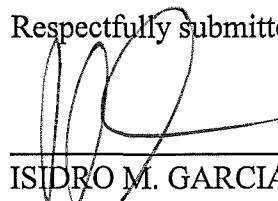
Defendant claims Plaintiffs' requests can never lead to admissible evidence. Defendant further states that Plaintiffs' are not entitled to discovery at all because they have no standing to sue the FOP.

5. To the date of my declaration Defendant has still refused to provide answers and responses to Plaintiffs' discovery requests. I have not been able to attempt to coordinate depositions for this case due to Defendant's stance that Plaintiffs' are not entitled to discovery at all and Defendant's refusal to respond to Plaintiffs' discovery requests, including providing documents it may have in its possession.



MARK JOHNSON

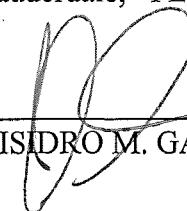
Respectfully submitted,



ISIDRO M. GARCIA
Florida Bar No. 437883
GARCIA LAW FIRM, P.A.
120 South Olive Avenue Suite 401
West Palm Beach, FL 33401
Telephone: (561) 832-7732
Telecopier: (561) 832-7137
E-mail: isidrogarcia@garcialaborlaw.com
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was furnished **VIA FLORIDA E-FILING PORTAL** (buschel@bglaw-pa.com) to: Robert C. Buschel, Esq., Buschel Gibbons, P.A., 100 S.E. Third Avenue, Suite 1300, Fort Lauderdale, FL 33394 this 27 day of May, 2018.



ISIDRO M. GARCIA

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

EDWARD MANAK,)
JERMAINE DAVIS,)
WILBUR VEASY AND)
WILL S. TWIGG,)
Plaintiff(s),)
vs.)
FRATERNAL ORDER OF)
POLICE JIM FOGLEMAN)
LODGE #50 INC.,)
Defendant(s).)
/

CASE NO.: 50-2014-CA-009494-XXXX-MB AH

PLAINTIFFS' FIRST REQUEST TO PRODUCE

Pursuant to the Florida Rules of Civil Procedure, Plaintiffs, EDWARD MANAK, JERMAINE DAVIS, WILBUR VEASY, AND WILL S. TWIGG, by and through undersigned counsel, hereby requests, Defendant, to produce the documents requested within thirty (30) days of the service of this request at the offices of Plaintiffs' attorney, Isidro M. Garcia, 120 S. Olive Ave., Suite 401, West Palm Beach, Florida 33401.

Definitions and Instructions

1. The term "document" shall mean any written or other tangible thing of every kind and description, however produced or reproduced, whether draft or final, in the actual or constructive possession of the Defendant or their custody or control, original or reproduction, including but not limited to: letters, notes, correspondence, films, transcripts, telegrams, teletype messages, contracts, agreements, including drafts, proposals and any and all modifications



APPENDIX 0058

thereof, licenses, memoranda, transcripts and recordings or summaries of telephone conversations or personal conversations, microfilms, microfiche, books, newspapers, magazines, advertisements, periodicals, circulars, pamphlets, statements, notices, recorded recollection and any other form of written notation of events intentions, minutes, and/or resolutions, agendas, expressions and/or statements of policy, reports, rules, regulations, directions, communications, inter-office memoranda, graphs, charts, invoices, reports of consultants, photographs, and other data computation from which information can be obtained.

2. Defendant is requested to list all documents for which it claims any privilege in its response to this Request for Production and to identify said documents and state the basis upon which the claim for privilege is being made. The term "identify" shall mean to set-forth the following: (1) name of origination, (2) name of recipient, (3) date, (4) brief description of subject matter, (5) identify of any person or persons to whom the contents of the document have already been communicated and (6) the identity of the person now in possession or control of the document.

3. If any document is not produced by the Defendant in their Response to this Request for Production for any reason other than ground of privilege, please set forth the reason and identity as defined in No. 2, Supra, of any such document.

4. The request is continuing in character to require the Defendant to file supplemental responses.

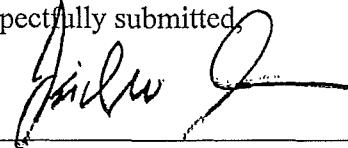
DOCUMENTS REQUESTED

1. Any and all documents that constitute Plaintiffs' membership status(es) with the FOP for all years in which Plaintiffs were members, and any other document which you have pertaining to the Plaintiffs, including any records relating to their claims in this case.
2. Any and all documents that constitute the policies, regulations, and bylaws of the Defendant including but not limited to a personnel handbook, FOP Constitutions and Bylaws, including national, state, and local.
3. Any and all documents that you contend support any of the affirmative defenses that you have or may raise in this matter.
4. Any and all documents that you contend supports any of the denials in your Answer.
5. Any and all documents that you will use for any purpose at the trial of this cause including but not limited to: primary evidence; impeachment evidence; rebuttal evidence.
6. Any and all documents that constitute a description for the position or positions held by Plaintiffs with Defendant including but not limited to "Elected Officer" positions.
7. Any and all documents that constitute an insurance agreement and/or policy that may provide coverage for the allegations set forth in Plaintiffs complaint.
8. Any and all Treasurer's Reports for 2013-2016.
9. Any and all documents that constitutes the Minutes of all lodge meetings for 2014, including but not limited to sign-in sheets, notes, and recordings.
10. Any and all documents that constitutes the Minutes of all executive meetings for 2014-2016, including but not limited to sign-in sheets, notes, and recordings.
11. Any and all documents constitutes Minutes of all special meetings for 2014, including but

not limited to sign-in sheets, notes, and recordings.

12. Any and all documents constitutes Minutes of all secret meetings for 2014, including but not limited to sign-in sheets, notes, and recordings.
13. Any and all documents relating and/or referencing Plaintiffs objecting to Manak's removal as treasurer.
14. Any and all documents identifying the structure of the Defendant at the local, state, and national level including but not limited to: flow charts; position descriptions of managerial personnel; any other such document.
15. Any and all documents relating and/or referencing Plaintiffs objecting to the movement of funds from five (5) PNC Bank accounts that the Defendant owned to personal accounts of the new treasurer of the Defendant, Carlos Dorta, and all documents referencing accounts such funds were moved into.
16. Any and all statements you claim to have taken from the Plaintiffs or any person who may be a witness to this case.
17. Any and all e-mails for the time period of 2013-2015 to Plaintiffs from any “@foplodge50.org” email address including, but not limited to president@foplodge50.org, vicepresident@foplodge50.org, secretary@foplodge50.org, treasurer@foplodge50.org, conductor@foplodge50.com.
18. Any and all e-mails for the time period of 2013-2016 from Plaintiffs to any “@foplodge50.org” email address including, but not limited to president@foplodge50.org, vicepresident@foplodge50.org, secretary@foplodge50.org, treasurer@foplodge50.org, conductor@foplodge50.com.

Respectfully submitted,



ISIDRO M. GARCIA
Florida Bar No. 437883
GARCIA LAW FIRM, P.A.
120 South Olive Avenue Suite 401
West Palm Beach, FL 33401
Telephone: (561) 832-7732
Telecopier: (561) 832-7137
E-mail: isidrogarcia@garcialaborlaw.com
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was furnished VIA FLORIDA E-FILING PORTAL (buschel@bglaw-pa.com) to: Robert C. Buschel, Esq., Buschel Gibbons, P.A., 100 S.E. Third Avenue, Suite 1300, Fort Lauderdale, FL 33394 this 21st day of May, 2018.

ISIDRO M. GARCIA

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

EDWARD MANAK,)
JERMAINE DAVIS,)
WILBUR VEASY AND)
WILL S. TWIGG,)
Plaintiff(s),)
vs.)
FRATERNAL ORDER OF)
POLICE JIM FOGLEMAN)
LODGE #50 INC.,)
Defendant(s).)
/

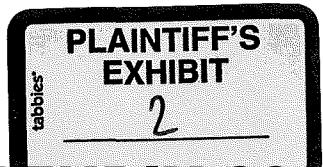
CASE NO.: 50-2014-CA-009494-XXXX-MB AH

PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANT

Plaintiffs, EDWARD MANAK, JERMAINE DAVIS, WILBUR VEASY, AND WILL S. TWIGG, through counsel, and pursuant to Rule 1.380, Florida Rules of Civil Procedure, hereby propounds the following interrogatories to Defendant, FRATERNAL ORDER OF POLICE JIM FOGLEMAN LODGE #50, INC., to be answered fully and under oath within thirty (30) days of service hereof.

GENERAL INSTRUCTIONS

1. These interrogatories are continuing in character to require the Defendant to file supplemental answers.
2. Each interrogatory is to be answered separately and as completely as possible. The fact that investigation is continuing or that discovery is not complete shall not be used as an excuse for failing to answer each interrogatory based on the knowledge you currently have.



3. In answering these interrogatories, furnish such information as is available to you, not merely such information as is within your own knowledge. This means you are to furnish information which is known by or in the possession of your employees, representatives or agents, including your attorneys.

4. Do not incorporate by reference facts contained in documents or publications: specify the precise facts, allegations, names, etc., called for by the interrogatories, regardless of whether the same are set forth elsewhere.

5. If you maintain that any document or record which refers to or relates to anything about which these interrogatories ask has been lost or destroyed, set forth the contents of said document, the location of any copies of said document, date of such destruction, and the name of the person who ordered or authorized such destruction, if any.

6. Whenever any objection is made to any numbered or lettered paragraph of any interrogatory, an answer shall be furnished to any other numbered or lettered paragraph of such interrogatory as to which there is no objection.

DEFINITIONS

Unless a contrary meaning appears in the text, the following definitions apply:

1. The term "you" and "your" means Defendant, its agents, and its predecessors and successors, if any.

2. "Person" or "persons" mean all entities of whatever description, and includes all individuals, associations, joint ventures, corporations, trusts and estates.

3. The term "Plaintiffs" means EDWARD MANAK, JERMAINE DAVIS, WILBUR VEASY, AND WILL S. TWIGG.

4. The term "document" means (a) any written or graphic matter of any kind or character, however produced or reproduced; (b) any electronically or magnetically recorded or store matter of any kind or character, however produced or reproduced; and © any other matter of any kind or character constituting the recording of any tangible thing, or storage in any retrievable way, by any means of communication or representation or data retention.

5. The terms "identify" or "identification" shall require, with respect to a document or communication: (a) a brief statement of the general nature of communication or of the documents' contents; (b) the identity of the person(s) who prepared the document or who was (were) involved in the communication; © the place where the document was prepared or where the communication took place; (d) the date of preparation of the document or of the communication; (e) if the document or communication was directed or communicated to another person, the identity of any person who was sent a copy of the document or communication; and (f) the identity of the person or persons presently in possession of the original document and/or copies.

6. The term "identify" or "identification" shall require, with respect to a person: (a) his, her or its full name; (b) the last known home and business address and telephone number of a natural person, or the principal business address and telephone number of any other person; © with respect to a natural person, the identification of the person's employer(s) at all relevant times and the person's job classification(s) or title.

INTERROGATORIES

1. Identify any person who has information relative to Plaintiffs' complaint or your defenses to said claim and set forth each person's address, telephone number, and a succinct but complete summary of the facts they have knowledge of.

2. Set forth the factual basis for each of your affirmative defenses and identify:
 - a) any person who has information about said affirmative defenses;
 - b) any documents that support said affirmative defenses.

3. Identify any documents that relate to the allegations of Plaintiffs' complaint.

4. Identify any and all documents that you intend to use for any purpose in this case including as primary evidence, impeachment and/or rebuttal.

5. Identify any person with whom you have consulted that may be used as an expert witness in this case for any purpose and provide a summary of what facts or opinions they will offer in their testimony.

6. Identify any person(s) who replaced Edward Manak as Treasurer for Defendant and/or any person(s) who became Treasurer for the Defendant since January 1, 2014, and set forth each person's address and telephone number.

7. Identify all bank accounts owned or operated by Defendant, including but not limited to PNC Bank accounts that Defendant owned for the years 2013-2016 and any successor bank accounts.

8. Identify all personal bank accounts of Carlos Dorta that had funds transferred to them from Defendant's PNC Bank accounts for the years 2014 to present.

9. Identify any and all person(s) who have been accused and/or disciplined and/or expelled from the Defendant for the misuse and/or misappropriation of funds, including but not limited to stealing, embezzlement, and wire fraud for the past ten years, and set forth each person's address, telephone number.

10. Identify any and all documents that constitute records kept by Carlos Dorta for the years he was or has been Defendant's Treasurer, as directed in Defendant's Constitution and By-Laws, including but not limited to the books, papers, and receipts belonging to the Treasurer's office, and all bank records wherein Defendant's funds were deposited.

STATE OF FLORIDA)

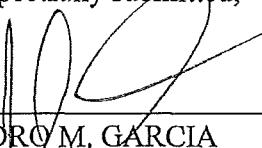
COUNTY OF PALM BEACH)

BEFORE ME the undersigned authority personally appeared _____,
who after being duly sworn and cautioned, upon oath states that the foregoing answers to
interrogatories are true and complete.

For Defendant
[FRATERNAL ORDER OF POLICE JIM
FOGLEMAN LODGE #50, INC.]

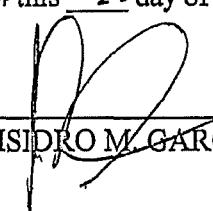
NOTARY PUBLIC, STATE OF FLORIDA
My Commission Expires:

Respectfully submitted,


ISIDRO M. GARCIA
Florida Bar No. 437883
GARCIA LAW FIRM, P.A.
120 South Olive Avenue Suite 401
West Palm Beach, FL 33401
Telephone: (561) 832-7732
Telecopier: (561) 832-7137
E-mail: isidrogarcia@garcialaborlaw.com
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was furnished VIA FLORIDA E-FILING PORTAL (buschel@bglaw-pa.com) to: Robert C. Buschel, Esq., Buschel Gibbons, P.A., 100 S.E. Third Avenue, Suite 1300, Fort Lauderdale, FL 33394 this 21 day of May, 2018.


ISIDRO M. GARCIA

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

EDWARD J. MANAK,
JERMAINE T. DAVIS,
WILBUR S VEASY AND
WILL S. TWIGG,

Plaintiffs,

v.

Case No. 14-CA-9494

FRATERNAL ORDER OF POLICE,
JIM FOGLEMAN LODGE #50, INC.
Defendant.

MOTION FOR SUMMARY JUDGMENT
and MOTION FOR PROTECTIVE ORDER

The Defendant, FRATERNAL ORDER OF POLICE, JIM FOGLEMAN LODGE #50, INC, through counsel, files this motion for summary judgment against the “first amended verified complaint for damages injunctive relief and an accounting” filed on August 18, 2017. As grounds for the motion state:

FACTUAL BACKGROUND

1. The first amended verified complaint was filed on September 10, 2014. But the Plaintiff added plaintiffs and filed another “first amended verified complaint” on August 18, 2017. All references to the Amended Complaint refer to the August 18, 2017 complaint.
2. Plaintiffs’ claims are for injunctive relief (it is now unclear whether it is for temporary and permanent).
3. The newest version of the complaint abandoned the request for a judgment for attorney’s fees and costs pursuant to Florida Statute Section 448.08. (*Cf.* September 10, 2014, ¶

1, Am. Compl. and “wherefore” clause *with* latest version of the complaint filed August 18, 2017).

4. In short, the Plaintiff Manak complains that he was removed as Treasurer of a fraternal organization without following its by-laws.

5. The other Plaintiffs Jermain Davis, Wilbur Veasy, and Will Twigg have standing to sue for any cause of action at all. They were not officers of the FOP and cannot be and never could be members in good standing.

6. Jurisdictional allegations are not alleged.

7. Venue allegations are not alleged.

8. There are no allegations why an accounting is allowed or required.

9. Formal causes of action are not alleged.

10. Plaintiffs did not file exhibits with the latest version of the complaint that were filed in previous versions of the complaint. Article IX “Recall of Officer,” Section 1, filed as Exhibit A to the first amended complaint September 10, 2014.

11. Plaintiff Manak was properly removed as Treasurer of the private organization. (Decl. Hannigan).

12. Merely attaching a “verification” page to the lawsuit is not sworn evidence and does not circumvent summary judgment.

13. Plaintiffs’ lawsuit is defamatory. Without evidence and without a cause of action alleged in paragraph 3 they allege a scandalous allegation that the current Treasurer was misusing or misappropriating funds.

14. The Plaintiffs have not alleged any cause of action outside of the entitlement of their lawsuit. No causes of action are labeled. No elements of any causes of action are

enumerated. This Amended Complaint barely accomplished anything except to meet the deadline that the Court imposed which compelled Plaintiff Manak to file an amended complaint or the Court would dismiss the claim for lack of prosecution. (Order, July 20, 2017).

15. Plaintiff Manak is not paid or employed by the Defendant Fraternal Order of Police (“FOP”) for services as Treasurer. It is a voluntary position in a fraternal organization.

16. Plaintiff Manak was removed as Treasurer on August 12, 2014. Plaintiff filed suit after the FOP removed him as Treasurer.

17. Plaintiffs seek injunctive relief after the action they seek to enjoin occurred. When a plaintiff seeks to enjoin an action that has already occurred, the cause of action for injunction is moot. *Boatman v. Florida Dept. of Corr.*, 924 So. 2d 906, 907 (Fla. 1st DCA 2006) (citing *Black v. Rouse*, 587 So.2d 1359 (Fla. 4th DCA 1991)); *City of Apalachicola v. Bd. of County Com'rs of Franklin County*, 567 So. 2d 22, 23 (Fla. 1st DCA 1990) (even various statutory violations were present in the process; mandamus was not an option since action sought occurred). Thus, any claim to have Plaintiff Manak placed back as Treasurer during the pendency of this case is moot.

18. Plaintiff Manak is no longer a member of the Fraternal Order of Police. His membership has been revoked. (Aff. Yoes).

19. Plaintiff Manak cannot be Treasurer of an organization he is no longer a member.

20. Plaintiffs are asking the court to intervene in a fraternal organization’s private meetings and procedures. In this FOP lodge, the FOP is merely fraternal and is not the collective bargaining agent of the Palm Beach County Sheriff’s Office.

21. Plaintiff Manak was given notice and a hearing. Plaintiff complains that the subtle niceties of the notice were not met, but it is not required even if such a distinction is parsed out. *See Boca W. Club, Inc. v. Levine*, 578 So. 2d 14, 15 (Fla. 4th DCA 1991).

22. "Even if there were factual allegations, however, it is difficult to see how a justiciable issue could be made. The governing body of a private, social club 'is the final arbiter of the sufficiency of causes for expulsion.' *Everglades Protective Syndicate, Inc. v. Makinney*, 391 So. 2d 262, 265 (Fla. 4th DCA 1980) (citation omitted)).

23. Plaintiffs do not have an ownership right in an officer's position or membership in the FOP. They did not pay for an ownership interest like some country club membership. There is no justiciable issue because courts must not get involved in the internal workings of a fraternal organization. The law does not provide for such remedy.

24. Plaintiffs served interrogatories and request for production of documents. All of the interrogatories and documents seek information Plaintiffs are not entitled to possess or review. They are not and cannot be a member of the FOP. They are not members and could never be a member of the organization again. They also seek information about deputy sheriffs that are protected under

25. Plaintiff Manak cannot be the Treasurer of an organization for which he was expelled. Manak cannot be force placed as an officer in an organization because it's an elected position. There have been several elections since Manak was expelled from the organization.

26. Plaintiffs seek to disrupt a fraternal organization because they are disgruntled. The relief Plaintiffs seek is impossible for the Court to award. The Court cannot force membership or make someone an officer of the FOP. The Court does not have the authority to do so.

27. Plaintiffs cannot be members of the FOP. They do not qualify as members.

28. Plaintiff Manak was expelled from the FOP. Manak exhausted his administrative remedies and cannot seek reentry as a member of the FOP. A court cannot order him to be

Treasurer of an organization he is not a member. A court cannot order that he be admitted as a member that expelled him for violations of its bylaws. (Decl. Hannigan).

29. Plaintiff Davis cannot be a member of the FOP. He waived his administrative hearing regarding his expulsion by failing to appear. (Decl. Hannigan). Davis was terminated from PBSO. He cannot be a member of the FOP, a police union.

30. Plaintiff Twigg is a convicted felon. He cannot be a member of the FOP, a police union. He is also not a member of the PBSO. Twigg did not retire in good standing from PBSO, he was terminated. He cannot be a member of the FOP. This Court cannot order his membership. Twigg does not have standing to seek obtain a remedy for Manak.

31. Plaintiff Veasy is not an employee of PBSO. He was terminated from PBSO. Veasy cannot be a member of the FOP if he was terminated from PBSO. (Decl. Hannigan).

32. Plaintiffs filed this lawsuit and has let it languish in the court system in order to punish and drain the resources of the FOP. They are not entitled to the discovery they seek since they are not members of the organization, can never be members of the organization, and have no standing to remediate their rights and rights of each other.

33. Plaintiffs rely upon Section 617.0607, Fla. Stat. to support their case. A procedure that is fair and reasonable is administrative review outlined in the declaration of Hannigan and the expulsion of the Plaintiffs after this private fraternal organization deemed them unworthy to be members.

LAW ON SUMMARY JUDGMENT

“Summary judgment is proper if there is no genuine issue of material fact and if the moving party is entitled to a judgment as a matter of law.” *Curci Vill. Condo. Ass'n v. Maria*, 14 So.3d 1175, 1177 (Fla. 4th DCA 2009) (citing *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*,

760 So.2d 126, 130 (Fla.2000)). “All doubts and inferences must be resolved against the moving party, and if there is the slightest doubt or conflict in the evidence, then summary judgment is not available.” *Reeves v. N. Broward Hosp. Dist.*, 821 So.2d 319, 321 (Fla. 4th DCA 2002). “The burden of proving the absence of a genuine issue of material fact is upon the moving party. This burden is shifted to the nonmoving party once the movant has successfully met his burden.” *Palm Beach Pain Mgmt., Inc. v. Carroll*, 7 So. 3d 1144, 1145 (Fla. 4th DCA 2009) (citations and internal quotation marks omitted).

SUMMARY JUDGMENT MUST BE GRANTED

Plaintiffs’ purpose in bringing this lawsuit that has been pending since 2014 is to be an albatross around the neck of a fraternal organization that expelled them. They do not qualify to be members, nor can they maintain membership.

They are not seeking monetary damages. They cannot seek injunctive relief. They believe the Court can force seat them as members in a private organization. They cannot cite to one case where this has ever happened.

In fact, this Court cannot interfere with a fraternal organization or private club. It is not the place for the judiciary to intervene in private matters or manage the affairs of an organization. “Even if there were factual allegations, however, it is difficult to see how a justiciable issue could be made. The governing body of a private, social club ‘is the final arbiter of the sufficiency of causes for expulsion.’ *Everglades Protective Syndicate, Inc. v. Makinney*, 391 So. 2d 262, 265 (Fla. 4th DCA 1980) (citation omitted)). Otherwise, the Court would be adjudicating private matters of social clubs all the time. The southern reporters would be replete with precedent on how to handle matters such as this case. There is no precedence in this District other than to say not to interfere.

Plaintiffs rely on Section 617.0607 of the Florida Statutes. There is not one case that interprets this statute as a private right of action. Nor, does the statute suggest a remedy. Because there is no precedent and the statute does not proscribe a remedy that plaintiffs could obtain, this Court must conclude there is no cause of action in common law or by statute to support any of Plaintiffs claims.

Lastly, every plaintiff besides Manak cannot be members of a law enforcement union when they are not law enforcement officers, nor did they retire in good standing. The FOP has presented an affidavit from Secretary Patrick Yoes of the National FOP that outlines that all Plaintiffs were not members of the FOP and cannot be members of the FOP. Plaintiff Twigg is a convicted felon from this Circuit. He cannot be a member of the FOP. The other Plaintiffs misrepresented their status as corrections officers and were expelled for other reasons. This Court cannot force their membership status upon this private union.

Manak was properly expelled. The Court cannot get into the nuances or details of whether Manak's expulsion was unfair. He exhausted his administrative remedies within the FOP on a state and national level. This "injustice" is not rectified in our court system. There have been several elections over the years. Manak cannot subvert the election system of the FOP by seeking to have a court order the FOP force seat him as an officer of the union. This Court does not have the power to install an officer of a private organization.

PROTECTIVE ORDER

Plaintiffs served interrogatories and request for production. They seek the accounting they are not entitled to and have requested discovery that can never lead to admissible evidence because they are not members of the FOP. Nonmembers are not entitled to books and records. There is no independent cause of action that would make them entitled to those records. Nothing

about those records could prove any fact that Plaintiffs seek to prove or any conceivable cause of action they have or have not alleged. A protective order is justified based upon the fact Plaintiffs have no standing to sue the FOP and are not otherwise entitled to discovery.

CONCLUSION

This Court needs to rule. Plaintiffs have been given great discretion to allege a complaint that would survive the lack of prosecution and poor pleading allegations. The Court cannot compel membership nor can it compel seating an unelected officer. This Court does not have subject matter jurisdiction to interfere in an organization's private matters.

This Court should grant summary judgment and dismiss this case with prejudice. Summary judgment should be granted without any further discovery.

Respectfully submitted,

Robert C. Buschel, Esq.
BUSCHEL GIBBONS, P.A.
One Financial Plaza
100 S.E. Third Avenue, Suite 1300
Fort Lauderdale, Florida 33394
Tele: (954) 530-5301
Email: Buschel@BGLaw-pa.com

By: /s/ Robert C. Buschel
ROBERT C. BUSCHEL
Florida Bar No. 0063436

CERTIFICATE OF SERVICE

I hereby certify that on June 21, 2018 a copy of this filing to opposing counsel via the Florida efilng system.

BUSCHEL GIBBONS, P.A.

BY: /s/ Robert Buschel
ROBERT C. BUSCHEL

Isidro M. Garcia
Garcia Law Firm, P.A.
120 S. Olive Avenue, Suite 401
West Palm Beach, FL 33401
isidrogarcia@garcialaborlaw.com
Counsel for Plaintiffs

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

EDWARD J. MANAK,
JERMAIN T. DAVIS,
WILBUR S. VEASY, AND
WILL S. TWIGG,

Plaintiffs,

v.

Case No. 14-CA-9494

FRATERNAL ORDER OF POLICE,
JIM FOGLEMAN LODGE #50, INC.

Defendant.

**AFFIDAVIT OF PATRICK YOES, NATIONAL SECRETARY
FOR THE NATIONAL FRATERNAL ORDER OF POLICE**

STATE OF LOUISIANA)
)
PARISH OF ST. CHARLES)

I, Patrick Yoes, being first duly sworn, do hereby state under oath and under penalty of perjury that the following facts are true:

1. I am over 18 years of age. I have personal knowledge of the matters set forth herein, and if called as a witness, I could and would testify competently as follows.

2. My name is Patrick Yoes. I currently serve as National Secretary of the National Fraternal Order of Police ("FOP")

3. I have been an active member of the FOP for over 33 years, including over 14 years as National Secretary.

4. My duties and responsibilities as National Secretary include having custody of the books, records, documents, Seal, office and equipment of the Grand Lodge under the general authority and order of the National President and the National Board of Trustees. Additionally, I am the official custodian of the FOP Constitution and By-Laws and amendments thereto and am responsible for publication of the FOP Constitution and By-Laws.

5. Pursuant to Article 4, Section 2 of the FOP Constitution and By-Laws, each state and subordinate lodge shall be the judge of its membership. Each state and subordinate lodge shall establish requirements for membership in good standing of its respective membership, which requirements shall not be inconsistent herewith.

6. Pursuant to Article 3, Section 1.E. of the FOP Constitution and By-Laws, any member belonging to a state or subordinate lodge that is delinquent or has been suspended shall not be a member in good standing.

7. Fraternal Order of Police, Jim Fogelman Lodge #50, Inc. ("Lodge 50") is a subordinate lodge organized in the state of Florida, Palm Beach county.

8. Pursuant to my duties and responsibilities I have reviewed and am familiar with the files pertaining to Edward J. Manak, Jermaine T. Davis, Wilbur S. Veasy, and Will S. Twigg. The files show Manak, Davis, Veasy, and Twigg are not considered members in good standing with the FOP.

Edward J. Manak

9. Edward J. Manak ("Manak") is the former Treasurer of Lodge #50. He was removed as Treasurer on August 8, 2014 for violating Lodge #50 by-laws.

10. On January 13, 2015, Manak was expelled by Lodge #50 and its members.

11. Pursuant to Article 3, Section 1.E. of the FOP Constitution and By-Laws, Manak is not a member in good standing with the FOP.

Jermaine T. Davis

12. On August 23, 2012 Jermaine T. Davis ("Davis") was terminated as a Palm Beach County Sheriff's Corrections Deputy. Davis has not been a member of the FOP since 2012.

