

94342-7

SUPREME COURT NO. TO BE SET

COURT OF APPEALS NO. 48631-8-II

KENNETH SWANIGAN and DR. CHARLIE WALKER, III
PAST GRAND MASTERS

Petitioner (s)

v

MOST WORSHIPFUL PRINCE HALL GRAND LODGE
F. & A.M. WASHINGTON AND JURSDICTION and
MOST WORSHIPFUL GRAND MASTER, GREGORY D. WRAGGS, SR.

Respondent (s)

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON
PIERCE COUNTY SUPERIOR COURT CAUSE NO. 15- 2- 09953- 7

The Honorable A.C.J. Maxa

PETITION FOR REVIEW

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I. TABLE OF CONTENTS

I. TABLE OF CONTENTS 1

II. TABLE OF AUTHORITIES..... 2 -3

III. IDENTITY OF PETITIONER..... 4

IV. COURT OF APPEALS DECISION..... 4

V. ISSUES PRESENTED FOR REVIEW..... 4 -5

VI. STATEMENT OF THE CASE 6- 17

VII. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED... 17 - 21

VIII. CONCLUSION 21

APPENDIX

- 1 Court of Appeal Decision
2. Motion For Reconsideration
3. Order Denying Motion For Reconsideration

II. TABLE OF AUTHORITIES

Cases

Woolfork's Appeal, 126 Pa. St.47 (1889), (Involving a black group calling itself Masonic) it was observed by the court that "The ancient landmarks of the Masonic fraternity are unalterable.

Smith v. Smith, 2 Desaus 557 (1813; So. Car.) and in *Bayliss v. Grand Lodge of Louisiana*, 131 La 579, 59 So. 996 (1912). On the ancient landmarks are predicated the rules that govern the Masonic fraternity. Nothing can be adopted in derogatory of these landmarks."

Rheubottom v. MWP HGLWA (2003; King County) where Attorney Fowler litigated and prevailed on behalf of his client Rheubottom; Court Rulings has stated, "we don't follow our own laws."

Eugene Nairn v. Prince Hall Grand Lodge of Bahama (2014) where the Supreme Court rule in (Narin) Freemason Wins Court Fight Over Expulsion From Lodge. Justice Evans ruled that masonic jurisprudence does not and "cannot" overreach the laws of The Bahamas. "Every citizen whether he be a mason or non-mason, has the right to apply to the Supreme Court of the Bahamas for redress and that right, in no manner whatsoever, be abrogated.

(*Evans v. Brown*, 134 Md 519, 107 Atl. 535, 1919 and *M. W. Grand Lodge v. Lee*, 128 Md. 42, 96 Atl. 872, 1916)(7 C. J. S. 63) (7 C. J.S. 61, 1980).

As a general rule, a member cannot be suspended from or expelled from an association without a fair trial before an impartial tribunal and a reasonable opportunity must be given to defend the charges filed. It is established that the proceedings to discipline a member should be conducted in conformity with the rules of the association and the law of the land.

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend 1

U.S. Const. Amend 7

U.S. Const. Amend 14

WASHINGTON STATUTES

RCW49.60 et seq.

OTHER AUTHORITIES

CR 5,

CR 26,

CR 59(a) (7-9)

RAP 12.3,

RAP 12.4 (b)

III. IDENTITY OF PETITIONER

Petitioners Kenneth Swanigan and Dr. Charlie Walker, III, the Petitioners below, request that this court review the decision of the Court of Appeals II, referred to this matter in Section II of our petition.

IV. COURT OF APPEALS DECISION

Kenneth Swanigan and Dr. Charlie Walker, III, request review of the Court of Appeals II, unpublished opinion entered on February 29, 2017. A copy of the opinion is attached.

V. ISSUE PRESENTED FOR REVIEW

Did the Grand Lodge lack probable cause given consideration of Petitioners claim under RCW 10.14.020(1), Course of Conduct to impose disciplinary actions and violate their internal procedures to wrongfully decide Petitioners discipline and suspended them prior the trial without notifying them of any formal charges?

1. The Supreme Court should accept review and hold that the Grand Lodge wrongfully decide Petitioners discipline and suspended them prior the trial without notifying them of any formal charges?
2. Review should be granted because the Appellate Court err in their opinion, that the Grand Lodge wrongfully decide Petitioners discipline and suspended them prior the trial without notifying them of any formal charges?
3. Review should be granted because the Appellate Court err in their opinion, that granting Respondent, summary judgment without demanding or considering all proof of evidence requested by Petitioners, i.e.; the 113th Grand Session Audio and Masonic Trial Tape Recordings.
4. Review should be granted because the Appellate Court err in their opinion, Petitioners requested discovery on two different July 9, 2015 and July 28, 2015, and Respondent failed to provide requested evidence on both occasions.

5. Review should be granted because the Appellate Court err in their opinion, Petitioners filed their Complaint on July 9, 2015, and to date Respondent has not answered.
6. Review should be granted because the Appellate Court err in their opinion because, the court erred by not considering Declaration Statements provided on behalf of Petitioners.

VI. STATEMENT OF THE CASE

This case is about the Petitioners standing in the Court with Mr. Lonnie Ray Traylor having been falsely accused by the Grand Lodge of theft, with no real basis and no formal charges filed against him.

The Petitioners were disciplined being falsely accused of representing Mr. Traylor in his case prior to Petitioners trial, without any formal charges file against Petitioners.

The Grand Lodge failed to follow its own internal rules for Resolution and violate Petitioners right of due process. Petitioners, exhausted all of their internal process and was left with no other alternative but to pursue resolution through the courts.

