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You've Won the Election!

Congratulations, You're A Chapter Officer. Now What?

It is a great honor to be elected an officer of one's fraternity. Experience over the years demonstrates that fraternity officers are generally people of outstanding character, not only during their undergraduate days but throughout their lives. They are people who lead and who are not afraid to accept responsibility.

It is the word *responsibility* that remains with the typical fraternity officer when the immediate thrill of election subsides. What responsibility comes with this new office? How will it be met? How should one prepare for the responsibility? These questions naturally occur to any new fraternity officer.

The answers to these questions all boil down to the fact that the job of a fraternity officer is to anticipate problems before they arise. Through forethought and planning, the responsible officer can avoid many problems and be prepared to cope with those that are unavoidable.

To assist chapter officers in their planning, the following topics are presented as a guideline for review.

A Whole New Way To Think About Your Meeting Place.

Every fraternity enjoys a place where it meets. In many cases this is a fraternity house; in some cases it is merely space leased from the university or from a local real estate investor.

Even if an officer has been a member of the chapter for two or three years prior to election, it is likely that the new officer has taken the fraternity's meeting place for granted. Initial questions the officer should consider in regard to the meeting place include:

- Who owns it?
- What agreement governs the relationship between the owner and the chapter?
- Who is responsible for what happens there?

Ideally, the entity that will never own the location is the chapter. It may be owned by an independent house corporation incorporated under the laws of the state where the chapter exists. It may be owned by the university. It may be owned by a private investor. The best of these three options is the first, where it is owned by an independent house corporation that exists to provide a house for the chapter. However, regardless of which type of ownership applies, in each case there should be a written agreement between the landlord and the chapter. This is true even when the landlord is a house corporation managed by alumni of the chapter.

The written agreement should clearly state the financial relationship between the chapter and the owner. It should clarify who is responsible for assessing and collecting rent and other charges from members who reside in the facility. It should spell out general rule-making powers and specify who is responsible for making rules to assure the good order of the house. The ideal agreement between a house corporation and the chapter clarifies which entity is responsible for which activities and avoids confusion between the two groups, which are essentially separate.

As far as who is responsible for what happens in the chapter house, the answer always must be the chapter, acting through its officers. In case of difficulty with law enforcement agencies, it is the officers to whom the university or police officials will look first.

Who's In Charge Here?

What is the relationship between the chapter and the college or university? Perhaps the ideal rela-

Editor's Note:

Robert Manley, the founder of Manley Burke, started our Fraternal Law practice over 30 years ago. Our focus on Greek clients has only grown over time. Mr. Manley created a pamphlet entitled "You've Won the Election" to help educate and train newly elected chapter officers. The slightly updated and revised version is the article you see here. We believe this serves as a great primer for undergraduate members and a good refresher for alumni volunteers.

- Daniel J. McCarthy

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tionship is where the fraternity is recognized as having a special relationship to the college, but is not truly a part of the college; therefore, it is not subject to regulations in the same way that the Athletic Department or the History Department would be subject to regulation. This is ideal because it allows the fraternity the freedom to do the things it feels it must do, yet it also protects the university from liabilities for mistakes made by the fraternity over which the university cannot, as a practical matter, exercise effective control. The ideal is often not present.

For many years fraternities have existed at various campuses without any recognition from the university or college. The relationship is largely that of neighbors who happen to have the common factor that all of the members of the neighboring fraternities are also members of the student body of the neighboring college. This is not the typical arrangement, but it is an arrangement that has worked well from time to time on some campuses.

The worst type of relationship is probably where the chapter occupies university real estate and is governed by a lease or relationship statement that purports to give the college administration detailed authority over the internal workings of the chapter. This is the worst relationship from the standpoint of the chapter because it prevents the chapter from having the freedom it needs for its members to grow in the typical trial and error manner through which young people mature. It is also the worst arrangement from the college's standpoint, because if the college claims to have the power to control all of the internal workings of the chapter, it threatens to impose liabilities upon the educational institution for things that may go wrong within the fraternity. In reality, there is no piece of paper that will effectively give a college the power to control the inner workings of a fraternity chapter corporation.

In those cases where a chapter occupies university real estate, the university should be working hard to create a lease that guarantees the autonomy of the chapter in order to avoid university liability for mistakes made by the officers of the chapter. Increasingly, college administrations are becoming aware of this reality.

The new officer must learn the nature of the relationship with the college. Is there a relationship statement, a lease, or some other document that clarifies this relationship? What does it say? Is it ambiguous? Does it really reflect the nature of the relationship? If it does not, how should these inconsistencies be handled?

