

ARTICLE IX - DISCIPLINE

Sec. 901 - Discipline of Members.

Article IX does not apply to actions taken by a Post, County Council, District or Department to bar, suspend or limit members from participating in activities or using clubrooms or holding company facilities sponsored, conducted or operated by a Post, County Council, District or Department. Such actions are subject to separate regulation by the respective Post, County Council, District or Department.

Sec. 902 - Offenses. (See Section 902 of the Bylaws)

Sec. 903 - Procedure for Disciplinary Actions.

- (a) Preliminary Requirements with Respect to Initiating Disciplinary Actions.** (See Section 903 of the Bylaws.)
- (b) Authority to Initiate Disciplinary Action.** (See Section 903 of the Bylaws.)
- (c) Procedure for Initiating Disciplinary Action.** (See also Section 903 of the Bylaws)
 - 1. Charges and Specifications. The charges must specifically identify the subsections of Section 902 of the Bylaws that have been violated. The specifications shall provide a factual description of the conduct constituting the violation.
 - 2. Materials Relied Upon. (See Section 903(c)(3) of the Bylaws.)
 - 3. Special Order. The Special Order should be issued using Special Order Form DA-1 and should have attached Charges and Specifications Form DA-2, Materials Relied Upon, a Request for Hearing Form DA-6, and a Request for Summary Disposition Form DA-8. These forms may be found in the Appendix to the Manual of Procedure.
- (d) Procedure if a Disciplinary Hearing or Summary Disposition is not Requested.** (See also Section 903 of the Bylaws.)

Notification of any penalties under this procedure shall be made using Form DA-7, found in the Appendix to the Manual of Procedure.
- (e) Procedure for Summary Disposition.**
 - 1. Within 15 calendar days following the appointment, the Chairman will contact the accused and the Initiating Officer or designated initiating member to establish a time for the Summary Disposition by the Assessment Panel. This must be scheduled within 45 calendar days of the appointment of the Chairman.
 - 2. The Initiating Officer or designated initiating member shall provide copies of the Charges and Specifications and Materials Relied Upon to the Panel at least 10 days prior to the Summary Disposition date.

Also, by that date each party will provide the Panel and the other party with any additional pertinent evidence or documents they wish the Panel to consider. Evidence may include any relevant documentation whether written or electronic by audio or video format.

3. It shall be the duty of the Chairman to assure there is a full and fair opportunity to present evidence and arguments. The Panel members may question the parties. The Initiating Officer or designated initiating member, or their designee, will first offer evidence and argument, followed by the accused. Each party may then make a closing presentation.

(f) **Procedure where Disciplinary Hearing Requested.** In the event that the accused member requests a Disciplinary Hearing within fifteen (15) calendar days and in the manner prescribed in Section 903 of the Bylaws, the following procedures apply:

1. **Preliminary Procedures.**

- a. If the action is initiated by a Post or Post Commander, the Department Commander will appoint the Disciplinary Panel members. The Department Commander will appoint the Panel in cases arising in the Department, unless the Department Commander expects to be a witness with respect to factual matters, in which case the Department Commander shall request, in writing, that the Commander-in-Chief appoint the Panel. The Commander-in-Chief shall appoint the Panel in cases in which the Commander-in-Chief is the Initiating Officer. In cases where a member has been designated to initiate the Disciplinary Action pursuant to Sections 903 (b) (6) and (7) of the National Bylaws, the designated member shall appoint the Panel.
- b. The Commander, Commander-in-Chief or designated initiating member shall, within forty-five (45) calendar days of receipt of the request for Hearing, issue a Special Order. The Special Order will be on the approved form appointing at least five (5) members to the Panel and designating one (1) of them the Panel President. Only members of the Veterans of Foreign Wars of the United States in good standing may sit on a Disciplinary Panel. Panel members must be able to afford an impartial hearing. If appointees are unable to serve or are unable to afford an impartial hearing, or the time and place of a hearing must be changed, a supplemental order may be issued. Panel members shall not discuss the merits of the case prior to the Hearing. The Prosecutor, Defense Counsel and Recording Officer are not Panel members.
- c. The hearing must be set within forty-five (45) calendar days of the date of the order appointing the Panel. If the hearing is not set or not held within such time, and not otherwise properly continued, the action shall be deemed dismissed and completed pursuant to Section 903 of the Bylaws, subject to reinstatement by higher authority.
- d. The same Panel may be appointed to hear more than one (1) case and related cases may be heard at the same time, provided the Recording Officer maintains a separate record for each accused.
- e. The appointing authority or Panel President may authorize or order that the hearing be held electronically, provided that the participants, witnesses and documents may be seen and heard by the Panel and parties.
- f. Duties of the Panel President. The Panel President is the presiding officer over the panel and hearing process and not subject to challenge. The duties of the President shall commence upon the issuance of the Special Order. The President shall be acquainted with the hearing procedures, maintain order and give the necessary directions for the conduct of the proceedings. The President shall require that the Prosecutor and the accused member, at least ten (10) days prior to the Hearing, disclose to each other any materials not previously disclosed under Section 903 that either party intends to introduce as evidence at the Disciplinary Hearing. The President shall rule upon all questions concerning the admissibility of evidence, the competency of witnesses, continuances, adjournments, recesses, motions, challenges and orders, the propriety of any argument or statement of counsel and on any other matter

