

**STARFLEET: THE INTERNATIONAL STAR
TREK FAN ASSOCIATION, INC.**



**REGIONAL COORDINATORS DUITES
MANUAL**

FIRST EDITION, 1998

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RC's Duties Manual

Foreward from the Vice-Commander, STARFLEET
Admiral Charles A. "Chuck" Freas, Esq.

STARFLEET: The International Star Trek Fan Association, Inc. is not just a fan club anymore - it's a corporation. We're recognized by the State of North Carolina and the United States Internal Revenue Service as a not-for-profit organization pursuant to Title 26, United States Code, Section 501(c) (7). These facts impose certain legal duties upon the officers and directors of STARFLEET. These duties cannot be avoided. All current and former officers and directors of STARFLEET must familiarize themselves with the legal duties they owe to the corporation, and to each and every one of its members. For even former officers and directors owe continuing duties to the corporation and its members. This booklet was prepared in order to prepare them to do so -- to 'Make it so!'

The members of the "Board of Directors" of STARFLEET are the sitting members of the Admiralty Board (AB) and the Executive Committee (EC) members. Every Regional Coordinator (RC) is a Director. Collectively, the RC's and the EC make up the entire Board of Directors. In addition, the EC members are "officers" of the Corporation. Finally, in addition to the Executive Committee members, the other officers of STARFLEET are those members who have International or Regional level offices. The following rules about what officers and directors of a corporation can do, must do, and cannot do are written for these officers and directors. .

Here you will find brief discussions about specific corporate duties of a STARFLEET Regional Coordinator and his or her staff, and a discussion of the personal liabilities that may attach to an officer or director that fails in his or her duties.

Forewarned is forearmed.

Admiral Chuck Freas, Esq.
Vice-Commander, STARFLEET
Amarillo, Texas
1998

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Legal Duties of the Officers and the Board of Directors

The members of a corporation's Board of Directors and its officers are generally responsible for the management of the business affairs of the corporation. They have a Fiduciary Duty to manage these affairs using their best business judgment. The officers and directors also have a Trustee's Duty owed to the corporation; this type of duty of care is the highest level of all the fiduciary-like duties.

Each officer and director, individually and the Board as a whole, owes the following duties to both the corporation and its members:

- 1. *Duty of Care*** - This is the duty to exercise their authority at the level of ordinary care and prudence and to the same degree that persons prompted by their own self-interest would exercise in their own business affairs. If a delegation of power or authority occurs, then there arises the additional duties of "reasonable supervision" and the "making of timely inquiries" about how the business affairs of the corporation are being conducted and are, in fact, going. These two duties are fulfilled by supervision and by inquiry. That is, asking the person to whom you have delegated your authority (called a delegate) how the job is going. This duty of supervision and inquiry must be done by the director who delegates his/her authority. These two duties must be fulfilled without fail.
- 2. *Attendance at Meetings*** - The supervising director and the delegate must both be in attendance at all necessary meetings, or else personal liability for any and all bad decisions and business losses resulting from the misconduct of the delegate attaches to the director(s) involved in the decision to delegate. It is no defense for the director to say that he had an honest belief in the honesty, fidelity, or competence of the delegate, or that the director was kept in ignorance by the delegate, or that either or both persons were just inexperienced, nor that the director had the most honest of intentions. Mere good intentions will get you sued.
- 3. *Duty of Loyalty*** - This is a Fiduciary Duty owed to the corporation and its members. The rule is that a director may not personally profit, or allow another to profit, at the expense of the corporation or its members. The test applied is "the duty of due care."

The duty of loyalty prohibits "insider deals." "Insider deals" are business arrangements involving or between corporate insiders, who are defined as the officers and directors of the corporation (Fleet and Fleet-wide office holders) or sub-units thereof (i.e.- the Regions and Regional Staff). Such deals are proper only if. 1) all of the relevant material facts are known to a disinterested majority of the corporation's board or to at least a majority of the members (Fleet-wide or Regional), and 2) either of these persons, acting in good faith, authorize the transaction by a majority vote. The majority vote of only the disinterested directors (those not involved in the deal) makes the deal properly approved, even though these disinterested directors are less than the otherwise required quorum of the Board.

Another test applied to insider deals is the "fair deal" test Under this test if the transaction is in fact fair to the corporation and its members at the time it is authorized or ratified by Board, or the appropriate sub-committee thereof, or by the members (Regional or Fleet-wide memberships), and where the Board, sub-committee, or membership has full

knowledge of all relevant facts, then the deal is considered permissible, if fair. However, as a practical matter, getting timely approval of the membership as a whole (either Fleet-wide or Regional), and getting knowing approval based upon a disclosure of all relevant facts to all members, is very hard to accomplish. It takes time to properly get approval.

If the insider deal being looked at fails either of these tests, then the insiders are liable to the corporation and the members for resultant damages, which usually are the benefit of the bargain which the insiders realized on the deal (what they got that they shouldn't have gotten), plus the cost to the corporation, if any, of making the insiders give up those benefits.

- 4. Misuse of Corporate Opportunities** - This would arise in dealings with other fan clubs or organizations, or where a public relations opportunity arises. In such "corporate opportunity" situations, the law requires the affected officer or director to first offer the business opportunity to this corporation. That offer must be made in "good faith," with full disclosure of all the facts about the opportunity, and at the time the director (or officer) first knows or should have known that STARFLEET would be interested in the business opportunity. If these tests are not met, the director (or officer or club or chapter or Region) involved must give up to STARFLEET the opportunity and/or all of his or her profits from the deal, regardless of whether STARFLEET even would have taken the deal if offered. Note that this rule applies to officers and directors of not-for-profit corporations.
- 5. Duty of Fairness** - Directors and officers must be fair in all their dealings with the corporation and its members. The facts to consider when seeing if this duty is breached are: the adequacy of the consideration involved (what did Fleet get out of the deal), the corporation's business needs for and in the transaction at issue (what did Fleet need vs. what could Fleet afford at the time), the financial position of the corporation at the time of the transaction (money in the bank, debts outstanding, etc.), the alternatives available to the corporation at the time, the adequacy and timing of the factual disclosures made to the Board, the officers and directors (EC and AB), and/or to the whole membership, and approvals, if any, given by the members and/or a disinterested majority of the Board. But note: No approval of unfair or fair deals is legally possible if fraud taints the deal in any way.

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The Authority of the Executive Committee

Either the Articles of Incorporation filed with the State of North Carolina or the bylaws of the corporation (which are not filed) must expressly or by implication authorize all actions taken by STARFLEET's Executive Committee. Where so authorized, the Executive Committee may exercise all of the operating authority of the Board in the management of the corporation's day-to-day or long-term business affairs, except where otherwise prohibited by state or federal laws. The articles of incorporation now on file with the State of North Carolina are very broad - they permit the Executive Committee alone to take any and all actions that it deems appropriate or advisable.

The new 1998 Fleet Constitution changes the scope of EC authority from the broad scope as set forth in the filed Articles of Incorporation to a much more narrowed scope of authority. That narrowed scope is not yet effective. It will be effective only when it is ratified by a majority of the membership and is properly filed with the State of North Carolina and the United States Internal Revenue Service's Exempt Organizations Office. Consult the proposed 1998 Fleet Constitution to see how the EC's scope of authority will be narrowed, and the Admiralty Board's scope of authority is correspondingly broadened. Basically, the change is that the EC still has primary authority in day-to-day decisions, and the AB has primary authority in matters of long-term policy.

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The Authority to Authorize Revisions to the Corporate Bylaws

The Corporate Bylaws of Fleet are set forth in the Membership Handbook. These consist of the Constitution and the rules by which STARFLEET is run. By law, the Board of Directors may vote to amend its corporate bylaws unless that power is reserved exclusively to others, for example, reserved to the membership as a whole by the corporation's Articles of Incorporation (as filed with the State of incorporation, which for STARFLEET is the State of North Carolina). With Fleet, that amendment power is now reserved to the Executive Committee.

The laws of the State of North Carolina neither forbid nor require the membership as a whole to approve or disapprove of proposed changes to our bylaws. Under the currently filed Articles of Incorporation, Admiralty Board approval for amendments to any of the bylaws of the corporation (whether in the Membership Handbook or not) is not required.