How To Be A Firefighter.

Anyone responsible for people in a place of assembly, whether they are residing there or merely meeting there, has a duty to plan to avoid fire and to minimize its harm should it occur. What are the fire plans of the chapter? Do they involve regular fire inspections? Are there adequate fire exits? Are there smoke detectors? Do the smoke detectors go to a central alarm station?

Does the facility conform to the fire code? Do all the members know the fire evacuation plan? Does it include a rendezvous point so that no one will run back looking for a friend who may have already fled to safety?

Now Where Did We File Those Insurance Policies?

A fraternity is a big business. The dues, fees, room charges and food charges constitute a large sum of money in any given year. The fraternity interacts through its members with hundreds, even thousands, of people. Every transaction is a potential lawsuit. The more contacts an organization has, the more exposure it has. As a result, the new fraternity officer should ask: What kind of insurance does the chapter have? Does this policy include liability insurance for the officers and members of the chapter?

If there is a chapter house, the chapter house corporation is responsible for adequate insurance for fire and extended coverage from the viewpoint of the house corporation. Where there is no house, the chapter still needs liability insurance.

In some cases, fraternities have organized national programs of insurance at substantial savings in premium cost. In a few cases, colleges have blanket insurance policies for the fraternities.

Whatever the source of insurance may be, it is important for the new officer to learn at least two things. First, the officer should know who is covered by the policy. All policies contain a "named insured clause," which defines the people and entities covered by the liability insurance. This named insured clause should include the chapter, its members and its officers to protect them against lawsuits arising out of the negligence of the chapter. Second, the new officers should know the liability limits of the policy. Is there a million dollars worth of coverage or is there twenty million dollars worth of coverage? Obviously, the greater the coverage, the greater the protection; however, the greater the coverage, the greater the expense. Whoever buys the insurance typically has to balance the virtue of the protection versus the evil of the expense. Insurance companies have, at times, limited the amount of insurance they are willing to write for fraternities. In any event, it is important to know the policy limits.

If the fraternity has its own chapter house, it certainly is prudent for an officer to inquire about whether or not the fire insurance is sufficient to replace the house if it burns down. This is normally the responsibility of the owner of the house, the house corporation, but there is nothing wrong with the active officer inquiring about the way in which the house corporation has

performed its responsibility to insure the house against fire.

In the event of a disaster by fire, everyone will ask, "Is there enough insurance to rebuild the house?" The fraternity officer should be prepared to respond. In addition, does the fire insurance provide for the relocation of the chapter if the house becomes unusable as a result of fire or natural disaster? Some policies would put the entire chapter in a motel for the balance of the term; others would not. Whatever the case may be, the officer should know the extent of the chapter's insurance coverage.

To Be A Good Officer, Be A Great Chaperon.

As important as the preceding elements are, the officers of a fraternity have the greatest personal responsibility and exposure to liability in the area of social events. Here is where they will earn their rank.

Everyone knows the legal hazards of serving alcohol. To serve alcohol illegally is a crime. In many states the commission of this crime gives rise to personal civil liability for damages caused by someone who is illegally served alcohol. For this reason, the extent and nature of insurance coverage is very important knowledge for the chapter officer.

What constitutes the illegal provision of alcohol? This varies according to state law where the chapter is located or the alcohol is served. In some parts of some states, alcohol is prohibited altogether. In the more typical situation, it is a crime to serve alcohol to someone under the age of 21; it is a crime to serve alcohol to someone who has already had too much to drink; and it is a crime to sell alcohol without a license. In addition, most colleges have regulations concerning the consumption or sale of alcohol. Obviously, any new chapter officer must learn not only the law as it relates to alcohol in the state of his chapter, but also the regulations of his college. It is the responsibility of the officer to see that these laws and regulations are obeyed. A failure in this responsibility can result in the officer being arrested or sued for civil liability and the chapter being disciplined.

Another social problem is the maintenance of order at social events. Disorderly conduct cannot be tolerated, and it is up to the officers to plan to avoid it and to deal with it should it arise. The officers must know what plans and regulations the chapter has to deal with alcohol and the maintenance of order at social events.

Acts of disorderly conduct, of course, have included assault, date rape, property damage, and invasion by unwanted outsiders. The chapter officer needs to know what his chapter's plans and policies are in regard to each of these matters. It may be that the officer will want to improve the plans and procedures that have been developed by previous groups of officers.

Though parties tend to take place at men's fraternity houses, the officers of women's fraternities need to make parallel plans to protect their members and themselves.

Recruitment. It's Time For Careful Thought.