13. Pursuant to Article 3, Section 1.E. of the FOP Constitution and By-Laws, Davis is not a member in good standing with the FOP.

Wilbur S. Veasy

14. On April 19, 2013 Wilbur S. Veasy ("Veasy") was terminated as a Palm Beach County Sheriff's Corrections Deputy. Veasy has not been a member of the FOP since 2013.

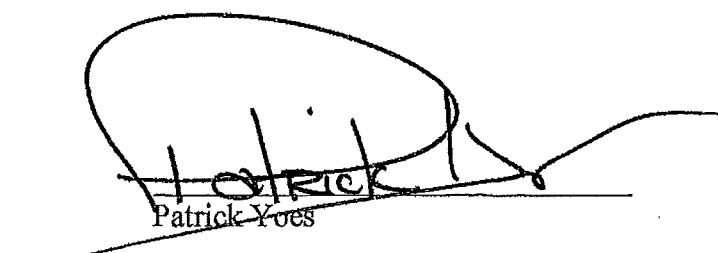
15. Pursuant to Article 3, Section 1.E. of the FOP Constitution and By-Laws, Veasy is not a member in good standing with the FOP.

Will S. Twigg

16. On July 8, 2014 Will S. Twigg ("Twigg") was expelled from membership with Lodge #50.

17. Pursuant to Article 3, Section 1.E. of the FOP Constitution and By-Laws, Twigg is not a member in good standing with the FOP.

Further Affiant sayeth naught.

A handwritten signature in black ink, appearing to read "PATRICK YOES", is written over a horizontal line. The signature is somewhat stylized and includes a small "Y" at the beginning.

Sworn to before me and subscribed in my presence by Patrick Yoes, whom I know to be
that person, this 20 day of June 2018.



Notary Public
Greg Champagne
#01005

Declaration of Thomas Hannigan

My name is Thomas Hannigan. I am over eighteen years of age and can swear to the below facts from my own personal knowledge.

I am the Vice President and former Secretary of the Fraternal Order of Police Lodge #50.

Edward Manak

Each member who joins the Fraternal Order of Police takes an oath and obligation to "... comply with all the Laws and Rules of this Order" and that he would "recognize the authority of his legally elected officers and obey all orders there from." Additionally, each member solemnly swears they will "not cheat, wrong or defraud this Order or any member thereof..." If a member violates their solemn oath and obligation he/she "hereby consent to be expelled from this Order." This oath and obligation is administered annually as well to all elected officers at the start of the calendar year.

Mr. Manak served as Treasurer of FOP Lodge 50 for nearly two decades. The treasurer as with all officers of the board is an elected position. Officers of the board volunteer their time and receive no compensation for their service. Mr. Manak had also been the long time chairperson of the Legal Aid Committee, fielding and facilitating all requests and funding for legal assistance for sworn Sheriff's Office members who became targets of an internal investigation, involved in an on-duty shooting or accused of a crime.

In January of 2013, a newly elected board of directors took office. The board was moving in a new direction seeking to increase membership that had been dramatically lost due to poor member-management in the past. The board was also tasked in seeking solutions to reduce costs associated with the upkeep of three properties owned by the Lodge on its nearly 7 acres of land as well as increase revenues from the annual Children's Christmas Show solicitation. The board was also eager to learn how business was conducted in the past to see if there were any areas in need of improvement.

One of the first issues the board encountered was discovering the tenants of one of the rental properties were in arrears in excess of four-thousand dollars. The board learned that Mr. Manak had assumed the responsibility of personally collecting and managing rent monies from the tenants. The board learned that Mr. Manak was collecting whatever funds the tenants could pay each month but he never properly informed the board they were in arrears. Mr. Manak was later found to have reported misleading and inaccurate financial reports regarding a payment plan adopted and agreed upon by the board and the tenants. Mr. Manak's continued pattern of withholding information subsequently led to further inquiries into his fiscal management. Mr. Manak became resistant as the board continued to inquire and make suggestions for improvement. This led to the board's decision to appoint a lodge member to act as the property manager thus relieving Mr. Manak of his duty to collect rent.

As the months followed, Mr. Manak's resistant and defiant behavior towards his fellow board members was becoming increasingly alarming. Some of the issues that troubled the board included:

Mr. Manak resisted in obtaining a lodge credit card

- *Mr. Manak's practice of using his personal credit card to pay for hotel reservations for quarterly state board of trustees meetings and annual conferences was under scrutiny. The board discovered Mr. Manak was receiving "honors points" from the hotel (s) in which the rooms were reserved and suggested he discontinue this practice as it would appear he was using his position as treasurer for personal gain. As a solution, the board voted on and subsequently instructed Mr. Manak to obtain a credit card issued solely to Lodge 50 but was met with resistance from him. He continually delayed in attaining one.*

Mr. Manak was storing financial data reports on the Palm Beach County Sheriff's Office computer system main network drive and divulging lodge information using the Sheriff's Office email server

- *Mr. Manak had to be reminded several times to discontinue this practice of using the Sheriff's Office computer hard drives as it was not only a Sheriff's Office policy violation, but no one would be able to retrieve the information in the event he was fired or died unexpectedly. A board officer even offered to assist Mr. Manak and show him how to properly retrieve the data but he failed to accept the offer*
- *Mr. Manak sent an email to an addressee that contained privileged lodge information from his Sheriff's Office email account*

Mr. Manak refused to switch to online banking and use accounting software

- *Mr. Manak failed to comply with the board's directive and became argumentative each monthly meeting when asked for a follow-up report. The board questioned his willingness and capabilities and subsequently was placed on notice to respond to the lodge president by the next monthly board meeting if he wishes to continue his duties as treasurer*

Mr. Manak defied direct orders from the lodge president and trustees

- *On June 4, 2014 Manak refused a direct order from the lodge president to return all checkbooks, ledgers, records, papers and receipts to the trustees in order to conduct an audit*
- *At the June 24, 2014 board of directors meeting, Manak had yet to return the financial records and was ordered once more by the lodge president to return the items. His outright refusal prompted the initiation of a petition to recall Mr. Manak from office*

On August 12, 2014, the members voted to recall Mr. Manak as treasurer for violating his oath of office. He subsequently appealed the decision to the Florida State FOP Lodge Board of Trustees who overturned the decision in October citing he was not afforded due process due to the fact that he was not properly served with the charges; however, he was not immune from expulsion. After the appeal, he returned to the position as lodge treasurer. He was nominated as an incumbent but lost in the annual officer elections held in November of 2014 at the general membership meeting. During that meeting, formal charges against Mr. Manak as a member were presented to the board.

A hearing was held on January 15, 2015. In accordance to the bylaws, the members in attendance voted to expel Mr. Manak from the order. He unsuccessfully appealed the members' decision before the Florida State FOP Lodge Board of Trustees in June of 2015. He later failed to file his final appeal before the Fraternal Order of Police Grand Lodge within the allotted time frame.

Jermaine Davis, Will Twigg and Wilbur Veasy

Mr. Jermaine Davis and Mr. Will Twigg deliberately and knowingly disrupted an official closed meeting of the legally elected board of directors on April 29th, 2014. They failed to obey all orders to leave the room by the members of the board. Formal charges were brought against both Mr. Davis and Mr. Twigg at a general membership meeting on May 13, 2014.

At a hearing held on July 8th, 2014, Mr. Davis and Mr. Twigg were found guilty of violating the lodge's constitution and by-laws and were expelled. Mr. Davis failed to attend the hearing. Mr. Davis later appealed his expulsion to the Florida State FOP Lodge Board of Trustees who overturned the decision however, when Mr. Davis re-applied for membership, he was found to have been terminated as a Palm Beach County Sheriff's Corrections Deputy on August 23, 2012 and therefore did not meet the requirements to be a member of the Fraternal Order of Police as a whole. Based on this fact, the general membership voted to deny his application in accordance to the lodge by-laws.

Mr. Twigg exhausted all his appeals to the Fraternal Order of Police Grand Lodge which upheld his expulsion. During his appeals to both the State and Grand Lodge, Mr. Twigg had been arrested and convicted of the charge of Felony Battery on an Emergency Medical Care Provider and Battery and was placed on probation. He was also terminated as a Palm Beach County Sheriff's Correction Deputy and clearly does not meet the requirements to become a member of the Fraternal Order of Police.

Mr. Wilbur Veasy applied for and obtained membership on April 9, 2013 at the recommendation of Mr. Edward Manak who sponsored and personally accompanied him at that evening's membership meeting. During my interview with Mr. Veasy he failed to disclose to me that he was on administrative leave, pending termination as a Palm Beach County Sheriff's Office Corrections Deputy. He later failed to disclose the fact that he was terminated on April 19th,

2013 thus making him ineligible to maintain his membership in the Fraternal Order of Police. He subsequently had personally resigned from Lodge 50.

I, Thomas Hannigan, under the penalty of perjury sign the above declaration under oath, on this 20th day of June, 2018.



Thomas Hannigan

FOP JIM FOGLEMAN LODGE #50
MEMBER CHARGING DOCUMENT

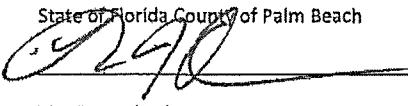
On June 24th 2014 at the Jim Fogleman FOP lodge 50 located at 885 62nd Drive North in the unincorporated area of West Palm Beach, Palm Beach County, Florida during the Executive Board Meeting, I was present in the meeting in my capacity as Vice President for FOP Jim Fogleman Lodge 50 when during the meeting I observed Lodge President Bill Williams order Brother Ed Manak, who was the Lodge Treasurer, to turn over all books and keys belonging to FOP Jim Fogleman Lodge 50. I observed Brother Manak openly refuse to comply with the order that President Williams had just given to him. President Williams told Brother Manak a second time that as President of the Lodge, President Williams requested for Brother Manak to turn over the Ledger, checkbooks, the keys to the lodge. President Williams reminded Brother Manak that the property belonged to the lodge and that he was to turn in the lodge property to the board. Brother Manak stated that he was not going to turn anything over and that he was not going to comply as he is the treasurer of the lodge. The meeting adjourned and Brother Manak left the lodge without returning any lodge property.

Sworn witness statements were obtained by the board members, who were present for the meeting.

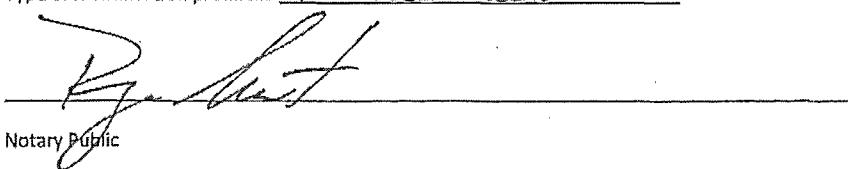
I find probable cause exist to find Brother Ed Manak in violation of FOP Jim Fogleman Lodge 50 bylaws Article 2 duties of Treasurer Section 1 subsection E whereas at any time, when ordered by the Board of Directors, he shall deliver all monies, books and papers to the Board of Trustees. I also find that Brother Manak also violated his Oath to the Order and Office, which he reaffirmed and swore to on January 14, 2014, by, "failing to recognize the authority of his legally elected officers." In taking his Solemn Oath or Obligation of Office and to the Order Brother Manak bound himself "under no less a penalty than to be impeached from office and expelled from the Order."

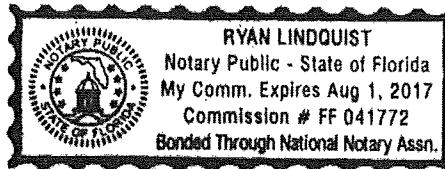
This shall serve as a charging document to formally charge Brother Ed Manak with violation of the listed bylaws and Oath of office.

State of Florida County of Palm Beach


The Forgoing Instrument was sworn to or affirmed and subscribed before me this 21 of November 2014 By Luis Blasco

Type of Identification produced FL Drivers License


Notary Public



FOP JIM FOGLEMAN LODGE #50
MEMBER WITNESS STATEMENT

On June 24th 2014 at the Jim Fogleman FOP lodge 50 located at 885 62nd Drive North in the unincorporated area of West Palm Beach, Palm Beach County, Florida during the Executive Board Meeting, I was present in the meeting in my capacity as Vice President for FOP Jim Fogleman Lodge 50 when during the meeting I observed Lodge President Bill Williams order Brother Ed Manak, who was the Lodge Treasurer, to turn over all books and keys belonging to FOP Jim Fogleman Lodge 50. I observed Brother Manak openly refuse to comply with the order that President Williams had just given to him. President Williams told Brother Manak a second time that as President of the Lodge, President Williams requested for Brother Manak to turn over the Ledger, checkbooks, the keys to the lodge. President Williams reminded Brother Manak that the property belonged to the lodge and that he was to turn in the lodge property to the board. Brother Manak stated that he was not going to turn anything over and that he was not going to comply as he is the treasurer of the lodge. The meeting adjourned and Brother Manak left the lodge without returning any lodge property.

On August 12th 2014 a recall election was held at the FOP Jim Fogleman Lodge reference the recall of FOP Lodge 50 Treasurer Ed Manak. The members in a 2/3 vote for recall had voted to recall Brother Manak as Treasurer. Before the meeting adjourned and after the vote, President Williams again asked Brother Manak to return all lodge property and he refused to do so. FOP District 4 director Mike Kelly was present and also informed Brother Manak that the lodge President was giving him an order and that the books and keys were property

of Lodge 50 and that he needed to comply. Brother Manak refused to comply and stated that he was not going to relinquish any property of the lodge.

Sworn witness statements were obtained by the board members, who were present for the meetings.

I find probable cause exist to find Brother Ed Manak in violation of FOP Jim Fogleman Lodge 50 bylaws Article 2 duties of Treasurer Section 1 subsection E whereas at any time, when ordered by the Board of Directors, he shall deliver all monies, books and papers to the Board of Trustees.

This shall serve as a charging document to formally charge Brother Ed Manak with violation of the listed bylaws.

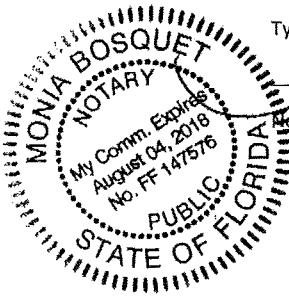
M. Louise Rubar
M. Louise Rubar

State of Florida County of Palm Beach

The Forgoing instrument was sworn to or affirmed and subscribed before me this 31 of October 2014 By M Louise Rubar, Trustee

Type of Identification produced

Florida Drivers License



Rendon-Olivo, Jose M

From: Rendon-Olivo, Jose M
Sent: Monday, October 27, 2014 10:39 AM
To: Rendon-Olivo, Jose M
Subject: FOP

I, Jose Rendon attended an FOP meeting on June 24th and August 12th. Ed Manich was asked By Bill Williams to return all books, treasures property to Lodge property, Ed Manich refuse Both times to do so.

Jose Rendon
Jose Rendon

FL DL
R 535-433-49-290-D
COP: 8/10/18



STEPHNEY THOMPSON
MY COMMISSION # FF 159031
EXPIRES: September 26, 2018
Bonded Thru Budget Notary Services

Stephney Thompson

FATERNAL ORDER OF POLICE JIM FOGLEMAN LODGE 50

WITNESS STATEMENT FROM APPOINTED TREASURER CARLOS DORTA

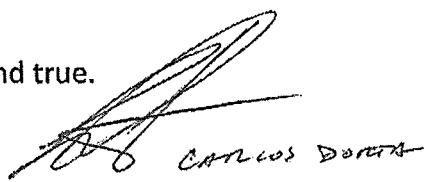
To whom it may concern,

My name is Carlos Dorta, and I am currently the appointed treasurer for the FOP Jim Fogelman Lodge 50 located at 885 62nd Drive North in West Palm Beach, FL 33413, in Palm Beach County, FL.

On June 24th, 2014, I attended an executive board meeting for the lodge to report on an issue from the Ways and Means Committee. During the meeting, I observed Lodge President Bill Williams order Brother Ed Manak, who was the Lodge Treasurer, to turn over all books and keys belonging to FOP Jim Fogelman Lodge 50. I observed Brother Manak openly refuse to comply with the order that President Williams had just given him. President Williams again requested Brother Manak a second time and Brother Manak refused to comply with the order. President Williams requested for Brother Manak to turn over the Ledger, checkbooks and the keys to the lodge. President Williams reminded Brother Manak that the property belonged to the lodge, and that he was to turn in the lodge property to the board. Brother Manak stated that he was not going to turn anything over, and that he was not going to comply as he is the treasurer of the lodge. The meeting adjourned and Brother Manak left the lodge without returning any lodge property.

This request by President Williams came after the discovery of misleading statements, inappropriate actions on behalf of Brother Manak and thousands of dollars of unexplained and misappropriated expenses.

I swear and affirm this statement is correct and true.

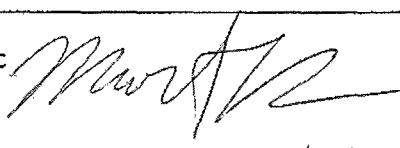


State of Florida County of Palm Beach

The Forgoing instrument was sworn to or affirmed and subscribed before me this 12 day of November, 2014, by Carlos Dorta.

Type of Identification produced PL DL 12630-101-77-337-0

Notary Public


11/12/14

Martin Rico
State of Florida
My Commission Expires 02/12/2018
Commission No. FF 92429

APPENDIX 0098

000304

FRATERNAL ORDER OF POLICE JIM FOGLEMAN LODGE #50

3rd Yr. Trustee Rafael Padilla-Rodriguez

To whom it may concern,

I am a Third-year Board of Trustee member for the Jim Fogleman FOP lodge 50 located at 885 62nd Drive North, West Palm Beach, Florida 33413.

While in attendance at an Executive Board Meeting on the evening of June 24, 2014, I observed lodge President, William Williams, request and subsequently order Treasurer Edward Manak, turn over all keys, documents, and properties belonging to the Lodge. This request came after months of numerous unsuccessful attempts for Mr. Manak to abide by the Board's decision to cease costly accounting practices. This, along with blatant and unauthorized decisions on Mr. Manak's behalf, have resulted in thousands of dollars in unexplained expenses and lost revenue to our organization. After the request by Williams, Mr. Manak became agitated and shouted he would not relinquish any of the aforementioned items, stating no one had the right to question him because he was the lodge's Treasurer. Mr. Manak further advised, "He would continue storing lodge documents at his residence because it was the safest place to keep them, and did not care what anyone had to say."

It should be noted prior to this incident I have observed this same explosive response on numerous occasions by Mr. Manak, regarding similar inquiries. This Board has spent the better part of the 2014 fiscal year, making amends for Mr. Manak's unauthorized actions, which have resulted in unwarranted expenses and mired the evolution of this Board and its membership.

I swear and affirm this statement is correct and true.

State of Florida County of Palm Beach

The Foregoing instrument was sworn to or affirmed and subscribed before me this *6th* of *November* 2014 By Rafael Padilla-Rodriguez *[Signature]*

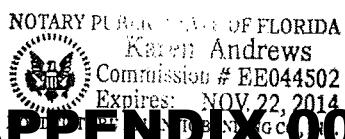
Type of Identification produced *Personally Known*

Notary Public

Karen Andrews

Karen Andrews

November 6, 2014

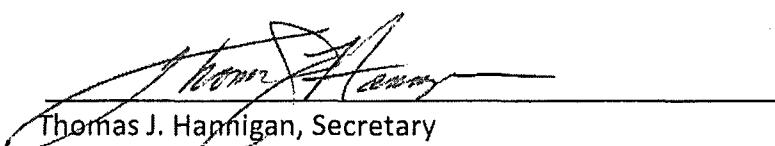


APPENDIX 0099

000305

Statement of Secretary Thomas J. Hannigan regarding the misconduct of Treasurer Edward Manak

At the June 24th, 2014 meeting of the Elected Board of Directors of FOP Lodge #50, I was present and serving in the capacity as the Lodge Secretary. During this meeting, President Williams, at the request of the Board of Trustees, ordered Treasurer Manak to relinquish all checkbooks, ledgers, papers, receipts and post office box key to the Board. Manak emphatically stated he would not do it and refused again when ordered to do so by President Williams a second time.



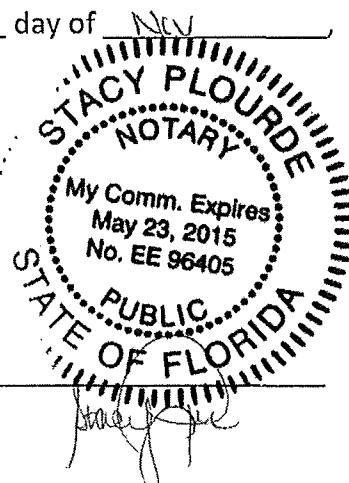
Thomas J. Hannigan, Secretary
Fraternal Order of Police
Jim Fogleman Lodge #50, Inc

State of Florida
County of Monroe

Sworn to (or affirmed) and subscribed before me this 10 day of May, 2014, by Thomas J. Hannigan.

(Notary Seal)

Personally Known _____ OR Produced Identification X
Type of Identification
Produced FL Drivers License



Witness Statement of Lodge President William F. Williams

On June 3, 2014, I, the Undersigned President of the Fraternal Order of Police, Jim Fogleman Lodge # 50 ordered Brother Edward Manak to bring in all checkbooks, ledgers, records, papers and receipts, to the FOP lodge because the board of trustees wanted to conduct their annual audit which is required by our Lodge's constitution and by-Laws. Brother Manak had been keeping all the check books, receipts and papers at his house. My order to do so was sent to him electronically via email because I wanted to have a record of my direct order. I did this because I had previously ordered Brother Manak to do so several times in the past and he never complied. Brother Manak did receive my email on June 3, 2014 which was confirmed via a read receipt.

On June 4, 2014, I met with Brother Manak in person at Lake Lytal Park in West Palm Beach and I asked him if he received my email from yesterday. He said yes he did. I asked him if he had the books & papers with him. He said no they are at his house. I asked him if he was going to bring them to the lodge and he told me no, he wasn't going to. I then made it perfectly clear to Brother Manak that I was the President of Lodge 50 and I was not asking him to bring in the books & papers and the post office box key to the lodge but I was giving him a direct order to do so. Brother Manak became red in the face and raised his voice and yelled "No I won't do it." Brother Manak started accusing me and other board members of wanting to steal money from the lodge. I asked Brother Manak why he was thinking that. He told me they are all part of a P.B.A. plan to steal the FOP's money. I asked if he had any evidence of that and he said no.

On June 24, 2014 Brother Manak did attend the elected board meeting and was again ordered by the board of trustees to bring in all checkbooks, ledgers, records, papers and receipts to the board of trustees so that our annual audit could be conducted by the board of trustees. I also directly ordered Manak to turn over the books, papers and post office box key. Manak told me and the members of the elected board of directors that were in attendance that he will not do it.

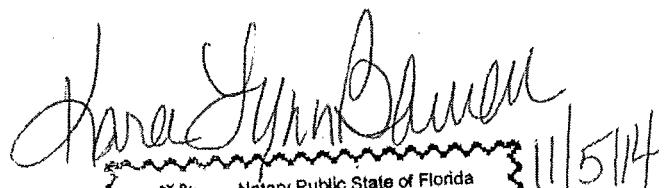
Brother Edward Manak was insubordinate by not recognizing the authority of his superior officers and he deliberately refused to comply with lawful orders therefrom. Brother Manak violated his oath /obligation for his office as the elected lodge treasurer and he violated his oath / obligation for the order.

Sworn to by Affiant:

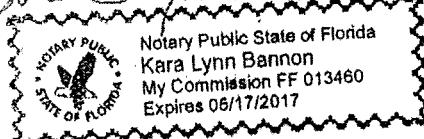


11/5/14

President William F. Williams
Fraternal Order of Police,
Jim Fogleman Lodge #50



11/5/14



Notary Public State of Florida
Kara Lynn Bannon
My Commission FF 013460
Expires 06/17/2017

INSTALLATION OF OFFICERS

(The newly elected Officers may be installed by any Past President or by the retiring President, who will be called the Installing Officer.)

INSTALLING OFFICER - My Brothers (and Sisters), you have been legally and duly elected to the office you have chosen. A vast amount of confidence and trust has been placed in you, and a great responsibility rests upon you. It is your duty to guard well the honor and dignity of this Lodge and of your office.

It is your privilege to use the authority of your office, not for personal gain, but for the best interest and welfare of this Lodge and all its members, and it is your duty to use any and all honorable means toward that end; to all of which the obligation you are about to take will bind you under no less penalty than that of being impeached and expelled from the Order for violation of the same. With this knowledge, are you willing to proceed?

(Each one answers) - I AM.

INSTALLING OFFICER - Then hold up your right hand, pronounce your name in full and repeat after me.

(Installing Officer gives three raps of the gavel which raises the entire Lodge.)

Obligation

I, _____, in the presence of the Creator of the Universe, and the members of the Fraternal Order of Police here assembled, do most solemnly and sincerely promise and swear, that I will, to the best of my ability, comply with all the laws and rules of this Order; that I will recognize the authority of my superior officers, obeying all the laws, rules and edicts of the Grand Lodge; that I will abide by and support the Constitution and By-Laws of this Order; that I will be fair in all my dealings with this Lodge during my term of office; that I will not use the authority invested in me for personal gain, or for any other cause, except for the best interests and welfare of this Lodge and its members.

Should I violate this, my solemn oath or obligation, I hereby bind myself under no less a penalty than that of being impeached from office and expelled from the Order.

To all of which I solemnly and sincerely promise and swear, so help me God, and keep me steadfast.

(The Installing Officer gives one rap of the gavel which seats the Lodge.)

Article II

Duties of the Treasurer

Section 1. It shall be the duty of the Treasurer to:

- (A) Receive from the Secretary all monies belonging to the lodge and issue receipt for same.
- (B) Pay all orders drawn on him, signed by the President and the Secretary.
- (C) Keep an accurate account of all monies received and expended and credit each special account with such sums as they occur.
- (D) Provide the audit committee with a correct account of all monies in his possession, together with the books, papers and receipts belonging to his office.
- (E) At any time, when ordered by the Board of Directors, he shall deliver all monies, books and papers to the Board of Trustees.
- (F) Deposit all monies belonging to the lodge in a financial institution chosen by the Board of Directors to the credit of the lodge.
- (G) Deliver to his successor in office, all books and property belonging to the lodge, within ten (10) days of the expiration of his term.
- (H) Perform such other duties as are usual and incident to his office.
- (I) At each session of the Board of Directors, submit a full and complete report of official business transacted by him subsequent to the last meeting of the Board of Directors, together with recommendations as he may deem advisable.

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

EDWARD MANAK,)
JERMAINE DAVIS,)
WILBUR VEASY AND)
WILL S. TWIGG,)
Plaintiff(s),)
vs.)
FRATERNAL ORDER OF)
POLICE JIM FOGLERMAN)
LODGE #50 INC.,)
Defendant(s).)
/

CASE NO.: 50-2014-CA-009494-XXXX-MB AH

EMERGENCY MOTION TO NOT ENTER
SUMMARY JUDGMENT AGAINST VEASY, DAVIS, AND TWIGG

Plaintiffs', through counsel, hereby move for emergency relief for the Court not to enter summary judgment against Veasy, Davis, and Twigg as announced in open court today by the Court, and would show in support:

1. Defense counsel represented to the Court that these three Plaintiffs' do not have standing to challenge Defendant's actions because they are not lawfully employed by the PBSO and were not lawfully employed at time of the adverse action. However, the Plaintiffs' were expelled for attempting to attend a board meeting from which the membership of the FOP was unlawfully excluded, see Affidavit of Edward J. Manak attached as **Exhibit 1**. This had nothing to do with any of the Plaintiffs' employment with PBSO. See May 14, 2014 letter from Thomas Hannigan to Davis, and July 9, 2014 Letter from Thomas Hannigan to Davis, attached as **Exhibit 2 and 3**, respectively. Also, see May 14, 2014 letter from Thomas Hannigan to Twigg, and July

9, 2014 letter from Thomas Hannigan to Twigg, attached as **Exhibit 4 and 5**, respectively.

Accordingly, defense counsel's argument that Davis lacks standing through his non employment with PBSO is not consistent with the reasons for being expelled with the FOP. Davis continued to be member from date of termination in 2012 until July 9, 2014.

2. In addition, Defendant misrepresented the law on these types of organizations in the case of McCune v. Wilson, 237 So. 2d 169 (Fla. 1970), attached as **Exhibit 6**, the Florida Supreme Court held that a professional organization such as the Defendant in this case must follow fair procedures when it takes disciplinary action against a member of said organization:

Professional organizations, although voluntary in nature, often attain a quasi-public significance. In public view, membership in such organizations may appear to be a tangible demonstration of professional competence and skill, professional responsibility, and acceptance by one's professional peers. The fact that an individual member expelled from membership may not be prohibited from practicing his chosen occupation or profession is not a sufficient test to determine whether he needs and is entitled to judicial protection from unfair proceedings or arbitrary actions. When a voluntary association achieves this quasi-public status, due process considerations come into play. Such is the policy of the judicial decisions and statutes of this State.

