

	FMCA POLICIES AND PROCEDURES	INDEX NO. 1002	APPROVAL LEVEL GB
	SUBJECT Constitution, Bylaws, and Member Code of Ethics Enforcement	EFFECTIVE 7/09	SUPERSEDES 7/08
	SPECIAL DISTRIBUTION FMCA Review Council		

POLICY

Article XVIII of the Bylaws vests in the Governing Board the authority to enforce the Constitution, Bylaws, and Member Code of Ethics of FMCA. The final jurisdiction within FMCA for discipline of any member, chapter, or area association rests with the Governing Board. The FMCA Review Council is the investigative and hearing body and recommends any disciplinary action to the Governing Board. Procedures to investigate and resolve the disciplinary actions by due process are herein established by the Governing Board. The FMCA Review Council reports to the Governing Board.

PROCEDURE

Reasons for Discipline

Upon recommendation of the FMCA Review Council, the Governing Board shall have the responsibility of taking action against any member, chapter, or area association for the following reasons:

1. Violation of this organization’s Constitution, Bylaws, or Member Code of Ethics;
2. Conviction of a felony or conviction of an indictable offense;
3. Established guilt of action contrary to the best interests of FMCA; or
4. Established guilt of unbecoming conduct rendering him or her unfit to continue in an office or position within FMCA.

Test to Establish Guilt

The test required to establish guilt is on the preponderance of the evidence where you are reasonably sure. A standard of the preponderance of the evidence means that it is more likely than not that a particular fact is true.

Forms of Discipline

1. Members who have been found guilty of any of the above offenses shall be subject to a written reprimand, suspension, expulsion, and/or removal from any office or position within FMCA. Additionally, if any member is charged with the commission of a felony (or an indictable offense) that negatively reflects, or could negatively reflect, on the FMCA because of the filing of such charge against the member, then the member is subject to suspension of FMCA membership by the Executive Board while the charge is pending.

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2. A chapter found guilty of violation of the Constitution, the Bylaws, or the Member Code of Ethics shall be subject as appropriate to a written reprimand or suspension or revocation of its charter.

Submitting a Complaint

1. A written complaint may be submitted by any member, chapter, or area association. Members of the FMCA Review Council are excluded from filing complaints.
2. The complaint must clearly state the grounds upon which action is sought, the evidence upon which the complaint is based, and be signed by all those seeking such action. Any complaint filed 3 months or later after the date the complainant became aware of the action resulting in the filing of the complaint will not be heard.

If a civil action is filed and also a complaint is filed with the FMCA Review Council on the same issue as the civil action, the FMCA Review Council will suspend action on the complaint until the civil action is resolved. A complainant cannot pursue both a civil action and an FMCA Review Council action at the same time.

3. A statement must be included on the complaint form listing the steps taken to show that the complainant(s) have made a good faith effort to reach an amicable solution with the accused and have been unsuccessful. If not, the complaint will be summarily rejected.
4. Complaint forms are available from the FMCA National Office. Requests for the form must be received in writing.

Investigation Procedures

1. The Chair of the FMCA Review Council will acknowledge receipt of the complaint to the complainant within 10 days.
2. The FMCA Review Council will determine first if the complaint should go further. The decision of the FMCA Review Council is non-appealable.
 - A. The FMCA Review Council will determine within 30 days of the receipt of the complaint whether the complaint should go further.
 - B. If the FMCA Review Council makes a determination that the complaint should go no further, the Chair of the Council shall notify the complainant no later than 40 days after receipt of the complaint.
3. When the FMCA Review Council determines the complaint should go further, the following actions will be taken:
 - A. The Chair of the FMCA Review Council shall promptly forward a copy of the complaint to be investigated by the Council to FMCA's legal counsel to determine if there are any specific issues that need to be addressed.

