From Rudy

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From: Rudy

To: link Byfield

Re: Dispute Resolution

OnTue, 30 Mar 2010 at 15:08:40 I received an email from Vitor Marciano to the effect that he was going to be issuing memoranda for CAs to put into our board records and take to meetings with us. At 16:02 the first such arrived - covering a dispute resolution process apparently accepted by the executive.

After reading it, I sent an email, (at 17:13 that day) , outlining some obvious problems with it, to Mr. Marchiano.

Having received no response, I sent a cleaned up redraft to Jeff Callaway (with CCs to Vitor, JOH, Mark, and you) at 17:23 on Thursday April 1st.

On Wed, 7 Apr 2010 at 23:41 I received the following reply from Mr. Marchiano - sent with copies to Messrs Callaway, Byfield, Dyrholm, and Hilton-O'Brien:

> Hi Rudy,
>
> I have reviewed your comments. The only one I concur with is the observation on section 1.10.
>
> An update will be sent out in the near future.
>
> It will read something like this:
>
> 1.10 Unless they have secured prior written approval from the Executive Committee, any volunteer, nominee or party member incurring an expense on behalf of the Party does so at their own risk, expense and sole cost.

Since I don't believe this addresses any of the more substantive concerns, I've reproduced my note to Mr. Callaway, below; and ask that you raise the need for a qualified legal review of this document with the executive at the next possible opportunity.

Text as sent to Jeff et al (Thursday April 1st.):

hi:

While I think the proposed dispute resolution process recently circulated by the executive director is important both in itself and as protection against legal liabilities arising from disputes, I also think the present draft needs a little work.

Now, obviously, I'm not a lawyer and this needs to be carefully reviewed by one - but just on a quick second scan some problems stick out:

1. the 1.0 header says the party will use the process outlined in this document to resolve all disputes - but then immediately vitiates that by exempting all disputes arising in the context of a leadership vote. (And, because leadership of what is not specified, a person of ill will could rationally argue its applicability to CA board elections and nominations - leaving the process authorized here almost entirely without scope.)

2. Para 1.1 requires that all disputes be refered to the executive director and part 1.3 concerns itself with conditions under which disputes come to the attention of the executive committee, but there is no linkage between them.

As a result an executive director made aware of a dispute would find no authority here to act - and if the director discussed this with the executive committee, the latter would face the same problem.

Further, because the link between 1.3.1 and 1.3.2 is obvious but unspecified, persons of ill-will would probably be free to assert that none exists. Nonsense, of course, but defensible on the text as written.

Finally, 1.3.3 takes away the usual option of stalling as a way of letting a dispute resolve itself. What's needed here is some concession to the passage of time: Something like this:

> If the members appointed pursuant to Article 1.3.2 decide not to intervene or are unsuccessful in resolving the dispute within 30 days Executive Committee shall, in writing, refer the matter to the Party Arbitration Committee.

and then, of course, there needs to be provision for bouncing the matter back to the executive committeee if the arbitrators fail to act within some specified time.

3. 1.4 is a little broad - if only matters related to the leadership selection process are excluded from the Arbitration Committee process, why can't it be used to settle party policy on abortion or over-ride an AGM vote if someone doesn't like the outcome?

4. 1.5 appears inconsistent in execution with 1.2. The former requires that half the members have unspecified legal training - I've been told by a judge how not to testify on a speeding charge, so I'm qualified, right? No? how about a law school graduate who flunked the bar and now sells real estate? - but 1.5 elides that requirement's effect on execution

5. In addition 1.5 says "decide on the dispute" where what is meant is "decide the dispute."

6. 1.8 [muzzling clause] is going to offend a lot of people, be broadly unacceptable to many, and impossible to police in practice. Since many disputes arise during nominations and these are necessarily public, a prohibition against public discussion is useful only for finishing off the losers.

7. Similarly the first part of 1.9 is both offensive to many and unenforceable. Volunteers are volunteers, the party can't restrict who they can talk to or about what without a specific, signed, confidentiality agreement. We need one of these with respect to things like memberships lists, but we don't ask members to sign anything other then their membership card when joining.

8. 1.10 says pretty much the opposite of what you want - what you want is

> Any volunteer, nominee or party member incurring a dispute related expense on behalf of the Party without first obtaining the Executive Committee's written approval does so at his or her own risk, expense, and cost.

   As written it reverses effect and cause to put incurring any expense ahead of approval, admits of no restrictions on the nature of the expense, and uses "their" to refer to an individual.

9. 3.3 seems to say that the parties to a dispute can get executive approval under 2.x to spend party monies and still have the panel rule that they have to pay all incurred expenses.

   A double jeopardy clause might make sense, but if it's there to discourage conflict we might not want to mask it quite so much - and if it's just copied from somebody's contract, we might want to rethink this rather considerable expansion on the panel's powers. We're not creating a human rights commission here, right?

10. 4.1 (panel must produce a written record) infringes on (or contradicts) on 3.2. (a panel can decide not to keep written records). In an amicable resolution the outcome should be that nothing ever happened - I think that's the point of 3.2, but 4.1 prohibits it.

There are other minor issues - e.g. 2.4ff refer to a vice chair whose appointment is not contemplated under 2.2 - but, in general I think we need something like this, this is a useful draft, but some more work to smooth out the cut and paste effects long before this thing gets tested in court.