However in doing so, the superior court failed by not allowing Petitioners due process of law. (RP 8)

Petitioners filed their complaint under Washington State Law RCW 10.14.020- (1) "Course of Conduct" which means a pattern of conduct composed and series of acts over a period of time, and not on the grounds of Anti-Harassment to which the court ruled. (CP 35)

This case is a Civil case, and Not a Masonic Case and not a petty or ancillary case based on the status of Petitioners membership. (CP 7)

Petitioners received a "Letter of Reprimand" from Respondent without receiving any Formal Masonic Charges prior to Respondent conducting an Investigation or Petitioners having any Masonic Trial. (CP 3)

In (*Evans v. Brown*, 134 Md 519, 107 Atl. 535, 1919 and *M. W. Grand Lodge v. Lee*, 128 Md. 42, 96 Atl. 872, 1916) (7 C. J. S. 63) (7 C. J.S. 61, 1980) a member cannot be suspended from or expelled from an association without a fair trial before an impartial tribunal and a reasonable opportunity must be given to defend the charges filed.

In accordance with the Masonic Code Book, "All charges of Un-Masonic conduct (that is, of Masonic offense) shall be made in writing specifying with reasonable certainty the character of the offense alleged, and the time and place as near as may be practical, and be signed by the accuser.

Charges must be so explicit that the accused will have a fair understanding of what he is to answer.” (CP 5)

Petitioners asserts, there were NO Specific Masonic Charges mailed or given to Appellants prior to Appellants Trial. (CP 6)

Petitioners asserts that Gregory D. Wraggs, Sr., Carlton Tucker, Patrick L. Hughes, was at the Civil Trial of Mr. Lonnie Traylor in Pierce County Superior Court on April 3, 2015, during the same time of Petitioners and no disciplinary actions was take against them.

However, only the Petitioners was identified to have allegedly violated the organization rules and regulation and later notified of their Trial to be held on Tuesday, June 30, 2015.

Petitioners asserts that, if other members of the Grand Lodge attended the Civil Trial of Mr. Traylor, why were Petitioners being discriminated against and treated unfairly Treatment?

The Court Official Transcripts of Mr. Traylor hearing will show that Mr. Traylor is and was the ONLY person, who represented himself at All of his hearings the Superior Court.

It is the Petitioners understanding that an American Citizen can attend a Civil Trial at any time without have to be discipline or punished.

It is the Petitioners belief that a Masonic Trial does NOT Have Jurisdiction over a Superior Court.

In the Masonic teachings it is stated clearly that “Masonry shall not interfere with a person Moral, Social, Civic duties or Privileges.”

Petitioners believes, the Grand Lodge either do not understand or do not care, that their actions are clearly in contrast and gross violations of it own unchangeable laws, rules and regulations.

Petitioners was NOT allowed the 30 days to prepare for their trial whereby; Title 203.03 - In part states “ *Thirty (30) days shall intervene between the time of a mailing of such notice and the time of the hearing and the proceedings of the trial.* (RP 6)

Petitioners asserts that their Substantive and Procedural Due Process of Law, which is guaranteed in the United States of America in the 14th Amendment has been Denied!

Petitioners filed their appeal with the Grand Lodge to appeal their case before the Grand Assembly in accordance the Unchangeable Landmark No. 13, and the Grand Lodge, again Denied Petitioners rights to be heard by the Grand Assembly.

Petitioners asserts, that Unchangeable Landmark No. 13, states' "THE RIGHT OF EVERY FREEMASON TO APPEAL" from the decision of his brethren in Lodge convened, to the Grand Lodge or General Assembly of Freemasons, is a Landmark highly essential to the preservation of justice, and the prevention of oppression. (CP 7)

Petitioners firmly asserts, that their Rights to Appeal was violated and that they have exhausted all possible internal resolutions to resolve this matter with the Grand Lodge. (APPENDIX 51.08)

Petitioners filed their civil Complaint, Preliminary Injunction and Restraining Order on July 9, 2015, specifically under Washington State Law RCW 10.14.020- (1) "Course of conduct" which means a pattern of conduct composed of a series of acts over a period of time, purpose to which the Prince Hall Grand Lodge to which the Respondent has yet to answer. (CP 1)

Petitioners assert that the court failed at not considering the issue that cause this matter to come before the court which have facts and evidences that show a Multitude of Gross Violations, which have been committed against Petitioners.

The Facts and Evidences has shown a Multitude of Gross Violations, which have been committed against Petitioners such as:

Administering a Letter of Reprimand to Appellants without A Trial, Investigation, No Formal/Specific Masonic Charges given to Petitioners in writing, which was Appellants first Punitive Encounter with Respondent. (CP 166)

Petitioners Substantive and Procedural Due Process of Law, which is guaranteed in the 14th Amendment; Violating the stature of "Equal Protection Under The Law" by inflicting Unfair Treatment to Petitioners and all members.

The court have ruled on several occasions against the Grand Lodge in stating that " The Grand Lodge Do Not Follow Their Own Laws" where their have been other civil lawsuit file against the Grand Lodge whereby the Petitioners prevailed on a similar case.

Appellants believes the Honorable Michael E. Schwartz received Appellants case from the Honorable Vicky Hogan on or about December 10, 2015, to be heard on December 11, 2015.

Appellants asserts that Honorable Michael E. Schwartz did not have appropriate time have read and reviewed Appellant entire case less than 24 hours prior to Appellants hearing. (RP 4)

It was after Petitioners hearing on December 14, 2015, when Petitioners received letter in the mail notifying them of the change in Judge that would be hearing their case. (RP 117)

Petitioners believe this is improper notification of the court and shows a prejudice as the court notified Respondent and not Petitioners.

Petitioners asserts that the court failed at the process of the Practical process of allowing Petitioners to present their case and allow time to rebuttal.

Petitioners asserts that this appear to be impractical and show a prejudice due to the fact Petitioners representing themselves.

Petitioners asserts that the hearing should have been continued until such time Petitioners was properly notified by the court that their case had been transferred to another judge to be heard.

Appellants asserts that, during this entire process that no court has never heard their case and plead to the court that all requests for Production of Documents have been exhausted as well as ALL internal remedies of the Grand Lodge to resolve this matter internally after making several attempts.