What this means in a nutshell is that currently the EC - and only the EC -- has all legal authority to amend the Membership Handbook and/or the Constitution of STARFLEET as it sees fit. The new 1998 STARFLEET Constitution changes this by making the Constitution legally binding (in place of the Articles of Incorporation currently on file with the State of North Carolina and with the IRS) and by requiring amendments thereto to be effective only upon obtaining a majority vote of the whole membership.

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Limitations upon the Authority of Corporate Officers and Directors

Ultra Vires Acts - No Corporation may do anything beyond the scope of its filed corporate charter (called its Articles of Incorporation). If a corporation engages in such an action, called an **ultra vires** (U.V.) act, then the corporation is liable to any party who has a contractual relationship with the corporation (ex. - members, Fed Ex., U.S. Postal Service, printers, CPA's, etc.). Further, there is personal liability for the corporation's directors and officers to these contractual parties. Finally, liability to the corporation's entire membership may result. Liability for U.V. actions occurs in three (3) typical situations:

1. A member sues to stop the corporation - If the U. V. act is in the form of an executory contract (a contract to be performed in the future, like a contract with the hotel hosting next year's IC or a Regional Summit or the printer for the CQ), then any shareholder may seek an injunction to prevent the contract from being performed. If all parties to the contract (usually the Commander, STARFLEET and the other contracting party) are properly served with a summons and service of process in the lawsuit, and if it is then just and equitable to do so, an injunction may be issued by the court to prevent the contract from being performed. Where an injunction is sought, the court must allow for recovery from the suing member for any damages caused by the injunction to the corporation. This usually means that the suing member has to post a bond or obtain a surety before the injunction order takes effect (but note that no anticipatory profits may be utilized in calculation of the bond amount, therefore the amount of the bond requirement is usually small).
2. A State sues the corporation - The Secretary of State for the State of incorporation, acting through the Attorney General's office or by retained outside counsel, may seek the judicial dissolution of the corporation or bring **quo warranto** proceedings against the corporation and/or its officers and directors. Such a suit could seek fines, penalties, and/or dissolution.
3. A lawsuit is brought against the officers and/or the directors - An U.V. action may form the basis for a legal action brought by the corporation (or in the name of the corporation) against its own directors or officers. One or more of the directors or any member of the corporation may bring a lawsuit. The suit could seek money damages and/or injunctive relief.

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Liability to Creditors

Fleet can be made a voluntary or "involuntary" creditor. "Involuntary creditor" status occurs where an officer, director, RC, or Regional staff member borrows money from STARFLEET, or any of its Regions, or a chapter, or a member, and where someone just illegally takes money belonging to STARFLEET or a Region, chapter or member. If a loan is somehow "approved" (which would be in violation of STARFLEET rules, as our rules expressly forbid any such loan), then all approving officers and/or directors become jointly, severally, and personally liable to STARFLEET, to STARFLEET's unpaid outside creditors, and/or to STARFLEET's members for any loan losses.

Otherwise, absent fraud or misrepresentation there is no personal liability to any Admiralty Board member or any EC member or officer for STARFLEET's debts to creditors.

Remember also that a "tortfeasor" (defined as someone whose violation of a legal duty causes harm to another, like a thief) is always liable for his or her own acts. The same is true of an officer or director who enters into a contract that violates corporate rules, even if the contract is expressly done in the name of or on behalf of STARFLEET. In other words, the contracting party (the person who wrongfully signed the contract) and the tortfeasor (the thief) are always forced by the law to accept personal liability for their actions. Payment of damages would come out of their own pockets.

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Indemnification of Officers and Directors

Depending upon the law of the state of incorporation or provisions in the corporate charter or the bylaws of the corporation, directors may have a right to indemnification by the corporation upon a finding of liability to third parties, or perhaps even upon the filing of any lawsuit against them. Such indemnification provisions are common, especially among non-profit and not-for-profit corporations. This right to indemnity may by law extend to all reasonable expenses incurred in the legal proceedings, whether such a proceeding be merely threatened or actually brought, if the lawsuit is or would be brought against a person at least in part because of their position as a director.

The right to indemnity may be made contingent upon any one or all of three factors. First, the directors being "wholly successful" in their defense (that is, they win on all issues, even if it is done on procedural grounds). Second, their defense being of some measurable benefit to the corporation (a given point usually, as it is always in the best interests of a corporation to recruit directors, and directors usually require such indemnification to even serve on the Board). Third, the directors having acted in good faith and with a reasonable belief that, at the time their acts were taken, they were in the corporation's best interests. Note that directors involved in this last contingency cannot prevail on an indemnification claim if the corporation itself has brought and won a legal action against them, and maybe not where the corporation itself brings the legal action against the directors but has not yet won.

North Carolina corporate law permits indemnification of officers and directors in a not-for-profit corporation's corporate charter or bylaws.

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Legal Standards and Tests Imposed upon Directors' Actions and Non-action

In lawsuits complaining about "actions taken," the legal standard applied is the objective criteria of what a reasonably prudent man of like experience would do (i.e. - how a prudent businessman would exercise his authority) in the same or similar circumstances. In "passive negligence" cases such as alleged inattention to business, or a failure to supervise or take prompt corrective actions, the standard of care owed to the corporation and its members by directors is that of "due care." "Due care" is defined as that level of care which men prompted by their own self interest would use when dealing with their own most sensitive of business affairs. Directors are usually never liable merely for using "bad business judgement."

The law tends to protect the innocent creditor who gives up real value to the corporation. Be aware that the above standards apply even where the person taking action on the corporation's behalf is not really the corporation's duly elected or appointed officer or director - in other words, a fraud. In other words, if a person operates "under color and claim of election" (that is, if his actions were within the authority of the corporation's officers or directors and when taking an action he claimed to be acting pursuant to elected authority granted by the corporation), his acts may still bind the corporation. This can result from a legal finding of a **de facto** director (a director in fact) whose acts then bind the corporation just as if they had been taken by a **de jure** director (a director by law). In order to protect the innocent, this "under color and claim of election" rule applies even where the officer's/director's election or appointment really was void or unlawful.

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If Illegal Actions are Taken, Money Damages are Available to Those Harmed

If illegal actions are taken, in addition to paying for the corporation's actual damages (that is, the monetary loss to Fleet), STARFLEET's individual officers and/or directors can be found liable to others (to members or creditors) for harm done to them. Board members and Executive committee members, if found liable, may also be forced to pay exemplary or punitive damages under agency theory, the same as if the corporation was a natural person.

In some states, a finding of actual malice (usually defined as the holding of "spite" or "ill will" towards another, or doing a purposeful act intending harm to another) is required for the imposition of punitive damages. In other states, the lesser standard of **gross negligence** (generally a reckless disregard of a known danger of serious harm) is sufficient to impose punitive damages. Which of these two standards applies depends upon the State where the illegal action was actually taken.

Internal Revenue Code Requirements

FORM 990 ISSUES

Fleet has to file an IRS Form 990 by the 15th of May of each year, for the preceding tax year. Our tax year runs from January 1st to December 31st of each year. That tax year cannot be changed, as it is tied to our approved Section 501(c)(7) status and to our first incorporation filing with the State of North Carolina. Failure to timely file a Form 990 with the I.R.S. subjects Fleet to a "failure-to-file" penalty of up to \$10,000 per year, plus interest. It is therefore critical that the Board of Directors personally make sure that the Form 990 is properly prepared and timely filed each year. Failure to do so again really will be the end of STARFLEET as we know it.

OK, but file a Form 990 for exactly who? Fleet alone, or Fleet and its Regions and its chapters? In other words, whose income and expenses are covered by Fleet's tax-reporting requirements? As far as the Internal Revenue Service is concerned, STARFLEET has always acted under the assumption that for reporting purposes its Regions are "income-less" and its chapters are independent entities. That's because historically Regions have had negative income (being "RC" meant having a "Real Costly" position), no income or negligible income, and the chapters, basically, are independent fan clubs over which STARFLEET maintains an "umbrella" for the purpose of facilitating communication and cooperation between independent chapters. It has always been the rule that Chapter income is not Fleet's income; therefore Fleet does not have to include each chapter's income and expenditures on its annual Form 990. Thank goodness!

