

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

E. KWAN CHOI,	)	
	)	
Plaintiff,	)	Case No. 02 CH 4053
	)	
v.	)	Judge Sophia H. Hall
	)	
K. RICHARD KEELER, et al.,	)	
	)	
Defendants.	)	

**DEFENDANTS' MOTION TO STAY PENDING APPEAL**

NOW COMES Defendants K. RICHARD KEELER, GEORGES MICHELSON-DUPONT, MO SIEGEL, and GARD JAMESON (collectively, the “Remaining Trustees” or “Defendants”), by and through their attorneys, Gardner, Carton, & Douglas, and pursuant to Supreme Court Rule 305(b), request that this Honorable Court stay its Decision that Plaintiff is currently an active Trustee of Urantia Foundation, pending appeal of that Decision. In support of this Motion, Defendants state as follows:

**I. INTRODUCTION**

1. On August 23, 2002, this Court granted Plaintiff’s partial motion for summary judgment, holding that the removal of Plaintiff as a Trustee of the Urantia Foundation (the “Foundation”) was not in accordance with the By-Laws of the Foundation. (A copy of the Decision and the Order are attached hereto as Exhibits A and B, respectively.) The Court premised its Decision on its finding that under the *Declaration of Trust Creating Urantia Foundation* (the “Declaration” or “DOT”) and the By-Laws of the Foundation, a Trustee that has been removed via a unanimous vote by the Remaining Trustees as provided for by Section 7.5 of the DOT (as this Plaintiff was on September 7, 2001) is still an active and voting Trustee of the Foundation during the pendency of votes confirming the removal at the next three quarterly

meetings and up until the time the Certificate of Removal is recorded. Based on this finding the Court held that Plaintiff was entitled to vote on the rescheduling of the October 20, 2001 regular quarterly meeting. The Court concluded that although the Plaintiff attended the November 10, 2001 quarterly meeting, there was no evidence that he agreed to reschedule the October 20, 2001 quarterly meeting to November 10, 2001, and therefore, the vote at the November 10, 2001 meeting affirming Plaintiff's removal as a Trustee was void and the removal process defective. The Court found that "Plaintiff is still a Trustee with all rights pertaining thereto." (Decision at 10).

2. On September 9, 2002, Defendants filed a motion to reconsider this Court's August 23, 2002 Decision and hold that once the Defendant Trustees unanimously voted to remove Plaintiff as a Trustee on September 7, 2001 pursuant to Section 7.5 of the DOT, the Plaintiff was no longer an active Trustee and, therefore, was not permitted to vote on the rescheduling of the October 20, 2001 meeting or on any other matters. The Defendants further asked the Court to reconsider its finding that no evidence was submitted demonstrating that Plaintiff agreed to reschedule the October 20, 2001 meeting. In particular, Defendants argued the following:

(a) The DOT and the By-Laws specifically draw a distinction between Remaining Trustees and a removed Trustee, a distinction expressly and repeatedly recognized by Judge Williams in *Myers v. Burns*, No. 94 C 927, 1995 WL 296938 (N.D. Ill. May 12, 1995). There can be no remaining Trustees unless there is a removed Trustee. Thus, following the September 7, 2001 unanimous vote to remove Plaintiff as a Trustee, he was no longer and active and voting Trustee but a removed Trustee.

(b) The Certificate of Removal (“Certificate”) contained in Section 2.4 of the By-Laws further demonstrates the Settlers’ intent that a Removed Trustee is no longer an active Trustee pending the three successive quarterly meetings by designating the Remaining Trustees as being the “presently qualified and acting Trustees.” Again, in order for there to be presently qualified and acting Trustees, there must be a disqualified and inactive Trustee, namely, the Removed Trustee. Furthermore, the Certificate’s subsequent language that the Removed Trustee “was fully and permanently removed as a Trustee” again unambiguously demonstrates the Settlers’ intent that a Removed Trustee is no longer an active Trustee but is instead a Removed Trustee with the possibility of reinstatement should the “Remaining Trustees” fail to unanimously confirm the removal at any of the three successive quarterly meetings. Following the unanimous confirmation at the next three quarterly meetings and the recording of the Certificate, as in the instant case, the Trustee is “fully and permanently removed as a Trustee.”