On some campuses, recruitment is very controversial. On every campus, recruitment generates its share of joyful moments and sad moments. The officer must understand how to handle recruitment tactfully so that the participants look upon it as a pleasant experience.

Since nearly every participant in recruitment is below the drinking age, the presumption is that everybody at every chapter has dry recruitment these days.

One issue with regard to recruitment that is new to some campuses is the recognition that if predominately white fraternities are to be healthy in the future they need to attract minority students today. Demographic changes in the overall population of the United States and in the student populations of many campuses make it abundantly clear that without the attraction of a fair share of minorities, there will not be a strong fraternity system in the 21st Century.

On many campuses this has already become self-evident, because a majority of the students are, in fact, minority students. On some campuses this idea is novel and only tentatively being explored. It is the job of the officer to lead the chapter in the direction of openness while still retaining the standards that relate to social behavior in the selectivity process.

Each officer has a responsibility to make sure that the entire pledge period is dignified and educational. Pledges are too young to drink; therefore, alcohol has no place in the pledge scene. Hazing is illegal, either by statute or by common law. It, too, has no place in pledging.

The way in which a chapter officer is able to handle responsibilities with regard to pledges may be the principal test of his leadership skills and of his character.

Is It "Borrowing?" Or Is It Really "Embezzlement?"

The chapter cannot function without money. This fact requires detailed attention from the officers. It requires the planning of a budget and the oversight of the receipts and expenditures so that the budget is met.

Many fraternities have rules that chapter funds may not be used to purchase alcohol. These rules must be obeyed.

Sometimes a chapter officer does not realize that to borrow a few dollars from the chapter treasury for personal use, with the intent to pay it back, constitutes embezzlement. For this reason, many chapters have adopted the procedure of requiring two signatures on every check. There should be procedures in place for each chapter to ensure against dishonesty or embezzlement.

A chapter has a float of funds where receipts come in before they are expended. Does the chapter get adequate interest on this float of funds through the way in which it is deposited? Most chapters are required to file a tax return every year, even though they are not required to pay taxes. Who has filed the tax return in the past? Who will be filing the tax return this year? What provision is made to assure that tax returns will always be filed properly in the future?

No matter how careful the officers who handle the money may be, some outside person or group should audit their activity periodically. This could be a simple matter of having an alumnus accountant and perhaps an accounting student who is not an officer serve as an audit committee to review the checkbooks and other financial records on a monthly or quarterly basis. At some chapters there is actually a certified public accountant audit performed once a year. On other campuses, the Office of Student Life provides this service.

Here's The Real Test Of Your Leadership Skills.

No matter how conscientious the officers may be, no matter what fine quality the members may be, catastrophe can hit any chapter at any time.

Some of the potential catastrophes have no relationship to the leadership skills of the officers. Examples of these are a tornado, an earthquake, and perhaps even a fire. Other catastrophes may be more directly related to the way in which the officers have done their jobs. An alcohol-related death, a date rape, serious property damage, a brawl at a party—these are all examples of the types of problems that officers strive to avoid.

When tragedy strikes, it will be better handled if the officers have planned long before how to handle such an occurrence. This means that every chapter should have a standard operating procedure to be implemented in the event of a catastrophe. Experience teaches that if the officers have done prior planning, no matter how terrible the catastrophe, they will handle it better than if they are not prepared.

Advisors Designated as Campus Security Authorities

In an August 8, 2014 memo to "Advisors of Recognized Student Organizations at Penn State," the University's Vice President of Student Affairs, Damon Sims, announced that Penn State has now designated advisors to recognize student organizations as "campus security authorities" under the Clery Act.

The Clery Act, in full, the Jeanne Clery Disclosure of Campus Security Policy and Campus Crime Statistics Act (20 U.S.C. 1092(f)), requires the reporting of certain crimes committed on or near campus and that those statistics be publicly available. Attention has been refocused on the Clery Act with new federal regulations that are now out for public comment. It appears that more campuses may be moving in the direction Penn State has just announced.

As campus security authorities, advisors will be expected to report any crime they observe or is reported to them that occurred on campus, in public areas around the campus, or in designated off-campus buildings owned or controlled by the university. They are to do so in good faith when the advisor has a reasonable basis for believing that the information is neither rumor nor hearsay. The advisor is not expected to determine whether or not a crime has actually been committed, but simply report and allow the investigation to be conducted by law enforcement authorities.