Disciplinary action against a member of a professional organization, although falling short of expulsion from occupation, may have an import which transcends the organization itself because it conveys to the community that the disciplined member was found lacking by his peers. For this reason, it is suitable and proper that an organization, whether a domestic or foreign nonprofit corporation, or a nonchartered nonprofit association, be held to reasonable standards of due process and fairness, especially those inherent in its own by-laws, rules or customs.

While the courts should be loathe to intervene in purely private organizational matters, nonintervention is not justified where a quasi-public organization takes action and imposes penalties which carry the odor of public sanctions. It is clear that not all private associations must observe due process standards. However, such standards must be observed when a private association becomes quasi-public, assumes a public purpose of its own, incorporates and seeks the tax shelters and other protections of public law, or otherwise assumes a larger purpose or statute than pleasant, friendly and congenial social relationships.

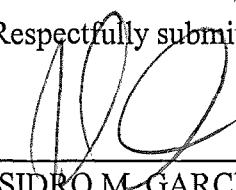
The public policy underlying the Florida Statutes is in harmony with standards herein affirmed. See § 617.10(2), F.S.A., which provides that if a person is an incorporator or member of a nonprofit corporation 'before his membership shall cease against his consent he shall be given an opportunity to be heard, unless he is absent from the county where the corporation is located. * * *' Also see § 617.11(3), which provides that a nonprofit corporation chartered out-of-state operating without a Florida permit 'shall not be permitted to bring or maintain any suit or other proceeding before any court or administrative body of this state; but failure to obtain such permit shall not affect the validity of any contract with or conveyance by such foreign corporation.' As this provision makes clear, the American Institute of Real Estate Appraisers or any other foreign nonprofit corporation in Florida, if it fails to obtain a permit in Florida, may not maintain suit; however, the contract and property rights of persons with whom the corporation has transactions will be protected by the law.

We hold that a private organization, particularly if tinged with public stature or purpose, may not expel or discipline a member adversely affecting substantial property, contract or other economic rights, except as a result of fair proceedings which may be provided for in organization by-laws, carried forward in an atmosphere of good faith and fair play.

The decision of the District Court Sub judice is quashed, and this case remanded to the District Court with instructions to affirm the judgment of the Circuit Court of Dade County.

WHEREFORE, Plaintiffs' respectfully request the Court not to enter summary judgment against Veasy, Davis, and Twigg.

Respectfully submitted,



ISIDRO M. GARCIA
Florida Bar No. 437883
GARCIA LAW FIRM, P.A.
120 South Olive Avenue Suite 401
West Palm Beach, FL 33401
Telephone: (561) 832-7732
Telecopier: (561) 832-7137
E-mail: isidrogarcia@garcialaborlaw.com
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was furnished **VIA FLORIDA E-FILING PORTAL** (buschel@bglaw-pa.com) to: Robert C. Buschel, Esq., Buschel Gibbons, P.A., 100 S.E. Third Avenue, Suite 1300, Fort Lauderdale, FL 33394 this 28 day of _____, 2018.



ISIDRO M. GARCIA

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

EDWARD MANAK,)	
JERMAINE DAVIS,)	
WILBUR VEASY AND)	
WILL S. TWIGG,)	
)	CASE NO.: 50-2014-CA-009494-XXXX-MB AH
Plaintiff(s),)	
)	
vs.)	
)	
FRATERNAL ORDER OF)	
POLICE JIM FOGLEMAN)	
LODGE #50 INC.,)	
)	
Defendant(s).)	
	/	

AFFIDAVIT OF EDWARD J. MANAK

UNDER PENALTY OF PERJURY, I declare as follows:

1. My name is Edward J. Manak and I have personal knowledge of the facts herein.
2. I am currently employed as a Deputy Sheriff for the PBSO and have been so employed since 1982.
3. On or about July 9, 2014, I was the treasurer duly elected of the Defendant.
4. Without notice and an opportunity to be heard, the executive board unlawfully voted to expel Wilbur Veasy from membership. He was not expelled from membership because he had been terminated from PBSO on or about April 17, 2013. In fact, Mr. Veasy joined FOP after he was terminated. He was expelled because Mr. Veasy came to my defense at an earlier executive board meeting on or about May, 2014, when there was an attempt by the executive board to force me to resign. I had objected to relinquishing the office of

treasurer as well as turning over PNC bank accounts to the executive board due to my concerns that they would misspend the funds on personal goods and services. Moreover, we have historically had many former employees of PBSO who have either retired or been fired by the PBSO who have remained members in good standing with the Defendant. For example, Keith Burns was fired, and then permitted to join the FOP and all of his legal fees were paid by the FOP (in a criminal case where he was acquitted and an arbitration case which was settled); Jermaine Davis, who was terminated by PBSO August 23, 2012. Mr. Davis was not expelled by the Defendant because of his termination by PBSO. I attended a meeting of the executive board on July 8, 2018, and Davis's employment or lack thereof with PBSO was not the reason for his expulsion.

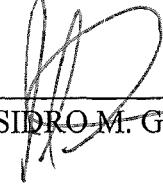

EDWARD J. MANAK

Respectfully submitted,


ISIDRO M. GARCIA
Florida Bar No. 437883
GARCIA LAW FIRM, P.A.
120 South Olive Avenue Suite 401
West Palm Beach, FL 33401
Telephone: (561) 832-7732
Telecopier: (561) 832-7137
E-mail: isidrogarcia@garcialaborlaw.com
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was furnished **VIA FLORIDA E-FILING PORTAL** (buschel@bglaw-pa.com) to: Robert C. Buschel, Esq., Buschel Gibbons, P.A., 100 S.E. Third Avenue, Suite 1300, Fort Lauderdale, FL 33394 this 28 day of August, 2018.



ISIDRO M. GARCIA



FRA'ERNAL ORDER OF POLICE®

PALM BEACH COUNTY SHERIFF'S OFFICE

JIM FOGLEMAN LODGE 50

Mailing Address • P.O. Box 16372 • West Palm Beach, FL 33416-6372
Lodge Location • 885 62nd Drive North • West Palm Beach, FL 33413-1001
Phone (561) 687-7554 • Fax (561) 687-4735
www.foplodge50.org • e-mail: FOP50President@comcast.net



July 9th, 2014

Mr. Jermaine Davis
1061 Serenade Circle
Royal Palm Beach, FL 33411

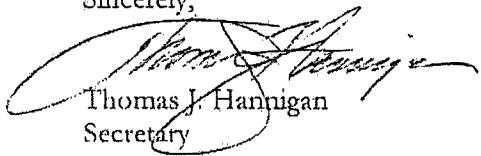
Dear Mr. Davis,

This letter will serve as official notification of the results of a Disciplinary Hearing conducted on July 8th, 2014, by members present at the General Meeting of the Fraternal Order of Police, Jim Fogleman Lodge #50, Inc.

In accordance with the Constitution and By-Laws of the Fraternal Order of Police Lodge 50 (Constitution Article IX, Section 4), a vote of 2/3 of the members present found you guilty of the charges as well as expulsion from the Lodge. You have the right to appeal the decision to the District Director.

Your appeal can be made to District 4 Director, Mike Kelley, in writing or in person at the next scheduled District 4 meeting. The next meeting will be held on August 21, 2014 at 6:30 PM with dinner being served at 6:00 PM. The location of this meeting is to be announced. Director Kelley can be reached at 561-441-5791.

Sincerely,



Thomas J. Hannigan
Secretary

000317

PLAINTIFF'S
EXHIBIT
APPENDIX 0111



FRATERNAL ORDER OF POLICE®

PALM BEACH COUNTY SHERIFF'S OFFICE

JIM FOGLEMAN LODGE 50

Mailing Address • P.O. Box 16372 • West Palm Beach, FL 33416-6372
Lodge Location • 885 62nd Drive North • West Palm Beach, FL 33413-1001
Phone 561-687-7554 • Fax 561-687-4735
www.foplodge50.org • e-mail: FOP50President@comcast.net



May 14, 2014

Jermaine Davis
1061 Serenade Circle
Royal Palm Beach, FL 33411

Dear Brother Davis:

In accordance to FOP Lodge #50 Constitution and By-Laws Article IX, Sections (1) and (2), you have been formally charged before the body during the General Membership meeting of May 13, 2014 for abusing your privileges as a member in good standing by committing the following offenses:

1. Failure to recognize the legal authority of their legally elected Lodge officers
2. Failure to obey all orders from those legally elected Lodge officers
3. Deliberately and knowingly disrupting an official closed meeting of the legally elected Executive Board

As a courtesy to you, an explanation of your rights and appeal procedures is outlined in the attached copy of FOP Lodge #50 Constitution and By-Laws Article IX.

This letter shall serve as official written notice.

Sincerely,

Thomas J. Hannigan Sr.
Secretary



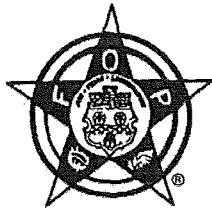
APPENDIX 0112

000318

Article IX

Discipline

- Section 1.** If any member of the lodge should abuse the usage of the lodge or be accused of any offense against the lodge or its membership, he may be reprimanded, suspended or expelled.
- Section 2.** The charges must be preferred in writing and submitted to the lodge at a regular meeting.
- Section 3.** The accused member shall be given the opportunity to answer the charges in person at the next regular meeting.
- Section 4.** A vote of 2/3 of the members present, to reprimand, suspend or expel the accused, shall be required to discipline the accused member.
- Section 5.** The accused member shall have the right to appeal to the District Director and the State and National Lodges, any discipline imposed by the lodge.
- Section 6.** The accused member shall retain all rights and privileges of membership pending the appeals process.
- Section 7.** Any member of this lodge who is in arrears for dues for a period of more than 90 days shall automatically be suspended from the lodge.
- Section 8.** The membership committee chairman shall notify the member in writing that he is in arrears and suspended.
- Section 9.** The delinquent member may be reinstated upon payment of all delinquent dues and fees.



FRATERNAL ORDER OF POLICE®

PALM BEACH COUNTY SHERIFF'S OFFICE

JIM FOGLEMAN LODGE 50

Mailing Address • P.O. Box 16372 • West Palm Beach, FL 33416-6372
Lodge Location • 885 62nd Drive North • West Palm Beach, FL 33413-1001
Phone 561-687-7554 • Fax 561-687-4735
www.foplodge50.org • e-mail: FOP50President@comcast.net



May 14, 2014

Will Twigg
1864 SW Jamesport Drive
Port St. Lucie, FL 34953

Dear Brother Twigg:

In accordance to FOP Lodge #50 Constitution and By-Laws Article IX, Sections (1) and (2), you have been formally charged before the body during the General Membership meeting of May 13, 2014 for abusing your privileges as a member in good standing by committing the following offenses:

1. Failure to recognize the legal authority of legally elected Lodge officers
2. Failure to obey all orders from the legally elected Lodge officers
3. Deliberately and knowingly disrupt an official closed meeting of the legally elected Lodge officers

As a courtesy to you, an explanation of your rights and appeal procedures is outlined in the attached copy of FOP Lodge #50 Constitution and By-Laws Article IX.

This letter shall serve as official written notice.

Sincerely,

Thomas J. Hannigan Sr.
Secretary

000320

PLAINTIFF'S
EXHIBIT
APPENDIX 0114



FRATERNAL ORDER OF POLICE®

PALM BEACH COUNTY SHERIFF'S OFFICE

JIM FOGLEMAN LODGE 50

Mailing Address • P.O. Box 16372 • West Palm Beach, FL 33416-6372
Lodge Location • 885 62nd Drive North • West Palm Beach, FL 33413-1001
Phone (561) 687-7554 • Fax (561) 687-4735
www.foplodge50.org • e-mail: FOP50President@comcast.net



July 9th, 2014

Mr. Will Twigg
3228 Gun Club Road
West Palm Beach, FL 33406

Dear Mr. Twigg,

This letter will serve as official notification of the results of a Disciplinary Hearing conducted on July 8th, 2014, by members present at the General Meeting of the Fraternal Order of Police, Jim Fogleman Lodge #50, Inc.

In accordance with the Constitution and By-Laws of the Fraternal Order of Police Lodge 50 (Constitution Article IX, Section 4), a vote of 2/3 of the members present found you guilty of the charges as well as expulsion from the Lodge. You have the right to appeal the decision to the District Director.

Your appeal can be made to District 4 Director, Mike Kelley, in writing or in person at the next scheduled District 4 meeting. The next meeting will be held on August 21, 2014 at 6:30 PM with dinner being served at 6:00 PM. The location of this meeting is to be announced. Director Kelley can be reached at 561-441-5791.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas J. Hannigan'.

Thomas J. Hannigan
Secretary

000321

APPENDIX 50115



Page 169

237 So.2d 169
Marion C. McCUNE, Petitioner,
v.
J. I. WILSON, as Chairman, and Earl Keefer, Frank J. Anderson, Gordon H Moyer, Jr., Charles W. Foglesong, William B. Smith, and Harry D. Fleming, Jr., as Members of the Professional Ethics Committee, South Florida Chapter No. 24, American Institute of Real Estate Appraisers, Respondents.
No. 38709.
Supreme Court of Florida.
June 17, 1970.
Rehearing Denied July 17, 1970.

Page 170

E. F. P. Brigham, of Brigham & Brigham, and Darrey A. Davis, of Scott, McCarthy, Steel, Hector & Davis, Miami, for petitioner.

G. David Parrish, Welsh & Carroll, and Horton & Schwartz, Miami, for respondents.

ADKINS, Justice.

We issued writ of certiorari under F.A.R. 2.1, subd. a(5)(b), 32 F.S.A. to review the decision of the District Court of Appeal, Third District, 222 So.2d 230, which conflicts with the other appellate decisions in this State concerned with the nature of memberships and interests in nonpublic organizations which are entitled to protection by the courts. The District Court decision reversed the opinion of the Circuit Court of Dade County, and approved disciplinary proceedings undertaken against petitioner.

This case arose when respondents, members of the Professional Ethics Committee of South Florida Chapter No. 24, of the American Institute of Real Estate Appraisers, a nonprofit foreign corporation chartered in Illinois, initiated disciplinary

proceedings against petitioner McCune. Petitioner sought an injunction in the Circuit Court against continuation of the proceedings against him.

After pleadings, the Circuit Court concluded that the Chapter is a professional organization and not a purely private social club, that as a professional organization it must observe due process and fairness required by Florida law in its disciplinary proceedings, and that the Ethics Committee failed to adhere to fair standards set out in its own procedural regulations in acting against petitioner in that the Committee failed to give fair and adequate notice, failed to give notice of charges with adequate particularity, and otherwise failed to provide a fair and impartial hearing. The Circuit Court held that due to these procedural due process defects, the Ethics Committee and the Chapter lacked jurisdiction to proceed with the case against petitioner on the charges made.

The District Court of Appeal reversed, with one Judge dissenting, and held that the Chapter is not a professional organization in which due process requirements must be observed. The dissenting judge concluded that the Institute is a professional organization which must observe due process standards of fairness and that the trial court's decision should be affirmed. The majority of the District Court stated:

'(I)f the association or organization involved in the instant proceeding were one of a quasi-judicial or administrative agency of the State, we would not hesitate to affirm the action of the trial judge. Or, if the actions being taken

Page 171

by an association or agency should result in the disciplined member being prevented from engaging in his chosen profession or occupation in this State, we would not hesitate to affirm the action of the trial judge. However, this cause does not involve such an

association or agency. The Institute involved in the instant proceeding is a mere voluntary organization, and the appellee will not be prohibited from practicing his chosen occupation or profession by virtue of any disciplinary action that might ultimately be taken by the Institute.' (page 232)

As this language makes clear, it is the view of the District Court that before judicial relief will lie, the breach of due process or the unfairness must be one involving a state agency, or if a private agency must be such as to result in prohibiting the individual from earning a living.

This standard is in conflict with rules announced in prior decisions by courts of this State.

In *Grand Lodge K. of P. of Florida v. Taylor*, 79 Fla. 441, 84 So. 609 (Fla.1920), this Court said that although no cause of action exists at law for expulsion from a voluntary beneficial society, the courts will offer redress if such expulsion deprives such member of a property right. Accord, *Taite v. Bradley*, 151 So.2d 474 (Fla.App.1st, 1963).

In *Sult v. Gilbert*, 3 So.2d 729 (Fla.1941), this Court recognized additional grounds. The Court held that courts would not intervene in disciplinary actions of an organization against a member 'unless some civil or contractual right is involved.' (p. 731) The Court noted that judicial review will not lie to protect 'natural' or political rights, within private organizations.

In *State ex rel. Barfield v. Florida Yacht Club*, 106 So.2d 207 (Fla.App.1st, 1958), the First District Court examined the nature of private organization which would or would not justify judicial intervention. Said that Court:

'There is a valid distinction between those institutions such as trade unions, professional associations or trading exchanges and like

organizations, affecting a person's right to earn a living on one hand, and private social clubs on the other. Certain conduct, which might not justify expulsion from some other type of association, Where membership is a condition to earning a livelihood, or essential to the enjoyment of a contract or property right, may justify expulsion from a private social club.' (Emphasis supplied) (p. 209)

'We agree that the courts should leave to the members of a private social club or to the proper board to which the members have lawfully delegated that power, the right to determine whether the action of a member has been such that, in the opinion of such Board, it would interfere with the pleasant, friendly and congenial social relationship between the members. In the absence of a clear allegation and convincing proof, in the case reaches that stage, Of fraud or bad faith, the action of the members or duly delegated board Should not be reviewed by the courts.' (Emphasis supplied) (p. 211)

The standards enunciated by the First District Court in this case, of impact on rights of contract or property, or of fraud or bad faith, were cited in *Murray v. High School Activities Association, Inc.*, 31 Fla.Supp. 66, affirmed without opinion by the District Court of Appeal, Third District, 213 So.2d 642 (Fla.App.3rd, 1968).

See also *Needelman v. Dade County Medical Association*, 205 So.2d 17 (Fla.App.3rd, 1968) in which the Third District invalidated the expulsion from membership of a doctor from a nonprofit, private medical association, on grounds the doctor was entitled to a fair hearing before action was taken.

Page 172

The posture of the law is, then, that this Court in *Grand Lodge*, *supra*, concluded that deprivation of property rights without due process would justify judicial intervention in

the action of a private organization to expel a member, and in Sult v. Gilbert, *Supra*, the range of interests was expanded to include contract as well as property rights. The First District Court, following similar reasoning in *Taite, supra*, then in *Yacht Club, supra*, concluded that judicial intervention also would be permitted in cases of fraud or bad faith on the part of the organization. The Third District Court adopted a view in *Needelman, supra*, which appears to permit judicial intervention without complete prohibition of opportunity to earn a living; adopted the views of the First District Court, in affirming *Murray, supra*, and in fact went beyond to include mistake, collusion or arbitrariness (stated in the Circuit Court's opinion), then in the case at bar adopted the much more restrictive view that judicial relief can be granted only where a person is denied opportunity to practice his occupation or profession.

We disagree.

Professional organizations, although voluntary in nature, often attain a quasi-public significance. In public view, membership in such organizations may appear to be a tangible demonstration of professional competence and skill, professional responsibility, and acceptance by one's professional peers. The fact that an individual member expelled from membership may not be prohibited from practicing his chosen occupation or profession is not a sufficient test to determine whether he needs and is entitled to judicial protection from unfair proceedings or arbitrary actions. When a voluntary association achieves this quasi-public status, due process considerations come into play. Such is the policy of the judicial decisions and statutes of this State.

Disciplinary action against a member of a professional organization, although falling short of expulsion from occupation, may have an import which transcends the organization

itself because it conveys to the community that the disciplined member was found lacking by his peers. For this reason, it is suitable and proper that an organization, whether a domestic or foreign nonprofit corporation, or a nonchartered nonprofit association, be held to reasonable standards of due process and fairness, especially those inherent in its own by-laws, rules or customs.

While the courts should be loathe to intervene in purely private organizational matters, nonintervention is not justified where a quasi-public organization takes action and imposes penalties which carry the odor of public sanctions. It is clear that not all private associations must observe due process standards. However, such standards must be observed when a private association becomes quasi-public, assumes a public purpose of its own, incorporates and seeks the tax shelters and other protections of public law, or otherwise assumes a larger purpose or statute than pleasant, friendly and congenial social relationships.

The public policy underlying the Florida Statutes is in harmony with standards herein affirmed. See § 617.10(2), F.S.A., which provides that if a person is an incorporator or member of a nonprofit corporation 'before his membership shall cease against his consent he shall be given an opportunity to be heard, unless he is absent from the county where the corporation is located. * * *' Also see § 617.11(3), which provides that a nonprofit corporation chartered out-of-state operating without a Florida permit 'shall not be permitted to bring or maintain any suit or other proceeding before any court or administrative body of this state; but failure to obtain such permit shall not affect the validity of any contract with or conveyance by such foreign corporation.' As this provision makes clear, the American Institute of Real Estate Appraisers or any other

Page 173

foreign nonprofit corporation in Florida, if it fails to obtain a permit in Florida, may not maintain suit; however, the contract and property rights of persons with whom the corporation has transactions will be protected by the law.

We hold that a private organization, particularly if tinged with public stature or purpose, may not expel or discipline a member adversely affecting substantial property, contract or other economic rights, except as a result of fair proceedings which may be provided for in organization by-laws, carried forward in an atmosphere of good faith and fair play.

The decision of the District Court Sub judice is quashed, and this case remanded to the District Court with instructions to affirm the judgment of the Circuit Court of Dade County.

It is so ordered.

ERVIN, C.J., ROBERTS and BOYD, JJ., and MOODY, Circuit Judge, concur.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION AH
CASE NO. 50-2014-CA-009494-XXXX-MB

EDWARD J MANAK,
JERMAINE T DAVIS,
WILBUR S VEASY,
et al.,

Plaintiff/Petitioners

vs.

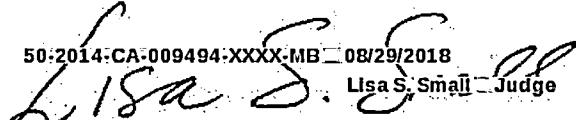
FRATERNAL ORDER OF POLICE JIM FOGLEMAN LODGE #50 INC,
Defendant/Respondent.

**ORDER ON PLAINTIFFS' EMERGENCY MOTION TO NOT ENTER SUMMARY
JUDGMENT AGAINST VEASY, DAVIS, AND TWIGG FILED AUGUST 28, 2018**

THIS CAUSE came before the Court upon receipt and review of Plaintiffs' Emergency Motion to Not Enter Summary Judgment Against Veasy, Davis, and Twigg filed August 28, 2018. It is,

ORDERED that Plaintiffs' Emergency Motion to Not Enter Summary Judgment Against Veasy, Davis, and Twigg filed August 28, 2018 is **DENIED** as an emergency. The motion is a motion for rehearing/reconsideration. The Court shall consider the motion in the ordinary course and in accordance with Local Rule 6.

DONE AND ORDERED, in West Palm Beach, Palm Beach County, Florida this 29th day of August, 2018.


50-2014-CA-009494-XXXX-MB 08/29/2018
Lisa S. Small Judge

50-2014-CA-009494-XXXX-MB 08/29/2018
Lisa S. Small
Judge

COPIES TO:

EUGENE GIBBONS	No Address Available	Gibbons@BGlaw-pa.com
ISIDRO M. GARCIA	224 DATURA STREET SUITE 900 WEST PALM BEACH, FL 33401	ISIDROGARCIA@GARCIAL ABORLAW.COM eservice@garcialaborlaw.com mark.johnson@garcialaborlaw.c om hannah.bourget@garcialaborlaw

JERMAINE T. DAVIS	No Address Available	.com
RANDY ALAN FLEISCHER	No Address Available	No E-mail Address Available
ROBERT C. BUSCHEL, ESQ	201 S.E 9TH STREET FT LAUDERDALE, FL 33316	randy@rafesq.com buschel@bglaw-pa.com indira@bglaw-pa.com
ROBET BUSCHEL	No Address Available	buschel@bglaw-pa.com
WILBUR S. VEASY	No Address Available	No E-mail Address Available
WILL S. TWIGG	No Address Available	No E-mail Address Available

IN THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY,
FLORIDA

EDWARD J. MANAK,
JERMAINE T. DAVIS,
WILBUR S VEASY AND
WILL S. TWIGG,

Plaintiffs,

v.

Case No. 14-CA-9494

FRATERNAL ORDER OF POLICE,
JIM FOGLEMAN LODGE #50, INC.

Defendant.

/

**SUPPLEMENT TO THE MOTION FOR SUMMARY JUDGMENT
and RESPONSE TO MOTION FOR REHEARING**

The Defendant, FRATERNAL ORDER OF POLICE, JIM FOGLEMAN LODGE #50, INC, through counsel, files this supplement to the motion for summary judgment against the “first amended verified complaint for damages injunctive relief and an accounting” filed on August 18, 2017. The Court treated Plaintiffs’ “Emergency” Motion filed on August 18, 2018 not as an emergency but as a motion for reconsideration.

SUPPLEMENT AND RESPONSE

The Court should rely on *Florida Research Inst. for Equine Nurturing, Dev. & Safety, Inc. v. Dillon*, 247 So. 3d 538, 542–43 (Fla. 4th DCA 2018) in deciding this case. The case is binding and was published in May 2018. It reviews the statute Plaintiffs rely upon and its holding compels the Court to grant summary judgment because Plaintiffs are not entitled to judicial review of their membership status or reinstatement to as any officer within the Fraternal Order of Police.

APPENDIX 0122

000330

To review, Florida Statute Section 617.0607 states:

- (1) A member of a corporation may not be expelled or suspended, and a membership in the corporation may not be terminated or suspended, except pursuant to a procedure that is fair and reasonable and is carried out in good faith.

Plaintiffs argue to the Court to interpret this statute to mean that they are entitled to a deep judicial review by the Court which will result in compelling membership and installation of an officer (Manak as Treasurer). It does not. Courts are not meant to be analyzers of bylaws and corporate due process. Plaintiffs received “fair and reasonable” treatment when they were expelled from the FOP. Plaintiffs cannot compel the Court to analyze the process any deeper than whether they received “fair and reasonable” process “in good faith.”

Good faith fair and reasonable process does not require notice and a hearing. “[T]he plain language of section 617.0607(1), Florida Statutes (2013), does not require notice and a hearing before a not for profit corporation terminates a member.” *Florida Research Inst.*, 247 So. 3d at 543. Simply, the FOP bylaws¹ set forth an expulsion and termination procedure that is fair and reasonable, which was carried out in good faith. *Id.* Each Plaintiff was expelled because at the time they applied for membership they were not in good standing as law enforcement officers. Plaintiff Manak was expelled for failing to comply with the lawful orders of the President and Board of the FOP to turn over FOP financial records to the President.

The record evidence indicates that the corporation complied with this fair and reasonable procedure and did so in good faith. Manak admitted in his declaration of August 28, 2018, that Veasy was not qualified to be a member of the FOP when he was “expelled.” “He was not expelled from membership because he had been terminated from PBSO on or about April 17, 2013. In fact, Mr. Veasy joined FOP after he was terminated. (Emergency Motion, Exh. 1, 4).

¹ See Art.II & IX to remove Treasurer and discipline members.

Jermaine Davis was terminated by PBSO in 2012. (*Id.*). A person, however, must be a law enforcement officer or a retired law enforcement officer in order to be a member of the FOP. Plaintiffs submitted testimony that Veasy never qualified to be a member; therefore, the FOP is not even required to give him the process outlined in Chapter 617—but he received it anyway. Plaintiffs' exhibits 2-5 support the undisputed fact each received process, including an appellate process. *Florida Research Institute* supports the FOP's position and the Court has sufficient undisputed evidence that Manak was given process consistent with Florida Chapter 617, as well as the other Plaintiffs, even though they were never qualified to be members of the FOP.

Plaintiffs went to the State and then the National FOP for review. They received the review pursuant to each entities' bylaws and that is Plaintiffs' fair and reasonable process. Plaintiffs' declarations prove they requested and received these reviews. The State and National FOP have not been accused of acting in bad faith. They served as the good faith review Plaintiffs now seek from this Court. But they are not entitled to judicial review, only fair and reasonable good faith review within the organization itself. *See id.*

Plaintiffs cited to a few cases to support their position. These cases were published before the 2009 amendment to the statute. The Fourth District Court of Appeal warned in *Florida Research Institute* not to rely on cases that were pre-2009 amendment. The statute has changed; the meaning of the statute has changed.