(c) Defendants' interpretation of Section 7.5 of the DOT and Section 2.4 of the By-Laws is the only interpretation that would construe Section 2.4 of the By-Laws as being not inconsistent with Section 7.5 of the DOT. To interpret Section 2.4 of the By-Laws as the Court did in its Decision by allowing a removed Trustee to remain an active and voting Trustee of the Foundation, requires the Court to construe Section 2.4 of the By-Laws as being inconsistent with Section 7.5 of the DOT and thus contrary to Section 7.6 of the DOT, which requires the By-Laws to be not inconsistent with the DOT. Nowhere in the Declaration is it provided that a removed Trustee continues as an active participating Trustee up until the time the Certificate of Removal is recorded.

(d) Newly discovered evidence, a letter dated December 29, 1983 (the “Settlers’ Letter”), written and signed by the then acting Trustees, two of which were the Settlers of the

DOT and the Trustees who initially framed the Bylaws, Ms. Edith E. Cook and Mr. William M. Hales, supported Defendants' construction of the DOT and the By-Laws. The Settlor's Letter involved the Foundation's removal of the then acting President and Trustee of the Foundation, Thomas A. Kendall in 1983 and 1984, and states in part that:

Please note that during the pendency of the removal proceedings through three successive quarterly meetings of the Board of Trustees of Urantia Foundation, you will be formally suspended from any rights, duties, and prerogatives you may enjoy as a Trustee.

Thus, two of the Settlers of the Foundation unequivocally stated that during the pendency of the three quarterly votes confirming removal called for by the By-Laws, the removed Trustee is "suspended."

e. There is record evidence that the Plaintiff did agree to reschedule the October 20, 2001 meeting, and that he stated that he only was unavailable on October 26, 2001 for the quarterly meeting and needed another date. Thus, the meeting was validly held on November 10, 2001. Plaintiff did not object to the rescheduling of the October 20, 2001 meeting until November 10, 2001, well after the October 20, 2001 date had passed.

3. On October 30, 2002, this Court denied Defendants' motion to reconsider. (A copy of the October 30, 2002 Order is attached hereto as Exhibit C).

4. Defendants have moved the Court for a Supreme Court Rule 304(a) finding, a Supreme Court Rule 307(a) finding, and a Supreme Court Rule 308(a) certification regarding the Court's Decision. Defendants have alternatively moved for a finding that the Court's August 23, 2002 Decision and Order constitutes entry of a preliminary injunction and is appealable as a matter of right. Defendants have also alternatively moved for a Supreme Court Rule 308 certification of the following question: ): "Whether a Trustee of Urantia Foundation who has been removed by unanimous vote of the Remaining Trustees pursuant to Section 7.5 of the

*Declaration of Trust Creating Urantia Foundation* remains an active and voting trustee (on all issues other than the quarterly votes for his removal) during the pendency of the three quarterly votes confirming the removal required under Section 2.4 of the By-Laws of the Urantia Foundation?” For the reasons discussed below, Defendants request that this Court stay the enforcement of its August 23, 2002 Decision pending appeal.

