

NOTICE OF MNA IMPARTIAL HEARING

Ted McTaggart, Kelly McLaughlin, Irrish Sowers, Anne Pluff, Cally Brooks, Anthony Kreyger, Kristin Hinchman, Angela Tatti, Juan Sanchez, Rebecca Lanfear, Sarah Mikkelson, Briana Hicks, Jeremie Rene, Megan Wallace, Laurie Coppock, Kathy Bruce, Carolyn Jordan, Baljit (Nevi) Dhillon, Lisa Borchanian, Monica Bova, Douglas Morningstar, Allison Carroll, Beth Christensen, Renee Curtis, Jennifer Haddad, Laura Jirasek, RaeDeane Hawthorne, Bethany Moore, Robert McCormick.

Complainants,

-and-

Katie Scott, Donna Carnahan, Desiree Conyers, Lynn Detloff, Sandy Dorsey, Becky Mammel, Katie Oppenheim, Thea Picklesimer, Deborah Totzkay, Barbara Van Kainen.

Accused.

Please take notice that based on the report of the Impartial Committee charges have been issued against you and a hearing will be held before the MNA Executive Committee in the above matter. **The hearing shall be conducted starting at 9:30am, until completed or adjourned, on March 29, 2021.** The hearing will be conducted via remote web service.

The hearing shall be limited to the following charges specified and recommended by the report of the Impartial Committee. On the specified recommended charges of:

- 1. Dual Unionism – Any activity intended to assist a competing labor organization** – While a member of MNA-UMPNC allegedly distributing and endorsing on December 25, 2020, and thereafter, a resolution to disaffiliate authored by a staff member of the American Federation of Teachers.
- 2. Violation of MNA or LBU Governance Documents, Rules or Policies** – While a member of MNA-UMPNC, on or about December 25, 2020, through various conduct surrounding the calling of a special meeting, allegedly violating the UMPNC Bylaws, including, but not limited to, Article II (subsection C), Article III (subsections B and E), Article III (subsections B and E), and Article VIII (subsections L and R). While a member of MNA-UMPNC, through the same above described conduct, allegedly violating the MNA Constitutional Bylaws, including, but not limited to, Article II (Section 8) and Article III.

- 3. Conduct Detrimental to UMPNC and MNA** – While a member of MNA-UMPNC allegedly engaging in conduct detrimental to UMPNC and MNA by sending a notice of a special meeting at approximately noon on Christmas Day (December 25, 2020) to impair member participation in the meeting.

Please review the attached hearing guidelines in advance of the hearing and be prepared to present your witnesses and offers of proof.

Notice Issued By:

MNA Executive Committee, March 5, 2021.