Fleet could take another approach. STARFLEET could consider its chapters "affiliated organizations." That would mean that STARFLEET would have to file its Form 990 (our "tax return," if you will), including the income and expenses from all chapters. And since a few Regions have some net income now, thanks to the hard work of their RC's, Fleet could require all Regions to disclose its annual income and expenses to Fleet HQ on a Form 990. That would effectively mean that a specialist in tax-exempt organizations (either a CPA or a tax attorney) would have to prepare Form 990's for all of our chapters and Regions (if you do it for one, you have to do it for all, and do it from then on). This would cost Fleet. an estimated \$25,000 per year, at least.

Therein lies a problem. Due to the institution of the chapter charter fee in 1996, the IRS might likely take the position that our chapters are affiliated organizations under the Internal Revenue Code, Title 26 of the U.S. Code. And while some Regions occasionally have non-negligible income, obviously all of the Regions are part of Fleet, the corporation. If the Service took that position, in order to properly file STARFLEET's tax return we would have to obtain and compile financial information from every single one of our chapters that paid the CCF, and arguable even from those who didn't, and the Regions. Plus, Fleet HQ would have to have kept these financial records in some kind of reasonable shape since 1991, or at least from 1996 on (the year of the first CCF). On top of this impossible problem, we have the complication that at least a few Fleet chapters are incorporated separately of STARFLEET. If their Section 501(c) status conflicts with that of STARFLEET's, we could have even bigger problems. We could wind up losing our 501(c)(7) tax-exempt status. To avoid that risk, it is essential that Fleet not do anything that would cause the I.R.S. to audit Fleet. That means filing our Form 990 on time, every time, and doing it accurately. It also means making sure we stay well within our spending and income-raising limitations under the Code.

Internal Revenue Code Requirements

USE OF FLEET'S TAX I.D. NUMBER

Another tax issue that constantly faces Fleet's leaders is proper use of our IRS taxpayer identification number. The first question is, "what uses are not proper?" STARFLEET's tax exemption is granted under Section 501(c)(7) of the Internal Revenue Code. STARFLEET itself (and therefore its leaders) is exempt from taxation on its income as a social club, but by law donations to a social club are not tax deductible. Organizations covered under Section 501(c)(3) are generally the only ones for which a taxpayer is allowed a charitable deduction. These are Charitable, Religious, Educational, Scientific, etc. organizations. Common examples would be the United Way, the American Cancer Society, or your local church or synagogue.

STARFLEET does not have a Group Exemption Number (GEN). A GEN would cover taxable revenue received by its chapters (thereby affording income tax protection for chapter income and tax protection to chapter CO's). We have an Employee Identification Number (EIN), which does not cover our chapters or even the Regions - it only covers Fleet-wide offices. The primary use of STARFLEET's taxpayer ID number is Form 990 reporting to the IRS of all income-tax related receipts/income and expenditures, obtaining Fleet operational bank accounts, and for issuance of Certificate of Deposit accounts in Fleet's name (used to hold scholarship trust funds, reserve operational funds, etc.).

Due to the legal effect of IRS reporting regulations, individual Fleet members, individual Fleet chapters, and the Regions cannot use the Fleet tax number for making tax-exempt purchases, for opening bank and/or savings accounts, or for any other purpose. Only the International-level offices may use this number (that is, Fleet-wide programs such as Fleet HQ, STARFLEET Academy, the Fleet Quartermaster, etc). The reason for this is that all Fleet purchases, all income off of all Fleet-related bank accounts, all expenditures of funds out of Fleet-related bank accounts, and all other uses of the Fleet tax number must be centrally recorded, accurately tracked, and then timely reported to the Internal Revenue Service on an annual basis - under penalty of law.

While the McGinnis Administration let it be known that individual chapters could utilize the Fleet's tax number for sales tax avoidance and bank account purposes (upon a written request for HQ permission to do so), from an tax accounting perspective that position was legally ill advised -- to say the least. The first Smith/Freas Administration went to great lengths to correct and minimize the legal and financial problems that such poor advice had or might create. We believe - based upon what we know at this time -- that we have policies and programs now in place that have all such problems identified and effectively dealt with, and all potential IRS problems under control.

For this reason, Fleet HQ cannot re ease its tax number without knowing what a member needs it for. It would be unwise to officially publish this number in the Communiqué or in any Regional publication. To do so might imply official permission for chapters or persons to generally use the Fleet tax number. As you can imagine, the IRS reporting problems that such a situation would create -- literally thousands of unreported purchases and hundreds of new bank accounts being opened (most if not all of which HQ would never know about and certainly could not control) -- would be impossible for Fleet to handle. It would certainly require the employment of a full-time accountant and cause increasingly expensive CPA audits; resulting in a considerable additional expense for the membership (estimated to be over \$25,000 annually in 1997) -- which Fleet cannot afford.

Of course, our EIN could be used to make qualified sales-tax exempt purchases (that is, for goods purchased for purposes of resale) in States where the required form has been filed with and approved by the State Comptroller's Office. But even then sales tax would have to be collected at the retail sales level and promptly remitted to the State (either quarterly or annually). While I have not researched all states, I know that the required filing has not been made in Texas. I have never seen a Texas or North Carolina Comptroller's tax certificate or a tax certificate from any other State, stating that STARFLEET is a qualified retail sales tax collector. It is a state and a federal criminal offense to try to avoid payment of state sales taxes by misuse of a federal taxpayer ID number. Therefore the bottom line is that Fleet's EIN may only be used for purchases on behalf of STARFLEET, the International Star Trek Fan Association, Inc., and may not be used for any purchase on behalf of any chapter or any Region of STARFLEET, nor for any other organization whatsoever.

If anyone violates this rule, we won't just send the I.R.S. after you - we'll send the Marines!!

Internal Revenue Code Requirements

OBTAINING AN TAX I.D. NUMBER

STARFLEET doesn't have a Group Exemption Number (GEN). It has an EIN. What solution is possible for our chapters to the risk that under the Tax Code, the Service could come in on an audit and determine that all chapter income is the personal income tax responsibility of the Commanding Officer? At the present time, the only solution is for the chapters to get their own taxpayer identification number. How, you say?

Chapters that want to get an Employee Identification Number from the Internal Revenue Service (which they can then use to get a free checking account or free meeting space) can do so. These instructions are modified to fit Fleet chapters generally.

EIN Guideline, version 2.1

In response to questions from a couple of Region 3 clubs, I composed the following information on how to get an Employer Identification Number (EIN) from the Internal Revenue Service. These instructions are based upon these assumptions: 1st, that your chapter is not incorporated; 2nd, that the main focus of your club's social activities is charitable and educational in nature; and 3rd, that you have a stable leadership base.

IF EVEN ONE OF THESE ASSUMPTIONS IS INCORRECT, THEN YOU SHOULD NOT TRY TO GET AN EIN FROM THE I.R.S. BY USING THESE INSTRUCTIONS. However, if all three are correct, then you may use these instructions, so read on.

The fastest way to get an EIN is to get a Form SS-4, rev. 12/93 or later, from your local I.R.S. S. office, fill it out as follows, and mail it to the Entity Control Division of your state's IRS office. The mailing addresses for all Regions are listed on the form. In Texas, the address is: Internal Revenue Service, Entity Control, Austin, Texas 73301.

Keep a copy of your completed Form SS-4. Then call the Entity Control Office (in Texas, the number is (512) 462-7843, which is the Austin office) and ask for a "Tele-TIN" (a Taxpayer Identification Number by telephone). Be prepared to call more than once; the line will most likely be busy. It's best to call early in the morning. Have the copy of your completed Form SS-4 in front of you when you call, as the I.R.S. official will ask you questions about it.

If you do not have a local office or you are not in a hurry, you can call the IRS toll-free at (800) 829-1040 and ask them to send you a Form SS-4, rev. 12/93. It takes about 2 to 4 weeks to get one by mail, depending upon the time of year. During March and April it takes longer.

There is an instruction booklet for Form SS-4's, but all the instructions you really need are on the back of and attached to the Form SS-4.

HOW TO ANSWER CERTAIN QUESTIONS:

Most questions are self-explanatory. Only a few will require you to look up answers. To make it easy, here are the correct answers by SS-4 Line Number:

Line 1. - Put in the full legal name of your club as it appears on your "Doing Business As" or "Assumed Name" Certificate issued by your local county clerk's office. For example, "The Panhandle Star Trek Fan Club d/b/a U.S.S. Palo Duro" is the full legal name of the Amarillo, Texas fan club (my local chapter).