## **II. STANDARDS FOR A STAY**

5. Courts have inherent power to grant a stay, and whether or not to do so is a discretionary act. *Stacke v. Bates*, 138 Ill.2d 295, 299, 562 N.E.2d 192, 195 (1990). There is no specific set of factors which the court, in each instance, must review when making its determination as to whether to grant a stay to suspend enforcement of judgment; rather, the court has wide degree of latitude when exercising its discretion. *Stacke*, 138 Ill.2d at 305, 562 N.E.2d at 196. One of the purposes of a stay pending appeal is to preserve the status quo pending the appeal and to preserve the fruits of a meritorious appeal where they might otherwise be lost. *Stacke*, 138 Ill.2d at 301, 562 N.E.2d at 195; *Kaden v. Pucinski*, 263 Ill.App.3d 611, 615, 635 N.E.2d 468 (1<sup>st</sup> Dist. 1994)(a stay order seeks only to preserve the status quo existing on the date of its entry and does not address in any way the merits of the underlying dispute.) Another factor that courts have looked to in whether to grant a stay is whether the moving party will suffer hardship. *Stacke*, 138 Ill.2d at 307, 562 N.E.2d at 197. As demonstrated below, each of these factors heavily favors granting a stay: (i) a stay is needed to preserve the status quo; (ii) the grounds for appeal are meritorious; and (iii) Defendants and the Foundation will suffer extreme hardship if a stay is not granted, Plaintiff will suffer no hardship if a stay is granted.

## **III. ARGUMENT**

### **A. A Stay Is Necessary To Preserve The Status Quo Pending Appeal**

6. A stay of the Court's Decision is necessary to preserve the status quo and thereby "preserve the fruits" of Defendants' meritorious appeal which will be lost if a stay is denied. *Stacke*, 138 Ill.2d at 301, 562 N.E.2d at 195. Since the Remaining Trustees unanimously voted to remove Plaintiff as a Trustee on September 7, 2001, Plaintiff has been considered a suspended/removed Trustee during the pendency of votes confirming the removal at the next three quarterly meetings (November 10, 2001, January 19, 2002 and April 20, 2002), and up until the time the Certificate of Removal was recorded on May 6, 2002, whereupon Plaintiff became "fully and permanently removed as a Trustee." In fact, Plaintiff did not even file his Complaint in this matter until February 2, 2002, five months after the September 7, 2001 unanimous removal vote.

7. If Plaintiff is permitted to be an active Trustee during the pendency of Defendants' appeal, the "fruits" of that appeal will be lost in that Plaintiff will once again be permitted to be the disruptive and divisive force at the Foundation that caused his removal as a Trustee. Furthermore, having delayed even filing his lawsuit for five months following his removal as a Trustee, Plaintiff should not be heard to claim that staying this Court's Decision pending appeal somehow harms Plaintiff. On the contrary, only the Foundation will be harmed, severely, should Plaintiff be permitted to function as an active Trustee.

8. Moreover, Defendants respectfully submit that they do have meritorious grounds for appeal, as noted above and in Defendants' motion to reconsider. As stated in Defendants' Motion for a Supreme Court 304(a) Finding, incorporated by reference herein, the express language in the Certificate of Removal to the "presently qualified and acting Trustees," i.e., the Defendants, as "said Trustees" makes clear the By-Laws envision only the Remaining Trustees will participate in the three quarterly meetings, and not "the Trustee hereby removed." (See By-

Laws, Section 2.4). The statement that the Removed Trustee “was fully and permanently removed as a Trustee” further demonstrates the Settlers’ intent that a Removed Trustee is no longer an active Trustee but is instead a Removed Trustee with the possibility of reinstatement should the “Remaining Trustees” fail to unanimously confirm the removal at any of the three successive quarterly meetings.

9. In short, Defendants respectfully submit that their appeal is meritorious and that they have a strong likelihood of prevailing on appeal based on the arguments set forth in the motion to reconsider.

**C. A Stay Is Necessary To Protect The Foundation From Plaintiff’s Reckless Conduct**

10. A stay is necessary to protect the interests of the Foundation in light of Plaintiff’s egregious conduct both as a Trustee and in this litigation. Although Section 7.5 of the DOT does not require any grounds for removal, there is unrebutted record evidence of Plaintiff’s misconduct: (1) without the knowledge or consent of the other Trustees, Plaintiff jeopardized Urantia Foundation’s legal position by entering into settlement negotiations with a plaintiff who had brought legal action seeking to invalidate the Foundation’s copyright in *The Urantia Book*; (2) verbally attacked a Foundation donor during a presentation made to the Board--that donor has never returned to the Foundation and has never again contributed to the Foundation; (3) treated a volunteer working on Foundation’s website so aggressively that the volunteer lost all desire to continue his volunteer work on the web site, and he ceased to do so; (4) at a Book Fair in Seoul, South Korea that Plaintiff attended as the representative of the Foundation, he angrily engaged in a public shouting match with a visitor to the Foundation booth; and, (5) as a result of Plaintiff’s behavior at a dinner in a restaurant with a large group of Foundation supporters, several of the persons present expressed concern about Plaintiff’s emotional stability and rational integrity and