Petitioner request this court to grant Petitioner request as the Superior and Appeal rendered a decision granting Respondents summary without considering all of the facts. (CP 120)

VII. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

The Supreme Court should accept review and hold that the Grand Lodge lacked probable cause to falsely accuse Petitioners and take

disciplinary actions against them without evidence, formal charges or documented proof

This significant question of constitutional law is of substantial public and person interest and should be determined by the Supreme Court. RAP 13. 4(b)(3) and(4)

The Court of Appeals II did not reversed and remanded the case to the Superior Court ,Appellant then filed a Motion for Reconsideration, which was denied on February 22, 2017, Petitioners now submits this Petition for Review to the Supreme Court.

The Petitioners argues action is being brought under RCW 10.14.020- (1)"Course of Conduct" which the Grand Lodge have composed a series of acts over a period of time with evidence of a continual behavior and purpose to harass Petitioners.

Petitioners attended a Civil Court Hearing in the Superior Court on April 3 2015, of Mr. Lonnie R. Traylor because, he has been falsely accused of theft by the Prince Hall Grand Lodge.

Consequently, Petitioner was subjected to Harassment, Unfair Treatment by the Prince Hall Grand Lodge.

Petitioners argues that the Grand Lodge knew they were in violations of their Constitution and By-Laws however chose to discipline Petitioners violating Petitioners dues process.

.Petitioners argues that Appeals Court did not overturn Summary Judgment granted to Respondent and Petitioners Complaint be remanded to remand back to Superior court to be heard by jury because, the trial court erred in their decision without considering all the facts.

Petitioners argues that case is about Due Process and Violations of their Civil and United State Constitutional Rights and violations of the Internal Dispute regarding the Grand Lodge violating their own laws.

Petitioners argues that Respondent's Attorney (James C. Fowler) interference with the ongoing case of Mr. Traylor, who is in Civil Litigation with the Prince Hall Grand Lodge caused Petitioners to be accused of action that is not true and unlawfully disciplined by the Grand Lodge without due process.

Petitioners argues that the Court of Appeal did not consider the "The Unchangeable Landmarks of Masonry can never be changed."

Petitioners objects to their opinion because, the organization broke it own laws and not allowed due process and failed to allow Petitioners opportunity to appeal in accordance to unchangeable laws that states in part; “ *Every member have the right to appeal before the Grand Assembly,* which Petitioners was denied.

Petitioners argues Appeal Court erred not considering the Petitioners filed their complaint on July 9, 2015, along with a Motion for Injunction an a Temporary Restraining Order that requested the relief sought to attend the Masonic Affairs to include attending an participating in the 113th Annual Grand Session.

Petitioners argues, the court did not allow due process and staved off Petitioners complaint from being heard.

Petitioners was not schedule for a hearing until after the 113th Grand Session which, consequently the court ruled to dismiss their case in favor of Respondent.

The court is the agency utilized in civilized communities to settle disputes which arise between persons relating to the law.

Petitioners argues the opinion rendered by the Court of Appeals II and it panel appear not to give consideration to various claims to the dissatisfaction with the Grand Lodge's decision to the disciplinary Procedures used to decide Petitioners n taking disciplinary actions against them Suspending them without any formal charge or document proof. in violating his due process.

Petitioners argues everyone charged with a penal offense has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.

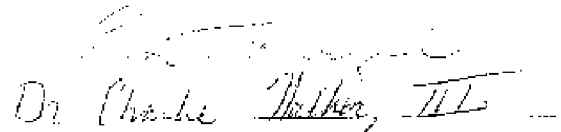
Finally, Petitioners argues and ask the court to consider, how can Petitioners defend himself when he has never been officially charge with a crime and neither have their been any official document proof of allege allegation made against them.

VII. CONCLUSION

The Supreme Court should accept Review and Reverse the Court of Appeals II decision and Remand Petitioners case back to The Superior Court to be heard by a jury.

Respectfully Submitted

Dated 7th day of April 2017

A handwritten signature in cursive script, appearing to read "Charlie Walker, III". The signature is written in dark ink on a white background.

Signature
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**IN THE COURT OF APPEALS / SUPREME COURT OF THE
STATE OF WASHINGTON**

KENNETH SWANIGAN and DR. CHARLIE WALKER, III

Pierce County No. **15-2-09953-7**

Petitioner

Court of Appeal Case No. **48631 -8-II**

v

**DECLARATION OF
DOCUMENT FILING AND SERVICE**

**MOST WORSHIPFUL PRINCE HALL GRAND
LODGE F.A.M. WASHINGTON & JURISDICTION
and MOST WORSHIPFUL GRAND MASTER
GREGORY D. WRAGGS, SR.**

Respondents

DECLARATION OF DOCUMENT FILING AND SERVICE

I KENNETH SWANIGAN and DR. CHARLIE WALKER, III, DECLARE THAT ON THE **7TH DAY OF APRIL 2017**, I CAUSED THE ORIGINAL **PETITION FOR REVIEW** TO BE FILED IN THE COURT OF APPEALS II AND SUPREME COURT AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X]	JAMES C. FOWLER, WSBA # 15560	<input type="checkbox"/>	U.S. MAIL
	1201 PACIFIC AVE STE 1900	<input checked="" type="checkbox"/>	HAND DELIVERED
	TACOMA, WA 98402	<input type="checkbox"/>	AGREED E-SERVICE
		<input checked="" type="checkbox"/>	VIA COA PORTAL

SIGNED IN RENTON, WASHINGTON THIS 7TH DAY OF APRIL 2017

February 28, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

KENNETH SWANIGAN and CHARLIE
WALKER, III, PAST GRAND MASTERS,

Appellants,

v.

MOST WORSHIPFUL PRINCE HALL
GRAND LODGE F.A.M. WASHINGTON &
JURISDICTION and MOST WORSHIPFUL
GRAND MASTER GREGORY D. WRAGGS,
SR.,

Respondents.

No. 48631-8-II

UNPUBLISHED OPINION

MAXA, A.C.J. – Kenneth Swanigan and Charlie Walker appeal the trial court’s dismissal of their complaint against the Most Worshipful Prince Hall Grand Lodge (Grand Lodge) and its Grand Master, Gregory Wraggs. Swanigan and Walker argue that the trial court erred because their complaint stated claims for harassment under chapter 10.14 RCW and violation of their substantive due process, procedural due process, and equal protection rights. Swanigan and Walker also allege various procedural errors.