If you do not have a Certificate, go to your county clerk's office and tell them you need to get a "Doing Business As Certificate," also known as a "Assumed Name Certificate." They will tell you how to look up your club's name to be sure that name is not already taken (fat chance), and how to fill out the certificate form. Each Clerk's office seems to use a different form, but they all ask for basically the same information: owner's name, address, telephone number, and the business' trade name, mailing address, phone number. Most Clerks' offices require the DB/A form to be signed in front of a notary public. There is usually a small fee for this (\$5 or so), but if you know a notary you can take the form and have them do it for free, then take it back to the Clerk's office for filing. There is a small fee to file it, usually about \$10 to \$15. They will either give you the filed form back on the spot, or send you a certificate by mail. It is effective on the date the form is filed, and good for ten years or so.

Line 3. - Put in the name of the person who will always be associated with the club and who is responsible enough to take care of any notices from the IRS. This is an important decision that is not to be made lightly. Be sure of who you put down. However, remember that if that information needs to be changed, it can be changed by sending a letter to the IRS officially informing them of the change in contact persons (stating old and new contacts).

Line 6. - Put in the location of your general meeting place. If you are a correyy chapter, there may not be such a place, so put in the CO's county or province and his or her State of residence (for example, "Randall County" and "Texas" for my chapter, which is a meetings chapter).

Line 7. -- Put in the name and social security number of the CO of your club. That's why the buck stops there.

Line 8a. - Check "Other nonprofit organization" and specify by typing in "educational, charitable and social club." Type in "N/A" where it asks for entry of a GEN. You want your own EIN; not to be under STARFLEET's number. Until Fleet gets a GEN (if ever), you may not use STARFLEET's EIN, as only STARFLEET Academy and a few other closely related programs and Fleet departments are, by law, allowed to use the Fleet EIN.

Line 8b. - I assume your club is not incorporated. If this is correct, type in "N/A" If not, answer with your State (ex. - "Texas") and "USA." If your club is incorporated, you've read too far. Stop. Throw away what you've done so far; it's no good. I suggest that you see a CPA or a tax attorney for guidance.

Line 9. - Check "Banking Purposes" and specify by typing in "deposit dues."

Line 10. - If you have a DB/A Certificate or if you are incorporated (in which case you should not be following this guide), put in the effective date of the Certificate or the date the Corporate Charter was issued by the Secretary of State's Office. If not, you are basically starting a new business for legal purposes, so put in today's date.

Line 11. - Usually "December 31" unless you have a different accounting system.

Line 12. - I assume you have no paid employees. Type in "N/A." (Who can afford paid employees? And, if you can, you're in for lots of trouble and a whole new set of reporting requirements that will never end. Go see a lawyer if you have or have ever had a paid employee. You'll need one.)

Line 13. - Same as 12.

Line 14. - Type in "Organized for charitable, educational, and social purposes."

Line 15. - Check "No."

Line 16. - Check "N/A" unless you are engaged in the regular sale of products to the public. Publication of a newsletter to members and engaging in newsletter exchanges are not engaging in the regular sale of products to the public. Generally, if more than 34% of your club's income comes from sales of products to the public at large (not including income from sales to club members), you are engaged in the regular sale of products to the public.

Line 17a. - If the entity named in Line 1 has, check "Yes," otherwise check "No."

Lines 17b and 17c. - If the answer to Line 17a is "No" then type in "N/A."

You should mail the Form SS-4 to your regional IRS office (Region III's is in Austin, Texas). It usually takes a couple of months to get a form letter back stating your Employee Identification Number (EIN). Be sure to keep a copy of this letter, you will need it for your club's permanent records (and to get a free checking account from your local bank).

If the focus of your club is charitable and social (meeting "for the fun of it" and doing good deeds by the way), the EIN is what you need to get a free checking account at a local bank for your club. Be sure to tell your bank that you are a "not-for-profit club organized for charitable, educational and social purposes" and most have a provision for free checking accounts. If they ask or appear to be confused about the nature of your club, you can tell them that you are an organization similar in purpose to the girl scouts or the boy scouts -- bank officials are familiar with these organizations. If the focus of your chapter is only "for the fun of it," then why do you want an EIN? More paperwork equals less fun, I think.

- END EIN Instructions -

Internal Revenue Code Requirements

DONATIONS and FUND RAISING EFFORTS

Another tax issue relates to donations. What happens if someone (Fleet member or not) donates either cash, goods (for example, Star Trek collectibles), labor, or other materials (stamps, envelopes, etc.) to Fleet and, first, tries to take a tax-deduction on his or her Form 1040, Schedule C, and/or second, claims he was told or was lead to believe that his donation was tax-deductible?

If that's true, Fleet just violated the IRS' rules. How? By not making it clear that any and all such donation is not tax-deductible. F.Capt. Howard Cronson, STARFLEET's CPA and its Donations Coordinator, has prepared a disclaimer that must be placed on all solicitations for donations and all acknowledgments of donations by or on behalf of Fleet or any Region thereof. It reads:

"Please note that your donation to STARFLEET is voluntary and is not tax-deductible, and that it is not considered a loan, an advance, or any other transaction that creates any extraordinary obligation or special debt owed to you by STARFLEET, The International Star Trek Fan Association, Inc."

Fund-raising efforts directed at purchasing airline tickets for individuals to attend certain STARFLEET events, for example, sending the Fleet Admiral to Regional conferences or an RC to the IC or bringing other members in from overseas for the STARFLEET IC, are great examples of Fleet's spirit. We should support these type: of activities. Mention has been made of passing the donations through STARFLEET personnel, including the Fleet Admiral or the Fleet Treasurer. If you are raising money that does not directly go to either the organization's operations or the scholarships sponsored by STARFLEET, do not route donations through HQ or the Treasurer's office. These types of efforts are not consistent with STARFLEET'S tax exempt purpose as defined by the Internal Revenue Service (although funding the Fleet Admiral's or Vice Commander's travel and room expenses would qualify, funding travel for an individual member would not), and could subject us to additional problems with the IRS. Of course, this is the last thing we need.

If you need help establishing proper financial and reporting controls for your project (and you must have them), please contact the Fleet Auditor for help. Also, attach a disclaimer to any individual or Regional fund-raising efforts you undertake. The disclaimer should read something like this:

"This Fund-raising effort is not sponsored by or for the benefit of STARFLEET: The International Star Trek Fan Association, Inc. STARFLEET assumes no responsibility for the use of funds donated to this project, and donations are made at your own risk. Donations are not tax deductible."

Internal Revenue Code Requirements

REQUIRED TAX NOTICES

Yet another issue is Tax Code-required notices to our membership. The following notice must be published at least once per year in both the Communiqué and the Command Status Report. Failure to do so is a violation of Title 26, United States Code, Section 6104. Liability for that violation is personal to the Commander, STARFLEET, to the Editors of the CQ and the CSR, and to other high-level members of the corporation.

"Pursuant to Title 26, United States Code, Section 6104, notice is hereby given that copies of STARFLEET's [name the last three (3) years] annual informational tax returns (commonly known as Form 990's), filed under Section 6033 (relating to returns by exempt organizations), is available for inspection during our regular business hours by any individual at the principal office of STARFLEET, located at [give exact street address, City, and State]. Further, notice is hereby given that a copy of STARFLEET's original application for tax-exempt status (together with a copy of all papers submitted in support of such application and any letter or other document issued by the Internal Revenue Service with respect to such application) has been made available by the organization for inspection during our regular business hours by any individual at said principal office of the organization.

Upon request of an individual made at said principal office, a copy of the materials requested and made available for inspection will be provided to such individual without charge, other than a reasonable fee for any reproduction and mailing costs. Any such request for inspection and copies must be made in person or in writing. If the request is made in person, such copy will be provided immediately upon receipt by STARFLEET HQ of reproduction costs and, if made in writing, shall be provided by mail within 30 days after the date of receipt of the written request and full payment of reproduction and mailing costs. The copy cost for the original application is \$8.00 U.S. The copy cost for the annual Form 990 is \$5.00 U.S. Mailing costs for a single copy of either the original application or a Form 990 is \$3.00 U.S.; domestic mailing costs for a copy of all four forms is \$9.00 U.S. For international mailings add \$5.00 U.S. Make all checks payable to STARFLEET."

