



# FRANK REED HORTON MEMORIAL LODGE NO. 379, F. & A. M.

UNDER THE JURISDICTION OF THE MOST WORSHIPFUL GRAND LODGE OF FREE AND ACCEPTED MASONS OF THE PHILIPPINES

## Lecture No. 08 **PRIMER ON MASONIC TRIAL – Part II**

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References: GLP Lawbook Part II – Ordinances and Masonic Trials by Henry Look

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*“He who decides a case without hearing the other side, though he decide justly, cannot be considered just.” Seneca*

Last month on the 1<sup>st</sup> part of this digest, we learned of the applicable provisions of the GLP Constitution and Masonic information from the book “Masonic Trials...” on matters relating to Offenses, Tribunal, Jurisdiction and the Charges. Tonight, we continue with the 2<sup>nd</sup> part of this digest on matters relating to the Answer, Proofs and the Argument.

### **Of the Answer**

1. The charges being properly introduced and served, and the accused duly summoned, it is his duty to appear and answer.
2. The answer should be in writing; if orally answered, the Lodge Secretary reduces this to writing and made a part of the case files that no misunderstanding may afterwards arise as to its exact import.
3. Before answering to the merits of the case, the accused may, with sufficient grounds, attack the proceedings incidentally—(a) Deny the jurisdiction; or, (b) Deny the validity or regularity of the charges. This proposition should be in writing defining clearly the ground upon which it is based.
4. It is the privilege of the accused to introduce, and the duty of the lodge to receive, and proper proofs of the facts alleged therein; afterwards at once sustain the basis or dismiss the case as Masonic law and usage may require.
5. If the bases of the proceedings are sustained, the accused **MUST** then answer to the merits—pleading guilty or not guilty in part or the entirety of the accusation.
6. The accused may choose any MM in good standing to act as his counsel and assist him in his defense. If the WM has appointed or the accuser chose his counsel for prosecution, the accused may, for good cause, object to such counsel; and vice versa. If the WM deems such objection well taken, he allows replacement of such counsel object to.

7. If the accused does not appear in person or by counsel, the WM may appoint counsel for the defense in his discretion, whose duty it will be to see that the trial is fairly conducted and the rights of the accused not imperiled.
8. A Mason under suspension cannot be admitted into the lodge; he MUST, therefore, appear and answer by agent or counsel.

### **Of the Proofs**

1. If the charges are denied by the accused, proofs must be taken as to the facts involved. An affirmation or denial of the charges and specifications raises issues which can only be decided by evidence.
2. Proofs may be taken before the lodge or commissioners who are each duly notified by the Lodge Secretary for that purpose.
3. The commissioners should appoint a time and place of meeting for the purpose of taking testimony, of which the accused and accuser, or counsel(s) must have due and reasonable notice. At such meetings, the WM has the ex-officio right to be present and preside.
4. In all cases, the whole of the testimony, proper to be written, must be reduced to writing and carefully preserved in the archives of the lodge. If material testimony cannot be produced at the time and/or place of the meeting, the same may be taken at any reasonable time and/or place upon permission of the WM; due notice being given to both parties and to the WM or Lodge Secretary.
5. Both parties, with their counsels, have the right to be present at the taking of all testimonies.
6. The testimony for the prosecution is taken first and afterwards the accused may introduce the proofs for his defense. If any matter is raised by the testimony for the defense, the prosecution may rebut the same but cannot enter into any new matters unless accused be allowed to reply the same by counter-proofs.
7. The official books and records of the lodge are evidence in themselves; so are the charter, constitution and by-laws of the lodge.
8. But the certificate of the WM or Lodge secretary, in the absence of entry upon the approved records of the lodge, is not sufficient evidence of the lodge transactions. A lodge is bound by the records duly approved, and no further. It has the power to amend its records, upon such evidence as is deemed sufficient; and such amended record, duly attested, has all the force and effect of an original record.
9. Neither the Grand Lodge nor sister lodges are warranted in receiving as evidence to control their actions, statements or allegations, from any source, presuming the inaccuracy of said records; unless, indeed, the lodge be put upon trial before the Grand Lodge for falsifying its records (which is another matter).