We hold that the trial court did not err in granting the Grand Lodge’s motion to dismiss because the complaint’s allegations were insufficient to (1) state a claim for harassment under chapter 10.14 RCW, and (2) support a finding that the Grand Lodge engaged in state action, a requirement for a constitutional violation. We reject Swanigan and Walker’s procedural claims. Accordingly, we affirm the trial court’s order of dismissal of Swanigan and Walker’s complaint.

FACTS

Swanigan and Walker are Freemasons and life members of the Grand Lodge, a local unit of the Freemasons. The Freemasons have a longstanding set of internal rules that govern the operations of each Grand Lodge. Among other things, these rules provide each Mason with the right to receive a Masonic trial before being disciplined.

On June 5, 2015, Swanigan and Walker attended the trial of a lawsuit between another Freemason – Lonnie Traylor – and the Grand Lodge. Traylor had filed suit after his membership was suspended. Swanigan and Walker received a letter of reprimand from Wraggs, apparently for attending Traylor’s trial. They subsequently received a notification of trial scheduling a Masonic trial for June 30. The complaint does not state what happened at the trial, but the complaint alleges that Swanigan and Walker were illegally suspended from the Grand Lodge.

On July 6, Swanigan and Walker filed a motion for a preliminary injunction to allow Swanigan to attend and participate in Masonic affairs, including to attend the Grand Lodge’s annual meeting on July 13-15.¹ The trial court denied the motion without prejudice. Swanigan filed a nearly identical motion on July 9.² On the same day, Swanigan filed a motion for a temporary restraining order (TRO). The record does not show if or when the trial court ruled on these motions.

¹ The motion does not clearly state the relief sought. But the motion attached a proposed order granting the injunction that enjoined the Grand Lodge from preventing Swanigan from attending and participating in Masonic affairs, including attending the Grand Lodge’s annual meeting.

² Both Swanigan and Walker signed the first motion for a preliminary injunction, but only Swanigan signed the second motion.

On July 7, Swanigan and Walker filed a complaint against the Grand Lodge and Wraggs.³ The complaint alleged that the Grand Lodge violated RCW 10.14.020(1), Washington's unlawful harassment statute, and violated their substantive due process, procedural due process, and equal protection rights under the Fourteenth Amendment of the United States Constitution. But the complaint primarily consisted of recitations of multiple Grand Lodge rules and procedures. The complaint alleged that the Grand Lodge violated some of these rules and procedures. The last page of the complaint appears to be taken from a "grievance and appeal" document and requested that "this Grand Body" review and overturn the Grand Lodge's decision. Clerk's Papers (CP) at 51.

On July 28, Swanigan and Walker served a request for production of documents on the Grand Lodge. Swanigan and Walker represent on appeal that the Grand Lodge did not respond to these requests. There is no indication in the record that Swanigan and Walker ever filed a motion to compel responses to the requests for production.

On December 3, the Grand Lodge moved to dismiss the complaint for failure to state a claim because the complaint did not state a claim for relief as required under CR 8(a). On December 10, the case was administratively reassigned from Judge Hogan to Judge Schwartz. There is no indication in the record that Swanigan and Walker objected to this reassignment at the time.

³ Only Swanigan signed the complaint. A nonlawyer party who represents himself cannot lawfully represent another party or submit documents on another party's behalf. *See Lloyd Enters., Inc. v. Longview Plumbing & Heating Co.*, 91 Wn. App. 697, 701, 958 P.2d 1035 (1998). Therefore, Walker's claims were subject to dismissal. However, the Grand Lodge does not raise this issue. Because we affirm dismissal of the complaint, we need not address this issue.

The trial court granted the Grand Lodge’s motion to dismiss, and later denied Swanigan and Walker’s motion for reconsideration. Swanigan and Walker appeal.

ANALYSIS

A. STANDARD OF REVIEW

The Grand Lodge filed a motion to dismiss based on CR 8(a) and argued that Swanigan and Walker’s complaint “fail[ed] to state a claim for which relief can be granted.” CP at 181. CR 8(a) requires that a complaint contain a “short and plain statement of the claim showing that the pleader is entitled to relief.” If a complaint does not comply with CR 8(a), the trial court may dismiss it for failure to state a claim under CR 12(b)(6). *Becker v. Cmty. Health Sys., Inc.*, 182 Wn. App. 935, 941, 332 P.3d 1085 (2014), *aff’d*, 184 Wn.2d 252, 359 P.3d 746 (2015).

Under CR 12(b)(6), a complaint may be dismissed if it fails to state a claim upon which relief can be granted. We review *de novo* a CR 12(b)(6) order dismissing a claim. *J.S. v. Vill. Voice Media Holdings, LLC*, 184 Wn.2d 95, 100, 359 P.3d 714 (2015). A complaint must contain allegations sufficient to provide a defendant with notice of what the claim is about and the grounds on which it rests. *Estate of Dormaier v. Columbia Basin Anesthesia, PLLC*, 177 Wn. App. 828, 854, 313 P.3d 431 (2013).

We accept as true all facts alleged in the plaintiff’s complaint and all reasonable inferences from those facts. *J.S.*, 184 Wn.2d at 100. We also “may consider hypothetical facts supporting the plaintiff’s claim.” *FutureSelect Portfolio Mgmt., Inc. v. Tremont Grp. Holdings, Inc.*, 180 Wn.2d 954, 962, 331 P.3d 29 (2014). The question is whether there are facts that conceivably could be raised that would support a legally sufficient claim. *Worthington v.*

WestNET, 182 Wn.2d 500, 505, 341 P.3d 995 (2015). Dismissal under CR 12(b)(6) is appropriate only if the plaintiff cannot allege any set of facts that would justify recovery. *Id.*

B. STATUTORY HARASSMENT CLAIM

Swanigan and Walker expressly alleged in their complaint that their suit was being brought under RCW 10.14.020(1). Swanigan and Walker repeat this claim several times in their briefs. We hold that the complaint's allegations failed to state a claim for relief for statutory harassment.