Internal Revenue Code Requirements

VIOLATIONS OF THESE RULES

What happens if any of the above I.R.S. rules are violated? The bottom line is that liability attaches to the entire Executive Committee and to the entire Board of Directors of STARFLEET: The International Star Trek Fan Association, Inc., a not-for-profit North Carolina Corporation. Depending upon when the violation occurred and what type it is, liability attaches to anyone who served on the Board in any capacity from potentially the date of incorporation (1991) through the date the IRS rule(s) was violated.

This specifically includes, but is not limited to, all members of the Executive Committee, the Admiralty Board, the AB's Finance Committee, the Commander, STARFLEET, and the Vice Commander, STARFLEET, who were "on board" during the relevant times. Regardless of how long anyone occupied any one (or more) of these offices, all officers and directors owe these legal duties to many entities and persons - the membership as a whole and individually, the corporation itself, the federal government, and to the States. Don't ever forget these duties, for ignorance of the law is no excuse.

SEXUAL HARASSMENT POLICIES

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature if forbidden. That conduct is sexual harassment. Sexual harassment is also when:

1. submission to such conduct is made either explicitly or implicitly a term or condition of an individual's membership,
2. submission to or rejection of such conduct by an individual is used as the basis for promotion or assignment decisions affecting such individual, or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's membership opportunities or creating an intimidating hostile, or offensive fan environment.

It is expressly forbidden for any member, whether aided in carrying out the sexual harassment by his or her position of authority or not, to engage in sexual harassment of any other member. In determining whether alleged conduct constitutes sexual harassment, STARFLEET will look at the record as a whole and at the totality of the circumstances, such as the nature of the sexual advances and the context in which the alleged incidents occurred. The determination of the propriety of a particular action should be made from all the facts, on a case by case basis.

With respect to conduct between members, STARFLEET's leaders are responsible for watching out for acts of sexual harassment and, where a leader (or his or her agents) knows or should have known of the conduct, leaders are to take immediate and appropriate corrective actions.

Prevention is the best tool for the elimination of sexual harassment. Leaders and their staff should take all steps necessary to prevent sexual harassment from occurring, such as affirmatively raises the subject, expressing strong disapproval, developing appropriate sanctions, informing members of their right to raise and how to raise the issue of harassment, and developing methods to sensitize all concerned

Harassment in any form is not fun for the person being harassed. Don't do it. Don't allow it to be done in your chapter, Region, or Department. Let's let Fleet be fun for all of us.

REIMBURSEMENT OF TRAVEL EXPENSES

This is an important subject, since so many problems stem from a member's official complaints about money. The first rule is that the RC or his/her proxy's expense in attending the IC is a legitimate regional expense, because his/her attendance -- either in person or by authorized proxy - is mandatory, the IC being the annual meeting of the board required by North Carolina law. However, the IC attendance of no other Regional personnel is mandated (they are not Board members).

This is not to say, however, that a Region cannot choose to pay the way for a person other than its Regional Coordinator, either by authorizing a loan or an outright grant of Regional funds for the trip. Unless specified otherwise by the Fleet Constitution or by an express directive from the Commander, STARFLEET, the method and timing of payments and repayments, be it for loans or grant; is the choice of the Region. Because only the Commander, STARFLEET, is legally responsible to the I.R.S. and the various State authorities for what is done by and for Fleet members in Fleet's name, and on behalf of Fleet by anyone - or any Region - the Commander, STARFLEET, has the final say in all financial matters.

However, if permitted by the CS, the Regions and chapters may vote to pay anyone's way to the IC or to a Regional Summit. But, and this is a big point here, it *must be the clearly expressed majority will* of the *entire* Region's Fleet members to do so. That requires a Regional balloting process be undertaken to make that **express** choice among all Fleet members. If a Region's members vote by a majority vote (either directly or through a vote of their CO's) to send their RC (or another representative) to the IC, that is the Region's free will choice. It may vote to do so. But, the vote as taken must be:

1. fairly handled,
2. with plenty of time allowed for voting (don't let time run short),
3. plenty of public notice of the vote must be given,
4. a full and fair opportunity for everyone to be heard on the issue must be given, and
5. the methods of repayment, if any, must be clearly spelled out (when it is to be repaid by, how much will be funded, to whom, exactly who goes, what they are to do there, etc.)

All *before* the vote is taken. Further, the person receiving the reimbursement cannot be the person issuing the check.

Persons going anywhere on Chapter or Regional fiends must save their receipts for all funded expenditures (travel, room, food, etc.). They must turn all those receipts over to the person who handles the Regional monies, *before* or *not later* than the time they are reimbursed. Want reimbursement? Produce the receipts! They must make a full, accurate, and public accounting of how much was spent, and for what. The person handling the Regional funds must publicly state when and if the funds are fully repaid, or that the funds have not been repaid as required No loopholes are permitted in these arrangements. The persons involved must follow Generally Accepted Accounting Principals (GAAP) in this matter, as with all Regional finances. That can mean two signatures required on checks, a verifiable audit trail, regular financial audits or reviews, etc. If they substantially fail in any of these duties, the RC can, must, and will be removed from office by the Commander, STARFLEET, for violation of Fleet financial policies and/or for allowing non-reporting and/or misuse of Fleet or Regional funds.

FINANCIAL ACCOUNTABILITY

Even as the RC, money in the Regional bank account is not *your* money: It belongs to all of the members of your Region. You hold it *in trust* for the benefit of the members of your Region. Because you hold these funds in trust, you have a legal duty to use these funds *only* for the benefit of the members. You may **not** use any part of these funds for your own personal benefit. You may not use any part of these funds for the personal benefit of anyone else - not you, not your spouse or "significant other," and usually not any one particular member. Violation of this rule is not only a violation of civil and criminal law; it is grounds for immediate removal from office by the Commander, STARFLEET.

Thus, you may not use those funds for any purpose that has not been approved in advance by the Commander, STARFLEET, or a majority of the members of your Region. The only standard pre-approved expenditures of regional funds are:

1. Reasonable *and necessary* expenses related to publication and distribution of Regional newsletters, status reports, and other special mailings of Fleet or Regional votes, business, and news, and
2. *Reasonable* travel related expenses (ticket, room, meals, car rental fees) to a Regional Summit and to the STARFLEET International Convention for the Commander, STARFLEET, and the Regional Coordinator or his or her proxy.

It is expressly forbidden to use regional funds to pay for travel related expenses of the RC's spouse or significant other without express approval from the Commander, STARFLEET, or by clear majority vote of all of the chapters in the Region. Violation of this rule is grounds for immediate removal from office.

As a Regional Coordinator, you might argue that since it's Regional funds being spent, you don't need the Commander, STARFLEET's approval for how you spend your Region's money. However, the IRS may well take the position that it *is* Fleet's money. That is because, as defined by the Internal Revenue Code, the chapters and the Regions *are* "affiliated" with STARFLEET (and Fleet should have been reporting that income all along since 1991). Fleet can't just ask the IRS if they will take that position or not, because if they do (very likely) they may well ask why we haven't been reporting it, and then impose penalties on us for our failure to do so. This is not a good thing. So, to be safe, the CS' approval requirement is imposed upon the Regions. Of course, the reality is that if a Regional majority expressly approves of the proposed expenditure of funds, the CS better not express a problem with it - unless it violates an express Constitutional provision. And, if the Region has its own EIN or GEN, then the IRS reporting issue is moot and that Region need not seek the CS' advance approval of any proposed expenditure of Regional funds.

When you seek approval in advance by the Commander, STARFLEET, or a majority of the members of your Region for a specific expenditure of Regional funds, you must make full and complete disclosure of the intended use of the funds - *before* you spend the money. You must state whether the expenditure is a loan to be repaid (by you or another), or not. If a loan, you must clearly say who will repay it, the date it will be repaid in full, the exact maximum amount to be loaned, and the amount of interest, if any, on the amount loaned. *No funds may be loaned to anyone for a non-STARFLEET or non Region related use.*

Keep your receipts for all funds expended. No receipt, no reimbursement. The Region must keep such receipts for at least seven years. Publish timely reports on all funds expended. Follow good accounting practices. Play it safe, because violation of this rule violates our legal commitments to the State of North Carolina and to the U.S. Internal Revenue Service, and opens STARFLEET up to possible adverse legal actions. Violation of this rule is therefore grounds for immediate removal from office by the Commander, STARFLEET.