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- B. The FMCA Review Council Chair shall furnish a copy of the complaint to the member, chapter, or area association against whom action is sought within 30 days from the date the Chair receives the complaint. In issues relating to a chapter or area association, the point of contact will be the President, unless the chapter or area association designates another person. Said member, chapter, or area association may reply to the charges in a written statement and/or request an appearance before the FMCA Review Council. The FMCA Review Council has no power to require the accused or any other member to appear before it.
- C. The FMCA Review Council will confidentially conduct an investigation. All proceedings of the FMCA Review Council in a matter of discipline shall be in executive session. The parties, their spouse or partner who shares a common membership number with the complainant(s) or accused, and their respective legal counsel, may attend the proceeding.
- D. If at any time during the FMCA Review Council’s consideration of the complaint, a resolution satisfactory to all parties is achieved, the investigation shall be terminated.
- E. With the consent of all parties, the FMCA Review Council may suspend its investigation at any time to give all parties an opportunity to mediate the dispute. FMCA is not responsible for any costs associated with the mediation.

Mediation

- 1. “Mediation” means a process in which a neutral person or persons facilitate communication between the complainant and the accused to assist them in reaching a mutually acceptable agreement. (It does not have to be a member of the FMCA Review Council. If an FMCA Review Council member does the mediation, he/she is disqualified from any further hearing.)
- 2. FMCA will provide a list of mediators. The parties shall jointly select the mediator(s), either from this list or on their own. The parties may also select a professional mediator, who will be paid by the parties. If the parties do not select the mediator, the FMCA Review Council shall select one from the FMCA list. If no one from the list is available, the mediation will be canceled and the FMCA Review Council will resume its investigation.
- 3. The mediator shall schedule the mediation within 30 days and provide written notice of same to all parties. The parties shall personally attend the mediation with full authority to settle the dispute.
- 4. In the event that the parties to the mediation are unable to reach a mutually acceptable agreement, or a party to the mediation wishes to terminate the mediation at any time, then the mediator shall send a statement of non-agreement to the FMCA Review Council, who shall immediately reopen the investigation.

All statements and writings presented by the parties at the mediation will be inadmissible in any hearing before the FMCA Review Council or the Governing Board unless otherwise admissible because they were also presented outside the mediation. Mediation proceedings will be held in confidence.

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5. If a mutual agreement is achieved in the mediation, the mediator shall send a statement of agreement to the FMCA Review Council, and the investigation shall be terminated. The FMCA Review Council shall report to the Governing Board, without particulars, in the FMCA Review Council Summary Report that an issue was resolved via mediation.

Results of the Investigation

1. If, after investigation, the FMCA Review Council does not find sufficient cause to pursue the complaint, it will dismiss the complaint and notify the complainant and the accused.
2. If sufficient cause is found by the FMCA Review Council to justify pursuing the complaint, the FMCA Review Council may, in its discretion, propose action that the accused may take (including resignation) to resolve the complaint. If the matter is still not resolved, the FMCA Review Council Chair will advise the FMCA President of the necessity for a hearing. The complainant and the accused will be so notified.

FMCA Review Council Hearing

1. The accused shall be accorded a full and fair hearing before the FMCA Review Council and shall be given the opportunity to present their defense and any supporting evidence.
2. The FMCA Review Council Chair, in consultation with the FMCA President shall set a time for a hearing.
3. The FMCA Review Council Chair shall notify the member, chapter, or area association concerned of the date, time, and place for a hearing, which shall be held no earlier than 30 days subsequent to the date the notice is received and shall further advise of the desire of the FMCA Review Council to hear all aspects of the complaint. Said notice of hearing shall be sent by U.S. Mail, overnight delivery, return receipt requested, to the last known address of the member. For a chapter or area association the notice shall be mailed to the President unless the chapter or area association designates another person.
4. Members, chapters, or area associations so charged may have legal counsel, if desired, at their own expense. Legal counsel may then speak for and otherwise represent the client in all matters pertaining to the FMCA Review Council actions.
5. At the hearing, the parties may be represented by legal counsel at their own expense, present oral and written evidence, cross-examine witnesses and present such factual or legal claims as are desired. The parties to the complaint as well as any witnesses shall be sworn. If requested, the hearing shall be recorded by FMCA and at FMCA's expense. No other recordings shall be permitted. The FMCA recording shall not be duplicated. Only the transcriptionist shall be authorized to listen to the recording. A transcript of the recording may be made available to each party, at that party's expense.
6. All procedural and evidentiary decisions shall be made by the Chair of the FMCA Review Council who shall not be bound by customary rules of evidence and procedures followed by courts of law.