Chapter 10.14 RCW, the anti-harassment statute, is intended to prevent "personal harassment through repeated invasions of a person's privacy by acts and words." RCW 10.14.010. The statute defines "unlawful harassment" to mean a "knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is detrimental to such person, and which serves no legitimate or lawful purpose." RCW 10.14.020. The behavior must both be sufficient to "cause a reasonable person to suffer substantial emotional distress" and actually cause such distress to the plaintiff. RCW 10.14.020; *see State v. Whittaker*, 192 Wn. App. 395, 406, 367 P.3d 1092 (2016).

Here, Swanigan and Walker apparently alleged in their complaint that the Grand Lodge violated its own rules and procedures in disciplining them. But their complaint did not contain any allegations showing how these actions fell within the definition of harassment in RCW 10.14.020. The complaint indicates only that the Grand Lodge reprimanded them, required them to attend a Masonic trial, and possibly suspended them. These actions are not sufficient to state a statutory harassment claim.

Further, the relief allowed under chapter 10.14 RCW is an order of protection against unlawful harassment. RCW 10.14.040. There is no indication in the statute that a petitioner can obtain any other relief. Swanigan and Walker did not expressly request a protection order in their complaint.

We hold that the trial court properly dismissed Swanigan and Walker's statutory harassment claim.

C. CONSTITUTIONAL CLAIMS

Swanigan and Walker alleged in their complaint that the Grand Lodge failed to follow its own rules and procedures in disciplining them. But the only stated basis for relief was for a violation of their substantive due process, procedural due process, and equal protection rights under the Fourteenth Amendment. We hold that the complaint allegations failed to state a claim for relief for constitutional violations because there were no allegations that the Grand Lodge was a state actor.

The Fourteenth Amendment applies only to actions of the state. *In re Estate of Hayes*, 185 Wn. App. 567, 603, 342 P.3d 1161 (2015). To bring a constitutional claim, a plaintiff must identify some state action that deprived him or her of a constitutionally protected property or liberty interest. *Id.* When a complaint fails to demonstrate that state action has occurred, that complaint must be dismissed for failure to state a claim. *In re Estate of Wright*, 147 Wn. App. 674, 686-87, 196 P.3d 1075, 1082 (2008).

Here, the Grand Lodge appears to be a private organization. And Swanigan and Walker's complaint did not allege that the Grand Lodge was an agent of the state or that any state action had occurred. Therefore, the complaint did not state a claim for a constitutional violation.

Swanigan and Walker's allegations that the Grand Lodge failed to follow its own rules and procedures in disciplining them technically could state a cause of action on non-constitutional grounds. But they do not allege in their complaint or identify in their briefing any basis for a civil claim against the Grand Lodge.

We hold that the trial court properly dismissed Swanigan and Walker's claims for violation of their due process and equal protection rights.

D. PROCEDURAL CLAIMS

Swanigan and Walker assert various procedural claims that are only tangentially related to the Grand Lodge's CR 12(b)(6) motion. We reject all of these claims.

1. Grand Lodge's Failure to Respond to Complaint

Swanigan and Walker argue that the Grand Lodge failed to respond to their complaint. The Grand Lodge apparently did not file an answer to the complaint. But a defendant is entitled to file a CR 12(b)(6) motion before filing an answer. CR 12(b). We reject this argument.

2. Motions for Injunction/TRO

Swanigan and Walker argue that the trial court erred by not considering Swanigan and Walker's July 9 motions for a preliminary injunction and a TRO. But the record does not show that Swanigan ever noted these motions on the trial court's calendar or requested that the trial court consider them. In the absence of such evidence, we cannot determine whether the trial court was required to address these motions. Further, Swanigan and Walker do not show that if the trial court had considered these motions, it would have ruled any differently than in its order denying Swanigan and Walker's first motion for an injunction. We reject this argument.

3. Request for Discovery

Swanigan and Walker argue that the trial court erred by not requiring the Grand Lodge to respond to their discovery requests. But discovery is immaterial under CR 12(b)(6), which focuses only on the allegations in the plaintiff's complaint. CR 12(b); *see Rodriguez v. Loudeye Corp.*, 144 Wn. App. 709, 725, 189 P.3d 168 (2008). Further, Swanigan and Walker apparently did not file a motion to compel discovery. We reject this argument.

4. Grand Lodge's Failure to Produce Evidence

Swanigan and Walker argue that the trial court erred by not requiring the Grand Lodge to produce evidence supporting its discipline of them. But a defendant has no obligation to present evidence to support a CR 12(b)(6) motion, which is based on the allegations in the plaintiff's complaint. CR 12(b); *see Rodriguez*, 144 Wn. App. at 725. We reject this argument.

5. Assigning Case to a Different Judge

Swanigan and Walker argue that the trial court violated due process by not timely informing them that their case had been assigned to a different judge until the day of the CR 12(b)(6) hearing. But they have not cited any authority for the proposition that the trial court must provide notice before a case is assigned to a different judge. And they do not explain why assigning a case to a different judge without notice violates due process. We reject this argument.

6. Grand Lodge Appeal Process

Swanigan and Walker argue that the trial court erred by not considering the Grand Lodge's failure to allow them to appeal their discipline before the Grand Assembly. But as noted above, due process and equal protection were the only stated grounds for relief for the

Grand Lodge's alleged failure to follow its procedures in disciplining Swanigan and Walker.

And the complaint did not allege state action. We reject this argument.

7. Trial Court's Failure to Consider Declarations

Swanigan and Walker argue that the trial court erred by not considering declarations that they submitted. But declaration evidence is immaterial for a CR 12(b)(6) motion, which is based on the allegations in the plaintiff's complaint. CR 12(b); *see Rodriguez*, 144 Wn. App. at 725. And Swanigan and Walker do not identify the declarations to which they are referring. We reject this argument.

CONCLUSION

We affirm the trial court's dismissal of Swanigan and Walker's complaint.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



MAXA, A.C.J.