When you spend the Region's funds, the law imposes upon you the duty to strictly account for every dime you spend. That means you have to have detailed receipts for every dime you spend. You have to have a valid reason to spend any money, and you have to detail that reason in writing on a financial log book or general ledger. It would be very wise to use an accounting software program to keep track of these funds, and how they are spent. No "shoebox accounting" is allowed. Violation of these rules is grounds for immediate removal from office.

Every member of your Region, the Inspector General of STARFLEET, and the Commander, STARFLEET, (or anyone acting on his or her behalf) has the right to demand full access to your financial books or general ledger, and to the documentation supporting each and every entry therein. If you refuse or fail to promptly provide that access, you are subject to immediate removal from office, for the good of the Fleet.

CUSTOMER SERVICE IN STARFLEET

This section is by R.Adm. Mandi Herrmann. It's well written. I highly recommend you share this with your Regional Staff members.

"Recently I began working at a computer software firm with its corporate headquarters in Charleston, SC. As a new employee, I have been attending workshop after workshop, class after class in the attempt to learn as much about the company and its mission. Some of these have been extremely boring (like the intro to Windows NT class). However, today I found myself sitting in a "Customer Service" workshop that just really impressed me. I started thinking, "You know, STARFLEET and its leadership could really use a good dose of what I just learned."

As the leadership in Fleet, we must realize that we aren't just a fan club with members worldwide. We are also a corporation that services over 5,000 customers! Think about that for a second. Let that sink into your mind and permeate your thoughts. In the next few paragraphs, I'm going to present some very effective approaches to increasing our customer service. The company I'm working for is one of the most successful developers of software for non-profit and charitable organizations in the United States. And I firmly believe it is due to their approach to customer service. Let's begin.

First of all, Customers are everywhere. The founder of Scandinavian Airlines once said, "If you're not serving the customer, your job is to be serving someone who is." In other words, everyone is someone's customer. There are a few definitions of the word "customer" in the dictionary. The obvious one is "someone who buys." A secondary, but much more important definition is "a person with whom one has dealings." In other words, there are two types of customers: External and Internal. External customers are the corporation's source of revenue. Internal customers are the staff and vendors of the organization. In Fleet we all serve as both External and Internal customers to each other. The "Joe Member" of Fleet is definitely our external customer. He's the one who pays his dues and expects service in return. Even though we are the leadership of the organization, we also pay dues, so we are external customers as well. However, we are also each other's Internal customers. We deal with each other day in and day out in the hopes of getting information to run our departments successfully and in turn please our external customers, the membership. Every organization and company is 100% dependent on both External and Internal customers. If External are unhappy, say adios to the revenue. If Internal are unhappy, low morale and high turnover of officers will occur. It costs 8 times more for most businesses to make a new customer than it does to keep an existing customer. So, if you are ever wondering, "Who is my customer," here's an easy way to determine that. Ask yourself "Where does my work go when I'm finished?" Also, ask yourself, "Who is my work important to?" The answers to these two questions will help you determine who exactly is your customer.

Okay, now we've covered the basics of who the customer is. So, what do we do when we get a complaint or a problem? Use the well placed, "I'm sorry." An apology in this case is a simple acknowledgment that the customer/member did not get what he expected. This quick act of empathizing with their problem puts them at ease and usually makes problem resolution easier on both the customer and yourself. Be sincere, empathize, be personal, and be timely in your apology. Too often in our organization, I've seen leadership snap back an uncaring response to a member. Heck, we've probably all been guilty of it at least once. Someone says, "My CQ was missing the front cover when it came two weeks late."

Many times our first response is "Ask for a replacement copy" and "Real life interferes sometimes with publication schedules." In other words, "go away, you are bothering us muckety-mucks." Giving a solution is good. But, we should say, "I'm sorry. Let's find a way to make sure you get better service next time." Then, either forward the message on to the CQ staff to send a replacement copy or nicely advise the member on how to do so himself.

Now, let's deal with Forbidden phrases and deadly sins of customer service. I see this happen ALL the time in STARFLEET. Every administration has been guilty of many of these "sins." Even our own. Even EC members. Now, first of all, let's look at the top seven "Forbidden Phrases."

1. ***I don't know.*** This implies that you don't care. Instead, try the phrase, "Let me find out." This shows you are willing to please the customer and that you do care about their well-being in Fleet. Don't give the member a dead end.
2. ***We can't do that.*** Well, yet again a dead end for the member. Sure you might not be able to do exactly what the member was requesting, but try saying, "Let me see what we can figure out," or "Let me see what I can do to help you."
3. ***You'll have to.*** Now, those words aren't necessarily bad to say. But, try to avoid the "YOU" word. This can be discomfoting to someone who isn't quite sure of what's going on and how to solve a problem. Instead of that, try saying, "Let's try this" or "Let's do this." Using "We" and "Us" shows you are assisting them. Granted, you may say, "Let's try sending an e-mail to CompOps Help and inquiring about your membership status." Then you can walk them through the process of how "We" would do that. For numbers 1, 2, and 3, you notice that the term "Let's" is used. This shows the member they aren't alone in the organization.
4. ***I'll get back to you.*** Well, talk about leaving someone hanging. That's almost another dead end for the member. You need to say something like, "It may take me three or four days to get you an answer. I'll let you know then." Give them a time frame and then stick with it. In fact, over-estimate the time needed. Say it will take you four days and get back to them in two days. Just like Scotty, you'll be a miracle worker! They will be impressed with the rapid response and quick service.
5. ***No.*** Try not to begin with "No" when answering people, unless you are saying "No Problem." Try to begin with something positive. This happened to me just recently and I handled it badly at first. If someone asks, "Will you nominate me for a promotion?", don't just say "No." I did and it got me flamed and really made someone angry. However, when I approached him by saying, "Well, I'm really not familiar with your service record right now, so why don't you fill me in on your accomplishments and time in rank." I discovered quite a few things I was unaware of and the person then softened and we have opened up a good dialog now. I'm even considering his request now due to some circumstances I'm now aware of.
6. ***It's not my fault.*** Okay, many times we will get a complaint and it isn't our fault. But that's awfully uncaring. When I took over the Academy, I was asked by many people "Why hasn't my check cleared." If I had responded by, "It's not my fault. I'm new here" I would have made many people just angry and they would have said "Boy, she's a jerk. That whole EC must be a bunch of idiots if they are all like her." Instead, Carolyn and Marlene and later myself explained the situation involving the checks to the Academy and we apologized for the inconvenience to everyone.

7. ***If you had done....*** Once again that is very negative. Sure, many of the issues we are presented with could be solved easily by the member if they had thought everything through. Instead of answering, "If you had read your membership handbook, you'd find..." try just simply answering the question and if possible say, something like this: "Okay, let's find your answer. Now, I'm sure this is in the handbook, so let me look on page 4 here. Oh, yeah, there it is" and then quote them the passage. Now, next time, they know to look in the handbook AND you didn't insult them.

Those were the "Forbidden phrases," so what about the "Deadly sins"? They are very similar with the forbidden phrases, but they are more often than not related to our attitudes and give the member/customer an impression about us and our attitude toward them.

1. ***I don't like you.*** This is implied when we don't focus on the customer or just kind of blow them off. Tone of voice or tone of email could also imply this.
2. ***I know it all.*** Don't interrupt someone when chatting or talking with them. If they have a question, don't cut them off until they are done asking it. How many times have you been asked, "Do you think you could ..." and then you spout of "Yes," and the rest of the question was, "take out the garbage?" See, don't interrupt.
3. ***You don't know anything.*** I can think of many instances when I've seen this happen in Fleet. Being condescending, pointing out an obvious thing and making someone look stupid to others is very poor customer service. So what they are asking you who is third in charge of STARFLEET? Don't say, "The Chief of Ops if you had read your handbook." Belittling isn't a good way to keep members happy.
4. ***Don't ask me anything else.*** It is really easy to make someone feel like this, like they are bothering you by doing numbers 1, 2, and 3 or by using those forbidden phrases. Don't make someone feel less than important just because they aren't in your circle of friends or in your peer group.
5. ***I'm right and you're wrong.*** This is pretty self-explanatory. It is not good customer service to state to someone, "Well, I'm on staff that's why."