Lastly, Plaintiffs are not entitled to damages, injunction, or an accounting under the statute -- only reinstatement if the FOP does not have a reasonable and fair procedure that was not followed. The description of that procedure is short of notice and an opportunity to be heard in a formal setting. But Plaintiff Manak was given notice and an opportunity to be heard at the local lodge level, he took his case to the State FOP, and then to the National FOP. Manak was

given his opportunity to be heard. This is all the statute requires. But, Manak wants more than the statute requires. Manak wants the Court to micromanage and appeal that process in the judicial system. It is this unusual and special request for relief that this Court must deny.

CONCLUSION

Since the facts are not in dispute as to the process Manak and the others received, summary judgment must be granted and the what the Court deemed Plaintiffs' motion for rehearing must be denied.

Respectfully submitted,

Robert C. Buschel, Esq.
BUSCHEL GIBBONS, P.A.
One Financial Plaza
100 S.E. Third Avenue, Suite 1300
Fort Lauderdale, Florida 33394
Tele: (954) 530-5301
Email: Buschel@BGlaw-pa.com

By: /s/ Robert C. Buschel
ROBERT C. BUSCHEL
Florida Bar No. 0063436

CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2018 a copy of this filing to opposing counsel via the Florida efilng system.

BUSCHEL GIBBONS, P.A.

BY: /s/ Robert Buschel
ROBERT C. BUSCHEL

Isidro M. Garcia
Garcia Law Firm, P.A.
120 S. Olive Avenue, Suite 401
West Palm Beach, FL 33401
isidrogarcia@garcialaborlaw.com
Counsel for Plaintiffs

247 So.3d 538

District Court of Appeal of Florida, Fourth District.

FLORIDA RESEARCH INSTITUTE FOR EQUINE
NURTURING, DEVELOPMENT AND SAFETY,
INC., a Florida not for profit corporation, Appellant,
v.

Dana DILLON and Robert
Dillon, individually, Appellees.

No. 4D17-605

|

[May 16, 2018]

Synopsis

Background: Former member of corporation, which was formed as a not for profit charitable organization and which was organized to provide horse rescue services, brought a declaratory judgment action against corporation, alleging that corporation's board of directors did not legally terminate her membership because the board did not provide her with notice and a hearing before terminating her membership. After bench trial, the Circuit Court for the Seventeenth Judicial Circuit, Broward County, Carlos A. Rodriguez, J., L.T. Case No. CACE13-024657, entered judgment in favor of former member, and corporation appealed.

Holdings: The District Court of Appeal, Gerber, C.J., held that:

[1] corporation was not statutorily required to provide member of corporation with notice and a hearing before terminating her membership in corporation, and

[2] member's conduct provided just cause for board of directors for corporation to terminate member's membership in corporation.

Affirmed in part, reversed in part, and remanded.

West Headnotes (5)

[1] Appeal and Error

Corporations and other organizations

Appellate court's review was de novo to the extent the trial court's final judgment, after bench trial, in favor of former member of not for profit charitable corporation was based upon its legal conclusion that corporation's application of the bylaws to member violated due process. U.S. Const. Amend. 14.

Cases that cite this headnote

[2] Corporations and Business Organizations

Withdrawal, expulsion, suspension, or exclusion

Statute, providing that member of a not for profit corporation may not be expelled or suspended and a membership in the corporation may not be terminated or suspended, except pursuant to a procedure that is fair and reasonable and is carried out in good faith, does not require notice and a hearing before a not for profit corporation terminates a member. Fla. Stat. Ann. § 617.0607(1).

Cases that cite this headnote

[3] Corporations and Business Organizations

Withdrawal, expulsion, suspension, or exclusion

Corporation, which was formed as a not for profit charitable organization and which was organized to provide horse rescue services, was not statutorily required to provide member of corporation with notice and a hearing before terminating her membership in corporation; statute, providing that member of a not for profit corporation may not be expelled or suspended and a membership in the corporation may not be terminated or suspended, except pursuant to a procedure that is fair and reasonable and is carried out in good faith, did not require notice and hearing before corporation terminated member. Fla. Stat. Ann. § 617.0607(1).

Cases that cite this headnote

[4] Corporations and Business Organizations

☞ Withdrawal, expulsion, suspension, or exclusion

Bylaws and rules of corporation, which was formed as a not for profit charitable organization and which was organized to provide horse rescue services, set forth an expulsion and termination procedure that was fair and reasonable, and this procedure was carried out in good faith when corporation terminated member's membership in corporation for cause; member received multiple verbal and written warnings for various rules violations, and despite these warnings, member sent e-mail to someone outside of the corporation, accusing the corporation of a variety of misdeeds and alleging that corporation was corrupt. Fla. Stat. Ann. § 617.0607(1).

Cases that cite this headnote

[5] Corporations and Business Organizations

☞ Withdrawal, expulsion, suspension, or exclusion

Pursuant to corporation's bylaws, member's conduct provided just cause for board of directors for corporation, which was formed as a not for profit charitable organization and which was organized to provide horse rescue services, to terminate member's membership in corporation; member received multiple verbal and written warnings for various rules violations, and despite these warnings, member sent e-mail to someone outside of the corporation, accusing the corporation of a variety of misdeeds and alleging that corporation was corrupt. Fla. Stat. Ann. § 617.0607(1).

Cases that cite this headnote

***540** Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Carlos A. Rodriguez, Judge; L.T. Case No. CACE13-024657.

Attorneys and Law Firms

Thomas H. Loffredo and Rebecca A. Rodriguez of Gray Robinson, P.A., Fort Lauderdale, and Kristie L. Hatcher-Bolin of Gray Robinson, Lakeland, for appellant.

Bruce H. Little of Bruce H. Little, P.A., Fort Lauderdale, for appellees.

Opinion

Gerber, C.J.

A corporation, organized to provide horse rescue services, appeals from the circuit court's final judgment, after a non-jury trial, in favor of a wife and husband arising from their alleged membership rights in the corporation. The corporation primarily argues that the trial court erred in two respects: (1) by concluding that the corporation illegally terminated the wife's membership in the corporation without affording her notice and a hearing; and (2) by finding that the husband was a member of the corporation at the time he demanded to inspect the corporation's corporate records. On the first argument, we agree with the corporation and reverse as to the wife's action. On the second argument, we disagree with the corporation and affirm without discussion as to the husband's action.

We present the circuit court's findings of fact in the final judgment as to the wife's action to the extent such findings are supported by competent, substantial evidence. *See Acoustic Innovations, Inc. v. Schafer*, 976 So.2d 1139, 1143 (Fla. 4th DCA 2008) ("When a decision in a non-jury trial is based on findings of fact from disputed evidence, it is reviewed on appeal for competent, substantial evidence."). Other record facts are included below where necessary to provide a complete picture of the material facts.

Procedural History

The corporation was formed as a not for profit charitable organization under chapter 617, Florida Statutes (governing not for profit corporations). Persons can become member sponsors of the corporation essentially by completing a membership application, paying a membership fee, being approved for membership, and paying recurring contributions towards the care of a horse or horses which the member is sponsoring.

APPENDIX 0128

The corporation was governed by a board of directors, sometimes referred to as the board of trustees. The corporation was operated according to a set of bylaws and a set of rules. The corporation's original bylaws provided that the board could remove a member by providing written notice to the member of a hearing, at which the board could remove the member for cause. The corporation later amended its bylaws to delete the requirements of notice and a hearing before the board could remove a member for cause. The amended bylaws provide, in pertinent part:

The Board of Trustees may suspend or expel a member ... for "just cause" after a vote is held at any regular, special or emergency meeting ***541** if deemed in the best interest of the organization, the horses or the general membership. Management may enforce the termination of membership if the member has received a prior verbal and written warning as stated in the Rules and Regulations. Should there be a vote of the Board of Trustees to terminate a member, and that vote is unanimous, when they terminate this member, then that member becomes ineligible for reinstatement.

The corporation's rules provide, in pertinent part:

Membership termination is at the discretion of management and the Board of Directors.

...

Any member/sponsor, who we determine has intentionally tried to undermine the organization, the Board of Directors or Management will terminate their membership immediately and without warning.

The bylaws amendment and rules existed before the wife became a member of the corporation.

After the wife became a member of the corporation, she received multiple verbal and written warnings for

various rules violations. Despite these warnings, the wife ultimately sent an e-mail to someone outside of the corporation, accusing the corporation of a variety of misdeeds, and alleging, among other things, "[The corporation] is as corrupt as you can imagine."

After the corporation's board became aware of the wife's accusatory e-mail, the board set an emergency meeting without providing notice to the wife. At the meeting, the board unanimously voted to terminate the wife's membership for cause. The corporation sent the wife a letter notifying her of the termination.

The wife brought a declaratory judgment action against the corporation. The wife alleged, among other things, that the board did not legally terminate her membership because the board did not provide her with notice and a hearing before terminating her membership.

In its answer, the corporation alleged that it terminated the wife's membership "pursuant to a fair and reasonable procedure carried out in good faith." The corporation alleged that the wife had violated the corporation's rules and ignored the corporation's directions to comply with the rules before the corporation terminated her after multiple violations.

After a non-jury trial, the trial court entered a final judgment in the wife's favor. The trial court reasoned, in pertinent part:

The termination of any member of [the corporation] is governed by Florida Statute § 617.0607, which dictates that a member may not be expelled or suspended and that a membership of a corporation may not be terminated or suspended except pursuant to a procedure that is fair and reasonable and carried out in good faith. The statute was obviously designed to comply with constitutional due process of law and notice requirements.

...

The changes in the By-Laws affected the requirement of a hearing, but both the [original] and [amended] By-Laws required "just cause" for removal of any member. Procedurally, the determination of whether there is just cause must be "fair and reasonable" by statute which legislates that some measure of due process must occur. The [amended] By-Laws do not

APPENDIX 0129

establish a procedure for removal that is “fair and reasonable.”

***542** No emergency existed for the termination of [the wife's] membership without notice, a hearing and the opportunity to be heard as required by a reasonable interpretation of the By-Laws, and strict interpretation of Florida law and due process.

...

Pursuant to Florida law, and [the corporation's] By-Laws, and constitutional due process of law, [the corporation] was required to provide a fair and reasonable procedure for the termination of [the wife's] membership after they decided to terminate or initiated the process.

[The wife's] membership was never effectively terminated; and therefore, the Court determines her to still be a member of [the corporation].

...

In reaching a decision in this case ..., the Court considered and applied ... sec. 617.0607[,] Florida Statute[s]. A similar case considered and applied by the Court was *La Gorce Country Club v. Cerami*, 74 So.2d 95 (Fla. 1954). In *Cerami*, a member of a private club was terminated under a similar By-Law provision without a hearing and at the sole discretion of the Board. The Supreme Court affirmed the trial court in compelling his reinstatement based on the due process requirement that he be afforded a hearing.

...

The Court finds in favor of [the wife] as to her declaratory action and determines that her membership was not reasonably, fairly or legally terminated and therefore, she continues to be a member of [the corporation].

The [corporation], ... the Board or individual members are hereby ordered to provide all the benefits and obligations of membership in [the corporation] to [the wife] and to refrain from involuntarily terminating the membership of [the wife] without first according her notice and a hearing which comports with Fla. Stat. § 617.0607 and the minimum standards of due process of law

Our Review

This appeal followed. The corporation argues that the trial court misapplied the applicable law and relied upon an inapplicable legal standard in ruling that the wife's membership was unreasonably and unlawfully terminated. More specifically, the corporation argues the trial court erred by ruling that the corporation's membership termination procedures were invalid based upon a purported due process violation.

[1] To the extent the trial court's final judgment was based upon its legal conclusion that the corporation's application of the bylaws violate due process, our review is *de novo*. See *Acoustic Innovations*, 976 So.2d at 1143 (“[W]here a trial court's conclusions following a non-jury trial are based upon legal error, the standard of review is *de novo*.); *Natiello v. Winn-Dixie Stores, Inc.*, 203 So.3d 209, 210 (Fla. 4th DCA 2016) (“[T]he issue of whether a party has been denied procedural due process is reviewed *de novo*.); *Retreat at Port of Islands, LLC v. Port of Islands Resort Hotel Condo. Ass'n, Inc.*, 181 So.3d 531, 532 (Fla. 2d DCA 2015) (“[O]rganizational bylaws are treated as contracts, and we review construction of those bylaws *de novo*.”).

We agree with the corporation's arguments regarding its termination of the wife's membership for three reasons:

1. the plain language of section 617.0607(1), Florida Statutes (2013), ***543** does not require notice and a hearing before a not for profit corporation terminates a member;
2. the corporation's bylaws and rules set forth an expulsion and termination procedure “that is fair and reasonable and [was] carried out in good faith” under section 617.0607(1); and
3. the case upon which the trial court primarily relied, *La Gorce Country Club v. Cerami*, 74 So.2d 95 (Fla. 1954), is inapplicable.

We address each reason in turn.

1. Plain Language

[2] [3] First, the plain language of section 617.0607(1), Florida Statutes (2013), does not require notice and a hearing before a not for profit corporation terminates a member. Section 617.0607(1) states: “A member of a [not for profit] corporation may not be expelled or suspended, and a membership in the corporation may not be terminated or suspended, *except pursuant to a procedure that is fair and reasonable and is carried out in good faith.*” (emphasis added). If the legislature had intended that a member of a not for profit corporation may not be expelled or suspended, or that a membership in a corporation may not be terminated or suspended, except pursuant to “notice and a hearing,” then the legislature could have said so. Because the legislature has not said so, both we and the trial court are without power to modify the statute to include the requirement of notice and a hearing before a not for profit corporation terminates a member. *See Hill v. Davis*, 70 So.3d 572, 575–76 (Fla. 2011) (“Courts are without power to construe an unambiguous statute in a way which would extend, modify, or limit, its express terms or its reasonable and obvious implications. To do so would be an abrogation of legislative power. Thus, if the meaning of the statute is clear then this Court’s task goes no further than applying the plain language of the statute.”) (internal citations and quotation marks omitted).

2. Fair, Reasonable, and Good Faith

[4] Second, the corporation’s bylaws and rules set forth an expulsion and termination procedure “that is fair and reasonable and [was] carried out in good faith” under section 617.0607(1). The bylaws provided, in pertinent part:

The Board of Trustees may suspend or expel a member ... for “just cause” after a vote is held at any regular, special or emergency meeting if deemed in the best interest of the organization, the horses or the general membership. Management may enforce the termination of membership if the member has received a prior verbal and written warning as stated in the Rules and Regulations. Should there be a vote of the Board of Trustees to terminate a member, and that

vote is unanimous, when they terminate this member, then that member becomes ineligible for reinstatement.

Further, the corporation’s rules provided, in pertinent part:

Membership termination is at the discretion of management and the Board of Directors.

...

Any member/sponsor, who we determine has intentionally tried to undermine the organization, the Board of Directors or Management will terminate their membership immediately and without warning.

[5] The record evidence indicates that the corporation complied with this fair and reasonable procedure and did so in good faith. The wife received multiple verbal and written warnings for various rules violations. Despite these warnings, the wife ultimately sent an e-mail to someone *544 outside of the corporation, accusing the corporation of a variety of misdeeds, and alleging, among other things, “[The corporation] is as corrupt as you can imagine.” This ultimate action, along with the wife’s prior conduct, provided the board with “just cause” to find that the wife was intentionally trying to undermine the organization, and justified the board’s unanimous vote to terminate the wife’s membership.

3. *La Gorce’s Inapplicability*

Third, the case upon which the trial court primarily relied, *La Gorce Country Club v. Cerami*, 74 So.2d 95 (Fla. 1954), is inapplicable. In *La Gorce*, our supreme court indeed concluded that a social club member was entitled to notice and a hearing before being expelled from the club. However, our supreme court reached that conclusion after finding that “the present case is controlled by statute under which the club was incorporated, namely F.S. § 617.10.” *Id.* at 97. Section 617.10 was repealed in 1990 (effective in 1991), and was very different than the current section 617.0607. Section 617.10 provided, in pertinent part:

Social clubs or societies not for profit may be incorporated under this chapter; provided, however, that any such club or society may, in its by-laws:

...

(2) Prescribe that an incorporator or member shall not have any vested right, interest or privilege of, in or to the assets, functions, affairs, or franchises of the corporation, or any right, interest or privilege which may be transferable or inheritable, or which shall continue after his membership ceases, or while he is not in good standing; provided, that *before his membership shall cease against his consent he shall be given an opportunity to be heard*

(emphasis added).

The current section 617.0607, which the trial court cited in its final judgment, contains no such requirement that before a person's membership shall cease against that person's consent, the person shall be given notice and an opportunity to be heard. Instead, the current section 617.0607(1) states: "A member of a [not for profit] corporation may not be expelled or suspended, and a membership in the corporation may not be terminated or suspended, *except pursuant to a procedure that is fair and reasonable and is carried out in good faith.*" (emphasis added). The trial court's conclusion, that this procedure requires notice and an opportunity to be heard, finds no support in section 617.0607's plain language or case law.

Based on the foregoing, we reverse the trial court's final judgment to the extent the trial court concluded that the corporation illegally terminated the wife's membership in the corporation without affording her notice and a hearing. We remand for the trial court to enter a new final judgment finding in the corporation's favor on the wife's declaratory action, determining that the wife's membership was reasonably, fairly, and legally terminated, and that the wife ceased being a member of the corporation when the corporation terminated her membership. The new final judgment shall not disturb the trial court's findings of fact and conclusions of law as to the husband's action, which, in sum, were that although the husband was a member of the corporation whose membership was never terminated, the husband's request to inspect the corporation's records was impermissibly vague and overbroad and, therefore, the corporation did not improperly fail to respond to the request.

***545** *Affirmed in part, reversed in part, and remanded for entry of new final judgment consistent with this opinion.*

Damoorgian and Klingensmith, JJ., concur.

All Citations

247 So.3d 538, 43 Fla. L. Weekly D1105

Conclusion

End of Document

© 2018 Thomson Reuters. No claim to original U.S. Government Works.



Fraternal Order of Police

FLORIDA STATE LODGE



February 16, 2015

Edward J. Manak
2599 Nassau Rd.
West Palm Beach, Florida 33406

RE: Written Notice of Appeal

Ed,

I am in receipt of your written Notice of Appeal of the action taken by Fraternal Order of Police Jim Fogleman Lodge 50.

In accordance with Florida State Lodge, Fraternal Order of Police Constitution, Article 20 – Discipline, Section 3. (B)(1): “An appeal to the State Lodge may be brought by the filing of a written notice of appeal with the State President no more than thirty (30) days after the member’s receipt of official notification of his suspension, expulsion or removal from office. Unless continued or delayed for good cause, such appeal shall be heard by the State Lodge Board of Trustees at the next board meeting following the State Lodge President’s receipt of such notice of appeal and , unless waived in writing by both the appealing member and the responding lodge, a written decision shall be rendered by the Board of Trustees within ten (10) days after such meeting. Both the appealing member and the lodge from whose action the appeal is brought shall have the right to a hearing at which both parties may be heard and may present witnesses and documents. Such hearing shall be conducted in conformity with Article 22 of the By-Laws and open to active members in good standing only. The parties to the appeal shall receive notice of the date of the hearing by registered mail not less than ten (10) days before such hearing. The Chairman of the Board of Trustees shall be the Presiding Officer, provided the Chairman is not the accused member or an involved party, in which case the Board of Trustees shall nominate and elect a Presiding Officer for the purpose of the hearing.”

3. (B)(2): The Florida State Lodge Board of Trustees may sustain, modify or reverse the disciplinary action against the member or subordinate lodge or state officer.

Article 20 – Discipline, Section D: Except in the case of discipline initiated thereby, the State Lodge Board of Trustees shall review appeals of disciplinary matters solely to ensure that the parties were afforded due process and that the decision was consistent with the Constitution, the By-Laws, and Ritual of the Order.

In accordance with Article 20, you are hereby notified that such Appeal shall be heard by the Florida State Lodge, Fraternal Order of Police Board of Trustees at their next regularly scheduled meeting to be held in June 2015 in St. Pete Beach. The exact date, time and place shall be transmitted to you not less than ten (10) days before such hearing.

Sincerely,

James W. Preston
James W. Preston, President
Florida State Lodge
Fraternal Order of Police

242 Office Plaza, Tallahassee, Florida 32301 • Post Office Box 1349, Tallahassee, Florida 32302-1349
Telephone: 850-656-9881 • Toll Free: 800-873-FOPI • Fax: 800-873-3670 • Web: www.floridastatefop.org

APPENDIX 0133

000341



Fraternal Order of Police

FLORIDA STATE LODGE



June 14, 2015

Edward Manak
2599 Nassau Rd.
West Palm Beach, Florida 33406-7769

Mr. Edward Manak,

Please read below the results of your hearing at the Fraternal Order of Police 66th Annual State Conference of the Florida State Lodge, dated Thursday June 11, 2015.

On Thursday June 11, 2015, the Florida State Lodge Fraternal Order of Police Board of Trustees met to determine if Mr. Manak received "Due Process" in his disciplinary process by Fraternal Order of Police Lodge 50. "Due Process" as stated in *The Florida State Lodge Constitution and By-laws Article-20 section 3D. Except in the case of discipline initiated thereby, the State Lodge Board of Trustees shall review appeals of disciplinary matters solely to ensure that the parties were afforded due process and that the decision was consistent with this Constitution, the By-laws, and Ritual of the Order.* After testimony by members of Lodge 50, Mr. Manak and the Chairman of the Trustees it was motioned, seconded and passed unanimously that Edward Manak did receive Due Process from Lodge 50 and the Florida State Lodge Fraternal Order of Police.

Appeal process. Appeal by members may be made through *The Florida State Lodge Constitution and By-laws Article-20 section 3B. In the case of discipline imposed upon an individual member involving suspension, expulsion or removal from office by a subordinate lodge, an appeal may be taken by the member to the Florida State Lodge and an appeal may be taken from the decision of the State Lodge by the non-prevailing party to the Grand Lodge National Board of Trustees and, ultimately, to the Biennial Conference of the Grand Lodge.*

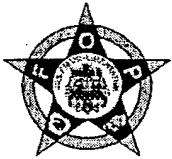
Fraternally;

Rob Robertson, Chairman of Trustees

The handwritten signature of Lynette F. Clinch.

Lynette Clinch Secretary
Fraternal Order of Police
Florida State Lodge

RECEIVED
JUN 30 2015
BY: A handwritten signature over the stamp.



The Fraternal Order of Police, Jim Fogleman Lodge #50, Inc.

Mailing Address: P.O. Box 16372

West Palm Beach, FL 33416-6372

Physical address: 885 62nd Drive N. West Palm Beach, FL 33413

Tele: (561) 687-7554 www.foplodge50.org email: secretary@foplodge50.org

January 28, 2015

Edward Manak
2599 Nassau Road
West Palm Beach, FL 33406

A handwritten signature in black ink that appears to read 'Luis Blasco'.

Dear Edward Manak:

As you were present, a disciplinary hearing was held at our January 13th, 2015 general members meeting in which the members present, voted 19-1 that you were guilty of violating Fop Jim Fogleman Lodge 50 bylaws; Article 2 Duties of Treasurer Section 1 Subsection E and including your violation of oath of office, which you swore to on January 14, 2014 by, "failing to recognize the authority of your legally elected officers." by refusing to relinquish all monies, checkbooks, keys and other Lodge property when asked numerous times by the President and the Trustees of the Lodge. The penalty of which is no less than to be expelled from the order.

This is your official notification of the results of the vote along with your notification of expulsion from FOP Jim Fogleman Lodge 50.

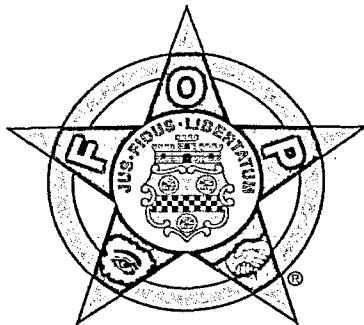
In accordance with Florida State Lodge, Fraternal Order of Police Constitution, Article 20-Discipline, Section 3.(B)(1): "An appeal to the State Lodge may be brought by the filing of a written notice of appeal with the State President no more than thirty (30) days after the member's receipt of official notification of his suspension, expulsion or removal from office.

Good Luck in your endeavors.

Sincerely,

Luis Blasco, President, FOP Jim Fogleman Lodge 50

**Constitution and By-Laws
Of
Fraternal Order of Police
Jim Fogleman Lodge #50**



Revised 1994
Seal of Jim Fogleman Lodge #50

Revised 2011 (October Board Meeting
Fort Lauderdale, FL)
Seal of Jim Fogleman Lodge #50

Index

I. Constitution

Preamble	5
Article I – Name	6
Article II – Object and Purpose	7
Article III – Membership	8
Article IV – Officers	11
Article V – Board of Directors	12
Article VI – President	13
Article VII – Vice President	14
Article VIII – Other Lodge Officers	15
Article IX – Discipline	16
Article X – Parliamentary Procedure	17
Article XI – Official Publications	18
Article XII - Official Ritual	19

II. By-Laws

Article I – Duties of the Secretary	20
Article II – Duties of the Treasurer	22
Article III – Duties of the Conductor	23
Article IV – Duties of the Guard	24
Article V – Duties of the Chaplain	25
Article VI – Board of Trustees	26
Article VII – Duties of the State Trustee	27
Article VIII – Election of Delegates	28
Article IX – Recall of Officers	29
Article X – Fees and Dues	30
Article XI - Meetings	31
Article XII – Amendments	32
Article XIII – Expenses of Lodge Officers/Delegates	33
Article XIV – Committees	34
Article XV – Audit and Budget	35
Article XVI – Legal Aid	37

Index by Subject

Abuse of Lodge or Membership	16
Active Membership	8
Appointment of Committees	34
Approval of Budget	35
Associate Membership	11
Attendance by Elected Officers	12
Audit by C.P.A.	26
Balloting on Petitions for Membership	12
Board of Director's Meetings	12
By-Laws of State and Grand Lodge to Prevail	17
Compliance with Fiscal Accountability	36
Contingency Fund	35
Delegates to District Four	28
Duties of the President	13
Duties of the Vice President	14
Duties of the Recording Secretary	20
Duties of the Treasurer	22
Duties of the Conductor	23
Duties of the Guard	24
Duties of the Chaplain	25
Duties of the Board of Directors	12
Duties of the State Trustees	27
Elected Officers	11
Election of Delegate to National Conference	28
Election of Delegates to State Conference	28
Election of Delegates to District Four	28
Election of Officers	11
Election of State Trustee	27
Eligibility to Hold Office	11
Emergency Appropriations	35
Expense of Lodge Officers	33
Failure of Committees to Act	34
Fiscal Year	35
Honorary Membership	9
Installation of Officers	11
Journal	18

Legal Aid	37
Line Item Budget	35
Location of Meetings	31
Membership Eligibility	11
Methods for Payment of Dues	30
Methods of Voting	31
Name of the Organization	6
Newsletter	18
Nominations Committee	34
Nominations of Officers	11
Notice of Suspension	16
Notification of Proposal to Amend By-Laws	32
Notification of Special Meeting	31
Parliamentary Procedure	17
Petition for Membership	9
Petition for Recall of Officers	29
Power to Act in an Emergency	12
Preamble	5
Procedure to Amend By-Laws	32
Purpose of the Organization	7
Quorum Necessary to Hold Meetings	31
Recall Election	29
Regular Meetings	31
Retired Members	9
Right to Appeal Disciplinary Rulings	16
Right to Appeal Recall Election	29
Special Committees	34
Special Meetings	31
Standing Committees	34
Term of Committees	34
Term of Delegates	28
Term of Officers	11
Transfers	9
Vacancy in Office	12
Voting on By-Law Change	32

Constitution

Preamble

We, the Law Enforcement and Correctional Officers in the geographical area designated by the Florida State Lodge, Fraternal Order of Police, and District Four, and the Political Subdivisions thereof, and in Particular as Representatives of Jim Fogleman Lodge #50 of West Palm Beach, Florida and Vicinity, being a Subordinate Lodge of the State and National Lodge of the Fraternal Order of Police do hereby associate for the following purposes:

To support and defend the constitution of the United States and the State of Florida; to inculcate loyalty and allegiance to enforcement of law and order, to improve the individual proficiency of our members in the performance of their duties; to enforcement and correctional officers, to create a tradition of esprit de corps, insuring fidelity to duty under all conditions and circumstances; to cultivate a spirit of fraternalism and mutual helpfulness among our membership and the people we serve; to increase the efficiency of the law enforcement and correctional professions and thus more firmly establish the confidence of the public in the service that is dedicated to the protection of life and property.

The Fraternal Order of Police, Jim Fogleman Lodge #50 is an organization of Law Enforcement and Correctional Officers actively engaged in the Law Enforcement and Corrections discipline or retired therefrom.