We concur:



WORSWICK, J.



SUTTON, J.

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MOST WORSHIPFUL PRINCE HALL
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JURISDICTION and MOST WORSHIPFUL
GRAND MASTER GREGORY D. WRAGGS, SR.,

Respondents

No. 48631-8-II

MOTION TO RECONSIDER

RAP 12. 4 (b)

Kenneth Swanigan and Charlie Walker III requests, pursuant to RAP 1. 2. 4(b), and without prejudice to his right under RAP 13. 4(b) to petition for review to the Supreme Court on all issues in the appeal, that this Court reconsider its decision of February 28, 2017, in the respects set forth below.

The opinion rendered by the court of appeals and it panel appear not to have given consideration to the claim under RCW 10.14.020(1), Course of Conduct to the dissatisfaction with the Grand Lodge's decision to the disciplinary procedures used to decide their used to wrongfully decide their discipline, and suspended them prior the trial without notify them of any formal charges. Mr. Wraggs violated their own normal process and timeline.

FACTS

Swanigan and Walker are Freemasons and life members of the Grand Lodge, a local unit of the Freemasons. The Freemasons have a longstanding set of internal rules that govern the operations of each Grand Lodge. Among other things, these rules provide each Mason with the right to receive a Masonic trial before being disciplined. It may be important to note that the Grand Lodge and Mr. Wraggs disciplined both appellants without charges and violated their own internal timelines.

The court erred in not considering that the Grand Lodge, also have rules that are unchangeable to which they violated. *Woolfork's Appeal, 126 Pa. St.47 (1889)*, On June 5, 2015, Swanigan and Walker attended the trial of a lawsuit between another Freemason – Lonnie R. Traylor – and the Grand Lodge. Traylor had filed suit after his membership was suspended under RCW49.60 to which the court erred to identify.

Swanigan and Walker was suspended for exercising their civil rights, which does not interfere with the Grand Lodge internal rules. In fact, the Grand Lodge is clear on the rule that states “Masonry on no account should interfere with your social or civic duties be they what they may.”

Although Swanigan and Walker received a letter of reprimand from Wraggs, without any charges, apparently for attending Traylor’s trial, they subsequently received an illegal notification of scheduling a Masonic trial for June 30th, the Grand Lodge and

Neither did the Grand Lodge provide any charges for the alleged crime nor allow any of Swanigan and Walker witnesses to testify. All of Swanigan and Walker witnesses to testify during their Masonic Trials including the members of their individual Lodge was not allowed into the trial.

We deem this as “Course of Conduct” and inappropriate and conspiracy to take action against them without allowing due process of law.

The complaint does state what happened at the trial but the court erred in seeing that Swanigan and Walker were illegally suspended with NO charges file against them from the Grand Lodge. (CP 48)

On July 6, 2015, Swanigan and Walker filed a motion for a preliminary injunction to allow them to attend and participate in Masonic affairs, including attending the Grand Lodge’s annual meeting on July 13-15, so that they may have an opportunity to appeal their cases before the Grand Assembly, which is a unchangeable law of the Grand Lodge Constitution.

Swanigan and Walker deemed this as Course of Conduct and violation of their due process. The reasoning for filing a motion for a Temporary Restraining Order (TRO) on the same day was due being directed by the court to go to Room 105 to have their case heard by a commissioner, who in turn directed them upstairs to another court room, only to be told that they had to have their case set on a calendar to be heard.

This is the reason record does not show if or when the trial court ruled on these motions.

On July 7, 2015, Swanigan and Walker filed a complaint against the Grand Lodge and Wraggs.

The complaint alleged that the Grand Lodge violated RCW 10.14.020(1), Washington's unlawful harassment statute, and violated their substantive due process, procedural due process, and equal protection under the law rights under the Fourteenth Amendment of the United States Constitution.

Swanigan and Walker complaint was against the Grand Lodge and Wraggs for stating that they were representing Mr. Traylor. The fact is that they have never represented Mr. Traylor. Rather, They supported Mr. Traylor, because we are our brother's keeper knowing of his innocence.

A Court Official Transcripts will show that Mr. Lonnie R. Traylor is and was the ONLY person, who represented himself (pro se) at all of his Civil Lawsuit Case in Superior Court Appellants.

In fact, The Judge and The Courts Official Transcripts stated and showed that Appellants could not and have not spoken A Single Word to Represent Mr. Traylor in his Civil Lawsuit Proceedings Mr. Traylor at his trial. (CP 48)

Appellants assert that Gregory D. Wraggs, Sr., Carlton B. Tucker, Patrick L. Hughes were also at the Civil Trial of Mr. Lonnie Traylor in Pierce County Superior Court on April 3, 2015 and it appears that only Swanigan and Walker was discipline for being in attendance. This raises a question of the Course of Conduct. was the other folks attending the trial there also in support of Mr. Traylor?

On July 28, 2015, Swanigan and Walker served a request for production of documents(previous requested Discovery Information) on the Grand Lodge for the rights of appeal, which the Grand Lodge did not respond to the requests.

Swanigan and Walker have been denied their requests for Requested Discovery Information and Materials, which were to be used in their respective Masonic Trials. However, we were denied the requested discovery information to show and prove our innocence.

On December 10, the case was administratively reassigned from Judge Hogan to Judge Schwartz.

Swanigan and Walker believe that the court erred and should reconsider their opinion on the fact that Honorable Michael E. Schwartz, received the case from Honorable Vicky Hogan on or about December 10, 015 to be heard on December 11, 2015. This means that Judge Michael E. Schwartz alleged to have read and reviewed the entire case in less than 24 hours. If, in fact, that he received the case at 3:00 p.m. on December 10, 2015.

Swanigan and Walker believe that the court erred in its decision that was rendered as there is no indication/notification in the record that the court notified Swanigan and Walker of the reassignment of their case until the day of their hearing.

Swanigan and Walker request reconsideration of their hearing because the court failed to properly notify plaintiffs their case had been transferred. Swanigan and

Walker were informed of the transfer the day of their hearing and not notified by the court. This action is in direct contrast and violation of CR 4 of the Washington Court Rules, which is in regards to time limitation.