RULES OF PROCEDURE GOVERNING MNA DISCIPLINARY HEARINGS

1. **NATURE OF PROCEEDINGS:** These Rules apply to disciplinary hearings conducted before the MNA Executive Committee in accordance with MNA's Bylaws and established Complaint Procedure. These Rules are established to provide members accused of disciplinary offenses with a full and fair hearing prior to the disposition of the charges pending against them.
2. **PARTIES:** An individual bringing charges against a member is designated as the "Complainant"; a member against whom charges are brought is designated as the "Accused". Complainants have the burden of producing evidence in support of their charges.
3. **HEARING OFFICERS:** The members of the MNA Executive Committee shall function as the presiding Hearing Officers over the proceedings. They have authority under the MNA governance documents to afford the Accused with a full and fair hearing. They have plenary authority to rule on objections, to determine the admissibility, weight and sufficiency of evidence, to maintain proper order and decorum, to resolve questions over the application of these Rules, and to exercise such other powers as are customarily vested in presiding officers in similar proceedings such as arbitrations or labor board hearings. The Hearing Officers acting by majority vote are solely responsible for all rulings during the course of the hearing and for determining the disposition of the charges against the Accused.
4. **DISQUALIFICATION:** Any request to disqualify a Hearing Officer must be made at least 10 days prior to a scheduled hearing. Such a request must be in writing and state with specificity the grounds for disqualification. A request to disqualify a Hearing Officer may be brought by any party to the hearing or a Hearing Officer, and will be decided by the Hearing Officers. In the event of a disqualification, the hearing may proceed with the remaining Hearing Officers, or they may in their discretion appoint a MNA member in good standing to function as a Hearing Officer for that case only.
5. **UNAVAILABILITY OF HEARING OFFICER:** If, after the start of a hearing but before final disposition of the charges, a Hearing Officer becomes incapacitated or otherwise unavailable due to exigent circumstances, the hearing may continue with the remaining Hearing Officers, or they may in their discretion appoint a MNA member in good standing as a replacement Hearing Officer to conclude the hearing. In the event a replacement officer is named, the replacement officer must review the transcript of the complete proceedings prior to deliberations and voting.
6. **MNA LEGAL COUNSEL:** The role of the MNA Legal Counsel shall be to advise the presiding Hearing Officers on matters of procedure, evidence and other issues related to the conduct of the hearing. MNA Legal Counsel may ask questions of the parties or witnesses for the purpose clarifying the record for the Hearing Officers' consideration.
7. **TIME LIMITS:** Subject to approval by the Hearing Officers, the parties may stipulate to amend or waive time limits contained in the Complaint Procedure or these Rules.

8. AUTHORIZED REPRESENTATIVES: The Complainants and the Accused may designate another MNA member in good standing as their authorized representative in the hearing.
9. ATTENDANCE AT THE HEARING: Attendance at MNA disciplinary hearings is limited to the presiding Hearing Officers, the Complainants, the Accused, any authorized representative of the Complainants and/or Accused, witnesses called by any party, MNA Executive Staff members, MNA Legal Counsel and the hearing stenographer. The failure of a party to attend the hearing may result in an adverse decision.
10. OFFICIAL TRANSCRIPT: The presiding Hearing Officers have the exclusive right to record and maintain the official transcript of the hearing. No other recording devices are permitted. The official transcript shall be available for inspection and review by appointment at MNA Headquarters by any party. A party desiring a personal copy of the official transcript must make arrangements for such directly with the stenographer and is responsible for the costs of their copy of the transcript.
11. EVIDENCE: MNA disciplinary hearings are internal proceedings conducted by the members themselves. Strict adherence to the rules of evidence is not required. The presiding Hearing Officers may admit, consider and give such weight as they deem proper to evidence of the type commonly relied upon by ordinary prudent persons in conducting their affairs. They may exclude evidence they deem to be irrelevant, immaterial, or repetitious. Upon a timely objection, Hearing Officers shall exclude evidence protected by a recognized privilege, e.g., attorney-client, priest-penitent, doctor-patient.
12. RIGHT TO CALL AND CROSS EXAMINE WITNESSES: The Complainants and the Accused have the right to call witnesses on their behalf and to cross examine witnesses called by other parties. It is the responsibility of the party calling the witness to arrange for his or her attendance.
13. SEQUESTRATION OF WITNESSES: The Complainants and the Accused have the right to be in attendance at all stages of the proceedings even if they are also witnesses; non-party witnesses shall be sequestered until called to testify and excused from the hearing after testifying.
14. RIGHT TO PRESENT EXHIBITS: The parties may present relevant exhibits to support their case. Exhibits submitted by the Complainants shall be marked "A,B,C..." sequentially, while Exhibits submitted by the Accused shall be numbered "1,2,3..." sequentially. The parties must provide copies of their exhibits to the opposing parties, the Hearing Officers, MNA Legal Counsel and the hearing stenographer.
15. DISCLOSURE OF WITNESSES, EXHIBITS AND REPRESENTATIVES: The parties shall exchange witness and exhibit lists and the identity of their authorized representative, if any, no less than 5 calendar days before the hearing. Copies of these lists shall also be provided to the presiding Hearing Officers. The failure to identify witnesses, exhibits or representatives prior to the hearing will ordinarily preclude their admission into evidence or participation in the hearing unless good cause is shown for the omission.