said that they thought the Board should ask for his resignation. (See Affidavit of Richard Keeler, attached as Exhibit 15 to Defendants' Response to Plaintiff's Partial Motion for Summary Judgment; see also the Affidavits of Mo Siegel, Gard Jameson and Georges Michelson-Dupont, attached as Exhibits 16, 17 and 18, respectively, to Defendants' Reply Memorandum in Support of Their Motion for Summary Judgment the Motion for Summary Judgment.)

11. In addition, Plaintiff signed a Confidentiality Agreement on May 15, 1998, which provides, in part, as follows:

During his/her association with the Foundation and at all times thereafter, Trustee agrees to hold all Confidential Information in trust for the benefit of the owner of such Confidential Information, and to take all reasonable steps necessary to safeguard its confidentiality. Trustee further agrees that he/she will use Confidential Information for the sole purpose of performing his/her Services for the benefit of the Foundation, and that during performance of the Services, and at all times thereafter, Trustee will not use, for his/her benefit or the benefit of others, or divulge or convey to any third party, any Confidential Information obtained by the Trustee at any time during his/her association with the Foundation, except pursuant to the Foundation's prior written permission.

(Exhibit D at ¶ 1.2).

12. The Agreement defines "Confidential Information" as follows:

For purposes of this Agreement, "Confidential Information" shall mean records and information and all proprietary information or data relating to the activities of the Foundation to which Trustee has access and/or learns during his/her tenure with the Foundation, including, but not limited to, ***financial information***; identities of and information concerning readers, members and donors, and prospective readers, members, and donors; ***development, expansion and business strategies***, plans and techniques; computer programs, devices, methods, techniques, processes and inventions; research and development activities; ***identities of translators and all processes related to translation; compilations, processes and other materials developed by or on behalf of the Foundation*** (whether in written, graphic, audio-visual, electronic or other media, including computer software). Confidential information also includes information of any third party associated with the Foundation which the Foundation or such third party identifies as being confidential. Confidential Information shall not include any information that is in the public domain or otherwise publicly available (other than as a result of a wrongful act of Trustee or an agent or employee of the Foundation.)

Exhibit D at par. 1.1.

13. Plaintiff has steadfastly maintained in this litigation that he is not bound by the Confidentiality Agreement and has repeatedly sought to damage the Foundation through his filings in this matter, which he publishes on his internet web-site, "Soldiers of the Circles," all the while maintaining that he is a Trustee. See, e.g., Plaintiff's Affidavit filed on April 22, 2001.

14. Furthermore, Plaintiff's stated goal in this litigation is removal of one or all of the Defendants as Trustees of the Foundation. Towards that goal, Plaintiff has deliberately and impermissibly blurred the distinction between his claimed status as a Trustee and his position as Plaintiff in this case. Thus, Plaintiff requests the following from the Board of Trustees:

I, Dr. E. Kwan Choi, move that between now and the next quarterly meeting, I be permitted unrestricted and immediate access to all records and property of the Urantia Foundation and its subsidiary corporations, that all employees of the Urantia Foundation and its subsidiary corporations are hereby directed to speak with me fully and truthfully regarding all matters about which I may require, and that I be permitted to copy any material I may wish on equipment of the Urantia Foundation or otherwise at the expense of the Urantia Foundation. For the purpose of this motion I withdraw my standing objections.

(A copy of "Motions by Dr. E Kwan Choi, dated October 19, 2002," is attached hereto as Exhibit E).