While the original Clery Act required reporting homicide, certain sex offenses, robbery, assault, burglary, car theft, arson and hate crimes to be reported, the list has now been increased by the Violence Against Women Reauthorization Act to include domestic violence, dating violence and stalking. Penn State suggests that the advisors should not worry about whether or not the crime they may learn of is actually one of the listed offenses, but rather simply report their knowledge of the crimes and leave it to others to determine whether or not it has to be listed in the statistic reporting required by the Clery Act.

Vice President Sims responded to concerns about liability imposed on campus security authority this way:

> "Some advisors have expressed concern about their possible legal liability related to Clery Act compliance, and this concern should never be wholly discounted. Yet it is important to note that, in general, the University will indemnify a student organization advisor acting within the scope of his or her service as a campus security authority, in accordance with the University's Bylaws and applicable law."

In all likelihood, there is limited exposure to liability for reporting, in good faith, suspicions of criminal activity to law enforcement or an official designated by the University as a person to receive such reports. Even more so when the obligation to do so has been imposed upon the individual making such a report. It is of some comfort that the University is recognizing the advisors are acting as agents of the University and promising, without much detail, to indemnify them.

What could be a greater problem for a chapter advisor is how the reporting obligation may impact the

willingness of chapter members to seek counsel or guidance from the chapter advisor. Consider the active member who is dealing with the aftermath of a sexual assault and struggling with whether or not she wants to report that to law enforcement. If she contacts the chapter advisor seeking guidance and reports to the chapter advisor that she has been raped, it triggers the obligation of that advisor as a campus security authority to report the crime. What started out as an intended confidential conversation may not be so confidential. While pastoral and professional counselors acting in the scope of their official responsibilities are exempt from Clery Act reporting requirements, such exemptions would not typically extend to chapter advisors.

- Timothy M. Burke

Delta Gamma States Transgender Member Policy

In a recent statement regarding sorority recruitment at the University of Alabama, the National Delta Gamma Fraternity expressed its membership policy as "membership is open to women and transgendered persons who identify themselves as women."

Delta Gamma is not the sole women only organization willing to consider the admission of transgender individuals who self-identify as women. Similarly, Mt. Holyoke College in Massachusetts and Mills College in Oakland, California – both of which are historically women's only colleges – have announced their intentions to accept any qualified student who is female or identifies as a woman. Last year at Ball State University a local sorority composed of transgender students, all of whom identified themselves as female, was accepted as an associate member of the campus Panhellenic. In contrast, a local group at University of California at Davis has generated controversy with its application for an associate membership in the campus Panhellenic. The difference is the local group at U.C. Davis identifies itself as welcoming any gender, including males, as members.

No doubt, there will be more news on the transgender front as this issue continues to develop.

- Timothy M. Burke

Hazing Not Limited to Greeks

The firing of the Ohio State University Band Director, praised by the U.S. Department of Education as it concluded a 4-year review of OSU's sexual discrimination policies, highlights the fact that hazing is not limited to fraternities and sororities or to marching bands at historically African-American colleges. Indeed, in an article posted on the Chronicle of Higher Education website on July 29, 2014, Elizabeth J. Allen, Associate Professor of Higher Education Leadership at the University of Maine at Orono, who is also the Director of the National Collaborative for Hazing Research and Prevention is quoted:

> "Since our national study in 2008, we continue to find that hazing is more pervasive than what stereotypes suggest. We know that students who participate in a range of organizations have experienced, even though they don't necessarily identify it as hazing. High percentages of students involved in performing-arts groups, including marching bands and A Cappella groups have been hazed. We also see hazing among intramural teams, outing clubs and even prestigious honors societies at various campuses."

While National Greek organizations collectively are united in efforts to prohibit hazing it is clear that halting hazing in fraternities and sororities is but part of the solution. Greek groups must continue their efforts but others must join in as well.

- Timothy M. Burke

Family Considers Suing Fraternity After Plane Crash

On August 25, 2014, a small plane carrying four Case Western Reserve University students crashed shortly after taking off in Cleveland Ohio. All four passengers, including two members of Zeta Beta Tau were killed in the crash. Now, the family representing the estate of Abraham Pishevar, one of the victims who was not a member of the fraternity, is considering suing the national fraternity and local chapter of Zeta Beta Tau. Pishevar had previously told friends and family that he was in the process of rushing the fraternity. In a petition for discovery, Pishevar's estate requested information seeking to prove that the flight was part of the fraternity's recruitment. The fraternity has already released a statement denying a connection between the flight and recruitment activities. *Fraternal Law* will continue to monitor this issue.