16. COMMUNICATION WITH THE HEARING OFFICERS: Except during the hearing itself, all communications intended for the Hearing Officers shall be directed to MNA Executive Assistant Carol Feuss at carol.feuss@minurses.org. If electronic communication is not feasible, such communications may be mailed or hand delivered to Carol Feuss at MNA Headquarters, 2310 Jolly Oak Road, Okemos, MI 48864. The parties and their representatives must refrain from having ex parte communications with the Hearing Officers about the substance of the charges while they are pending.

17. COSTS: All costs shall be borne by the party incurring them.

18. ORDER OF PROCEEDINGS: The order of proceedings shall be substantially as follows:

- Introductions
- Review of Procedure
- Charging Party's Opening Statement
- The Accused's Opening Statement
- Presentation of Charging Party's case
- Presentation of the Accused's case
- Opportunity for rebuttal by the Charging Party
- Closing Statement by the Charging Party
- Closing Statement by the Accused

SUPPLEMENTAL MNA REMOTE HEARING RULES DURING THE COVID-19 PANDEMIC

Due to the ongoing pandemic of COVID-19 and the inherent safety concerns of an in person hearing, the MNA Executive Committee has determined that the hearing will be conducted remotely via Zoom. The MNA Executive Committee adopts the following supplemental hearing procedures for the remote conduct of the hearing:

- i. The MNA administrative assistant will invite attendees via email to join the hearing via Zoom. To protect the security of the hearing, access to the hearing will be password-protected and limited to authorized attendees only. Hearing attendees should not forward or share the hearing link or password.
- ii. All hearing attendees must have their own individual Zoom account and video and audio. Each attendee must have their full name labeled on their account and be visible via video during the hearing. Attendees must remain on mute unless providing testimony or otherwise properly participating in the hearing. The host shall have the ability to mute any attendee who has not properly placed themselves on mute. Each attendee must be in a room by themselves during their participation in the hearing. Each attendee shall confirm at the start of the hearing that there are no other parties in the room. In the event of a technological failure of the video or audio equipment of a party or attendee the hearing officers shall have the ability to order continued participation of party or attendee via telephonic conference line.
- iii. The parties will not record, via audio, video or screenshot, or permit any other person to record, via audio, video or screenshot, the hearing or any part of it. Parties likewise will not transmit live the video and/or audio of the hearing to another party during the hearing. The parties will ensure that each additional attendee at the hearing for which that party is responsible also acknowledges, agrees, and complies with these prohibitions.
- iv. In order to facilitate email invitations for the hearing, the parties shall send to Carol Feuss at Carol.Feuss@minurses.org a list of each attendee's name, e-mail address, and phone number (where they will be reachable on the day(s) they attend the hearing).
- v. Each party will be responsible for testing the videoconferencing system with each of their witnesses who will be attending virtually. The video conference shall be of sufficient quality so as to allow for clear video and audio transmission of all participants. Each party should test their equipment to determine their best audio connection –whether by phone, through their computer speakers/microphone, and with or without a headset.
- vi. If any party to the hearing does not have access to a computer or tablet with a camera and microphone they may request to be loaned a device by MNA for the exclusive

purpose of participation in the hearing provided they request it more than five (5) business days prior to the hearing. If a party does not have access to high speed WiFi at their home or local union office they may request that MNA provide them with an appropriate accommodation, such as a hotel conference room, in order to participate in the hearing. A request for such an accommodation shall also be made in writing to Carol Feuss no later than ten (10) business days prior to the hearing.

- vii. Parties are required to make proper arrangements for witnesses and member advocates to attend. If a witness, in good faith, has no access to internet or necessary equipment, the party may request in advance that the witness be allowed to provide testimony via telephonic conference. Such a request must be made in writing at least five (5) business days prior to the hearing.
- viii. Breakout rooms shall be made available to any party and their member authorized representative to convene as necessary and appropriate during the hearing.