Article I

This organization shall be known as the Fraternal Order of Police, Jim Fogleman Lodge #50 a Subordinate Lodge of the Fraternal Order of Police Grand Lodge and the Fraternal Order of Police Florida State Lodge, and the Fraternal Order of Police District Four.

On October 20, 1966 a charter was granted by the Grand Lodge Fraternal Order of Police, Incorporated at Pittsburg Pennsylvania, May 24, 1915.

Article II

Object and Purpose

Section 1. This organization is formed for the mutual welfare of Law Enforcement and Correctional Officers and the promotion of fraternal, charitable and social relations among its members between this lodge and the general public and all public officials.

Section 2. It shall be the duty of this lodge to further professionalize Law Enforcement and Corrections and to encourage greater public support for Law Enforcement and Corrections Officers in the performance of their duties.

Article III

Membership

Section 1. Any regular appointed and full time employed Law Enforcement or Correctional Officer shall be eligible for membership in the Fraternal Order of Police, Jim Fogleman Lodge #50, Inc, subject to the provisions of this constitution and bylaws of the order. No person shall be denied membership because of race, religion, color, creed, gender, age or national origin.

The Fraternal Order of Police shall deny membership to anyone who is, or has been a member of the communist party, or of any organization known (regardless of what name) to advocate the abolition or destruction of our government by force or subversion.

Section 2.

- (A) The term, “regularly appointed Law Enforcement and Correctional Officer”, shall mean, for the purposes hereof, any Law Enforcement or Correctional Officer who meets the minimum standards, has received the training and the education required by the United States, the State of Florida and the agency by which they are appointed, and is granted arrest powers.
- (B) The term “Full Time Employed” shall mean Law Enforcement and Correctional Officers that are engaged in such employment as their full time occupation.

Section 3. There shall be three classes of membership; active, retired, and honorary.

- (A) **Active Membership:**
 - 1. Shall include regular, appointed or elected full time Law Enforcement and Correctional Officers.
 - 2. May include retired, regular appointed or elected Law Enforcement and Correctional Officers.
 - 3. May include, subject to the approval of the State Lodge Board of Trustees and Jim Fogleman Lodge #50 Inc., regular appointed or elected Law Enforcement or Correctional Officers who have left the employ of their respective agency and who have remained in good standing with the lodge.
 - 4. Only active members herein described shall have voice and vote.

(B) Retired Membership:

Shall be comprised of regular, appointed or elected Law Enforcement or Correctional Officer who withdraw from active membership upon or after retirement from their respective agency.

- (1) Retired members pay no per capita tax and have no voice or vote.
- (2) The only benefit a retired member has is a membership card issued by this lodge.

(C) Honorary Membership:

Shall be comprised of individuals recognized by this Lodge for exceptional service or contribution to law enforcement, community or the Fraternal Order of Police.

Section 4. No person shall be a member of Jim Fogleman Lodge #50 Inc. while still a member of another F.O.P. Lodge, nor shall any member who is delinquent or has been suspended for any reason, be eligible for membership in Jim Fogleman Lodge #50 Inc.

Section 5. The Fraternal Order of Police Jim Fogleman Lodge #50 Inc. may deny membership to anyone who is, or has been, a member of any organization regardless of what name, which advocates the abolition, destruction, or violent overthrow of the Government of the United States, or any State or Political subdivision thereof.

Section 6. Any active member may be granted a transfer from Jim Fogleman Lodge #50 to another lodge, or from another lodge to Jim Fogleman #50 provided that he or she is a member in good standing, both lodges agree to the transfer, and the member cannot be active in his or her former lodge because of collective bargaining law restrictions or geographical location.

Section 7. All persons seeking membership in this lodge shall submit in writing a petition for membership, authorized by the lodge and conforming to the regulations of the Grand Lodge. All questions on all petitions must be answered and warranted by the applicant to be true. All petitions for membership must be recommended by an active member in good standing.

Section 8. All petitions for membership shall be referred to the membership committee of three (3) members who shall investigate the applicant and report their findings to the next general business session of the lodge. The President shall have the authority to grant further time for investigation if deemed necessary.

Section 9. Any petition for affiliation shall be through transfer or demit issued in regular form, and said demit must be presented within one year from the date of issue.

Section 10. All petitions for membership in this lodge shall be voted upon, and if the petitioner shall receive a two thirds vote of the members present, and voting, the petitioner shall be declared accepted, and the secretary of the lodge shall notify the applicant.

Section 11. In consideration of the benefits to which such member is entitled while a member in this lodge, the member shall, upon severing his connection with the lodge for any reason whatsoever, forfeit all rights and claims to funds and property of this lodge.

Section 12. Specifically excluded from membership are Private Security Guards, Special Police, members of profit making security and correctional organizations, auxiliary or Reserve Police.

Section 13. No person at any time shall be a member of the auxiliary or associate lodge when they qualify for membership in the Fraternal Order of Police active lodge.

Article IV

Officers

Section 1. The officers of Jim Fogleman Lodge #50 shall consist of President, Vice President, Secretary, Treasurer, Guard, Chaplain, Conductor and three Lodge Trustees.

Section 2. Nominations of Officers will be held at the regular meeting in the month of November of each year.

Section 3. No member can be eligible as a candidate for office in this lodge unless he or she is in good standing and has attended at least six (6) regular meetings in the previous (December through November) twelve month period.

Section 4. All Officers of this lodge shall be annually. The election shall be by secret ballot and shall be held at the December regular meeting. The candidate receiving the largest number of votes cast for that office shall be declared elected.

Section 5. The newly elected officers of this lodge shall be installed at the dinner meeting in the month of January and shall serve until their successors are duly elected and installed.

Article V

Board of Directors

Section 1. The Board of Directors shall consist of the President, Vice President, Secretary, Treasurer, Chaplain, Guard, the three Lodge Trustees, Conductor, the State Trustee, the immediate past President and any State Officer from this lodge.

Section 2. It shall be the duty of the Board of Directors to;

- (A) Hold a regular meeting once a month.
- (B) Cause a special meeting of the board to be called upon the request of four members of the board.
- (C) Have a quorum of four members present.
- (D) Render recommendations concerning the welfare of the lodge to the assembly for action. The board shall have the power to act in all emergencies pertaining to the welfare of the lodge and its members, and report the action taken to the assembly.

Section 3. When any elected officer misses five (5) consecutive meetings (board meetings included), the office shall be declared vacant. The only exception acceptable to the lodge for a violation of this section shall be a long term illness or due to his or her regular duty assignment.

Section 4. Should the office of President become vacant for any reason, the Vice President shall assume the office of President. The office of Vice President will then be declared vacant and filled as prescribed in section 5 of this article of the constitution.

Section 5. In the event of a vacancy occurring in any office except the President, the vacancy shall be filled by Presidential appointment at the same meeting at which the vacancy occurred, and ratified by a 2/3 vote of the Board of Directors present. The appointment shall be for the unexpired term of office.

Article VI

President

Section 1. The President of this lodge shall be the Chief Executive Officer of the lodge.

Section 2. It shall be the duty of the President to;

- (A) Preside at all meetings.
- (B) Ensure that the constitution and by-laws of this lodge are enforced.
- (C) Sign all papers requiring his signature.
- (D) Appoint the majority of all committees with the exception of the nominations committee.
- (E) Appoint all officers protem.
- (F) Preside as Chairperson of the Board of Directors.
- (G) Preside as Ex-Officio Chairperson of the Board of Trustees.
- (H) Communicate the password to all members entitled to receive the same.
- (I) Notify the State Lodge and the Grand Lodge of any change of Secretary either at the time of election or between elections, giving the name, address, and signature of the new Secretary.
- (J) Call all special meetings.

Article VII

Vice President

Section 1. It shall be the duty of the Vice President to;

- (A) Assist the President in the discharge of his duties.
- (B) In the absence of the President, exercise the powers and duties of that office.
- (C) Appoint the minority of all committees with the exception of the nominations committee.
- (D) Maintain the official membership rolls.
- (E) Perform the duties of the treasurer in the event of the treasurer's absence, until such time as the treasurer can assume his duties, or appointment is made as provided for in this constitution.
- (F) Receive all petitions for membership and refer the same to the membership committee.

Article VIII

Other Lodge Officers

The Secretary, Treasurer, Conductor, Guard, Chaplin, State Trustee and the Lodge Trustees shall perform the prescribed duties of their respective offices by the By-laws hereof.

Article IX

Discipline

Section 1. If any member of the lodge should abuse the usage of the lodge or be accused of any offense against the lodge or its membership, he may be reprimanded, suspended or expelled.

Section 2. The charges must be preferred in writing and submitted to the lodge at a regular meeting.

Section 3. The accused member shall be given the opportunity to answer the charges in person at the next regular meeting.

Section 4. A vote of 2/3 of the members present, to reprimand, suspend or expel the accused, shall be required to discipline the accused member.

Section 5. The accused member shall have the right to appeal to the District Director and the State and National Lodges, any discipline imposed by the lodge.

Section 6. The accused member shall retain all rights and privileges of membership pending the appeals process.

Section 7. Any member of this lodge who is in arrears for dues for a period of more than 90 days shall automatically be suspended from the lodge.

Section 8. The membership committee chairman shall notify the member in writing that he is in arrears and suspended.

Section 9. The delinquent member may be reinstated upon payment of all delinquent dues and fees.

Article X

Parliamentary Procedure

Section 1. All business transactions of this lodge shall in no manner conflict with the constitution and by-laws of the State and Grand Lodges of the Fraternal Order of Police. In such cases not provided for in the constitution and by-laws, the latest edition available of "Robert's Rules of Order" shall prevail.

Article XI

Official Publications

Section 1. There shall be an official publication of the lodge titled “Jim Fogleman Lodge #50 Fraternal Order of Police Inc. Journal”. Said Publication to be under the management, control and supervision of the Board of Directors and operated by the Ways and Means Committee.

Section 2. There shall be a newsletter published by the lodge and sent to each lodge member via the most cost effective means, such as email and/or other electronic/digital communication methods titled, “Jim Fogleman Lodge #50 Fraternal Order of Police Inc. Newsletter”. Said newsletter to be under the management, control and supervision of the Board of Directors and operated by the public relations committee.

Article XII

Official Ritual

Section 1. There shall be an official ritual of the order which shall be known as the Fraternal Order of Police Ritual.

Section 2. The Ritual of the Fraternal Order of Police as revised at the 47th Biennial Conference in Baltimore, Maryland August 6-9, 1985, shall be the official ritual of this lodge.

By-Laws

Article I

Duties of the Secretary

Section 1. It shall be the duty of the Lodge Secretary to:

- (A) Have custody of the books, records, documents, the seal of the lodge and office paraphernalia and equipment under the general authority and orders of the President and the Board of Directors.
- (B) Take a record and transcribe minutes of the meetings and the Board of Directors' meetings, and submit the same for approval or rejection at the next meeting.
- (C) Attest under the Seal of the Order, all duly authorized contracts of the Order.
- (D) Conduct the general correspondence of the lodge.
- (E) Be the Official Custodian of the Constitution of the Order, which shall be authenticated by the Seal of the Order and the signature of the President and the Secretary. Keep a record of the Official Amendments adopted at meetings amending the constitution, duly authenticated by the Seal of the Order and the signatures of the President and the Secretary, in a book known as "The Book of Amendments to the Constitution and By-Laws".
- (F) At the expiration or termination of his or her term of office for any reason, within ten (ten) days thereafter, the Secretary shall deliver to his or her successor the Official Seal of the Order, and all books, documents, records, paraphernalia, equipment, and all other lodge property in his or her possession and require and receive a receipt for same.
- (G) At each session of the Board of Directors, submit a full and complete report in writing of official business transacted by him or her subsequent to the last meeting of the Board of Directors, together with such recommendations as he or she may deem advisable.

- (H) Prepare per capita taxes and publish a list of delinquent members and advise those delinquent members in writing.
- (I) Collect all incoming monies for the lodge and record same and forward same to the Treasurer for deposit in the proper accounts.

Article II

Duties of the Treasurer

Section 1. It shall be the duty of the Treasurer to:

- (A) Receive from the Secretary all monies belonging to the lodge and issue receipt for same.
- (B) Pay all orders drawn on him, signed by the President and the Secretary.
- (C) Keep an accurate account of all monies received and expended and credit each special account with such sums as they occur.
- (D) Provide the audit committee with a correct account of all monies in his possession, together with the books, papers and receipts belonging to his office.
- (E) At any time, when ordered by the Board of Directors, he shall deliver all monies, books and papers to the Board of Trustees.
- (F) Deposit all monies belonging to the lodge in a financial institution chosen by the Board of Directors to the credit of the lodge.
- (G) Deliver to his successor in office, all books and property belonging to the lodge, within ten (10) days of the expiration of his term.
- (H) Perform such other duties as are usual and incident to his office.
- (I) At each session of the Board of Directors, submit a full and complete report of official business transacted by him subsequent to the last meeting of the Board of Directors, together with recommendations as he may deem advisable.

Article III

Duties of the Conductor

Section 1. It shall be the duty of the Conductor to:

- (A) Perform such duties as prescribed by the ritualistic work of the lodge.
- (B) In the absence of the Vice President, assume the duties of that office.
- (C) In the absence of both the President and the Vice President, assume the duties of the President and all powers of that office.
- (D) Act as the liaison between the parent lodge and the associate and auxiliary lodges.

Article IV

Duties of the Guard

Section 1. It shall be the duty of the Guard to:

- (A) Attend the door and sign in all attending members.
- (B) Assist the Chaplain with greeting new members and guests and visitors.
- (C) Perform such duties as the President requires.

Article V

Duties of the Chaplain

Section 1. It shall be the duty of the Chaplain to:

- (A) Lead the lodge in opening prayer.
- (B) Lead the lodge in closing prayer.
- (C) Serve as liaison between families of this lodge, members and/or families ill, injured or in distress, and report to the lodge any members and/or families ill and/or in distress, and take appropriate action as necessary for the occasion.
- (D) Assist and advise the President on lodge matters.
- (E) Greet visitors, guests and new members of the lodge.
- (F) Introduce new members, visitors and guests to other members.
- (G) Advise the President and/or the Vice President of the presence of new members, visitors and guests.

Article VI

Board of Trustees

Section 1. The Board of Trustees shall consist of the three lodge Trustees. The term of office of a Trustee shall be three years with one Trustee elected every year. The Board of Trustees shall:

- (A) Manage and inspect all properties of the lodge.
- (B) Advise proper distribution of permanent funds and make all investigations necessary prior to the investment of such funds.
- (C) Advise and present to the lodge such transactions for approval.
- (D) Conduct an annual inventory of all lodge property and submit the same in writing to the Board of Directors.
- (E) Make an annual audit of the lodge accounts, books and records petty cash funds, and bank accounts which shall be turned over to them by the lodge Secretary and Treasurer.
- (F) Reconcile the bank statements monthly.
- (G) Sanction the payment of all bills and expenses contracted by the lodge.
- (H) Require a C.P.A. audit of all books and papers of the lodge which shall be completed no later than the regular meeting in December of each year.

Article VII

Duties of the State Trustee

Section 1. In addition to the regular duties of the State Trustee, the State Trustee shall:

- (A) Serve as co-chair of the audit committee.
- (B) Serve as co-chair of the Board of Trustees.
- (C) Gather data and information of every kind pertaining to the welfare of Law Enforcement and Correctional Officers and furnish the same to the lodge on request or when deemed necessary.
- (D) Attend all State Conferences and Board meetings.

Article VIII

Elections of Delegates

Section 1. Nomination and election of Delegates to State and National Conferences, meetings called by the District Director Florida State Lodge.

- (A) Delegates to the National Conference shall be elected as prescribed in Article X of the Grand Lodge By-laws.
- (B) Delegates to the National Conference shall be elected no later than July preceding the conference.
- (C) Delegates to the State Conference shall also attend all meetings called by the District Director as representatives of the lodge.
- (D) The three qualified candidates receiving the highest number of votes shall be declared Delegates.
- (E) The term of office of the Delegates shall commence upon their election and terminate upon the election of their successors.
- (F) The State Trustee for this lodge will be elected at a meeting of the Delegates to the State Conference and announced prior to the taking of nominations of other State Officers during the general session of the conference.

Article IX

Recall of Officers

Section 1. Petition to recall: If six or more members in good standing of this lodge have sufficient proof in hand to show that any officer or officers have acted dishonestly or otherwise detrimental to the best interest of the lodge, they may file a petition to recall with the Board of Directors. A copy of the charges shall be filed in duplicate form, and must be submitted with the petition to recall. The Board of Directors shall forward a copy of the charges to the Officer or Officers against whom the petition is directed.

Section 2. Recall election: the Board of Directors shall call a special meeting within fifteen (15) days after the accused officer or officers receive notification of the charges, and so notify the accused to allow him or them to reply to the charges, by virtue of a personal appearance, at which time the plaintiffs shall appear in person. If the Board of Directors find sufficient cause to justify the recall petition, they shall proceed with a recall election. The charges shall be read at the next regular meeting of the lodge. A vote of 2/3 of the majority of the members present at the regular meeting to sustain the recall petition is necessary to remove the accused from office.

Section 3. Appeal: the accused Officer shall retain all rights to appeal the recall election to the District Director, State and National Lodges.

Article X

Fees and Dues

Section 1. The dues for members of Jim Fogleman Lodge #50 Inc. shall be \$25.00 a month or \$300 per year. Members may pay their dues:

- (A) Monthly by cash, check or via electronic funds transfer such as ACH withdrawal; each member choosing the ACH method of payment shall sign an authorization form authorizing FOP Jim Fogleman Lodge #50, Inc. to withdraw their dues from the personal checking or savings account of their choice. If the lodge is equipped to accept and process check, debit and/or credit cards then a member may choose that option for payment of their dues:
- (B) In advance for the current year: each member not choosing to pay dues monthly will pay all dues for the current year, directly to the Secretary of Jim Fogleman Lodge #50 Inc. Fraternal Order of Police. Payment of dues shall be made by January 31st of each year.
- (C) Payroll Deduction: When and if authorized by the Palm Beach County Sheriff's Office or any other agency, each member choosing to pay dues by this method shall sign a payroll deduction authorization, authorizing the Sheriff of Palm Beach County and/or other agency administrator(s) to withhold the amount prescribed from the member's pay and submit that amount to the treasurer of Lodge #50 each pay period.

Section 2. Members who retire, but choose to remain classified as an active member, will pay per capita tax to the State and National Lodges along with the costs of any benefits, except for legal aid, provided by this lodge.

Article XI

Meetings

Section 1. Regular meeting of this lodge shall be held once a month.

Section 2. The President may call a special meeting of the lodge at any time. He must call a special meeting of the lodge when requested to do so by five (5) members in good standing, when such requests are made in writing and signed by said members. The purpose of the special meeting shall be clearly stated in the written request.

Section 3. Notification of all special meeting shall be posted on the bulletin boards of all line-up rooms twenty-four hours preceding the meeting.

Section 4. No business other than that for which the special meeting has been called can be transacted at any special meeting.

Section 5. There must be a quorum present before a regular meeting can be held. A quorum shall consist of twelve active members, two of whom must be elected members of this lodge, except when a special meeting is called by an Officer of the Grand Lodge or State Lodge. A quorum for a special meeting shall consist of the five members calling for the meeting and two Officers of the lodge.

Section 6. No petitions for membership or amendments to the constitution or by-laws can be presented at any special meeting.

Section 7. The location, date and time of each meeting shall be designated by the lodge President with the approval of the Board of Directors.

Section 8. The majority vote shall govern, except in balloting on petitions for membership, amendments to the by-laws, and where the vote is stipulated in specific sections of these by-laws.

Section 9. Any member or the President may call for a secret ballot on any issue coming before this lodge.

Article XII

Amendments

Section 1. An amendment to this constitution and by-laws must be submitted at a regular meeting of the lodge.

- (A) Said amendment must be in writing and read before the membership present.
- (B) Said amendment must be signed by two (2) members in good standing.

Section 2. The proposed amendment shall be reviewed by the by-laws committee who shall:

- (A) Notify by e-mail or other commonly accepted electronic/digital communication methods available to all members of the lodge, of the proposed amendment along with a statement that the proposal is/is not in conflict with the State and National by-laws.
- (B) Such notification shall allow a ten (10) day period for review prior to the amendment being voted upon by the membership present at the next regular meeting.

Section 3. The proposed amendment shall be voted upon by the membership present at the next two regular lodge meetings.

- (A) The amendment must receive a 2/3 pass vote at both meetings.
- (B) An amendment receiving a pass vote at both meetings shall be forwarded to the State Lodge By-laws Committee for approval.

Section 4. The proposed amendment shall take effect immediately upon approval by the State Lodge.

Article XIII

Expenses of Lodge Officers and Delegates

Section 1. The elected Officers and Delegates, when attending a State Board meeting or conference, shall receive expenses as prescribed in subsections (A), (B), (C), and (D) of this section.

- (A) Travel: shall be paid at tourist rate air transportation, When traveling in areas not covered by air transportation, mileage will be paid at the rate of \$.22 per mile for any mileage over twenty (20) miles.
- (B) Hotel accommodations: shall be paid at the rate prescribed by the host lodge for the event.
- (C) Meals: shall be paid at the rate of \$35.00 per day.
- (D) Registration and installation banquet fees: shall be paid at the rate prescribed by the host lodge.

Article XIV

Committees

Section 1. All committees shall be appointed by the President and Vice President, with the exception of the nomination committee which will be elected by the membership at the October meeting.

Section 2. The President shall name the Chairperson of all committees.

Section 3. No committee shall enter into any contract under the name of Jim Fogleman Lodge #50 Inc. Fraternal Order of Police.

Section 4. Any committee failing to meet within thirty (30) days of appointment shall be declared dismissed by the President and a new committee appointed if deemed necessary.

Section 5. There shall be standing committees on membership, by-laws and standing rules, way and means, public relations, legal aid, and legislation.

Section 6. Each committee shall consist of a minimum of three members.

Section 7. Special committees may be appointed as deemed necessary by the President.

Section 8. The nominations committee shall return a complete slate of officers recommended for nomination at the regular meeting in November, at which time additional nominations can be made from the floor by any regular member. No member of this committee will appear on the nominations committee slate, however they may be nominated from the floor.

Section 9. The term of all committees shall expire upon the expiration of the term of office of the President or as provided for elsewhere in these by-laws.

Article XV

Audit and Budget

Section 1. The fiscal year of Jim Fogelman Lodge #50 Inc. shall be from January 1 to December 31, inclusive of each year. In addition to the annual audit to be made by the Board of Trustees, said Board of Trustees shall annually cause a complete audit and report of all funds and financial books and records of the lodge to be made for the fiscal year by a certified public accountant.

Section 2. The Board of Directors will meet in November of each year, called by the President, to formulate a line item budget of all facets of the lodge administration and operational structure for the next fiscal year.

(A) Every Committee Chair, Advisor, Sub-Contractor or Employee will, before October 1 of each fiscal year, advise the Board of Directors, in writing of the anticipated operating expenses in their area of interest for the up-coming fiscal year.

(B) The budget approved by the Board of Directors shall be submitted for approval of the general membership, remain in force for that fiscal year.

(C) The budget shall include an estimate of anticipated revenue, anticipated expenditures, and line item estimates of the need of the administrative and operational functions of the lodge. Line items will include, but not be limited to the following topics;

1. Conferences and board meetings

2. Legal Aid

3. Officers and committees

4. Building fund

5. Charitable works

(D) At no time will the estimate of revenue for the fiscal year exceed ninety (90%) if the actual revenues collected the previous fiscal year.

(E) The ten percent (10%) monies non-appropriated, plus any surplus funds collected above anticipated revenues, shall be invested as contingency, and subject to appropriation to insufficient accounts, after the President has declared that an emergency exists in a particular account, and the President has notified the Board of Directors.

- (F) Regardless of any other provision of the constitution and by-laws, the President is not required to honor any warrant or voucher in excess of the budgeted amount for any particular line item or sub-line item account; unless an emergency appropriation from contingency monies has been approved by the Board of Directors and the general membership.
- (G) All Officers, Committee Chairs, Advisors, Sub-Contractors or Employees shall cooperate with the institution and compliance requirements of a Jim Fogleman Lodge #50 Inc. fiscal accountability system.

Article XVI

Legal Aid

Section 1. Jim Fogleman Lodge #50 Inc. shall provide legal aid to members in good standing in accordance with the requirements of the constitution and by-laws of the Grand Lodge and the State Lodge and the standing rules of the legal fund established by this lodge.

Sections 2. A fund shall be established, maintained and administered by the Board of Directors, of this lodge, for the express purpose of providing legal aid to members in good standing of Jim Fogleman Lodge #50.

(A) The legal fund shall be maintained from dues monies paid by the membership. No other monies will be placed in the fund. Each month, the Treasurer shall deposit forty (40) % of the dues monies collected into an account designated as the legal fund.

Section 3. At no time will any lodge funds be expended for legal aid in excess of the actual amount of monies in the legal aid fund. No funds of this lodge shall be transferred to the legal fund other than in the method described in Section 2. (A) of this by-law.

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

EDWARD MANAK,)
JERMAINE DAVIS,)
WILBUR VEASY AND)
WILL S. TWIGG,)
Plaintiff(s),)
vs.)
FRATERNAL ORDER OF)
POLICE JIM FOGLEMAN)
LODGE #50 INC.,)
Defendant(s).)
/

CASE NO.: 50-2014-CA-009494-XXXX-MB AH

**PLAINTIFFS' RESPONSE TO COURT'S ORDER REQUIRING PARTIES TO
ADDRESS WHETHER OR NOT §617.0607, F. S. PERMITS
A PRIVATE RIGHT OF ACTION**

As the court noted at the hearing of August 28, 2018, the statute rebukes the Defendant's argument that Plaintiffs cannot maintain a cause of action under §617.0607, Fla. Stat., wherein the legislature provided that "[a]ny proceeding challenging an expulsion, suspension, or termination [of a member of a not for profit corporation], including a proceeding in which the defective notice is alleged, must be commenced within 1 year after the effective date of the expulsion, suspension, or termination." §617.0607(3), Fla. Stat. Defendant acknowledges as much when it cites Florida Research Inst. for Equine Nurturing, Dev. & Safety v. Dillon, 247 So. 2nd 538 (Fla. 4th DCA 2018), reviewing just such a challenge. However, Defendant then goes on to misrepresent the holding of that case as establishing that "Plaintiffs are not entitled to judicial review of their membership status or reinstatement to as any officer within the Fraternal Order of Police." Defendant's "Supplement

to the Motion for Summary Judgment," etc., p. 1. The case actually holds that persons alleged to be "members" of a not for profit corporation were indeed entitled to bring an action for termination of their membership; one party, the wife, won at trial for wrongful termination of her membership, but the trial court was reversed, because the corporation followed its by laws in terminating her, and the statute only requires a procedure that is fair and reasonable and is carried out in good faith, and does not require notice and a hearing. *Id.* at 543.

In this case, Defendant never filed the by laws in support of the motion for summary judgment, and the Plaintiffs alleged, in their First Amended *Verified* Complaint, the following facts, which must be accepted as true for summary judgment:

3. Plaintiffs were unlawfully removed and or expelled from the Defendant's board and/or membership rolls after Plaintiff EDWARD J. MANAK objected to what he reasonably believed to be misuse and/or misappropriation of funds by new treasurer Carlos Dorta.

4. Manak was improperly removed as treasurer of the Defendant on or about August 26, 2014 , after he refused to resign as treasurer and turn over all records to a new treasurer. Manak later objected to the movement of the funds from five (5) PNC Bank accounts that the Defendant owned to personal accounts of the new treasurer of the Defendant, Carlos Dorta, which took place on or about September 16, 2014.

5. After Manak was improperly ousted by the Board in retaliation for objecting to improper removal and in violation of Defendant's bylaws, he appealed to the Fraternal Order of Police Florida State Lodge which ordered him reinstated as Treasurer on or about October 1, 2014. Despite this, Manak was then expelled by the Defendant as a member on or about January 13, 2015; was denied a hearing on said expulsion by the Chairman of trustees of the Florida State Lodge, Rob Robertson on or about June 11, 2015, and was prevented from seeking an appeal to the national Grand Lodge by David Frazier.

6. Plaintiffs JERMAINE T. DAVIS, WILBUR S. VEASY and WILL S. TWIGG objected to Manak's planned removal as treasurer and the apparent planned misuse and/or misappropriation of funds by the new treasurer and were expelled from the Defendant in retaliation and in violation of Defendant's bylaws for same on or about July 8, 2014 (Davis and Twigg) and on or about July 29, 2014 (Veasy).