Okay, we've gotten those out of the way. Next key to quality customer service is to Listen, Listen, Listen! Did you know that we speak at about 100-150 words per minute, but we can hear up to 600 words per minute? Yet, even though we can hear 600 words, studies have shown we actually only recall 1/3 of all we hear. So, how can we improve our listening skills? First of all, take notes. If a member calls you or gets you on IRC, take notes or log the conversation. This way, you won't have to ask them to repeat themselves later in the conversation. Secondly, reflect. That is, repeat back in your own words how you understood what they said. This reassures the member that you were listening and they are important. Then, if you did hear anything incorrectly, the member can set you straight. Finally, don't be afraid to ask questions to understand the situation better.

Another important aspect of customer service would be to Master the Art of Calm. You only serve as good as you feel. How many of us are guilty of shooting off a sarcastic e-mail due to being stressed. Yeah, I have and I know many of you have, too. So, remember to breathe, relax, organize, laugh, and think & talk positively. That should get you in a better frame of mind.

Finally, Go the Extra Mile! Surprise and delight each customer you come in contact with on a daily basis. Finding creative ways to make the customer know you want to help will make them very happy. Go above and beyond the call. We need to treat each member as if he were the most important member in Fleet.

This is the key to growth in Fleet. This is the key to happy and content customers. This will be the key to winning elections.

We've got to get off our high horses, put away our condescending tones and attitudes, quit sending out flaming e-mail, and quit playing petty political games. If we are to send Fleet into the next century as the very best fan organization out there, we must master the art of Customer service. We must realize that we are each other's customers.

RC's Duties Manual

Glossary of Terms

Agency - A relationship between two persons, by agreement or otherwise, where one (the agent) may act on behalf of the other (the principal) and thereby bind the principal by the agent's words and actions. It is a state of relationship in which one person acts for or represents another with authority, either in the relationship of a principal and agent, a master and servant, or an employer or proprietor and independent contractor. The term agency also designates a place at which an agent transacts the business of a company or an individual. This relationship is created either by an express or implied contract, or by operation of law whereby one party delegates the transaction of some lawful business with more or less discretionary power to another, who undertakes to manage the affair and render back to him a true and accurate account thereof. It is also a relationship where one person confides to his agent the management of a more limited, specific affair, to be transacted on his account. It may also be where one party is authorized to do one or more specific, certain acts for or in relation to the rights or property of another. But, in any event, agency means more than tacit permission, and involves a general or specific but direct request, instruction, or command.

De facto - In fact, in deed, actually. This phrase is used to characterize an officer, a government, a past action, or a state of affairs, which must be accepted for all practical purposes, but is illegal or illegitimate. Thus, an office, position or status existing under a claim or color of right, such as a "de facto" corporation. In this sense, it is the contrary of **de jure**, which means rightful, legitimate, just, or constitutional. Thus, an officer, king, or government *de facto* is one who is in actual possession of the office or supreme power, but by usurpation, or without lawful title; while an officer, king, or governor *de jure* is one who has just claim and rightful title to the office or power, but has never had plenary possession of it, or is not in actual possession. But the term is also frequently used independently of any distinction from *de jure*; thus a blockade *de facto* is a naval blockade which is actually maintained at sea, as distinguished from a mere paper blockade by a blustering paper tiger.

De facto contract - One which has purported to pass the property from the owner to another but is defective in some element. Compare De jure.

De jure - Descriptive of a condition in which there has been total compliance with all requirements of law. Therefore of right; legitimate; lawful; by right and just title. In this sense, it is the contrary of *de facto*. It may also be contrasted with *de gratia*, in which case it means "as a matter of right," as *de gratia* means "by grace or favor." Again, it may be contrasted with *de acaudate*; here meaning "by law," as the latter means "by equity."

Delegation - The entrusting of another with a general power to act for the good of those who deputize him; a body of delegates. The transfer of authority by one person to another.

Dissolution - The act or process of dissolving; termination; winding up. In this sense, it is frequently used in the phrase "dissolution of a business." As to contracts, the dissolution of a contract is the cancellation or abrogation of it by the parties themselves with the effect of annulling the binding force of the agreement, and restoring each party to his original rights. As to corporations, the dissolution of a corporation is the termination of its legal existence. This may take place in several ways; as by act of the legislature, by surrender or forfeiture of its charter, by expiration of its charter by lapse of time, by proceedings for winding it up under the law, by loss of all its members or the reduction below the

statutory limit, or by bankruptcy. Dissolution of a corporation can be either voluntary (initiated and approved by Board of Directors and shareholders), or involuntary. Involuntary dissolution may be "administrative" (e.g., by the State for failure of corporation to file reports or pay certain taxes) or "judicial" (e.g., by an attorney general for abuse of corporate authority, by shareholders because of deadlock in management, or by unpaid creditors) or can result from bankruptcy of corporation. Procedures for corporate dissolution are usually provided for in state statutes. See e.g. Rev. Model Bus. Corp. Act section 14.01 et seq.

Enjoin - To require, command, positively direct. To require a person, by writ of injunction, to perform, or to abstain or desist from, some act. As in "obtaining an injunction or a restraining order."

Executory - That which is yet to be fully executed or performed; that which remains to be carried into operation or effect, incomplete depending upon a future performance of event. The opposite of executed or completed.

Exemplary damages - Damages on an increased "scale, awarded to a plaintiff over and above his or her actual or ordinary damages, usually where the wrong done to the plaintiff was aggravated by circumstances of violence, oppression, malice, fraud, or wanton and wicked conduct on the part of the defendant. Exemplary damages are also known as punitive damages.

Fiduciary - The term is derived from the Roman law and means (as a noun) a person holding the character of a trustee, or a character analogous to that of a trustee, in respect to the trust and confidence involved in it and the scrupulous good faith and candor which being in a fiduciary relationship requires. A fiduciary is a person having a duty, created by his voluntary undertaking to act primarily for another's benefit in matters connected with such undertaking. As an adjective, it means of or in the nature of a trust; having the characteristics of a trust; analogous to a trust; or relating to or founded upon a trust or confidence. A term refers to a person having legally imposed duties involving good faith, trust, special confidence, and complete candor towards another. A fiduciary includes such relationships as director, officer, executor, administrator, trustee, or guardian. A lawyer is also in a fiduciary relationship with the client. It applies to any person or institution who manages money or property for another and who must exercise a certain standard of care in such management activity imposed by law or contract. A breach of fiduciary responsibility would make the fiduciary liable to the beneficiaries for any damage caused by such breach. The status of being a fiduciary gives rise to certain legal incidents and obligations, including the prohibition of theft, misuse of corporate opportunities, and against the investing of the money or property of another in investments, which are speculative or otherwise imprudent. Many states have adopted the Uniform Fiduciaries Act and the Uniform Management of Institutional Funds Act, which set forth additional limitations upon persons who act in a fiduciary capacity.

Fraud - An intentional perversion of the truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him, or to surrender a legal right. A fraud is a false representation of a matter of fact, whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives and is intended to deceive another so that he shall act upon it to his legal injury. It is anything calculated to deceive, whether by a single act or combination, or by suppression of truth, or suggestion of what is false, whether it be by direct falsehood or innuendo, by speech or silence, by word or mouth, or look or gesture. Fraud, as a generic term, embraces all multifarious means that human ingenuity can devise, and which are resorted to by one individual to get an advantage over another by false suggestions or by suppression of truth. The term includes all surprise, trick, cunning, dissembling, and any unfair way by which another is

cheated. "Bad faith" and "fraud" are synonymous, and also synonyms of dishonesty, infidelity, faithlessness, perfidy, unfairness, etc. Elements of a cause of action for "fraud" include false representation of a present or past fact made by a defendant, action in reliance thereupon by a plaintiff, and damage resulting to the plaintiff from such misrepresentation. As distinguished from negligence, fraud is always a positive, intentional act. It comprises all acts, omissions, and concealment involving a breach of a legal or equitable duty and resulting in damage to another. Fraud, as applied to contracts, is the cause of an error bearing on a material part of the contract, created or continued by artifice, with design to obtain some unjust advantage to the one party, or to cause an inconvenience or loss to the other.

Good faith - Good faith is an intangible and abstract quality with no technical meaning or statutory definition, and it encompasses, among other things, an honest belief, the absence of malice, and an individual's personal good faith is concept of his own mind and inner spirit. Good faith may not conclusively be determined by protestations alone. It includes honesty of intention and freedom from knowledge of circumstances, which ought to put the holder upon inquiry. An honest intention to abstain from taking any un-conscientious advantage of another, even through technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transaction un-conscientious equals good faith. In common usage, this term is ordinarily used to describe that state of mind denoting honesty of purpose, freedom from intention to defraud, and, generally speaking, means being faithful to one's duty or obligation.