15. In other words, Plaintiff seeks to question Trustees and staff at length in an effort to further his lawsuit. Furthermore, Plaintiff seeks carte blanche access to copies of all Foundation documents at Foundation expense, but is unwilling to acknowledge the effectiveness of the Confidentiality Agreement that he voluntarily entered as a Trustee.

16. Further evidencing the difficulties inherent should this Court not stay enforcement of judgment pending appeal is the "Declaration and Agreement" Plaintiff presented to the Board of Trustees at the October 19, 2002 quarterly meeting. (A copy of the Declaration and Agreement is attached hereto as Exhibit F). Even a cursory reading of this document makes

clear that Plaintiff's outlandish positions, his wholly inappropriate demands, and his apparent and mistaken assumption that he is somehow a "super" Trustee makes his functioning on the Board as a Trustee extremely damaging to the business of the Foundation.

17. In short, Plaintiff has damaged the Foundation as a Trustee and will continue to damage the Foundation if he is permitted to be an active Trustee with his unexplainable recklessness towards the Foundation. It is abundantly clear based on Plaintiff's actions and outlandish demands that a stay is necessary to protect the Foundation during the pendency of Defendants' Motion to Reconsider. The hardship visited on the Defendants and the Foundation is severe in the event a stay is denied. The hardship on the Plaintiff if a stay is granted is non-existent – he waited five months after his removal before even filing suit and has been treated as a removed Trustee for a year. On this basis as well, Defendants submit that the Decision should be stayed during the pendency of the Motion to Reconsider.

**C. The Attorney General's Office Has Been Advised Of Plaintiff's Complaints**

18. The Illinois Charitable Trust Act ("Act"), 760 ILCS § 55/1 *et seq.*, provides the Illinois Attorney General with substantial regulatory authority over charitable trusts, such as the Foundation. The Act provides:

The Attorney General may investigate transactions and relationships of trustees subject to this Act for the purpose of determining whether the property held for charitable purposes is properly administered. He may require any agent, trustee, fiduciary, beneficiary, institution, association, or corporation, or other person to appear, at a named time and place, in the county designated by the Attorney General, where the person resides or is found, to give information under oath and to produce books, memoranda, papers, documents of title and evidence of assets, liability, receipts, or disbursements in the possession or control of the person ordered to appear.

760 ILCS § 55/9. Moreover, the Act requires substantial financial reporting on a yearly basis.

*See* 760 ILCS § 55/7, "Periodic Reports-Rules and Regulations-Registration Cancellation."

19. Although the Plaintiff has attempted in this litigation to portray himself as a whistleblower who was removed as a Trustee because he wanted to investigate alleged financial improprieties at the Foundation (Plaintiff's sudden desire to investigate coincided with his being informed that if he did not resign as a Trustee, he would be removed), it was the Defendant Trustees, and not Plaintiff, who first made the Attorney General's Office aware of Plaintiff's allegations. Later, on August 2, 2002, Plaintiff wrote a letter to the Attorney General requesting a formal investigation of the Foundation regarding alleged financial improprieties.

20. The Illinois Supreme Court in discussing the Attorney General carrying out his statutory duty has expressly recognized that it is "presumed that a public official [the Attorney General] performs the functions of his office according to law and that he does his duty." *Fuchs v. Bidwell*, 65 Ill. 2d 503, 510, 359 N.E.2d 158, 162 (1976). Here, the Attorney General has been advised of this matter and is a defendant in this case. Therefore, as a matter of law, it is presumed that the Attorney General will properly regulate the Foundation and will take all necessary steps to ensure that the Foundation complies with its obligations.

21. In short, the entry of a stay will not harm the public interest in that the Attorney general, who is charged with regulating the Foundation, will ensure that the public interest is protected.