MNA IMPARTIAL COMMITTEE

Ted McTaggart, Kelly McLaughlin, Irrish Sowers, Anne Pluff, Cally Brooks, Anthony Kreyger, Kristin Hinchman, Angela Tatti, Juan Sanchez, Rebecca Lanfear, Sarah Mikkelson, Briana Hicks, Jeremie Rene, Megan Wallace, Laurie Coppock, Kathy Bruce, Carolyn Jordan, Baljit (Nevi) Dhillon, Lisa Borchanian, Monica Bova, Douglas Morningstar, Allison Carroll, Beth Christensen, Renee Curtis, Jennifer Haddad, Laura Jirasek, RaeDeane Hawthorne, Bethany Moore, Robert McCormick.

Complainants,

-and-

Katie Scott, Donna Carnahan, Desiree Conyers, Lynn Detloff, Sandy Dorsey, Becky Mammel, Katie Oppenheim, Thea Picklesimer, Deborah Totzkay, Barbara Van Kainen.

Accused.

REPORT AND RECOMMENDATION OF THE MNA IMPARTIAL COMMITTEE

The Impartial Committee does not make a determination on the ultimate merits of any complaint. Its role is to screen a complaint to determine if there is sufficient evidence and recommend dismissal or the issuance of charges. If charges are recommended, a full and fair hearing is held before the MNA Executive Committee. If the complaint is dismissed there is no further action.

Background of the Complaint

On December 30, 2020, Jamie Brown, MNA President, received a complaint from the twenty-nine (29) above named complainants against the ten (10) named accused. Brown acknowledged receipt of the complaint in writing and sent it to the MNA Impartial Committee. The accused were then sent a copy of the complaint and all exhibits attached to it. All of the accused were asked to submit their positions and defenses to the Impartial Committee. The majority of the accused responded to the Committee by explicitly resigning their membership and the remaining accused did not respond directly or submit any position or defense.

Relevant Sections of the UMPNC Bylaws

Article II, Objectives:

C. To promote professional growth and encourage active participation in activities at the local (UMPNC), state (Michigan Nurses Association, MNA), and national levels.

Article III, Membership and Dues:

B. Every nurse in good standing with UMPNC and MNA shall be entitled to the rights, benefits, and privileges set forth in these bylaws;

E. The members of UMPNC shall adhere to the policies, bylaws, and philosophy of the UMPNC and MNA.

Article VIII, Elections/Appointments/Terms of Office:

L. All elected and appointed officials shall be current members of UMPNC and MNA;

R. 2. Delegates to the MNA House of Delegates shall be required to:

- a. Be a member in good standing of the MNA and the Nurse Council*
- b. Attend the MNA House of Delegates*
- c. Support the interests of UMPNC and MNA*
- d. Participate in activities that support the goals of UMPNC and MNA*
- e. Report to UMPNC membership regarding the delegate activities*
- f. Encourage membership input and participation with MNA initiatives*
- g. Delegates are the democratic leaders and will act in the interests of membership and UMPNC and MNA.*

Article IX, Meetings:

D. Special meetings may be called by the President and must be called by the Executive Committee upon written request of 100 members. Notification of this meeting and the agenda shall be made seven (7) days prior to the meeting. No business shall be transacted other than the business identified in the notification.

Relevant Sections of the MNA Constitutional Bylaws

Article II, Membership and Dues:

SECTION 9. DISCIPLINARY ACTION

- a. Cause for disciplinary action by the MNA against a member of any membership category shall be limited to failure to fulfill the obligations of membership as established in these bylaws and other actions detrimental to the mission or function the MNA or its local bargaining units.*
- b. Complaints against members shall be considered first by the Impartial Committee and processed according to MNA's established Complaint Procedures.*

SECTION 8. DUAL UNIONISM

It shall be the responsibility of all members, regardless of membership category, to refrain from engaging in dual unionism, which is defined as participating in or assistance to one or more labor organizations which are in direct competition with the MNA as they act for and represent the collective bargaining interest of members.