ANALYSIS

A. STANDARD OF REVIEW

Swanigan and Walker argue that the court reconsider CR 8(a) that Swanigan and Walker's complaint did not "fail" to state a claim for which relief should be granted." CR 8(a) requires that a complaint contain a "short and plain statement of the claim showing that the pleader is entitled to relief."

(Evans v. Brown, 134 Md 519, 107 Atl. 535, 1919 and M. W. Grand

Lodge v. Lee, 128 Md. 42, 96 Atl. 872, 1916)(7 C. J. S. 63) (7 C. J.S. 61, 1980).

As a general rule, a member cannot be suspended from or expelled from an association without a fair trial before an impartial tribunal and a reasonable opportunity must be given opportunity to defend the charges filed It is established that the proceedings to discipline a member should be conducted in conformity with the rules of the association and the law of the land.

Eugene Nairn v. Prince Hall Grand Lodge of Bahama (2014) where the Supreme Court rule in (Narin) favor based on the conduct of the Grand Lodge.

Rheubottom v. MWPHGLWA (2003) where Attorney Fowler litigated and prevailed on behalf of his client Rheubottom; Court Rulings has stated, "we don't

follow our own laws." It may be important to note that Mr. Rheubottom also appointed as the Chairman of Swanigan's and Walker's "masonic trial."

Swanigan and Walker argue that the court reconsider all facts alleged in the plaintiff's complaint and all reasonable inferences from those facts. *Universal Lodge v. Valentine, 134 Md. 505, 107 Atl. 531, 1919 and Evans v. Brown, 134 Md. 519, 107 Atl. 335, 1919*) *In accordance with the general rule, membership in a Masonic group cannot be terminated without notice and an opportunity to be heard.*

Swanigan and Walker argue that there is no question if whether there are conceivably facts that could be raised that would support their legal claim. *Woolfork's Appeal, 126 Pa. St.47 (1889), (Involving a black group calling itself Masonic) it was observed by the court that "The ancient landmarks of the Masonic fraternity are unalterable.*

B. STATUTORY HARASSMENT CLAIM

Swanigan and Walker filed their complaint under RCW 10.14.020(1).
Swanigan and Walker repeat this claim several times in their briefs.

Swanigan and Walker request that the court reconsider their opinion and grant their claim for relief for statutory harassment .Chapter RCW10.14.010.

The statute defines "unlawful harassment" to mean a "knowing and willful course of conduct directed at a specific person which seriously alarms, annoys, harasses, or is

detrimental to such person, and which serves no legitimate or lawful purpose.

” RCW 10.14.020. The behavior must both be sufficient to “cause a reasonable person to suffer substantial emotional distress” and actually cause such distress to the plaintiff.

Swanigan and Walker request that the court reconsider their opinion and grant their claim for relief in their complaint, because the Grand Lodge violated its own written rules and procedures in disciplining them based on the violations of the Grand Lodge Constitution.

Swanigan and Walker request that the court reconsider their opinion and grant their claim for relief in their complaint, because the Grand Lodge violated its own rules and procedures reprimanding them, prior to any charges and to attend a Masonic trial, and suspended them without due process of law.

These actions are sufficient to state a statutory harassment claim due to the vast violations and lack of process of the Grand Lodge Constitution.

Further, the relief request was a temporary restraining order that Swanigan and Walker attempted file in the trial court, however being referred one court room to another, it was determine by the court, that they needed to get on a judge calendar to be heard to request protection in their complaint.

Swanigan and Walker hold that the trial court erred in not properly dismissing their statutory harassment claim.

C. CONSTITUTIONAL CLAIMS

Swanigan and Walker have stated that their basis for relief was for a violation of their substantive due and procedural due process or written law, and equal protection under the law rights based on the Fourteenth Amendment.

Swanigan and Walker hold that the complaint does not failed to state a claim for relief for constitutional violations, because their complaint shows proof that the Grand Lodge failed to follow its own rules and procedures in disciplining them.

Swanigan and Walker argue, the Fourteenth Amendment applies that ‘No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Here, the Grand Lodge appears to be a private organization that is incorporated under Washington State Rules and Regulation, which falls under the corporate laws.

Therefore, Swanigan and Walker’s complaint is appropriate and does not fail that the Grand Lodge is an agent of the state thus falling under the rules operating as an corporation under state laws.

Therefore, the complaint in fact does state a claim for a constitutional violation.

Swanigan and Walker’s hold that the trial court erred by dismissing their claims for Grand Lodge violations of their due process and equal protection rights.

D. PROCEDURAL CLAIMS

Swanigan and Walker assert various procedural claims related to the Grand Lodge's CR 12(b)(6) motion. Swanigan and Walker's hold all of these claims should be reconsidered. It appears that the presumption of innocence seems to be overlooked.

1. Grand Lodge's Failure to Respond to Complaint

Swanigan and Walker argue that the Grand Lodge failed to respond to their complaint. The Grand Lodge did not file an answer to the complaint. Swanigan and Walker's hold this argument should be reconsidered. CR 12(a) (1)

2. Motions for Injunction/TRO

Swanigan and Walker argue that the trial court erred by not considering Swanigan and Walker's July 9, 2015, motions for a preliminary injunction and a TRO. The reasoning for the motions not reflecting on judge or commissioner calendar, because the court was referring Swanigan and Walker to various court rooms for their motion to be heard. Nevertheless it was not heard on July 9, as they was told to get on Judge Hogan calendar, which were not their intention.

The intent was to file an injunction that would have allowed them to appeal their case before the Grand Assembly as stated in the Grand Lodge unchangeable Masonic Landmark law of the Grand Lodge Constitution and throughout the world in Masonry.

Swanigan and Walker's hold this argument should be reconsidered because the court erred in not hearing their complaint to impose the temporary injunction against the Grand Lodge.