**D. Assuming Arguendo That Plaintiff Is A Current Trustee, This Court Has Recognized That Remaining Trustees Have Authority To Remove Plaintiff**

22. The Court in its Decision expressly recognized that the Remaining Trustees have "broad, essentially unfettered removal powers" regarding Trustees. (Decision at 8.) The Court has further stated that the issue of whether a Trustee is an active and voting Trustee is a "pivotal issue" in this case. Defendants, without waiving their position that Plaintiff is currently a removed Trustee, have begun again the removal of Plaintiff as a Trustee. In fact, Defendants had

a special meeting on Saturday September 21, 2002, wherein they again voted to remove Plaintiff as a Trustee of the Foundation. (A copy of the Notice of Special Meeting and Notice with Agenda of Special Trustees' Meeting Via Teleconference on Saturday September 21, 2002, which was mailed to the Trustees and to Plaintiff's counsel on Thursday, September 12, 2002, is attached hereto as Exhibit G.)

23. True to form, Plaintiff's counsel misconstrued a letter sent to him regarding Plaintiff's inappropriate interrogation of Foundation staff on his September 13, 2002 visit to the Foundation's Chicago offices. Not wanting to take any chances regarding removal of Plaintiff as a Trustee, Defendants set another special meeting on October 14, 2002 to again remove Plaintiff as a Trustee, and, in light of Plaintiff's counsel's misunderstanding of the Defendants' counsel's direction that Plaintiff not interrogate Defendants and Foundation staff regarding his pending lawsuit, expressly invited Plaintiff "to participate in this special meeting . . . with the Trustees of the Foundation." (A copy of the Notice of Special Meeting and Notice with Agenda of Special Trustees' Meeting Via Teleconference on Monday, October 14, 2002, which was mailed to the Trustees and to Plaintiff's counsel on Friday, October 4, 2002, is attached hereto as Exhibit H).<sup>1</sup> Subsequently, at the next regular quarterly meeting following the removal vote, the Remaining Trustees again voted unanimously to remove Plaintiff as a Trustee as called for by Section 2.4 of the By-Laws. The By-Laws call for two more votes at the next two regular quarterly meetings.

24. In short, Plaintiff will again be a removed Trustee. What remains is an appeal that will address the question of the status of a removed Trustee during the pendency of the three quarterly votes confirming removal pursuant to Section 2.4 of the By-Laws.

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<sup>1</sup> Surprisingly, at the hearing before this Court on October 30, 2002, Plaintiff sought to get mileage out of the fact that the Defendants voted to remove Plaintiff at a special meeting not once but twice. (October 30, 2002 Tr. at 24, attached hereto as Exhibit I). Of course, the reason for the second special meeting was to foreclose yet another attempt by Plaintiff to manufacture grounds upon which to challenge his removal as Trustee.

25. If Plaintiff is permitted to be an active Trustee during the pendency of this appeal, the “fruits” of that appeal will be lost in that Plaintiff will once again be permitted to be the disruptive and divisive force at the Foundation that caused his removal as a Trustee.

**IV. CONCLUSION**

WHEREFORE, for the reasons stated above, the Defendants K. RICHARD KEELER, GEORGES MICHELSON-DUPONT, MO SIEGEL, and GARD JAMESON hereby respectfully request this Court to stay the enforcement of its ruling entered on August 23, 2002, pending its pending appeal, and for such other relief the Court deems just and proper.

**DEFENDANTS K. RICHARD KEELER,  
GEORGES MICHELSON-DUPONT,  
MO SIEGEL, AND GARD JAMESON**

By: \_\_\_\_\_  
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**CERTIFICATE OF SERVICE**

The undersigned, an attorney, hereby certifies that he caused a copy of the foregoing **Defendants' Motion to Stay Pending Appeal** to be served on the following, this 6th day of November, 2002, as follows:

Michael D. Poulos  
1724 Sherman Avenue  
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(Via Facsimile and Overnight Delivery)

Assistant Attorney General Floyd Perkins  
Chief Charitable Trust Division  
100 West Randolph Street Third Floor  
Chicago, Illinois 60601  
(Via U.S Mail)

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Wallace C. Solberg