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7. The decision that there is sufficient cause to substantiate the complaint and the recommended form of any discipline shall be approved by 4 of 5 members of the FMCA Review Council. In the event the whole FMCA Review Council does not participate in the hearing then agreement by 3 of 4 participating members or by 2 of 3 participating members whichever applies, shall be required to approve the FMCA Review Council's Complaint Report that there is sufficient cause to substantiate the complaint.
8. If the FMCA Review Council does not find sufficient cause to substantiate the complaint, the complaint fails. The FMCA Review Council shall inform the accused and the complainant of the dismissal of the charges in writing. Decisions of the FMCA Review Council are non-appealable. When the complaint is not substantiated by the FMCA Review Council, the complainant shall pay reasonable costs towards the accused's legal fees. Such costs shall be set by the FMCA Review Council.
9. If the FMCA Review Council finds that the complaint has been substantiated, the FMCA Review Council shall prepare its decision on the merits in the form of written findings of fact, conclusions, and any recommended discipline (the "FMCA Review Council Complaint Report"). A copy of the FMCA Review Council Complaint Report shall be provided to the complainant and the accused no less than 30 days prior to the next Governing Board meeting. The FMCA Review Council Complaint Report shall be given to the Governing Board at the time of the Governing Board hearing.

Governing Board Proceedings

1. The FMCA Review Council Chair shall notify the FMCA President that there is sufficient cause for the Governing Board to consider the case. The FMCA President shall set the date, time, and place of the Governing Board meeting and notify the accused and complainant. Said notice shall be sent by U.S. Mail, overnight delivery, return receipt requested, to the last known address of the accused and complainant. If either the accused or complainant is a chapter or area association, the notice shall be sent to the President unless the chapter or area association designates another person. The accused, by themselves or through legal counsel (at the accused's sole expense), may be present and given an opportunity to rebut the FMCA Review Council Complaint Report, and the FMCA Review Council will have an opportunity for rebuttal at the meeting.
2. To sustain the charges against the accused, at least 65% of the Governing Board members in attendance must vote to uphold the charges. Any disciplinary measure imposed by the Governing Board also requires at least 65% approval.
3. All proceedings and deliberations of the Governing Board on the complaint shall be in executive session, with invited guests to include the parties; their spouse or partner who shares a common membership number with the complainant(s) or accused; legal counsel(s); and FMCA Review Council members. The session may also include FMCA's Chief Executive Officer (CEO), parliamentarian, legal counsel, and sound and security personnel.
4. If the complaint fails to achieve a 65% affirmative vote of the Governing Board members in attendance, the complainant shall pay reasonable costs towards the accused's legal fees. Such costs shall be set by the FMCA Review Council.

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Legal Fee Reimbursements

1. FMCA will upon written request pay the legal fees incurred by a national officer in any circumstance as long as the complaint involves the national officer in the performance of his/her duties.
2. FMCA will upon written request pay the legal fees of any employee, chapter officer, area officer, or volunteer as long as the complaint involves the individual(s) performing FMCA, chapter, and/or area association business.
3. FMCA will not pay the legal fees of any member other than those noted in 1. and 2. above.
4. Legal fees of the complainant(s) shall not be reimbursed.

Confidentiality

All records received in these proceedings shall be sealed and sent within 30 days to the National Office for storage. All records shall be retained for one year after final adjudication of the complaint and then destroyed unless otherwise required to be preserved by law or Court order. No records will be released except by a subpoena by a court of competent jurisdiction for any ensuing legal action.