3. Request for Discovery

Swanigan and Walker argue that the trial court erred by not requiring the Grand Lodge to respond to their discovery requests. Parties may obtain discovery information regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter (CR 26 (b) (1)).

On July 28, 2015, requested Production of Documents to be produced by Defendant with conditions of Rule 34 of the Washington State Rules and Procedures. Defendants had Fifteen days of service to comply with the specified production, unless alternate mutually agreed upon terms are reached by all parties.

Defendant Attorney (Fowler) never provided Discovery Information requested which was the Appellants Masonic Trial Tape Recording and the Annual Grand Session minutes. Swanigan and Walker did file a motion requesting discovery.

Swanigan and Walker hold that this argument should be reconsidered, because the court erred by not demanding that the Grand Lodge comply with the request for discovery information to show and prove our innocence.

The court erred by not allowing Plaintiffs due process of law to prove their innocence and shows a lack of due process of the Grand Lodge's Failure to Produce Evidence, which they used to disciplined Swanigan and Walker without charges and a multitude of violations of their own written laws.

4. Assigning Case to a Different Judge

Swanigan and Walker argue that the trial court violated due process by not timely informing them that their case had been assigned to a different judge until the day of the hearing. Swanigan and Walker maintain that this argument should be reconsidered, because the court erred by not properly notifying them until the day of the trial. Their case was assigned to a different judge, and it is our opinion the court must provide notice before a case is assigned to a different judge.

5. Grand Lodge Appeal Process

Swanigan and Walker argue that the trial court erred by not considering the Grand Lodge's failure to allow them to appeal their discipline before the Grand Assembly.

Swanigan and Walker's hold this argument should be reconsidered because the court erred in not considering the unchangeable Masonic Landmarks law of masonry around the world that states, " Every member have the right to appeal before the Grand Assembly," which the Grand Lodge violated Swanigan and Walker's due process of law to appeal.

6. Trial Court's Failure to Consider Declarations

Although Swanigan and Walker case was not heard by jury, they did, in fact, provide a witness list and declaration of testament by Mr. Lonnie Traylor, Mr. Kenneth Clark that were not take in consideration.

Swanigan and Walker argue that the trial court erred by not considering declarations that they submitted. In accordance with PCLR 3, the parties shall exchange: (A) lists of the witnesses whom each party expects to call at trial.

E. CONCLUSION

Because Swanigan and Walker appeal presented debatable issues upon which the panel may deem reasonable minds might differ. Swanigan and Walker appeal was not frivolous and request reconsideration of their appeal and Respondents remain in non- compliance under the state statue RCW 10.14.010.

In addition CR 26 and CR 34 for production of documents as well as the oversights of evidence and facts by the Superior and Appeal Court.

Swanigan and Walker request reconsideration of his appeal for the foregoing reasons:

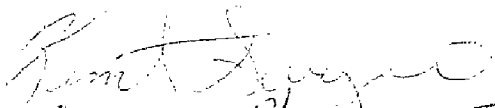
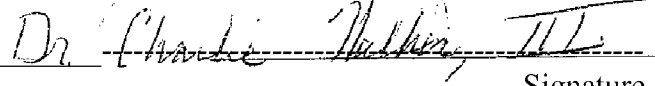
Swanigan and Walker respectfully request that the Court reconsider the Order Granting Summary Judgement, because it is contrary to Washington Law, Masonic, Unchangeable Masonic Landmark Laws, and the United State Constitutional Law in regards to Procedural and Substantive Due Process of Laws.

Swanigan and Walker believes substantial justice has not been done, and Swanigan and Walker should be given the opportunity to present their case before impartial jury for harassment and Course of Conduct.

Justice delayed, may become Justice denied. The presumption of innocence appears to be lacking given the gross violations of Masonic, State, and United States Constitution Laws violations, which gives credence to our contentions of Course of Conduct.

Swanigan and Walker are asking the court to remand this case back to the trial Court, because Respondent has failed to provide Swanigan and Walker, and the court documented proof of their alleged crime that cause their unwarranted discipline without formal charges.

DATED this 10th day of March 2017

Signature

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Renton, WA 98506

IN THE COURT APPEALS DIVISION II OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE

KENNETH SWANIGAN and DR. CHARLIE WALKER, III
PAST GRAND MASTERS

Appellant

Pierce County No. **15-2-09953-7**

Court of Appeal Case No. **48631 -8-II**

v

DECLARATION OF

DOCUMENT FILING AND SERVICE

MOST WORSHIPFUL PRINCE HALL GRAND
LODGE F.A.M. WASHINGTON & JURSDICTION
and MOST WORSHIPFUL GRAND MASTER
GREGORY D. WRAGGS, SR.

Respondents

DECLARATION OF DOCUMENT FILING AND SERVICE

WE, KENNETH SWANIGAN AND DR. CHARLIE WALKER, III DECLARE THAT ON THE **10TH DAY OF MARCH 2017**, WE, CAUSED THE ORIGINAL **MOTION TO RECONSIDER** TO BE FILED IN THE COURT OF APPEALS DIVISION TWO AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

[X] **JAMES C. FOWLER, WSBA # 15560**

1201 PACIFIC AVE STE 1900
TACOMA, WA 98402

() U.S. MAIL

(X) **HAND DELIVERED**

() AGREED E-SERVICE
VIA COA PORTAL

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

Filed
Washington State
Court of Appeals
Division Two

KENNETH SWANIGAN and CHARLIE
WALKER, III, PAST GRAND MASTERS

No. 48631-8-II

March 21, 2017

Appellants,

v.

ORDER DENYING MOTION FOR
RECONSIDERATION

MOST WORSHIPFUL PRINCE HALL
GRAND LODGE F.A.M. WASHINGTON &
JURISDICTION and MOST WORSHIPFUL
GRAND MASTER GREGORY D. WRAGGS,
SR.,

Respondents.

Appellants move for reconsideration of the court's February 28, 2017 opinion. Upon consideration, the court denies the motion. Accordingly, it is

SO ORDERED.

PANEL: Jj. Worswick, Maxa, Sutton

FOR THE COURT:


ACTING CHIEF JUDGE