The by laws were never filed by the Defendant in support of summary judgment, and all materials relied upon must be submitted by the moving party 20 days prior to the hearing. Page 16 of the bylaws, attached herein, provide for a the process for expelling a member, attached as **Exhibit 1**; Plaintiffs' Verified First Amended Complaint and the Declaration of Jermaine Davis, create an issue of material fact, on whether or not Defendant complied with the process which require that 1) charges be in writing; 2) that the member be given an opportunity to address the charges at a regular meeting; 3) 2/3 of the members present "shall be required" to "expel" the accused. More importantly, Defendant never established *any of these facts in its summary judgment motion*, so Plaintiffs had no obligation to refute said facts, but did so any way. The Declaration of Davis establishes the following:

5. Plaintiff Manak was not properly removed as treasurer from FOP Lodge #50, but was removed because the FOP Lodge #50 Board Members wanted unlawful access to lodge funds. On or about September 1, 2014, at the PGA National Resort and Spa, Manak was reinstated as treasurer by the Florida State Lodge after which Manak said aloud that he would have a forensic audit done as was his right. The FOP Executive Board sought to expel Manak to stop him from conducting such an audit.

6. Manak was improperly removed as treasurer of the Defendant on or about August 26, 2014, after he refused to resign as treasurer and turn over all records to a new treasurer. Manak later objected to the movement of the funds from five (5) PNC Bank accounts that the Defendant owned to personal accounts of the new treasurer of the Defendant, Carlos Dorta, which took place on or about September 16, 2014. After Manak was improperly ousted by the Board in retaliation for objecting to improper removal and in violation of Defendant's bylaws, he appealed to the Fraternal Order of Police Florida State Lodge which ordered him reinstated as Treasurer on or about October 1, 2014. Despite this, Manak was then expelled by the Defendant as a member on or about January 13, 2015; was denied a hearing on said expulsion by the Chairman of trustees of the Florida State Lodge, Rob Robertson on or about June 11, 2015, and was prevented from seeking an appeal to the national Grand Lodge by David Frazier. Manak was unlawfully expelled from the FOP due to the Lodge's bad faith and unfair play.

7. My unlawful expulsion from FOP Lodge #50 was overturned by the FOP Florida State Lodge Board of Trustees on February 13, 2015, at the Orlando,

Florida conference/meeting. During this meeting it was finally admitted by an FOP Lodge #50 Executive Board member and the current FOP Lodge #50 secretary that the meeting halls doors were locked with the intention of locking out dues paying members who had a right to be present. On October 2, 2014, the FOP Florida State Lodge Grievance Committee advised FOP Lodge #50's Executive Board President, Vice President, and other FOP Lodge #50 Executive Board Members that FOP Lodge #50 is to be run by its members and not the Executive Board, and the Executive Board is not permitted to lock its members out of Executive Board Meetings. This is not the first time that FOP Lodge #50's Executive Board Members have been warned about not locking its members out of meetings, as the same thing happened during a meeting on April 29, 2014. The FOP Florida State Lodge Constitution and Bylaws, Article 20 (Discipline) and the FOP Grand Lodge Constitution and Bylaws, Article 23 (Discipline) state the non prevailing party may appeal the decision to the FOP Grand Lodge or the Biannual Conference, which FOP Lodge #50 failed to do when both Twigg's and my expulsions were overturned.

8. In spite of the same issues that Manak faced, Twigg was reinstated as a member by the Florida State Lodge. Subsequently FOP Lodge #50 charged him again with the same charges which should never have been done because the constitutions and bylaws only permitted FOP Lodge #50 to appeal the Grand Lodge when Twigg won his first appeal.

9. Veasy was expelled without notice and without a hearing as required. Veasy obtained valid membership in Lodge #50. He did nothing wrong. Veasy was unlawfully expelled because he objected to violations of Twigg's rights under the FOP Constitution and Bylaws.

Given these facts, summary judgment is not possible.

Moreover, Defendant claimed that Plaintiffs other than Manak, lack standing to pursue this claim because they were not employed by the PBSO at the time of the expulsions, citing, but again, not providing the Court, with Article III of the Bylaws. According to Verified First Amended Complaint the expulsions were on: July 8, 2014 (Davis and Twigg) and on or about July 29, 2014 (Veasy). Twigg was still employed until he was fired August 10, 2017, years after being expelled. Moreover, the evidence from the Plaintiffs is that their non membership had nothing whatsoever to do with their non membership and they were never told that was the reason for the expulsion. Finally, the Declaration of Ed Manak, filed of record on August 28, 2018 with plaintiff's Emergency

Motion Not to Enter Summary Judgment Against Veasy et al., prior to entry of the order on summary judgment on September 11, 2018 (the order is not dated but was received via email that day from the court), establishes that:

4. Without notice and an opportunity to be heard, the executive board unlawfully voted to expel Wilbur Veasy from membership. *He was not expelled from membership because he had been terminated from PBSO on or about April 17, 2013. In fact, Mr. Veasy joined FOP after he was terminated. He was expelled because Mr. Veasy came to my defense at an earlier executive board meeting on or about May, 2014, when there was an attempt by the executive board to force me to resign.* I had objected to relinquishing the office of treasurer as well as turning over PNC bank accounts to the executive board due to my concerns that they would misspend the funds on personal goods and services. Moreover, *we have historically had many former employees of PBSO who have either retired or been fired by the PBSO who have remained members in good standing with the Defendant. For example, Keith Burns was fired, and then permitted to join the FOP and all of his legal fees were paid by the FOP (in a criminal case where he was acquitted and an arbitration case which was settled); Jermaine Davis, who was terminated by PBSO August 23, 2012. Mr. Davis was not expelled by the Defendant because of his termination by PBSO. I attended a meeting of the executive board on July 8, 2018, and Davis's employment or lack thereof with PBSO was not the reason for his expulsion.*

(Emphasis added). The Manak Declaration is attached as **Exhibit 2**. The Manak Declaration was filed with Plaintiff's Emergency Motion because, at the summary judgment hearing, the Defendant misrepresented the law on these types of organizations being not subject to any court review, as it attempts again to do while citing the Florida Research Inst. for Equine Nurturing case. In the case of McCune v. Wilson, 237 So. 2d 169 (Fla. 1970), the Florida Supreme Court held that a professional organization such as the Defendant in this case must follow fair procedures when it takes disciplinary action against a member of said organization:

Professional organizations, although voluntary in nature, often attain a quasi-public significance. In public view, membership in such organizations may appear to be a tangible demonstration of professional competence and skill, professional responsibility, and acceptance by one's professional peers. The fact that an individual member expelled from membership may not be prohibited from practicing his chosen occupation or profession is not a sufficient test to determine whether he needs and

is entitled to judicial protection from unfair proceedings or arbitrary actions. When a voluntary association achieves this quasi-public status, due process considerations come into play. Such is the policy of the judicial decisions and statutes of this State.

Disciplinary action against a member of a professional organization, although falling short of expulsion from occupation, may have an import which transcends the organization itself because it conveys to the community that the disciplined member was found lacking by his peers. For this reason, it is suitable and proper that an organization, whether a domestic or foreign nonprofit corporation, or a nonchartered nonprofit association, be held to reasonable standards of due process and fairness, especially those inherent in its own by-laws, rules or customs.

While the courts should be loathe to intervene in purely private organizational matters, nonintervention is not justified where a quasi-public organization takes action and imposes penalties which carry the odor of public sanctions. It is clear that not all private associations must observe due process standards. However, such standards must be observed when a private association becomes quasi-public, assumes a public purpose of its own, incorporates and seeks the tax shelters and other protections of public law, or otherwise assumes a larger purpose or statute than pleasant, friendly and congenial social relationships.

The public policy underlying the Florida Statutes is in harmony with standards herein affirmed. See § 617.10(2), F.S.A., which provides that if a person is an incorporator or member of a nonprofit corporation 'before his membership shall cease against his consent he shall be given an opportunity to be heard, unless he is absent from the county where the corporation is located. * * *' Also see § 617.11(3), which provides that a nonprofit corporation chartered out-of-state operating without a Florida permit 'shall not be permitted to bring or maintain any suit or other proceeding before any court or administrative body of this state; but failure to obtain such permit shall not affect the validity of any contract with or conveyance by such foreign corporation.' As this provision makes clear, the American Institute of Real Estate Appraisers or any other foreign nonprofit corporation in Florida, if it fails to obtain a permit in Florida, may not maintain suit; however, the contract and property rights of persons with whom the corporation has transactions will be protected by the law.

We hold that a private organization, particularly if tinged with public stature or purpose, may not expel or discipline a member adversely affecting substantial property, contract or other economic rights, except as a result of fair proceedings which may be provided for in organization by-laws, carried forward in an atmosphere of good faith and fair play.

The decision of the District Court Sub judice is quashed, and this case remanded to the District Court with instructions to affirm the judgment of the Circuit Court of

Dade County.

Finally, on this issue, defendant again failed to file the by law on membership in support of summary judgment, but claimed the by law required current employment at the PBSO for membership. This is not true, as the Manak Declaration attests; moreover, the by law provides that there are three classes of membership: active, retired and honorary. This by law is attached as **Exhibit 3**. Veasy and Davis chose to retire after their termination, as did Twigg, although his termination did not occur until three years after his expulsion. The by law on membership moreover states that “[a]ny regular appointed and full time employed Law Enforcement or Correctional Officer shall be eligible for membership in the [FOP]...”; however, this language in no way restricts others from also seeking, and obtaining membership, as the Manak Declaration attests. Finally, the Defendant has never raised as an Affirmative Defense the issue of standing in its Answer and Affirmative Defenses, hence this issue was waived under Rule 1.140, FRCP. The standing issue was sprung without amending the affirmative Defenses.

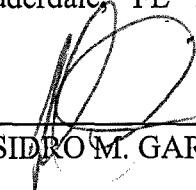
For all of the foregoing reasons, the court must deny summary judgment against Manak and grant rehearing on the remaining three plaintiffs.

Respectfully submitted,


ISIDRO M. GARCIA
Florida Bar No. 437883
GARCIA LAW FIRM, P.A.
120 South Olive Avenue Suite 401
West Palm Beach, FL 33401
Telephone: (561) 832-7732
Telecopier: (561) 832-7137
E-mail: isidrogarcia@garcialaborlaw.com
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was furnished **VIA FLORIDA E-FILING PORTAL** (buschel@bglaw-pa.com) to: Robert C. Buschel, Esq., Buschel Gibbons, P.A., 100 S.E. Third Avenue, Suite 1300, Fort Lauderdale, FL 33394 this 13 day of September, 2018.

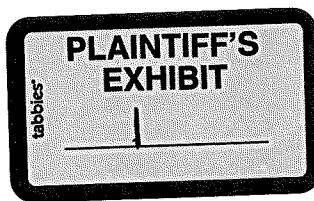

ISIDRO M. GARCIA

**Constitution and By-Laws
Of
Fraternal Order of Police
Jim Fogleman Lodge #50**



Revised 1994
Seal of Jim Fogleman Lodge #50

Revised 2011 (October Board Meeting
Fort Lauderdale, FL)
Seal of Jim Fogleman Lodge #50



Article III

Membership

Section 1. Any regular appointed and full time employed Law Enforcement or Correctional Officer shall be eligible for membership in the Fraternal Order of Police, Jim Fogleman Lodge #50, Inc, subject to the provisions of this constitution and bylaws of the order. No person shall be denied membership because of race, religion, color, creed, gender, age or national origin.

The Fraternal Order of Police shall deny membership to anyone who is, or has been a member of the communist party, or of any organization known (regardless of what name) to advocate the abolition or destruction of our government by force or subversion.

Section 2.

- (A) The term, "regularly appointed Law Enforcement and Correctional Officer", shall mean, for the purposes hereof, any Law Enforcement or Correctional Officer who meets the minimum standards, has received the training and the education required by the United States, the State of Florida and the agency by which they are appointed, and is granted arrest powers.
- (B) The term "Full Time Employed" shall mean Law Enforcement and Correctional Officers that are engaged in such employment as their full time occupation.

Section 3. There shall be three classes of membership; active, retired, and honorary.

- (A) **Active Membership:**
 - 1. Shall include regular, appointed or elected full time Law Enforcement and Correctional Officers.
 - 2. May include retired, regular appointed or elected Law Enforcement and Correctional Officers.
 - 3. May include, subject to the approval of the State Lodge Board of Trustees and Jim Fogleman Lodge #50 Inc., regular appointed or elected Law Enforcement or Correctional Officers who have left the employ of their respective agency and who have remained in good standing with the lodge.
 - 4. Only active members herein described shall have voice and vote.

Article IX

Discipline

- Section 1.** If any member of the lodge should abuse the usage of the lodge or be accused of any offense against the lodge or its membership, he may be reprimanded, suspended or expelled.
- Section 2.** The charges must be preferred in writing and submitted to the lodge at a regular meeting.
- Section 3.** The accused member shall be given the opportunity to answer the charges in person at the next regular meeting.
- Section 4.** A vote of 2/3 of the members present, to reprimand, suspend or expel the accused, shall be required to discipline the accused member.
- Section 5.** The accused member shall have the right to appeal to the District Director and the State and National Lodges, any discipline imposed by the lodge.
- Section 6.** The accused member shall retain all rights and privileges of membership pending the appeals process.
- Section 7.** Any member of this lodge who is in arrears for a period of more than 90 days shall automatically be suspended from the lodge.
- Section 8.** The membership committee chairman shall notify the member in writing that he is in arrears and suspended.
- Section 9.** The delinquent member may be reinstated upon payment of all delinquent dues and fees.

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

EDWARD MANAK,)
JERMAINE DAVIS,)
WILBUR VEASY AND)
WILL S. TWIGG,)
Plaintiff(s),)
vs,)
FRATERNAL ORDER OF)
POLICE JIM FOGLEMAN)
LODGE #50 INC.,)
Defendant(s).)
/

CASE NO.: 50-2014-CA-009494-XXXX-MB AH

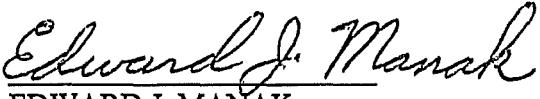
AFFIDAVIT OF EDWARD J. MANAK

UNDER PENALTY OF PERJURY, I declare as follows:

1. My name is Edward J. Manak and I have personal knowledge of the facts herein.
2. I am currently employed as a Deputy Sheriff for the PBSO and have been so employed since 1982.
3. On or about July 9, 2014, I was the treasurer duly elected of the Defendant.
4. Without notice and an opportunity to be heard, the executive board unlawfully voted to expel Wilbur Veasy from membership. He was not expelled from membership because he had been terminated from PBSO on or about April 17, 2013. In fact, Mr. Veasy joined FOP after he was terminated. He was expelled because Mr. Veasy came to my defense at an earlier executive board meeting on or about May, 2014, when there was an attempt by the executive board to force me to resign. I had objected to relinquishing the office of



treasurer as well as turning over PNC bank accounts to the executive board due to my concerns that they would misspend the funds on personal goods and services. Moreover, we have historically had many former employees of PBSO who have either retired or been fired by the PBSO who have remained members in good standing with the Defendant. For example, Keith Burns was fired, and then permitted to join the FOP and all of his legal fees were paid by the FOP (in a criminal case where he was acquitted and an arbitration case which was settled); Jermaine Davis, who was terminated by PBSO August 23, 2012. Mr. Davis was not expelled by the Defendant because of his termination by PBSO. I attended a meeting of the executive board on July 8, 2018, and Davis's employment or lack thereof with PBSO was not the reason for his expulsion.

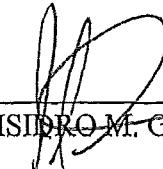

EDWARD J. MANAK

Respectfully submitted,


ISIDRO M. GARCIA
Florida Bar No. 437883
GARCIA LAW FIRM, P.A.
120 South Olive Avenue Suite 401
West Palm Beach, FL 33401
Telephone: (561) 832-7732
Telecopier: (561) 832-7137
E-mail: isidrogarcia@garcialaborlaw.com
COUNSEL FOR PLAINTIFF

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy was furnished **VIA FLORIDA E-FILING PORTAL** (buschel@bglaw-pa.com) to: Robert C. Buschel, Esq., Buschel Gibbons, P.A., 100 S.E. Third Avenue, Suite 1300, Fort Lauderdale, FL 33394 this 28 day of August, 2018.



ISIDRO M. GARCIA

(B) Retired Membership:

Shall be comprised of regular, appointed or elected Law Enforcement or Correctional Officer who withdraw from active membership upon or after retirement from their respective agency.

- (1) Retired members pay no per capita tax and have no voice or vote.
- (2) The only benefit a retired member has is a membership card issued by this lodge.

(C) Honorary Membership:

Shall be comprised of individuals recognized by this Lodge for exceptional service or contribution to law enforcement, community or the Fraternal Order of Police.

Section 4. No person shall be a member of Jim Fogleman Lodge #50 Inc. while still a member of another F.O.P. Lodge, nor shall any member who is delinquent or has been suspended for any reason, be eligible for membership in Jim Fogleman Lodge #50 Inc.

Section 5. The Fraternal Order of Police Jim Fogleman Lodge #50 Inc. may deny membership to anyone who is, or has been, a member of any organization regardless of what name, which advocates the abolition, destruction, or violent overthrow of the Government of the United States, or any State or Political subdivision thereof.

Section 6. Any active member may be granted a transfer from Jim Fogleman Lodge #50 to another lodge, or from another lodge to Jim Fogleman #50 provided that he or she is a member in good standing, both lodges agree to the transfer, and the member cannot be active in his or her former lodge because of collective bargaining law restrictions or geographical location.

Section 7. All persons seeking membership in this lodge shall submit in writing a petition for membership, authorized by the lodge and conforming to the regulations of the Grand Lodge. All questions on all petitions must be answered and warranted by the applicant to be true. All petitions for membership must be recommended by an active member in good standing.

Section 8. All petitions for membership shall be referred to the membership committee of three (3) members who shall investigate the applicant and report their findings to the next general business session of the lodge. The President shall have the authority to grant further time for investigation if deemed necessary.

Section 9. Any petition for affiliation shall be through transfer or demit issued in regular form, and said demit must be presented within one year from the date of issue.

Section 10. All petitions for membership in this lodge shall be voted upon, and if the petitioner shall receive a two thirds vote of the members present, and voting, the petitioner shall be declared accepted, and the secretary of the lodge shall notify the applicant.

Section 11. In consideration of the benefits to which such member is entitled while a member in this lodge, the member shall, upon severing his connection with the lodge for any reason whatsoever, forfeit all rights and claims to funds and property of this lodge.

Section 12. Specifically excluded from membership are Private Security Guards, Special Police, members of profit making security and correctional organizations, auxiliary or Reserve Police.

Section 13. No person at any time shall be a member of the auxiliary or associate lodge when they qualify for membership in the Fraternal Order of Police active lodge.

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION AH
CASE NO. 50-2014-CA-009494-XXXX-MB

EDWARD J MANAK,
JERMAINE T DAVIS,
WILBUR S VEASY,
et al.,

Plaintiff/Petitioners

vs.

FRATERNAL ORDER OF POLICE JIM FOGLEMAN LODGE #50 INC,
Defendant/Respondent.

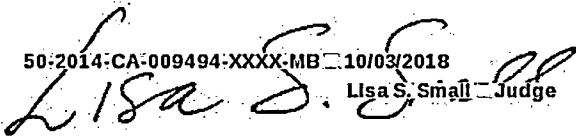
/

**ORDER DENYING DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT AS TO EDWARD J. MANAK**

THIS CAUSE came before the Court at the hearing upon Defendant's Motion for Summary Judgment. The Court requested briefs and case law concerning Sec. 617.0607, F.S., as to Plaintiff Edward J. Manak. Upon receipt and review of the briefs and supplemental case law, it is

ORDERED that Defendant's Motion for Summary Judgment as to Edward J. Manak is **DENIED**.

DONE AND ORDERED, in West Palm Beach, Palm Beach County, Florida.

50-2014-CA-009494-XXXX-MB 10/03/2018

Lisa S. Small Judge

50-2014-CA-009494-XXXX-MB 10/03/2018
Lisa S. Small
Judge

COPIES TO:

EUGENE GIBBONS	No Address Available	Gibbons@BGLaw-pa.com
ISIDRO M. GARCIA	224 DATURA STREET SUITE 900 WEST PALM BEACH, FL 33401	ISIDROGARCIA@GARCIAL ABORLAW.COM eservice@garcialaborlaw.com mark.johnson@garcialaborlaw.c om hannah.bourget@garcialaborlaw .com

JERMAINE T. DAVIS	No Address Available	No E-mail Address Available
RANDY ALAN FLEISCHER	No Address Available	randy@rajesq.com
ROBERT C. BUSCHEL, ESQ	201 S.E 9TH STREET FT LAUDERDALE, FL 33316	buschel@bglaw-pa.com indira@bglaw-pa.com
ROBET BUSCHEL	No Address Available	buschel@bglaw-pa.com
WILBUR S. VEASY	No Address Available	No E-mail Address Available
WILL S. TWIGG	No Address Available	No E-mail Address Available

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

EDWARD J MANAK,
JERMAINE T DAVIS,
WILBUR S VEASY,
and WILL S TWIGG

CASE NO.: 502014CA009494XXXXMB

Plaintiffs,

v.

FRATERNAL ORDER OF POLICE
JIM FOGLEMAN LODGE #50 INC

Defendant.

/

MOTION FOR RECONSIDERATION

Plaintiffs, JERMAINE T DAVIS, WILBUR S VEASY, and WILL S TWIGG, by and through the undersigned counsel, hereby file this Motion for Reconsideration of the Court's September 11, 2018 Order Granting Summary Judgment against them, and in support thereof state as follows:

INTRODUCTION

On June 21, 2018, Defendant, FRATERNAL ORDER OF POLICE JIM FOGLEMAN LODGE #50 INC, filed a Motion for Summary Judgment alleging, among other things, that Plaintiffs, JERMAINE T DAVIS, WILBUR S VEASY, and WILL S TWIGG did not have standing to maintain an action against it. The basis of the allegation was that the Plaintiffs were not members in good standing with the Defendant and could not have been members in good

— { 1 } —

standing for various reasons. On September 11, 2018 this Court entered an Order holding that Plaintiffs did not have standing and granting Defendant's Motion against them.

The First Amended Complaint in this action alleges that Defendant attempted to terminate Plaintiffs from the organization in bad faith. Plaintiffs were all members of the organization at the time of this improper action, and therefore did have standing to bring this suit. The information provided to the Court by Defendant was incorrect and misleading regarding both the facts and the law governing this matter, and Plaintiffs therefore are seeking reconsideration of the Court's Order removing them from this action.¹

ARGUMENT

I. Reconsideration generally

An order granting a motion for summary judgment is not a final judgment; rather, it is a nonfinal order. *See White Palms of Palm Beach, Inc. v. Fox*, 525 So. 2d 518, 519 (Fla. 4th D.C.A. 1988). A trial court has the inherent authority to reconsider and alter or retract such orders prior to the entry of final judgment. *Silvestrone v. Edell*, 721 So. 2d 1173, 1175 (Fla. 1998). A motion directed to a nonfinal order is actually a "motion for reconsideration" based upon this inherent and discretionary authority of the trial court. *Bettez v. City of Miami*, 510 So. 2d 1242, 1242-43 (Fla. 3d D.C.A. 1987)

¹ Plaintiffs previously filed an Emergency Motion to Not Enter Summary Judgment Against Veasy Davis and Twigg. This Court ruled that the Motion was not an emergency in its August 29, 2018 Order, but did not appear to have a separate ruling on the Motion itself. To that end, Plaintiffs also renew the previously filed Motion for this Court's further consideration with the present Motion.

Additionally, a Court has the power under Fla. R. Civ. P. 1.540(b)(3) to relieve a party from an order if there is misrepresentation by the adverse party. Where an adverse party makes a misrepresentation by affidavit to obtain a judgment, a moving party is entitled to relief from such judgment. *See Lacore v. Giralda Bake Shop, Inc.*, 407 So.2d 275 (Fla. 3d DCA 1981). Likewise, an omission of material fact constitutes a misrepresentation that entitles a movant for relief from a judgment or order. *Crowley v. Crowley*, 678 So.2d 435 (Fla. 4th DCA 1996).

II. The Plaintiffs' cause of action was properly before the Court

Plaintiffs allege in the First Amended Complaint that they were improperly removed from membership by Defendant in retaliation for opposing corruption within the organization. They further allege that the removal was not done properly in accordance with the Defendant's by-laws and constitution. According to prevailing case law, Plaintiffs have properly stated a cause of action against Defendant.

In *McCune v. Wilson*, 237 So.2d 169 (Fla. 1970), the Florida Supreme Court established that professional organizations, despite being voluntary in nature, often attain a quasi-public significance. Such organizations are therefore subject to following due process standards when expelling a member, as such expulsion carries the odor of public sanctions. The Court held that "a private organization, particularly if tinged with public stature or purpose, may not expel or discipline a member adversely affecting substantial property, contract or other economic rights , except as a result of fair proceedings which may be provided for in organization by-laws, carried forward in an atmosphere of good faith and fair play." *Id.* Here, Defendant is a chapter of the well-known quasi-public organization, the Fraternal Order of Police, and expelling the Plaintiffs had "an import which transcends the organization itself because it conveys that the disciplined member

was found lacking by his peers.” *Id.* Under such circumstances, the Plaintiffs were entitled to due process and good faith proceedings, not proceedings tinged by retaliation, before being expelled by Defendant from the organization.

Further, in the Fourth District Court of Appeals case *Boca West Club, Inc. v. Levine*, 578 So.2d 14 (Fla. 4th DCA 1991), the Court confirmed that the plaintiff was afforded a proper hearing and opportunity to be heard by the organization. It then went through a detailed analysis of whether the club complied with its own bylaws and regulations. Plaintiffs here are entitled to such an analysis by the fact finder, as they alleged that they were not afforded such due process before being removed from membership.

III. Plaintiffs had standing to bring their action despite misrepresentations by the Defendant

Standing requires a litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly. *Hayes v. Guardianship of Thompson*, 952 So. 2d 498, 505 (Fla. 2006). Standing is that sufficient interest in the outcome of litigation which will warrant the court's entertaining it. *3709 N. Flagler Drive Prodigy Land Tr. v. Bank of Am., N.A.*, 226 So. 3d 1040, 1041 (Fla. 4th DCA 2017). As explained above, Plaintiffs properly stated a cause of action for their improper removal by Defendant.

In support of its Motion for Summary Judgment, Defendant proffered the affidavit of Patrick Yoes, the National Secretary of the National Fraternal Order of Police. Mr. Yoes' affidavit contained several material misrepresentations regarding Plaintiffs' membership in Defendant's organization. Firstly, Yoes claims in paragraph 12 that “Davis has not been a member of the FOP since 2012.” Davis, however was a member through 2015, well after the time of the incidents

alleged in the Complaint, as evidenced by his membership card (signed by Yoes) and an invoice sent to him. See Exhibit A. Next Yoes claims in paragraph 14 that “Veasy has not been a member of the FOP since 2013.” However Veasy, like Davis, was a member until he was surreptitiously and involuntarily dropped from the rolls in 2015. Lastly, Yoes asserts that Twigg was “expelled from membership” on July 8, 2014. Firstly, this is the exact improper expulsion that is being addressed in the Complaint. Secondly, like Davis, Twigg was issued a membership card (again, signed by Yoes), which shows that he was an active member through 2015. See Exhibit B. Additionally, both Twigg and Davis were specifically reinstated into the organization at the state level once Defendant initially tried to remove them without due process. See Exhibit C.

The misrepresentations in the affidavit of Yoes were material and mislead this Court as to Plaintiffs’ standing. All of Plaintiffs would still be members of the Defendant organization if improper actions had not been taken against them, and they therefore have standing to bring this action for wrongful expulsion.

CONCLUSION

On a Motion for Summary Judgment, the facts must be construed in the light most favorable to the nonmovant, *Buntin v. Carter*, 234 So.2d 131 (Fla. 4th DCA 1970), in this case Plaintiffs. Here, Plaintiffs have asserted that they were members of the Defendant organization, and that but for the wrongful termination of their membership, still would be, and inferences must therefore be drawn in favor of that conclusion. *See Moore v. Morris*, 475 So.2d 666 (Fla. 1985). Most importantly, the Defendant’s material misrepresentations in support of its motion entitle Plaintiffs to relief from the Order discharging them from this suit.

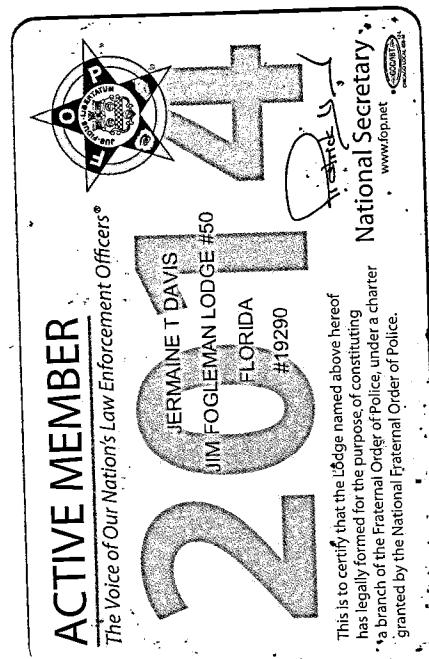
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served, on June 12, 2019, electronically via the Florida Courts E-Filing Portal to all registered participants or by regular U.S. Mail to all nonparticipants.

