

'We'll Just Kick Him Out!' Member Discipline and Expulsion in Private Clubs

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Most private country clubs and social clubs are nonprofit corporations governed by North Carolina's Nonprofit Corporation Act found in Chapter 55A of the North Carolina General Statutes.

Specifically, N.C. Gen. Stat. § 55A-6-31(a) (2017) states, in pertinent part, as follows:

- No member of a corporation may be expelled or suspended, and no membership may be terminated or suspended, except in a manner that is fair and reasonable and is carried out in good faith

Two recent cases in the North Carolina Court of Appeals provide some clarity to country clubs and private social clubs when they elect to discipline their members, including suspension and expulsion from the club. The North Carolina statute governing expulsions and suspensions, as interpreted by the Court in the two cases, gives wide deference to private social clubs in matters of discipline resulting in suspension or termination.

In the first case, *Emerson v. Cape Fear Country Club* (COA 17-1149), Mr. Emerson was expelled without having been given notice or a hearing. The Club's governing documents did not require notice or a hearing. After termination, Mr. Emerson was given an opportunity to address the Club's board but declined. Based on the particular facts of this case and the procedural posture of it, the North Carolina Court of Appeals determined that the statute did not, as a matter of course, require notice and a hearing in order to terminate the membership.

The *Emerson* Court compared North Carolina's statute with the America Bar Association Model Non-Profit Corporation Act ("Model Act"), noting that North Carolina mimicked the Model Act in a number of ways. However, when it came to the specific provisions dealing with the expulsion of a member, the Court noted that the Model Act required 15 days prior written notice of the expulsion, suspension, or termination and the reasons for it and, in addition, an opportunity for the member to be heard. The North Carolina Legislature chose not to follow that portion of the Model Act when enacting N.C. Gen. Stat. § 55A-6-31. The Court concluded that the General Assembly purposely declined to follow the Model Act and, in so doing, did not require notice and a hearing. As a result, the Court upheld Mr. Emerson's termination.

Although the *Emerson* Court ruled that North Carolina's statute did not require notice or a hearing in all cases, it may be wise for a club to give notice and provide an opportunity to be heard. The Court placed some emphasis on Mr. Emerson's failure to accept the Club's offer to appear before the Board after the fact, and other court cases would indicate that notice and a hearing may be required.

In the second case decided by the North Carolina Court of Appeals in 2018, *Master v. County Club of Landfall* (COA18-215), the Court again upheld the termination of a country club membership. Contrary to the governing documents of Cape Fear Country Club, the Country Club of Landfall had specific procedures that required notice and an opportunity to be heard. The Masters complained that the Country Club of Landfall did not follow its own governing documents, did not adequately provide an opportunity to be heard, and did not appoint an "impartial tribunal" to hear the evidence and make a decision.

In the *Master* case, the Court of Appeals stated that it is "well established that courts will not interfere with the internal affairs of voluntary associations [and] a court, therefore, will not determine, as a matter of its own judgment, whether a member should have been suspended or expelled." The Court did hold that the charter and bylaws of a club may constitute a contract between the club and its members, requiring the club to follow them in dispensing discipline. The Court determined that it is not necessary for private clubs and associations to have an impartial decision maker hear and determine disciplinary matters if the governing documents provide otherwise. The Court noted that the governing documents of the Country Club of Landfall provided that four members of the Board of Directors and three members of the Rules and Members Committee would make up the hearing panel adjudicating disciplinary matters and that the Club complied with that requirement when it expelled Mr. Master.

CONCLUSION

The North Carolina Court of Appeals has now provided some guidance to private country clubs and social clubs for the discipline of its members. The "takeaways" appear to be as follows:

1. Clubs are given great deference to manage their own affairs and in the disciplining of their membership. Courts will not substitute their judgment for the judgment of the club as to whether a member's conduct should have resulted in discipline, including, but not limited to, suspension and expulsion.
2. A member does not have an absolute right to notice and an opportunity to be heard prior to being disciplined. If the club's governing documents require notice and an opportunity to be heard, those governing documents must be followed. The better approach would be to give notice and an opportunity to be heard whether the governing documents require it or not, which would likely put the club in the best light with the court.
3. A member of a private or social club does not have a right to a hearing before an impartial tribunal unless the governing documents require it.

Members of private clubs facing discipline should realize that the deck is stacked against them such that seeking forgiveness rather than fighting an uphill battle may be the best course. Club boards and managers, when meting out discipline, should be very careful to follow their governing documents closely and seek legal advice early in the process. Getting a cool, independent head involved in the process may be the ounce of prevention that saves a pound of cure.

The attorneys at Ward and Smith have significant experience providing legal representation to Country Clubs and other private clubs in all matters related to governance, labor and employment, real estate, vendor contracts, and the like. We can help guide you through these complex issues when the need arises.

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