Article III, MNA Local Bargaining Units:

SECTION 2. FUNCTIONS

a. Require that Members have the qualifications specified in Article II.

c. Maintain bylaws, which are congruent with those of MNA.

SECTION 1. DEFINITION AND PURPOSE

MNA Local Bargaining Units (LBUs) shall exist for the purpose of improving the professional, economic and general welfare of persons represented by the Michigan Nurses Association. The LBUs established and existing pursuant to this subsection shall conform to the following minimum requirements and such other requirements as from time to time are established by the House of Delegates. LBU shall be synonymous with Staff Council;

Summary of the Complainants’ Allegations

Complainants contend the following factual background to their complaint. On Christmas Day, December 25, 2020, an email was sent by Kathryn Oppenheim, then UMPNC President, signed by all of the accused in their individual capacities as UMPNC Executive Committee Officers. The email announced that a resolution had been voted on and passed by the UMPNC Executive Committee and that the Committee was calling for a special meeting on January 2, 2021, for the membership to approve the resolution. Attached to the email was a copy of the resolution and an FAQ, both in Microsoft Word. The resolution stated as follows:

RESOLUTION REGARDING UMPNC DISAFFILIATION FROM MNA AND NNU

IT IS HEREBY RESOLVED that the UMPNC Executive Committee supports disaffiliating from the Michigan Nurses Association (“MNA”) and National Nurses United (“NNU”).

IT IS FURTHER RESOLVED that the disaffiliation shall become effective upon a majority vote of those UMPNC members eligible and voting in a secret ballot election that shall be conducted as soon as practicable.

IT IS FURTHER RESOLVED that upon a majority vote of the UMPNC membership approving of the disaffiliation from the MNA and NNU that UMPNC will be a self-governing, autonomous, unaffiliated union.

IT IS FURTHER RESOLVED that upon a majority vote of the UMPNC membership approving of the disaffiliation from MNA and NNU, the UMPNC Executive Committee shall immediately investigate options to affiliate with another national union and based on this investigation, the Executive Committee will present a recommendation to the UMPNC membership as soon as practicable.

Complainants allege that the properties tab of the resolution and FAQ show they were authored by a Ms. Roxanna McCloud-Lewis a staff member of the labor organization the American Federation of Teachers. MNA-UMPNC have no affiliation with the American Federation of Teachers.

The Complaints allege that at the time the email was sent and the special membership meeting was called there was actually no preceding vote of the Executive Committee authorizing it. In support of this assertion they offer copies of text messages between accused, Becky Mammel, and complainant, Ted McTaggart (UMPNC Secretary-Treasurer), showing that he was not informed of a meeting and vote of the UMPNC Executive Committee until forty-five minutes after the notice of the special meeting had been sent. At 1pm McTaggart received a text from Mammel which stated in part, "Hello Ted. Sorry for the short notice. We are having an emergency executive committee meeting at 1:15. Katie o is sending a zoom link to your NON UM email."

At the meeting Accused, Katie Scott, read the text of the resolution which had already been emailed to the membership as passed by the Executive Committee. A vote to approve the resolution was then held. Lynn Detloff, Sandy Dorsey, Becky Mammel, Katie Scott, and Barbara Van Kainen voted in favor of the resolution. McTaggart voted against the resolution. Kathryn Oppenheim did not vote.

On December 30, 2020, three (3) days prior to the special meeting, the complainants filed their complaint asserting that the above described actions of the accused individuals violated multiple provisions of the UMPNC and MNA governing documents, was an act of dual unionism, and constituted generally conduct detrimental to both organizations. Our findings are set forth below.

ANALYSIS OF THE COMPLAINT'S ALLEGATIONS

At the outset we should acknowledge that in the investigation of this complaint we have found that since its filing there have been significant factual developments. We are required to review the allegations of the complaint based on the allegations as stated at the time they were filed and so to the fullest extent possible we will limit our review accordingly.