MILSON LAW, PA
Citigroup Building
201 S. Biscayne Blvd., Suite 2650
Miami, FL 33131
Ph: (305) 209-0321

By: /s/ Nicole Milson
Nicole A. Milson, Esq.
Fla. Bar No. 86157

EXHIBIT A



APPENDIX 0197

000423



Fraternal Order of Police
Jim Fogleman Lodge #50, Inc
P.O. Box 16372
West Palm Beach, FL 33416-6372

It's Time to Renew Your Membership

To renew your annual dues by mail:

1. Update your contact information or leave blank if no changes
2. Detach bottom portion and return with your payment
3. Make checks payable to *FOP Jim Fogleman Lodge 50, Inc.*

Please do not send cash

JERMAINE DAVIS
1061 SERENADE CIRCLE
ROYAL PALM BEACH, FLORIDA 33411

Email; jayd045@yahoo.com
Phone 561-333-6396
Alt Phone 561-436-7508

MEMBER ID	MEMBER TYPE	EXPIRATION DATE	Total Due	
19290	ACTIVE	12/31/2015		\$360.00

Please keep this portion for your records

ATTENTION ACTIVE MEMBERS

Enjoy the convenience of having your annual dues paid monthly from your checking account by enrolling in the ACH payment plan. Simply attach a voided check in lieu of the total payment due. Once enrolled, twelve monthly payments in the amount of \$30.00 will be automatically deducted from your account. It's that easy. This payment plan is not available for retired members.



For more information call the Lodge Office at 561-687-7554 or visit our new website at www.foplodge50.org

Detach this portion and return with your check. To update your address, phone and email, please print the correct information below.

Address _____

Email _____

City, State, Zip _____

Telephone (_____) - (_____) - (_____) _____

Return by mail with payment to:

Invoice Date 02/27/2015

FOP LODGE #50
P.O. BOX 16372
WEST PALM BEACH, FL 33416-6372

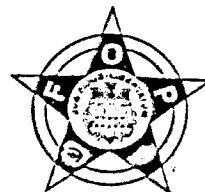
Total Due	\$360.00
Member ID	19290
Name	JERMAINE DAVIS
Address	1061 SERENADE CIRCLE ROYAL PALM BEACH, FLORIDA 33411

APPENDIX 0198

000424

ACTIVE MEMBER

The Voice of Our Nation's Law Enforcement Officers®



24

L33411

#19310
FLORIDA

JIM FOGLEMAN LODGE #50

WILL TWIGG

This is to certify that the Lodge named above hereof
has legally formed for the purpose of constituting
a branch of the Fraternal Order of Police, under a charter
granted by the National Fraternal Order of Police.

National Secretary
www.fop.net



20¢ 20¢ 20¢
FEDERATED POLICE ORGANIZATIONS
INTERNATIONAL

EXHIBIT B

APPENDIX 0199

Fraternal Order of Police

FLORIDA STATE LODGE



March 19, 2015

Brother Jermaine Davis

Please read below the results of your grievance heard at the October Board of Trustees meeting of the Florida State Lodge, Fraternal Order of Police, dated October 3rd 2014.

The Board of trustees was empaneled and heard your matter as brought forth. Upon conclusion of the presentation, deliberations began and the results are as follows;

The Florida State Lodge Fraternal Order of Police, Board of Trustees have considered your grievance and find in your favor. It was found that Brother Davis did not receive his due process rights, and as such Lodge 50 is to reinstate you as a member in good standing, and allow you the privileges and rights of such membership immediately and without prejudice.

Fraternally;

Lynette F. Clinch

Lynette Clinch Secretary
Fraternal Order of Police
Florida State Lodge

Cc: President Jim Preston
1st V. P, Lonnie Miller Jr.
2nd V. P. Kelly Shefflitt
Chairman of Trustees, Robb Robertson
William Williams, Lodge 50 President
Lodge 50 Secretary



Fraternal Order of Police



FLORIDA STATE LODGE

April 17, 2015

Brother Twiggs,

Please read below the results of your grievance heard at the October Board of Trustees meeting of the Florida State Lodge, Fraternal Order of Police, dated October 3rd 2014.

The Board of trustees was empaneled and heard your matter as brought forth. Upon conclusion of the presentation, deliberations began and the results are as follows:

The Florida State Lodge Fraternal Order of Police Board of Trustees have considered your grievance and find in your favor. It was found that Brother Twiggs did not receive due process and as such is to be reinstated you as a member in good standing, and allow you the privileges and rights of such membership immediately and without prejudice.

Fraternally,

Rob Robertson, Chairman of Trustees

A handwritten signature in cursive ink that reads "Lynette F. Clinch 7029".

Lynette F. Clinch, Secretary

Fraternal Order of Police

Florida State Lodge

The logo for the Fraternal Order of Police Florida State Lodge, featuring a five-pointed star with a central shield containing a scale and a sword. The words "FOP FLORIDA STATE LODGE" are inscribed around the star.

Cc:

Lodge 50, President

Jim Preston, State President

Lonnie Miller Jr., 1st Vice President

Kelly Shifflett, 2nd Vice President

Mike Kelly, District 4 Director

Robert Robertson, Chairman of Trustees

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION AH
CASE NO. 50-2014-CA-009494-XXXX-MB

EDWARD J MANAK,
JERMAINE T DAVIS,
WILBUR S VEASY,
et al.,

Plaintiff/Petitioners

vs.

FRATERNAL ORDER OF POLICE JIM FOGLEMAN LODGE #50 INC,
Defendant/Respondent.

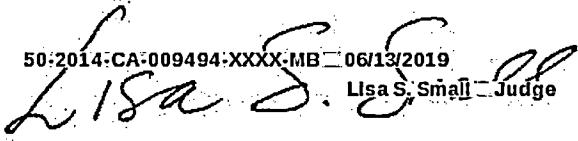
/

ORDER DENYING MOTION FOR RECONSIDERATION

THIS CAUSE came before the Court on June 13, 2019 upon receipt and review of Plaintiffs' Davis, Veasy and Twiggs Motion for Reconsideration of the Court's September 11, 2018 Order Granting Summary Judgment filed June 12, 2019. It is,

ORDERED that the Plaintiffs' Davis, Veasy and Twiggs Motion for Reconsideration filed June 12, 2019 is **DENIED**.

DONE AND ORDERED, in West Palm Beach, Palm Beach County, Florida this 13th day of June, 2019.


50-2014-CA-009494-XXXX-MB 06/13/2019
Lisa S. Small Judge
50-2014-CA-009494-XXXX-MB 06/13/2019
Lisa S. Small
Judge

COPIES TO:

JERMAINE T. DAVIS	No Address Available	jayd045@yahoo.com
ROBERT C. BUSCHEL, ESQ	201 S.E 9TH STREET FT LAUDERDALE, FL 33316	buschel@bglaw-pa.com indira@bglaw-pa.com
ROBET BUSCHEL	No Address Available	buschel@bglaw-pa.com
WILBUR S. VEASY	No Address Available	jlopezwils@msn.com
WILL S. TWIGG	No Address Available	willstwigg@yahoo.com
EDWARD MANAK	No Address Available	edwardmanak@att.net

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA,
FOURTH DISTRICT

CASE NO. 4D19-2152
L.T. NO. 2014-CA-009494

WILBUR S. VEASY, WILL S. TWIGG
and JERMAINE T. DAVIS
Plaintiffs/Appellants

v.

FRATERNAL ORDER OF POLICE JIM
FOGLEMAN LODGE #50, INC.
Defendant/Appellee,

**APPELLANTS, WILBUR S. VEASY,
WILL S. TWIGG AND JERMAINE T. DAVIS',
INITIAL BRIEF**

Attorney for Appellants/Plaintiffs

MILSON LAW, PA
Citigroup Center
201 S. Biscayne Blvd., Suite 2700
Miami, Florida 33131
Tel.: (305) 209.0321
Nicole A. Milson, Esq.
Fla. Bar. No.: 86157
nicole@milsonlaw.com

TABLE OF CONTENTS

TABLE OF CONTENTS	2
TABLE OF AUTHORITIES	4
PRELIMINARY STATEMENT	7
STATEMENT OF THE CASE	7
I. PARTIES	7
II. FACTS	8
III. THE PROCEEDINGS	8
SUMMARY OF ARGUMENT	10
STANDARD OF REVIEW	12
I. STANDING	12
II. SUMMARY JUDGMENT	12
III. MOTION FOR REHEARING	12
IV. MOTION FOR RELIEF FROM JUDGMENT	13
ARGUMENT	13
I. INTRODUCTION	13
II. THE TRIAL COURT ERRED IN ALLOWING THE MATTER OF STANDING TO BE ASSERTED WHEN IT WAS NOT PLED IN APPELLEE'S ANSWER AND AFFIRMATIVE DEFENSES	14
III. THE TRIAL COURT ERRED IN ENTERING SUMMARY JUDGMENT WHEN DEFENDANT HAD NOT RESPONDED TO ANY OUTSTANDING DISCOVERY	15
IV. PLAINTIFFS HAVE STANDING IN THIS MATTER	16

V. SUMMARY JUDGMENT IS IMPROPER ON THE EVIDENCE PRESENTED.....	17
VI. THE TRIAL COURT ERRED IN DECLINING TO REHEAR ITS ORDER	22
VII. THE TRIAL COURT ERRED IN DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION WITHOUT A HEARING.....	23
CONCLUSION	24
CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT	26
CERTIFICATE OF SERVICE	26

TABLE OF AUTHORITIES

CASES	PAGES
<i>3709 N. Flagler Drive Prodigy Land Tr. v. Bank of Am., N.A.</i> , 226 So. 3d 1040, 1041 (Fla. 4th DCA 2017)	16
<i>Bogatov v. City of Hallandale Beach</i> , 192 So. 3d 600, 602 (Fla. 4th DCA 2016)	19
<i>Cong. Park Office Condos II, LLC v. First–Citizens Bank & Tr. Co.</i> , 105 So.3d 602, 607 (Fla. 4th DCA 2013)	15
<i>Coquina Ridge Properties v. E. W. Co.</i> , 255 So. 2d 279, 280 (Fla. 4th DCA 1971)	19
<i>Craven v. TRG-Boynton Beach, Ltd.</i> , 925 So. 2d 476, 479 (Fla. 4th DCA 2006) ..	12
<i>Dynasty Exp. Corp. v. Weiss</i> , 675 So. 2d 235, 239 (Fla. 4th DCA 1996)	24
<i>Everett Painting Co. v. Padula & Wadsworth Constr., Inc.</i> , 856 So.2d 1059, 1061 (Fla. 4th DCA 2003)	12
<i>Fatherly v. Cal. Fed. Bank, FSB</i> , 703 So.2d 1101, 1102 (Fla. 2d DCA 1997)	22
<i>Florida Power & Light Co. v. Hayes</i> , 122 So. 3d 408 (Fla. 4th DCA 2013)	22
<i>Freemon v. Deutsche Bank Tr. Co. Americas</i> , 46 So. 3d 1202, 1204 (Fla. 4th DCA 2010)	13
<i>Glynn v. First Union Nat. Bank</i> , 912 So. 2d 357 (Fla. 4th DCA 2005)	15
<i>Herbits v. City of Miami</i> , 207 So.3d 274, 281 (Fla. 3d DCA 2016).....	12
<i>Holl v. Talcott</i> , 191 So. 2d 40 (Fla. 1966)	13
<i>Holl v. Talcott</i> , 191 So. 2d 40, 43 (Fla. 1966)	19
<i>Holl v. Talcott</i> , 191 So. 2d 40, 46–47 (Fla. 1966)	22

<i>J.J.K. Int'l, Inc. v. Shivbaran</i> , 985 So.2d 66, 68 (Fla. 4th DCA 2008).....	13
<i>Jaffer v. Chase Home Fin., LLC</i> , 155 So. 3d 1199 (Fla. 4th DCA 2015)	14
<i>Jones v. Stoutenburgh</i> , 91 So. 2d 299 (Fla. 1956)	19
<i>Kissman v. Panizzi</i> , 891 So. 2d 1147 (Fla. 4th DCA 2005)	15
<i>Krivanek v. Take Back Tampa Political Comm.</i> , 625 So.2d 840, 842 (Fla. 1993)..	15
<i>Lenhal Realty, Inc. v. Transamerica Commercial Fin. Corp.</i> , 615 So.2d 207 (Fla. 4th DCA 1993)	18
<i>Martin County v. Edenfield</i> , 609 So. 2d 27, 29 (Fla. 1992)	18
<i>McLean v. JP Morgan Chase Bank Nat'l Ass'n</i> , 79 So.3d 170, 173 (Fla. 4th DCA 2012)	17
<i>Petrucci v. Brinson</i> , 179 So. 3d 398 (Fla. 1st DCA 2015)	13
<i>Petrucci v. Brinson</i> , 179 So. 3d 398, 400 (Fla. 1st DCA 2015)	22
<i>Pitcher v. Zappitell</i> , 160 So. 3d 145, 149 (Fla. 4th DCA 2015)	18
<i>Pub. Def., Eleventh Judicial Circuit of Fla. v. State</i> , 115 So. 3d 261, 282 (Fla. 2013)	17
<i>Republic of Ecuador v. Dassum</i> , 255 So. 3d 390, 394–95 (Fla. 3d DCA 2017)....	15
<i>Residential Mortg. Servicing Corp. v. Winterlakes Prop. Owners Ass'n, Inc.</i> , 169 So. 3d 253 (Fla. 4th DCA 2015).....	12
<i>Reynolds v. Nationstar Loan Services, LLC</i> , 190 So. 3d 219 (Fla. 4th DCA 2016)	12
<i>Reynolds v. Nationstar Loan Services, LLC</i> , 190 So. 3d 219, 221 (Fla. 4th DCA 2016)	17
<i>Schuster v. Blue Cross & Blue Shield of Fla., Inc.</i> , 843 So.2d 909, 912 (Fla. 4th DCA 2003).....	15

<i>Sconyer v. Scheper</i> , 119 So. 2d 408, 412 (Fla. 2d DCA 1960)	19
<i>Sconyer v. Scheper</i> , 119 So. 2d at 412.....	25
<i>Singer v. Star</i> , 510 So.2d 637, 639 (Fla. 4th DCA 1987).....	16
<i>Westport Recovery Corp. v. Midas</i> , 954 So. 2d 750, 752 (Fla. 4th DCA 2007)	17
<i>Wills v. Sears, Roebuck & Co.</i> , 351 So.2d 29 (Fla. 1977)	18
<i>Wilson v. State Rd. Dept.</i> , 201 So. 2d 619, 622 (Fla. 1st DCA 1967)	19

Rules	Pages
Fla. R. Civ. P. 1.540(b)(3)	24

PRELIMINARY STATEMENT

Throughout this Initial Brief, Appellants will be referred to as “Plaintiffs” and Appellee will be referred to as “Defendant.” References to pages of the Record will be labeled “R.”

Pursuant to this Court’s August 26, 2019 Order, this Appeal is proceeding in accordance with Fla. R. App. 9.110(k) as an appeal of the Final Judgment entered against Appellants by the trial court on September 24, 2019, and the directly related rulings.

STATEMENT OF THE CASE

I. PARTIES

Plaintiffs, WILBUR S. VEASY, WILL S. TWIGG and JERMAINE T. DAVIS, are all individuals who are former officers with the Palm Beach County Sheriff’s Office. Each Plaintiff was a member of Defendant, FRATERNAL ORDER OF POLICE JIM FOGLEMAN LODGE #50, INC.

Defendant, FRATERNAL ORDER OF POLICE JIM FOGLEMAN LODGE #50, INC. is a Florida not-for-profit corporation. Defendant’s membership is largely composed of current and former officers of the Palm Beach County Sheriff’s Office.

II. FACTS

In 2014, Plaintiffs were each dues-paying members of the Defendant, along with the fourth Plaintiff in this underlying action, Edward Manak. At the time, Edward Manak served as the elected Treasurer for the Defendant. Unfortunately, Defendant's other officers made plans to surreptitiously oust Manak from his position. Plaintiffs learned of the plan to remove Manak, and because of their belief that the removal was being performed improperly and for suspicious purposes, Plaintiffs vocally objected to the plan. In July 2014, Plaintiffs were expelled from their memberships with Defendant in retaliation for their support of Manak. Plaintiffs' expulsions were performed in bad faith and were not performed in accordance with Defendant's bylaws. Plaintiffs therefore sued Defendant for damages and injunctive relief.

III. THE PROCEEDINGS

On August 1, 2014, Edward Manak initiated an action regarding the efforts to remove him as treasurer. (R.000010) On August 18, 2017, the First Amended Verified Complaint for Damages (the "Complaint") was filed, adding Plaintiffs to this action. (R.000158) On December 11, 2017, Defendant filed its Answer and Affirmative Defenses to the Complaint. (R. 000202)

On June 21, 2018, Defendant filed a Motion for Summary Judgment and Motion for Protective Order. (R.000217). At a hearing on August 28, 2018, the trial court verbally granted summary judgment against Plaintiffs. Following the hearing, prior to the entry of an order, Plaintiffs filed an Emergency Motion to Not Enter Summary Judgment Against Veasy, Davis and Twigg, fundamentally requesting rehearing of the trial court's verbal ruling. (R. 000310) The trial court denied the Motion as an emergency (R. 000326) and ultimately entered an Order on September 11, 2018 granting summary judgment against Plaintiffs. (R. 000328)

Plaintiffs again requested rehearing of the trial court's Order in Plaintiffs' Response to Court's Order Requiring Parties to Address Whether or Not §617.0607, F.S. Permits a Private Right of Action. (R. 000381) The trial court denied summary judgment in regards to Manak (R. 000397), but did not rehear or reconsider its September 11, 2018 Order against Plaintiffs. On June 12, 2019, Plaintiffs lastly filed a Motion for Reconsideration on the basis of misrepresentations made by Defendant. (R. 000418). The trial court denied the Motion for Reconsideration on June 13, 2019 without hearing. (R. 000431).

This appeal followed.

SUMMARY OF ARGUMENT

The Complaint essentially alleges that Plaintiffs were improperly expelled from their memberships with Defendant in 2014, and that they were damaged as a result of the wrongful expulsion. Defendant's Motion for Summary Judgment asserted, among various other things, that Plaintiffs did not have standing to pursue this action. The trial court entered summary judgment against Plaintiffs holding that "there are no genuine issues of material fact as to these Plaintiffs not having standing to proceed with the claims against Defendant." However, Defendant admitted in its Answer that Plaintiffs were members of Defendant's organization, and evidence submitted in support of summary judgment affirmed that Plaintiffs' memberships were terminated, as alleged, in 2014. Therefore, the trial court erred in several ways in entering summary judgment on the grounds that Plaintiffs did not have standing to pursue this action.

Firstly, the trial court erred by allowing the Defendant to assert the defense of standing on summary judgment when the defense was not raised in its Affirmative Defenses. Without raising the issue, the standing defense was waived by Defendant at the time of summary judgment, and the Court should not have allowed the argument at the hearing.

Even if Defendant's argument had been properly before the Court, the Court did not draw all inferences in favor of the Plaintiffs, as required. Instead it improperly weighed the competing written testimony submitted by the parties and made a determination in favor of Defendant. However, Defendant's own evidence demonstrated conflicting information on Plaintiffs' memberships, and summary judgment was therefore improper in light of such conflict.

Ultimately, the Court erred in finding that Plaintiffs did not have standing, as standing simply means that the Plaintiffs are the correct parties to assert the rights and damages alleged in the Complaint. Plaintiffs are clearly asserting their own personal rights and damages against Defendant, and cannot be said under any circumstances to be the improper parties to make such allegations.

Lastly, summary judgment was wholly inappropriate where Defendant had admittedly refused to respond to any discovery.

Following the summary judgment Order, the trial court abused its discretion by refusing to rehear and reconsider its ruling. Plaintiffs repeatedly submitted additional evidence that Defendant had made misrepresentations to the Court regarding Plaintiffs' memberships and their expulsion. Such evidence would have properly precluded summary judgment and it was within the Court's purview to actually consider such evidence before maintaining its ruling. Additionally, the

Court was required to hold an evidentiary hearing on the Defendant's misrepresentations.

For all of the above reasons, Plaintiffs assert that it was error for the trial court to enter and maintain summary judgment against them on the issue of standing, and the final judgment should be vacated.

STANDARD OF REVIEW

I. STANDING

Standing is a pure question of law that is reviewed de novo. *Herbits v. City of Miami*, 207 So.3d 274, 281 (Fla. 3d DCA 2016). *Reynolds v. Nationstar Loan Services, LLC*, 190 So. 3d 219 (Fla. 4th DCA 2016).

II. SUMMARY JUDGMENT

The standard of review of the entry of summary judgment is de novo. *Everett Painting Co. v. Padula & Wadsworth Constr., Inc.*, 856 So.2d 1059, 1061 (Fla. 4th DCA 2003); *Craven v. TRG-Boynton Beach, Ltd.*, 925 So. 2d 476, 479 (Fla. 4th DCA 2006).

III. MOTION FOR REHEARING

Denial of a motion for rehearing is reviewed for abuse of discretion. *Residential Mortg. Servicing Corp. v. Winterlakes Prop. Owners Ass'n, Inc.*, 169 So. 3d 253

(Fla. 4th DCA 2015); *Petrucci v. Brinson*, 179 So. 3d 398 (Fla. 1st DCA 2015); *Holl v. Talcott*, 191 So. 2d 40 (Fla. 1966).

IV. MOTION FOR RELIEF FROM JUDGMENT

The standard of review of an order on a motion for relief from judgment is whether there has been an abuse of the trial court's discretion. *J.J.K. Int'l, Inc. v. Shivbaran*, 985 So.2d 66, 68 (Fla. 4th DCA 2008); *Freemon v. Deutsche Bank Tr. Co. Americas*, 46 So. 3d 1202, 1204 (Fla. 4th DCA 2010).

ARGUMENT

I. INTRODUCTION

Plaintiffs' verified Complaint essentially alleges that Plaintiffs, Wilbur S. Veasy, Will S. Twigg and Jermaine T. Davis, were improperly expelled from their memberships with Defendant, and that they were damaged as a result of the wrongful expulsion. (R.000159, ¶ 6, 7) Defendant admits in its Answer and Affirmative Defenses that Plaintiffs were members of Defendant's organization. (R.000202, ¶ 1) Lack of standing is not raised by Defendant in its Affirmative Defenses. (R.000203)

Defendant's Motion for Summary Judgment and Motion for Protective Order alleges that Plaintiffs do not have standing to sue for the wrongful expulsions because they are not eligible to be members of the organization (R. 000218, ¶ 5)

Defendant's request for a protective order impliedly admits that it has failed to respond to Plaintiffs' discovery. (R.000223)

Defendant submitted, with its Motion, two sworn statements that reference Plaintiffs, the Affidavit of Patrick Yoes (R. 000226) and the Declaration of Thomas Hannigan (R. 000230). Yoes asserts that each of the Plaintiffs "are not a member in good standing" with Defendant. Hannigan asserts that Plaintiffs are all presently ineligible to be members of Defendant. (R. 000232)

Plaintiffs filed the Declaration of Jermaine Davis, in opposition to the Motion, which again asserts that Plaintiffs were unlawfully expelled from their membership and suffered damages as a result. Plaintiffs also filed the Declaration of Mark Johnson confirming that Defendant refused to complete any propounded discovery or depositions. (R. 000261)

II. THE TRIAL COURT ERRED IN ALLOWING THE MATTER OF STANDING TO BE ASSERTED WHEN IT WAS NOT PLED IN DEFENDANT'S ANSWER AND AFFIRMATIVE DEFENSES

The trial court's first error was allowing Defendant to present the issue of standing on summary judgment. Defendant did not raise an issue of the Plaintiff's lacking standing in its affirmative defenses. It is well-established that lack of standing is an affirmative defense that if not pled, is waived. *See Jaffer v. Chase*

Home Fin., LLC, 155 So. 3d 1199 (Fla. 4th DCA 2015); *Kissman v. Panizzi*, 891 So. 2d 1147 (Fla. 4th DCA 2005); *Glynn v. First Union Nat. Bank*, 912 So. 2d 357 (Fla. 4th DCA 2005); *Republic of Ecuador v. Dassum*, 255 So. 3d 390, 394–95 (Fla. 3d DCA 2017); *Krivanek v. Take Back Tampa Political Comm.*, 625 So. 2d 840, 842 (Fla. 1993); *Cong. Park Office Condos II, LLC v. First–Citizens Bank & Tr. Co.*, 105 So. 3d 602, 607 (Fla. 4th DCA 2013); *Schuster v. Blue Cross & Blue Shield of Fla., Inc.*, 843 So. 2d 909, 912 (Fla. 4th DCA 2003).

In *Republic of Ecuador v. Dassum*, the appellate court determined that the trial court erred in allowing the defendant to assert that the plaintiff did not have standing as the defendant had not made any such assertion in its affirmative defenses. *Republic of Ecuador v. Dassum*, 255 So. 3d at 395. Similarly here, Defendant did not include lack of standing as one of its twelve enumerated affirmative defenses. Such an assertion on summary judgment was therefore outside of the scope of the pleadings and improperly heard on summary judgment by the trial court. The entry of final judgment against the Plaintiffs, on this basis alone, must be reversed in accordance with prevailing law.

III. THE TRIAL COURT ERRED IN ENTERING SUMMARY JUDGMENT WHEN DEFENDANT HAD NOT RESPONDED TO ANY OUTSTANDING DISCOVERY

Summary judgment should not be granted until the facts have been sufficiently developed for the court to be reasonably certain that no genuine issue of material fact exists. *Singer v. Star*, 510 So.2d 637, 639 (Fla. 4th DCA 1987). As a general rule, a court should not enter summary judgment when the opposing party has not completed discovery. *Id.*

Defendant admittedly refused to complete any of Plaintiffs' discovery, instead combining its request for a protective order against the propounded discovery in its Motion for Summary Judgment. Plaintiffs then filed the Declaration of Mark Johnson confirming that Defendant had not responded to any discovery. (R.000261) It was therefore clear to both parties and the court that the facts could not have been sufficiently developed in this matter in order to enter summary judgment for Defendant on any issue, including the matter of standing. The final judgment against Plaintiffs must be vacated on this basis.

IV. PLAINTIFFS HAVE STANDING IN THIS MATTER

Fundamentally, the trial court erred in holding that the Plaintiffs do not have standing to pursue this action against Defendants. Standing is that sufficient interest in the outcome of litigation which will warrant the court's entertaining it. *3709 N. Flagler Drive Prodigy Land Tr. v. Bank of Am., N.A.*, 226 So. 3d 1040, 1041 (Fla.

4th DCA 2017). A party's standing is determined at the time the lawsuit is filed. *McLean v. JP Morgan Chase Bank Nat'l Ass'n*, 79 So.3d 170, 173 (Fla. 4th DCA 2012). *Reynolds v. Nationstar Loan Services, LLC*, 190 So. 3d 219, 221 (Fla. 4th DCA 2016). Generally, standing requires a would-be litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly. *Pub. Def., Eleventh Judicial Circuit of Fla. v. State*, 115 So. 3d 261, 282 (Fla. 2013). To have standing, a party must establish an injury that may be redressed by the requested relief. *Westport Recovery Corp. v. Midas*, 954 So. 2d 750, 752 (Fla. 4th DCA 2007).

Standing is therefore a simple concept of whether the party requesting relief is the party that is entitled to relief. In the present case, Plaintiffs are asserting that their own memberships were illegally terminated by Defendant, that they personally were damaged by the improper termination, and that they are seeking injunctive relief and damages for the loss of their memberships. They are clearly asserting their own rights and are the parties that would benefit from the relief requested if they were to prevail. Plaintiffs therefore very clearly have standing to pursue their claims against Defendant in this action, and the final judgment on those grounds should be reversed.

V. SUMMARY JUDGMENT IS IMPROPER ON THE EVIDENCE PRESENTED

The evidence presented by Defendant in support of its Motion was wholly insufficient to establish that Plaintiffs lacked standing in this matter. The right to trial by jury is a concept so deeply imbedded in our jurisprudence that only in those cases where there is no issue whatever of a material fact and it is made to appear that the moving party is entitled to a judgment as a matter of law should one be granted. *Pitcher v. Zappitell*, 160 So. 3d 145, 149 (Fla. 4th DCA 2015); *Martin County v. Edenfield*, 609 So. 2d 27, 29 (Fla. 1992). The law is well settled in Florida that a party moving for summary judgment must show conclusively the absence of any genuine issue of material fact, and the court must draw every possible inference in favor of the party against whom a summary judgment is sought. *Wills v. Sears, Roebuck & Co.*, 351 So.2d 29 (Fla. 1977).