10. The best evidence must always be produced, if possible. If impracticable, then secondary evidence may be offered.
11. A witness cannot be compelled to incriminate himself.
12. All testimonies relevant to the facts in issue should be admitted; those irrelevant excluded. As a general rule, hearsay evidence should be excluded. Although many of these technical rules of evidence which apply in courts of civil law are NOT RECOGNIZED in Masonic tribunals, yet there certain fundamental principles of proof which must apply to all human investigation, without which rights cannot be protected and truth elicited.
13. Both parties have the right of cross-examination. Either party may object to any proofs offered and the WM, or the commissioners in his absence, must decide on the sufficiency of such objection.
14. Any discreet person is a competent witness. The testimony of a mason may be taken upon his honor; for Masonry regards no obligation to speak the truth more binding than its own. The testimony of profanes must be upon oath; duly administered by any officer competent under the law to administer oaths. If the testimony of a profane is to be taken before the lodge, then the lodge must be called from labor to refreshment, and sit as a committee, during his introduction and cross-examination.
15. The testimony of an EA or a FC, if taken in open lodge, must be upon the degree corresponding to the rank of the witness; after which the lodge should be closed upon the inferior degree, and opened upon the degree of MM.
16. During the testimony before the lodge, the WM or any member may put such question as he pleases to any witness which he may be objected to by any party to the trial; the WM deciding upon such objection as he may think proper, but NO objection can be interposed to any question put by the WM.
17. A person under sentence of expulsion from the rights and benefits of Masonry CANNOT testify upon his Masonic honor, for he has none. He has no part or lot in ANY of the privileges of the Order.
18. The attendance of Mason-witnesses is enforced by summons. Willful disobedience of such summons, or refusal to testify while under cross-examination as a witness, is a Masonic Offense, which subjects the offender to discipline.
19. All summonses are issued by the WM upon application to him by either party or his counsel. If there are voluntary witnesses, none will be issued. No summons is issued to a profane as he is not subject to Masonic jurisdiction.
20. It is not proper for commissioners to report their opinion as to the guilt or innocence of the accused; they ought simply to report their doings for the action of the lodge.
21. If the accused answers that he is guilty of the charges and specifications, nothing remains but for the lodge to determine by ballot the degree of penalty.

to be imposed, all necessity for the taking of proofs being obviated by such answer.

22. The accused is allowed to make any statement he chooses before the lodge for its consideration. He cannot be cross-examined without his consent and when questions are put to him, he may or may not answer them as he pleases. He cannot be summoned nor cross-examines as a witness in the case.

### **Of the Argument**

1. Upon closing of proofs before the lodge, or reception of the commissioners' report, either party or their counsel have the right to argue the case before the lodge.
2. The accuser, having the affirmative issue, usually opens the argument; the accused, having the negative, replies and urges all proper points in his defense. The accuser then closes the argument by replying to the arguments of the accused; but the accuser should not be allowed, in closing, to raise any new questions or urge any new matters, unless leave be also given for the accused to reply.
3. The WM has the right to limit the argument to such time as he may deem proper, giving the parties due notice before the opening the argument to prevent inconveniences that may be suffered.
4. The parties should be confined in the argument to the subject matter; and no personal abuse, unmerited accusations, or violent and improper language of any kind should be allowed. Either party (or any member of the lodge) may call the other to order, and when such order is made, the party speaking must stop and remain silent until the point of order is decided by the WM; which if sustained, the other party must proceed in his argument in accordance with the WM's direction. Refusal to comply with such direction may compel the WM to seat the refractory party (or counsel); or, if his conduct be grossly improper, may cause him to immediately be conducted from the lodge.
5. It should be remembered that the relation of parties and counsel in a Masonic trial is still that of BRETHREN, and differs materially from those in action before a civil court of law. Truth, candor and courtesy are never forgotten. Passion, invectiveness or recrimination ought never to be indulged, and when manifested from any source at any period of the trial should be promptly checked by the WM; and especially the WM should be mindful of his own conduct in these particulars.

From what has already been said, enumeration of this Masonic judicial process can be long and tedious but necessary that the rights of individuals are upheld and protected. We must labor immeasurable time so that Justice can be equitably served to our fellowmen.

More information will be shared as the resolution of these issues progresses.