It is also important to note that under the Public Employment Relations Act the University of Michigan Professional Nurse Council is not an affiliate of the Michigan Nurses Association and could not disaffiliate. The Michigan Nurses Association alone was elected and certified as the union of the nurses at the University of Michigan in 1975. UMPNC was subsequently formed as a part of MNA as what's called a local bargaining unit of the Michigan Nurses Association. Our jurisdiction as a Committee, however, is limited to reviewing the alleged conduct within the parameters set forth in the MNA Constitutional Bylaws.

We should finally also discuss the issue of whether a complaint should move forward if the accused are no longer members of the organization. It is undisputed that at the time of the conduct in question the accused were members of the Association. While the accused lack of current membership may impact certain penalties, if they were found to be warranted, in the absence of a withdrawal request by the complainants, it is not for this Committee to unilaterally dismiss the complaint on these grounds.

Dual Unionism

The complaint's allegations of dual unionism center around the accused's distribution of a resolution to disaffiliate and an attached FAQ that appear, based on the evidence submitted, to have clearly been drafted by a staff member of the American Federation of Teachers. Screenshots show her name listed as the author and additional screenshots submitted to the Committee show she is employed by the American Federation of Teachers. The implication of allegation is that the American Federation of Teachers wishes for the bargaining unit to somehow disaffiliate so it can immediately affiliate with AFT, or they are simply using the resolution as a way to sow discord and discontentment within the membership in order to push members for a decertification vote to create an "independent" union which would again, immediately affiliate with the Teachers' Union. In analyzing these allegations we also cannot ignore our prior report in November involving several other acts by one of the accused that also seemingly involved multiple staff members of the American Federation of Teachers. Based on the evidence before us and the lack of a response from the accused, we find that there is sufficient evidence on this allegation and recommend that a charge of dual unionism be issued.

Violation of MNA or LBU Governance Documents, Rules or Policies

The complaint alleges multiple violations of the governing documents of UMPNC and MNA. Article IX (Section D) authorizes the President to call a special meeting, yet according to the evidence submitted she did not vote on the resolution to authorize it. The same section seems to limit the Executive Committee to authorizing a special meeting only at the request of 100 members, but even if that was not the case, the meeting appears to have been authorized without a preceding vote of the Executive Committee. Based on the evidence presented, there appears to be sufficient evidence suggesting the special meeting was not properly authorized under Article IX of UMPNC's governing documents.

The complaint also alleges violations of multiple provisions of the UMPNC Bylaws and the MNA Constitutional Bylaws, which provide, among other things, that officers and members of local bargaining units must maintain membership in good standing in MNA and in the local bargaining unit and that local bargaining units are subordinate units of MNA and are subject to the supervision of MNA. We find and conclude that there is sufficient evidence that each of the accused have potentially violated the following provisions of the UMPNC Bylaws, including, but not limited to: Article II (subsection C), Article III (subsections B and E), and Article VIII (subsections L and R). We also find there is sufficient evidence of potential violations of the MNA Constitutional Bylaws including, but not limited to: Article II (Section 8), and Article III.

For the reasons stated above we believe there is sufficient evidence of violations of MNA or LBU governance documents, rules or policies and recommend that a charge be issued.

Conduct Detrimental to UMPNC and MNA

Complainants also allege that the accused's actions in sending notice of a special meeting at approximately noon on Christmas day was detrimental to the membership as the timing indicates that they were seeking to have their email go unnoticed by members otherwise focused on the holidays in order to limit member engagement. We agree the unique timing of the email suggests just that. In the absence of any explanation from the accused, we therefore conclude there is sufficient evidence of this allegation and recommend that a charge of conduct detrimental to UMPNC and MNA on these facts be issued.

CONCLUSION

The Impartial Committee recommends charges be issued for the allegations of:

1. Dual Unionism – Any activity intended to assist a competing labor organization
2. Violation of MNA or LBU Governance Documents, Rules or Policies
3. Conduct Detrimental to UMPNC and MNA

Decision Issued February 13, 2021

MNA Impartial Committee
Melissa Boals, RN – Chair
Scott Balko, RN
Lori Batzloff, RN
Kristina Protaziewicz, RN