Gross negligence - The intentional failure to perform a manifest duty in reckless disregard of the consequences, as affecting the life or property of another. It is materially more of a want of care than constitutes simple inadvertence. It is an act or omission respecting a legal duty of an aggravated character, as distinguished from a mere failure to exercise ordinary care. It amounts to indifference to a present legal duty and to utter forgetfulness of legal obligations so far as other persons may be affected. It is a heedless and palpable violation of a legal duty respecting the rights of others. It includes an element of culpability, which characterizes all negligence, magnified to a high degree as compared with that present in ordinary negligence. Gross negligence is a manifestly smaller amount of watchfulness and/or circumspection than the circumstances required of a person of ordinary prudence. It falls short only in not being such reckless disregard of probable consequences as is equivalent to a willful and intentional wrong. Ordinary and gross negligence differ in degree of inattention, while both differ in kind from willful and intentional conduct which is or ought to be known to a tendency to injure. Gross negligence consists of conscious and voluntary act or omission, which is likely to result in grave injury when in face of clear and present danger of which alleged tortfeasor, is aware. It is that entire want of care, which would raise the belief that an act or omission complained of was result of conscious indifference to rights and welfare of persons affected by it.

Indemnification - In corporate law, the practice by which corporations pay the legal expenses of officers or directors who are named as defendants in litigation relating to a corporate affair. In some instances, corporations may indemnify officers and directors for fines, judgments, or amounts paid in settlement as well as expenses.

Insider - Generally refers to anyone who has knowledge of facts not available to the general public (e.g., officers, directors, key employees, and relatives). In determining whether a person, not a director or officer (who are automatically insiders by virtue of their positions), is a corporate "insider," the test is whether he or she had such a relationship to the corporation that he or she had access to information which should be used only for corporate purposes and not for the personal use and benefit of anyone. In other words, an "insider" is an entity or person with sufficiently close relationship with the

corporation that his or her conduct is subject to closer scrutiny than those persons dealing at an arm's length with the corporation are.

Joint and several liability - Describes the liability of co-promisors of the same performance when each of them, individually, has the duty of fully performing the obligation, and the obligee (the person to whom the obligation is owed) can sue all or any of them upon the breach of performance. Liability is said to be joint and several when the creditor may demand payment from or sue one or more of the parties to such liability separately, or all of them together, or any combination of them at his option. The term refers to the liability of joint tortfeasors (i.e., liability that an individual or business either shares with other tortfeasors or bears individually without the others). Such liability permits the Internal Revenue Service to collect a tax from one or all of several taxpayers. See Title 26, U.S. Code, Section 6013.

Negligence - The omission to do something which a reasonable man, guided by those ordinary considerations, which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do. Negligence is the failure to use such care as a reasonably prudent and careful person would use under similar circumstances; it is the doing of some act, which a person of ordinary prudence would not have done under similar circumstances. Negligence is conduct falling below the standard established by law for the protection of others against unreasonable risk of harm; it is a departure from the conduct expected of a reasonably prudent person under like circumstances. The term refers only to that legal delinquency that results whenever a man fails to exhibit the care that he ought to exhibit, whether it be slight, ordinary, or great. Chiefly inadvertence, thoughtlessness, inattention, and the like characterize it, while "wantonness" or "recklessness" is characterized by willfulness.

Ordinary negligence - The omission of that care which a person of common prudence usually takes of his own concerns. Failure to exercise care of an ordinarily prudent person in the same situation. A want of the care and prudence that the great majority of mankind exercise under the same or similar circumstances. Wherever the distinctions between gross, ordinary, and slight negligence are observed, "ordinary negligence" is said to be the want of ordinary care. Ordinary negligence is based on the fact that one ought to have known the results of his acts, but was recklessly or wantonly indifferent to the results. The distinction between "ordinary negligence" and "gross negligence" is that the former lies in the field of inadvertence and the latter in the field of actual or constructive intent to injure.

Passive negligence - Failure to do something that should have been done. The difference between "active" and "passive" negligence is that one is only passively negligent if he merely fails to act in fulfillment of duty of care which the law imposes upon him, while one is actively negligent if he participates in some manner in some conduct or omission of care which caused injury to another.

Per se negligence - The inexcusable violation of an applicable statute is *per se* or automatic negligence in some states.

Willful, wanton, or reckless negligence - These terms are customarily treated as meaning essentially the same thing. The usual meaning assigned to "willful," "wanton," or "reckless" is that the actor has intentionally done an act of an unreasonable character in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great a risk as to make it highly probable that harm would follow. It usually is accompanied by a conscious indifference to the consequences, amounting almost to willingness that they shall follow; and it has been said that this is indispensable. The result is that "willful," "wanton," or "reckless" conduct tends to take on the aspect of highly

unreasonable conduct, or an extreme departure from ordinary care, in a situation where a high degree of danger is apparent. As a result, there is often no clear distinction between such conduct and "gross" negligence, and the two have tended to merge and take on the same meaning, of an aggravated form of negligence, differing in quality rather than in degree from ordinary lack of care. It is at least clear, however, that such aggravated negligence must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence, or simple inattention.

Quorum - A majority of the entire body. The number of members who must be present in a deliberative body before business may be transacted. Such a number of the members of a body as is competent to transact business in the absence of the other members. The idea of a quorum is that when that required number of persons goes into a session as a body, such as directors of a corporation, the majority of persons then present cannot legally act unless a certain minimum number of the whole are present, that number being called a "quorum." In the absence of any law or rule fixing the quorum, it consists of a majority of those entitled to act.

Quo warranto - In Old English practice, a writ in the nature of a writ of right for the king, against him who claimed or usurped any office, franchise, or liberty, to inquire by what authority he supported his claim, in order to determine the right. It lay also in case of non-user, or long neglect of a franchise, or misuse or abuse of it; being a writ commanding the defendant to show by what warrant he exercises such a franchise, having never had any grant of it, or having forfeited it by neglect or abuse. A common law writ designed to test whether a person exercising power is legally entitled to do so. An extraordinary proceeding, prerogative in nature, addressed to preventing a continued exercise of authority unlawfully asserted. It is intended to prevent exercise of powers that are not conferred by law, and is not ordinarily available to regulate the manner of exercising such powers. An ancient prerogative right through which the state acts to protect itself and the good of public generally through its chosen agents as provided by its Constitution and laws, though sometimes it is brought at instance of and for benefit of a private individual who may have a special interest. In the law of corporation, quo warranto may be used to test whether a corporation was validly organized or whether it has power to engage in the business in which it is involved.

Sexual harassment- A type of forbidden discrimination; includes sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature prohibited by federal law (for example, Title VII of 1964 Civil Rights Act) and commonly by state statutes. *See, e.g.,* Mass. General Laws, Chapter 151B, § 1(18).

Vires - Powers; forces; capabilities; natural powers; powers granted or limited. Examples: "Extra vires" - Acts that are beyond the limited powers granted.,

Intra vires - An act is said to be intra vires ("within the power") of a person or corporation when it is within the scope of his or its powers or authority. It is the opposite of "ultra vires."

Ultra Vires - Beyond; outside of; in excess of the scope of the limited powers granted. An act performed without any authority to act on the subject. Acts beyond the scope of the powers of the corporation, as defined by its charter or laws of state of incorporation. The term has a broad application and includes not only acts prohibited by the charter, but acts which are in excess of powers granted and not prohibited, and generally applies either when a corporation has no power whatever to do an act, or when the corporation is without authority to perform it under any circumstances or for any purpose. By

doctrine of ultra vires, a contract made by a corporation beyond the scope of its corporate powers is unlawful.

Afterthoughts & Acknowledgements

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I hope every reader of this Duties Manual gains an understanding here of their legal duties to the corporation known as STARFLEET, to the State of North Carolina, and to the various agencies of the federal government. While we're all here to have fun and because we love Fleet and what it stands for, every officer, director and member must never forget that we are now a business - a corporation whose very existence depends upon both the members and the leaders doing what they must do to keep Fleet on an even keel. Every member is important. Every leader is required to stand up for what is right, and to avoid what is wrong. This Manual is your tool to accomplish those goals. Read it. All of it.

Use it, wisely. Remember... "Scientia sciorum est mixta ignorantia."

- Chuck