- Micah E. Kamrass

2014 Fraternal Law Conference Information and Schedule

We are pleased to present the full schedule (times may be subject to change) for the 2014 Fraternal Law Conference. The Conference is set for Thursday, November 6th and Friday, November 7th. Our host hotel is once again the Cincinnati Westin Hotel. We have secured a group rate for rooms. In order to receive the group rate, rooms must be booked by October 21, 2014. More information on the hotel is available here: https://www.starwoodmeeting.com/StarGroupsWeb/booking/reservation?id=1403031276&key=1AB5A

More information, including registration for the Conference, is available here: http://fraternallaw.com/library-annex/fraternal-law-conference/

We have a truly outstanding faculty this year. We are honored to have Justice Robert D. Rucker from the Indiana Supreme Court, Dr. Santa Ono (President of the University of Cincinnati), Dr. Leonard Sancilio (the Dean of Students at the State University of New York at Geneseo), Colleen McGuire (the retired Executive Director of Delta Gamma and member of the Department of Defense's Response Systems to Adult Sexual Assault Crimes Panel), Paul Denton (the Chief of Police of The Ohio State University), Denine Rocco (the Associate Vice President and Dean of Students at the University of Cincinnati), as well as leading attorneys from across the nation.

The Ohio Supreme Court has approved the Conference for 10 hours of Continuing Legal Education credits. We also work to ensure proper CLE credit for other jurisdictions as needed.

Please direct any questions you have about the Conference to me at dmccarthy@manleyburke.com. We look forward to seeing you in November!

- Daniel J. McCarthy

Thursday, November 6, 2014

12:30 p.m. – 1:00 p.m.	Check-in/Registration
Joint Sessions	
1:00 p.m. – 2:00 p.m.	**Title IX, the Clery Act and SaVe: What You Need to Know** *Colleen McGuire, Executive Director Delta Gamma Fraternity (Retired)* *Paul Denton, Chief of Police The Ohio State University*
2:00 p.m. – 3:00 p.m.	**Can You Really Close a Chapter?** *Dave Westol Limberlost Consulting, Inc.*
3:15 p.m. – 4:15 p.m.	**Strategic Use of Mediation and Alternate Dispute Resolution** *Chuck Mancuso, Delta Chi Educational Foundation*

Friday, November 7, 2014

Joint Sessions	
8:30 a.m. – 9:30 a.m.	**Sunrise Session, Open Floor Discussion on Pressing Legal Issues** *Timothy M. Burke, Partner* *Sean P. Callan, Partner* *Daniel J. McCarthy, Partner Fraternal Law Partners*
9:30 a.m. – 10:30 a.m.	**Perspective from the Bench** *Justice Robert D. Rucker Indiana Supreme Court*
12:45 p.m. – 2:15 p.m.	**Lunch/Break** **Lunch Speaker** *President Santa Ono University of Cincinnati*
Foundation Track	
10:45 a.m. – 11:45 a.m.	**Planned Giving** *John E. Christopher, Partner Fraternal Law Partners*
11:45 a.m. – 12:45 p.m.	**Restarting your Foundation** *Marc Katz, LLC, Indianapolis*
2:15 p.m. – 3:15 p.m.	**Nationwide Registration Update** *Jacklyn D. Olinger, Associate Fraternal Law Partners*
3:15 p.m. – 4:15 p.m.	**Nonprofit Management: Challenges, Successes, and Emerging Issues** *Darlene Kamine, Executive Director Community Learning Center Institute*
Fraternity Track	
10:45 a.m. – 11:45 a.m.	**Trademarks – Protecting your Intellectual Property** *Sarah Otte Graber Wood, Herron & Evans, LLP*
11:45 a.m. – 12:45 p.m.	**Sigma Alpha Epsilon's End of Pledging** *Thomas J. Dement Leitner, Williams, Dooley and Napolitan, PLLC*
2:15 p.m. – 3:15 p.m.	**Litigation Defense: How to be Prepared and What to Expect** *Michael C. Osborne Archer Norris, PLC, San Francisco*
3:15 p.m. – 4:15 p.m.	**Hazing, Health, Wellness and Safe Social Practices** *Dr. Leonard Sancilio Dean of Students, State University of New York at Geneseco* *Denise Rocco, Associate Vice President and Dean of Students, University of Cincinnati*
Joint Session	
4:30 p.m. – 5:30 p.m.	**Single Sex and Transgender Membership Policies** *Timothy M. Burke* *Lani Biafore, In-House Staff Attorney Delta Gamma Fraternity*

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The Goal of *Fraternal Law* is to provide a discussion of fraternity law, but its contents are not intended to provide legal advice for individual problems of Greek organizations. The latter should be obtained from your attorney.

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