Defendants moving for summary judgment must conclusively prove both the factual existence of the defense upon which they rely and its legal sufficiency. *Lenhal Realty, Inc. v. Transamerica Commercial Fin. Corp.*, 615 So.2d 207 (Fla. 4th DCA 1993). Only where the movant tenders competent evidence in support of his motion does the burden shift to the other party to come forward with opposing evidence. *Id.* Before it becomes necessary to determine the legal sufficiency of the affidavits or other evidence submitted by the party moved against, it must first be determined that the movant has successfully met his burden of proving a negative,

i.e., the non-existence of a genuine issue of material fact. *Holl v. Talcott*, 191 So. 2d 40, 43 (Fla. 1966).

It is also settled that when ruling on a motion for summary judgment, the trial court is not authorized to try or weigh facts or the credibility of the witnesses in determining whether there exists a genuine issue of material fact. *Coquina Ridge Properties v. E. W. Co.*, 255 So. 2d 279, 280 (Fla. 4th DCA 1971); *Jones v. Stoutenburgh*, 91 So. 2d 299 (Fla. 1956); *Sconyer v. Schepers*, 119 So. 2d 408, 412 (Fla. 2d DCA 1960).

Even where the evidence is uncontradicted, the trial court lacks the authority to enter a summary judgment or decree if such evidence is reasonably susceptible to conflicting inferences. *Wilson v. State Rd. Dept.*, 201 So. 2d 619, 622 (Fla. 1st DCA 1967). When evidence of inconsistency in testimony and documentary evidence itself creates a disputed issue of fact for the jury, it may not be resolved by the trial court adversely to the nonmoving party on motion for summary judgment. *Bogatov v. City of Hallandale Beach*, 192 So. 3d 600, 602 (Fla. 4th DCA 2016).

Defendant's only summary judgment evidence regarding Plaintiffs was the Yoes affidavit and the Hannigan declaration. Neither document establishes that Plaintiffs are the improper parties to present their claims or that Plaintiffs would not be the

parties entitled to the requested relief should they prevail, and the documents are factually conflicting.

The Yoes affidavit admits that Plaintiffs were members of Defendant's organization and simply disputes when they were members. Additionally, Yoes cites the National Fraternal Order of Police Constitution and By-laws, which are not controlling or relevant in this matter, and were never filed with the court. Specifically, he cites an "Article 3, Section 1.E," which allegedly states that "any member belonging to a state or subordinate lodge that is delinquent or has been suspended shall not be a member in good standing." (R. 000227). A plain reading of that clause as written would be that if the lodge itself is "delinquent" or "suspended" then its members are not in good standing. Yoes clearly misinterprets it to mean that if the members themselves are "delinquent" or "suspended" then they are not in good standing. However, Yoes fails to allege any facts to establish that any of the Plaintiffs are "delinquent" or "suspended" at any point in the affidavit. Further, there is no factual allegation that members who are not in "good standing" with the National organization are somehow barred from pursuing a lawsuit against Defendant, a local organization, for its improper actions. The Yoes affidavit is nothing more than a misleading attempt to misdirect the court from the actual cause of action.

The Hannigan declaration actually directly contradicts the Yoes affidavit, stating that Plaintiffs Twigg and Davis were actually members until their expulsion in 2014 (R.000232). Hannigan also makes a vague allegation that Plaintiff Veasy “subsequently... resigned” (R. 000233), which differs from the Yoes testimony. While the Hannigan testimony disputes Plaintiffs’ reason and timing of their expulsion from Defendant, it does not establish in any manner that they are the incorrect parties to pursue the Complaint’s claims of wrongdoing. Instead, the fact that there is a glaring conflict between the Yoes testimony and the Hannigan testimony presents an issue of fact regarding when and how the Plaintiffs’ memberships actually ended, and precludes summary judgment.

Plaintiffs were therefore not required to put forth any evidence on standing as Defendant clearly failed to tender competent evidence that would prove the non-existence of a genuine issue of material fact on this issue. Plaintiffs did in fact present evidence, however, through the Davis declaration, which directly controverted Hannigan’s factual version of events regarding Plaintiffs’ expulsion from membership. (R.000246) The only way to enter summary judgment in the face of such conflicting testimony was for the trial court to have weighed the credibility of Davis versus Hannigan, to make a determination of fact that Hannigan’s version was

correct. As fact-finding and weighing credibility on summary judgment are improper, summary judgment is again precluded here.

VI. THE TRIAL COURT ERRED IN DECLINING TO REHEAR ITS ORDER

A trial court has broad discretion to grant a rehearing of a summary judgment when the party seeking rehearing submits matters that would have created an issue precluding summary judgment. *Fatherly v. Cal. Fed. Bank, FSB*, 703 So.2d 1101, 1102 (Fla. 2d DCA 1997); *Petrucci v. Brinson*, 179 So. 3d 398, 400 (Fla. 1st DCA 2015). Florida's appellate courts have reversed in cases where evidence submitted with a motion for rehearing would have raised an issue of material fact precluding summary judgment. *Id.* When the motion is filed by one against whom a summary judgment has been entered, the discretion not to grant is narrowed and every disposition should be indulged in favor of granting the motion. *Florida Power & Light Co. v. Hayes*, 122 So. 3d 408 (Fla. 4th DCA 2013); *Holl v. Talcott*, 191 So. 2d 40, 46–47 (Fla. 1966). Not only should the opposing party's papers on summary judgment be liberally read and construed, as opposed to a strict reading of the movant's papers, but this same favorable weighting of the balance should be used on the opposing party's subsequent motion for rehearing. *Id.*

Plaintiffs twice submitted to the trial court additional argument and documentation demonstrating that Defendant had legally and factually misled the

court. In their Emergency Motion to Not Enter Summary Judgment Against Veasy, Davis and Twigg, Plaintiffs submitted an affidavit of Edward Manak reiterating that Defendant's assertions for when, why and how Plaintiffs were terminated were false. (R.000314). Plaintiffs also submitted letters from Defendant that stated the date and a reason, other than those asserted on summary judgment, that Plaintiffs Davis and Twigg were expelled. (R. 000317, 000318, 000320, 000321) In Plaintiffs' Response to Court's Order Requiring Parties to Address Whether or Not §617.0607, F.S. Permits a Private Right of Action, Plaintiffs again asserted that Defendant had misled the court regarding Plaintiffs' membership and ability to continue being members if they hadn't been improperly expelled. Plaintiffs also submitted an excerpt of Defendant's by-laws regarding membership and discipline to demonstrate that there was nothing in the document precluding Plaintiffs memberships or rights that would divest them of standing to pursue their claim against Defendant. (R.000389) Plaintiffs also again pointed out that Defendant had waived the issue of standing. After being presented with such evidence that showed that summary judgment was undeniably improper, the trial court abused its discretion by failing to rehear its Order against Plaintiffs.

VII. THE TRIAL COURT ERRED IN DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION WITHOUT A HEARING

Plaintiffs lastly filed a Motion for Reconsideration alleging that they were entitled to relief from the court's Order under Fla. R. Civ. P. 1.540(b)(3) due to the misrepresentations made by Defendant in its Motion and affidavits regarding Plaintiffs' membership status. (R.000417) Plaintiffs again submitted additional documentation demonstrating that Defendant's assertions were blatantly false, including copies of the 2014 membership cards of Davis and Twigg. (R. 000423, R.000425) If the allegations in the moving party's motion for relief from judgment "raise a colorable entitlement to rule 1.540(b)(3)'s relief, a formal evidentiary hearing on the motion, as well as permissible discovery prior to the hearing, is required. *Dynasty Exp. Corp. v. Weiss*, 675 So. 2d 235, 239 (Fla. 4th DCA 1996). Instead of holding an evidentiary hearing, the trial court denied the Motion for Reconsideration the day after it was filed although there was no opposition even filed by Defendant. Under theses circumstances, Plaintiffs were entitled to an evidentiary hearing, and it was error for the trial court to deny the Motion without one.

CONCLUSION

It is clear from the motions and evidence in the record that the trial court erred in entering summary judgment against Plaintiffs on the issue of lack of standing. Where the judgment was based upon written evidence rather than live testimony, the trial court was in no better position to arrive at a correct conclusion as to the

credibility of the witnesses at the time the summary judgment was entered than is the appellate court on appeal, and the trial court's conclusion does not warrant the presumption of correctness. *Sconyer v. Scheper*, 119 So. 2d at 412. This Court therefore is free to make the correct determination regarding the law and evidence in this matter.

The issue of standing never should have been before the trial court on summary judgment as the issue was waived. Summary judgment was also improper where the Defendant had refused to respond to discovery. More importantly, Plaintiffs clearly have standing to pursue their claims against Defendant as they themselves are the parties injured by Defendant's wrongful actions. Defendant failed to show any evidence demonstrating otherwise, and in fact, presented conflicting evidence that precluded the entry of summary judgment. Once the trial court was made aware that Defendant's submitted testimony on the matter was false, the trial court was obligated to rehear the matter and vacate the summary judgment Order against Plaintiffs. Lastly, Plaintiffs were at least entitled to an evidentiary hearing on their request for relief from judgment due to Defendant's misrepresentations. In light of the errors made by the trial court, Plaintiffs respectfully request that this Court vacate the final judgment, and allow Plaintiffs to proceed with their case before a jury.

CERTIFICATE REGARDING FONT SIZE AND TYPE

The undersigned attorney hereby certifies that the foregoing Initial Brief of Appellant was typed in Times New Roman, 14-point size.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served, on December 3, 2019, electronically via the Florida Courts E-Filing Portal to Robert C. Buschel, Esq., attorney for appellee, at Buschel@BGlaw-pa.com, whose physical address is 100 S.E. Third Avenue, Fort Lauderdale, FL 33394.

MILSON LAW, PA
Citigroup Building
201 S. Biscayne Blvd., Suite 2700
Miami, FL 33131
Ph: (305) 209-0321

By: /s/ Nicole Milson
Nicole A. Milson, Esq.
Fla. Bar No. 86157

IN THE DISTRICT COURT OF APPEAL
FOURTH DISTRICT OF THE STATE OF FLORIDA

WILBUR S VEASY,
WILL S TWIGG,
and JERMAINE T DAVIS

CASE NO.: 4D19-2152

Appellants,

v.

FRATERNAL ORDER OF POLICE JIM
FOGLEMAN LODGE #50 INC

Appellee.

/

**APPELLANTS' MOTION FOR ISSUANCE OF A WRITTEN OPINION,
REHEARING, REHEARING EN BANC, AND CERTIFICATION**

Appellants, WILBUR S VEASY, WILL S TWIGG, and JERMAINE T DAVIS, by and through the undersigned counsel, pursuant to Fla. R. App. P. 9.330 and Fla. R. App. P. 9.331, hereby file this Motion for Issuance of a Written Opinion, Rehearing, Rehearing en banc, and Certification in regards to its May 14, 2020 Order, and in support thereof state:

INTRODUCTION

In this matter, the trial court entered partial final judgment based on a summary judgment finding that solely concluded that there were no genuine issues of material fact as to Appellants “not having standing” in their claims against Defendant. As there were several procedural and substantive errors made by the trial court, Appellants filed the present appeal.

Although Appellants deeply respect the authority of this Court, the entry of a per curiam affirmance in this matter appears to conflict with the previously stated opinions of this Court, the other Florida Courts of Appeals, the Supreme Court of Florida, and the Florida Constitution. Without a written opinion, Appellants must presume that the trial court’s “standing” ruling was summarily affirmed, and that their constitutional right to access court was improperly abrogated. A trial court being permitted to decide which plaintiffs are barred from court without any supporting rule, law or fact, is a matter of great public importance. Appellants therefore are requesting a written opinion in this matter to properly identify the conflicts, a rehearing en banc to resolve intradistrict conflicts, and certification to resolve conflicts with rulings of other districts and the Florida Supreme Court.

ARGUMENT

I. This Court's order appears to conflict with existing precedent on determination of standing

This standard of review of the trial court's finding that Appellants lacked standing in this action was de novo. Appellants clearly are the correct parties in interest to assert the violation of their own rights by Appellee in this action, namely the improper and bad faith expulsion from their membership in the Fraternal Order of Police, and the injuries stemming therefrom. A determination by this Court that Appellants did not have standing would therefore be in derogation of the prevailing case law in this District that standing exists where a party has established an injury that may be redressed by the requested relief. *Westport Recovery Corp. v. Midas*, 954 So. 2d 750, 752 (Fla. 4th DCA 2007). A determination of lack of standing also goes against the standard held by the Supreme Court of Florida that standing simply requires parties to demonstrate that they reasonably expect to be affected by the outcome of the proceedings, either directly or indirectly. *Pub. Def., Eleventh Judicial Circuit of Fla. v. State*, 115 So. 3d 261, 282 (Fla. 2013). A change from or constraint on the current definition of standing would actually be a significant departure from the fundamental right to access to court as delineated in Art. I, § 21, Fla. Const., which guarantees broad accessibility to the courts for resolving disputes. *See Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016). A written opinion

would thoroughly explain the reason for the deviation from all prior precedent on standing, as well as provide a basis for the Supreme Court to review the constitutional implications.

II. This Court's Order appears to conflict with existing precedent on procedural rules regarding determination of standing and entry of summary judgment

Appellants asserted, and the record on appeal reflects, that Appellee did not raise the issue of the Appellants' lacking standing in its affirmative defenses. It is well-established in this District that lack of standing is an affirmative defense that if not pled, is waived. *See Alexopoulos v. Gordon Hargrove & James, P.A.*, 109 So.3d 248 (Fla. 4th DCA 2013); *Cong. Park Office Condos II, LLC v. First–Citizens Bank & Tr. Co.*, 105 So.3d 602, 607 (Fla. 4th DCA 2013); *Jaffer v. Chase Home Fin., LLC*, 155 So. 3d 1199 (Fla. 4th DCA 2015); *Kissman v. Panizzi*, 891 So. 2d 1147 (Fla. 4th DCA 2005); *Glynn v. First Union Nat. Bank*, 912 So. 2d 357 (Fla. 4th DCA 2005); *Schuster v. Blue Cross & Blue Shield of Fla., Inc.*, 843 So.2d 909, 912 (Fla. 4th DCA 2003). A written opinion is therefore necessary to explain the deviation from prior precedent, as the judgment was affirmed on the basis of lack of standing. The affirmance also conflicts with the same principle of law in other districts found in *Republic of Ecuador v. Dassum*, 255 So. 3d 390, 394–95 (Fla. 3d DCA 2017) and *B.B.S. v. R.C.B.*, 252 So.2d 837, 839 (Fla. 2d DCA 1971), and most importantly

conflicts with the same principle stated in the Supreme Court case of *Krivanek v. Take Back Tampa Political Comm.*, 625 So.2d 840, 842 (Fla. 1993). A written opinion would therefore provide a legitimate basis for Supreme Court review under these circumstances.

Additionally, Appellants asserted in this appeal, and the record reflects, that Appellee refused to respond to any discovery in this action. A court should not enter summary judgment when the opposing party has not completed discovery. *Singer v. Star*, 510 So.2d 637, 639 (Fla. 4th DCA 1987). This Court's order affirming summary judgment therefore deviates from prior precedent in this District as well as the same precedent in other Districts such as in *Harper v. Wal-Mart Stores E., L.P.*, 134 So. 3d 557 (Fla. 5th DCA 2014), *Almond Entm't, Inc. v. Bayview Loan Servicing, LLC*, 98 So. 3d 723 (Fla. 2d DCA 2012), *Payne v. Cudjoe Gardens Prop. Owners Ass'n, Inc.*, 837 So. 2d 458 (Fla. 3d DCA 2002), and *Harvey Covington & Thomas, LLC v. WMC Mortg. Corp.*, 85 So. 3d 558 (Fla. 1st DCA 2012). A written opinion is needed to state why this Court has deviated from its established position on this matter. A written opinion would further allow the Supreme Court to resolve any conflict amongst the District courts presented by this Court on this matter.

III. This Court's Order appears to improperly apply the prevailing substantive law in this matter to affirm the entry of summary judgment

The evidence presented by Appellee in support of its Motion for Summary Judgment was wholly insufficient to establish that summary judgment was appropriate in this matter on any grounds. Appellee's only evidence consisted of a conclusory affidavit and a factually conflicting conclusory declaration regarding when Appellants' memberships were terminated. When evidence of inconsistency in testimony and documentary evidence itself creates a disputed issue of fact for the jury, it may not be resolved adversely to the nonmoving party on motion for summary judgment. *Bogatov v. City of Hallandale Beach*, 192 So. 3d 600, 602 (Fla. 4th DCA 2016); *Wilson v. State Rd. Dept.*, 201 So. 2d 619, 622 (Fla. 1st DCA 1967); *Heithmeyer v. Sasser*, 664 So.2d 358 (Fla. 4th DCA 1995). As Appellee only offered conflicting evidence, and its motion only offered conclusory legal opinions not even based on that evidence, Appellee failed to successfully meet its burden of conclusively proving the non-existence of all genuine issues of material fact, and summary judgment is improper. *See Holl v. Talcott*, 191 So. 2d 40, 43 (Fla. 1966); *Lenhal Realty, Inc. v. Transamerica Commercial Fin. Corp.*, 615 So.2d 207 (Fla. 4th DCA 1993). Further, as Appellants submitted their own declaration refuting the facts asserted by Appellee's evidence, this Court would have had to engage in unauthorized weighing of the opposing witnesses' credibility to still affirm summary

judgment in this matter. *Coquina Ridge Properties v. E. W. Co.*, 255 So. 2d 279, 280 (Fla. 4th DCA 1971); *Jones v. Stoutenburgh*, 91 So. 2d 299 (Fla. 1956); *Sconyer v. Schepers*, 119 So. 2d 408, 412 (Fla. 2d DCA 1960). A written opinion is necessary on this issue to explain how this Court deviated from the prevailing case law to enter summary judgment based on inconsistent, inconclusive and refuted evidence. A written opinion would likewise assist the Supreme Court in resolving any conflict created by this conclusion, as it has been the longstanding controlling law in this jurisdiction that summary judgment should be granted sparingly. *Williams v. City of Lake City*, 62 So.2d 732 (Fla. 1953).

In addition to a lack of summary judgment evidence, there is no law supporting the affirmance of summary judgment against Appellants. As detailed supra, Appellants do have standing under the law to redress their claims against Appellee in this action. To the extent that this Court affirmed the entry of summary judgment on an alternate basis, such as Appellee's assertion that Appellants essentially failed to state a proper cause of action, such a decision would conflict with prevailing and controlling case law as well. The cases relied on by Appellee of *Florida Research Institute for Equine Nurturing, Dvlpm't. and Safety, Inc. v. Dillon*, 247 So.3d 538 (Fla. 4th DCA 2018), *Boca W. Club, Inc. v. Levine*, 578 So.2d 14 (Fla. 4th DCA 1991) and *Everglades Protective Syndicate, Inc. v. Makinney*, 391

So.2d 262 (Fla. 4th DCA 1980) do not refute that a private club must act in good faith and according to its bylaws when expelling members. An expelled member who alleges that the expulsion constituted fraud or bad faith has stated a proper cause of action. *Werber v. Imperial Golf Club, Inc.*, 413 So. 2d 41, 43 (Fla. 2d DCA 1982) Even more importantly, the Florida Supreme Court has specifically carved out and elaborated a right to judicial review of the improper actions of professional organizations like Appellee in *McCune v. Wilson*, 237 So.2d 169 (Fla. 1970). A written opinion is needed to explain the reasoning behind this affirmation and its conflict with controlling law, so that the Supreme Court may review same.

IV. *This Court's Order appears to allow the trial court to abuse its discretion in not rehearing its summary judgment order when presented with additional evidence*

Appellants repeatedly requested rehearing and reconsideration of the trial court's order on the basis of the procedural deficiencies, the evidentiary issues, and the lack of supporting law. Additional evidence that was submitted with their requests for rehearing raised issues of material fact that further precluded summary judgment, namely that Appellee had been untruthful regarding Appellants' memberships and how they had been expelled. Under these circumstances, the discretion not to grant the rehearing was narrowed, every disposition should have been indulged in favor

of granting the motion, and Appellants' moving papers should have been liberally read and construed. *Florida Power & Light Co. v. Hayes*, 122 So. 3d 408 (Fla. 4th DCA 2013); *Petrucci v. Brinson*, 179 So. 3d 398, 400 (Fla. 1st DCA 2015); *Fatherly v. Cal. Fed. Bank, FSB*, 703 So.2d 1101, 1102 (Fla. 2d DCA 1997); *Holl v. Talcott*, 191 So. 2d 40, 46–47 (Fla. 1966). When Appellants requested relief from the court's summary judgment order under Fla. R. Civ. P. 1.540(b)(3) a formal evidentiary hearing on the motion, as well as permissible discovery prior to the hearing, was required. *Dynasty Exp. Corp. v. Weiss*, 675 So. 2d 235, 239 (Fla. 4th DCA 1996). This Court's affirmance allows the trial court to avoid following the law of this jurisdiction on summary judgment rehearings. A written opinion is necessary to explain this deviation from clear prior precedent, and allow the Supreme Court to review the conflicting and controlling law.

V. Rehearing en banc

Due to the legal and factual irregularities of this affirmance, as enumerated above, Appellants are respectful requesting that this appeal be reheard. As the issue of standing and access to court is one of exceptional importance to all litigants, Appellants are specifically requesting that the rehearing be made en banc. Additionally, Appellants believe it is of utmost importance to maintain conformity in this jurisdiction regarding the manner that summary judgments are granted on the

issue of standing or any other basis. To that end, pursuant to Fla. R. App. P. 9.331(d)(2), the undersigned counsel affirms:

I express a belief, based on a reasoned and studied professional judgment, that the case or issue is of exceptional importance. I express a belief, based on a reasoned and studied professional judgment, that the panel decision is contrary to the following decisions of this court and that a consideration by the full court is necessary to maintain uniformity of decisions in this court:

- a. Standing – *Westport Recovery Corp. v. Midas*, 954 So. 2d 750, 752 (Fla. 4th DCA 2007)
- b. Procedural rules – *Alexopoulos v. Gordon Hargrove & James, P.A.*, 109 So.3d 248 (Fla. 4th DCA 2013); *Cong. Park Office Condos II, LLC v. First–Citizens Bank & Tr. Co.*, 105 So.3d 602, 607 (Fla. 4th DCA 2013); *Singer v. Star*, 510 So.2d 637, 639 (Fla. 4th DCA 1987)
- c. Summary judgment evidence – *Bogatov v. City of Hallandale Beach*, 192 So. 3d 600, 602 (Fla. 4th DCA 2016); *Heithmeyer v. Sasser*, 664 So.2d 358 (Fla. 4th DCA 1995); *Lenhal Realty, Inc. v. Transamerica Commercial Fin. Corp.*, 615 So.2d 207 (Fla. 4th DCA 1993); *Coquina Ridge Properties v. E. W. Co.*, 255 So. 2d 279, 280 (Fla. 4th DCA 1971)

- d. Judicial review of professional organizations - *Florida Research Institute for Equine Nurturing, Dvlpm't. and Safety, Inc. v. Dillon*, 247 So.3d 538 (Fla. 4th DCA 2018); *Boca W. Club, Inc. v. Levine*, 578 So.2d 14 (Fla. 4th DCA 1991); *Everglades Protective Syndicate, Inc. v. Makinney*, 391 So.2d 262 (Fla. 4th DCA 1980)
- e. Rehearing of summary judgment orders - *Florida Power & Light Co. v. Hayes*, 122 So. 3d 408 (Fla. 4th DCA 2013); *Dynasty Exp. Corp. v. Weiss*, 675 So. 2d 235, 239 (Fla. 4th DCA 1996)

VI. *Certification*

As the present Order of affirmance appears to conflict with persuasive opinions on these issues from other Districts, as well as controlling case law from the Florida Supreme Court, Appellants respectfully request that this Court certify the following questions, in the language this Court sees fit, to the Supreme Court for review:

- a. Does an appellate determination that Plaintiffs do not have standing to sue a professional organization that they allege has damaged them by improperly expelling them in bad faith, unconstitutionally deprive them of their right to access court in departure from *Pub. Def., Eleventh Judicial*

Circuit of Fla. v. State, 115 So. 3d 261, 282 (Fla. 2013), Art. I, § 21, Fla. Const. and *Westphal v. City of St. Petersburg*, 194 So. 3d 311 (Fla. 2016)

b. Is the defense of “lack of standing” waived if not raised as an affirmative defense prior to a motion for summary judgment in accordance with *Republic of Ecuador v. Dassum*, 255 So. 3d 390, 394–95 (Fla. 3d DCA 2017), *B.B.S. v. R.C.B.*, 252 So.2d 837, 839 (Fla. 2d DCA 1971), and *Krivanek v. Take Back Tampa Political Comm.*, 625 So.2d 840, 842 (Fla. 1993)

c. May summary judgment be entered where a Defendant has admittedly refused to allow any requested discovery in the action in conflict with all other District courts on this matter in *Harper v. Wal-Mart Stores E., L.P.*, 134 So. 3d 557 (Fla. 5th DCA 2014), *Almond Entm't, Inc. v. Bayview Loan Servicing, LLC*, 98 So. 3d 723 (Fla. 2d DCA 2012), *Payne v. Cudjoe Gardens Prop. Owners Ass'n, Inc.*, 837 So. 2d 458 (Fla. 3d DCA 2002), and *Harvey Covington & Thomas, LLC v. WMC Mortg. Corp.*, 85 So. 3d 558 (Fla. 1st DCA 2012)

d. May an appellate court affirm a summary judgment based upon inconsistent, inconclusive, refuted evidence in conflict with *Wilson v. State Rd. Dept.*, 201 So. 2d 619, 622 (Fla. 1st DCA 1967), *Holl v. Talcott*, 191 So. 2d 40, 43 (Fla. 1966), *Jones v. Stoutenburgh*, 91 So. 2d 299 (Fla. 1956);

Sconyer v. Scheper, 119 So. 2d 408, 412 (Fla. 2d DCA 1960), and *Williams v. City of Lake City*, 62 So.2d 732 (Fla. 1953)

- e. Do Plaintiffs properly state a cause of action where they allege that a professional organization has damaged them by improperly expelling them in bad faith in accordance with *Werber v. Imperial Golf Club, Inc.*, 413 So. 2d 41, 43 (Fla. 2d DCA 1982) and *McCune v. Wilson*, 237 So.2d 169 (Fla. 1970)
- f. Does a trial court abuse its discretion by refusing to rehear its summary judgment order where Plaintiffs submit evidence that the court was factually and legally misled in accordance with *Petrucci v. Brinson*, 179 So. 3d 398, 400 (Fla. 1st DCA 2015), *Fatherly v. Cal. Fed. Bank, FSB*, 703 So.2d 1101, 1102 (Fla. 2d DCA 1997), and *Holl v. Talcott*, 191 So. 2d 40, 46–47 (Fla. 1966)

CONCLUSION

For the foregoing reasons, Appellants believe that the absence of a written opinion in this matter causes more confusion of the rights of this District’s litigants in regards to their access to court and ability to pursue their claims. Especially in a summary judgment procedural posture, a written opinion is imperative to ensuring

that litigants' rights have been adequately weighed and considered under the prevailing and controlling laws. Here, Appellants, who were all public servants with longstanding careers sullied by Appellee's actions, are requesting that this Court provide an opinion that resolves the procedural and substantive discrepancies in this action, that respects their right to bring this action granted to them in accordance with *McCune v. Wilson*, 237 So.2d 169 (Fla. 1970), and allows this action to be remanded for further proceedings. In the alternative, Appellants respectfully request that this Court certify the conflicts here to the Florida Supreme Court for determination.

Respectfully submitted,

MILSON LAW, PA
Citigroup Building
201 S. Biscayne Blvd., Suite 2700
Miami, FL 33131
Ph: (305) 209-0321

By: /s/ Nicole Milson
Nicole A. Milson, Esq.
Fla. Bar No. 86157

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served, on May 29, 2020, electronically via the Florida Courts E-Filing Portal to Robert C. Buschel, Esq., attorney for appellee, at Buschel@BGlaw-pa.com, whose physical address is 100 S.E. Third Avenue, Fort Lauderdale, FL 33394.

MILSON LAW, PA
Citigroup Building
201 S. Biscayne Blvd., Suite 2700
Miami, FL 33131
Ph: (305) 209-0321

By: /s/ Nicole Milson
Nicole A. Milson, Esq.
Fla. Bar No. 86157