deemed appropriate for the efficient conduct of the hearing. The President shall maintain a record of all proceedings prior to the hearing, which shall be included in the record. The President may, for reasonable cause, postpone and/or reschedule a hearing. A party desiring that the President postpone or reschedule a hearing shall make such request with reasonable notice and in writing, stating the reasons for such request. All Panel members and parties shall be advised in writing of the rescheduled date and time, provided the hearing is not unnecessarily delayed.

- g. Prosecutor, Defense Counsel and Recording Officer.
 - i. Appointment and Duties of the Prosecutor. The Prosecutor shall be designated by the initiating officer or designated initiating member and shall present the evidence supporting the Charges and Specifications. The Prosecutor may not be a witness, but may provide advice concerning procedural matters.
 - ii. Duties of the Defense Counsel. The accused may select lay counsel, retain private representation at their own expense, or represent themselves. Defense Counsel may not be a witness, but may provide advice concerning procedural matters.
 - iii. Appointment and Duties of the Recording Officer. The Recording Officer shall be appointed by the initiating officer or designated initiating member. The Recording Officer shall record all the proceedings and the recordings shall be retained and included as record. The recording officer should take reasonable steps to assure that all testimony is recorded and that all speakers and exhibits are adequately identified in the record. A complete record shall include copies of:
 - Special Order advising of the initiation of a Disciplinary Action. (Form DA-1)
 - Charges and Specifications and Materials Relied Upon. (Form DA-2)
 - The written statement that the Charges and Specifications have been personally served or mailed to the accused in accordance with Section 903 (c).
 - The request for the Disciplinary Hearing made by the accused. (Form DA-6)
 - The order appointing the Panel. (Form DA-3)
 - The complete recording of the proceedings by audio or video means.
 - The President's notes of the proceedings.
 - Any exhibits admitted into evidence.
 - The record of Disciplinary Action. (Form DA-5)
 - The findings and sentence. (Form DA-4)
 - The resolution agreement signed by all parties in accordance with Section 903 (g) [if applicable].

The record shall be delivered to and maintained by the Adjutant.

- 2. **General Rules Concerning the Conduct of Hearings.** The procedure for conducting a Disciplinary Hearing shall be as follows:
 - a. **Challenges.** The entire panel shall initially be seated. Either side may challenge any member, but a member may be removed only for good cause. Good cause includes, but is not limited to, prejudice for or against a party, financial or other interest in the outcome or inability to afford an impartial hearing. The challenging party shall state the reasons upon which that party believes good cause exists. When a member of the Panel is challenged for cause, the President of the Panel will decide on the question. No further Panel members may be excused for cause when the effect is to reduce the number of panel members below three. Members of the panel shall swear or affirm that they will judge the case fairly and impartially.
 - b. **Plea to the Charges.** After the Panel is confirmed, the Charges and Specifications shall be read to the accused by the President unless the accused advises the Panel that the accused has read the charges and they need not be read.

The accused will plead guilty or not guilty to each charge and specification separately. The plea will be recorded on the Form of Record of Disciplinary Action (DA-5).

- c. **Objections.** If there have been procedural errors in initiating the disciplinary action, preparing or delivering the Charges or Specifications, appointing the panel, scheduling the time and place of the hearing or any other matter occurring prior to the hearing, Defense Counsel or the accused must make their objections known to the Panel before the opening statements are given and evidence heard. Similarly, objections must be made to errors in procedure or in the admission of evidence occurring during the course of the hearing at the time of the error. Unless objections are timely made, the alleged error will not be considered in the event of an appeal.
- d. **Opening Statements.** The Prosecutor and then the Defense Counsel shall be permitted to make opening statements which outline for the Panel what each believes the issues to be and what each expects to show by the evidence to be introduced.
- e. **Order of Presentation.** The Prosecutor introduces evidence first followed by the defense. The prosecutor may then present evidence to rebut such evidence as may have been presented by the defense and the defense shall be given an opportunity to rebut any rebuttal evidence presented by the prosecution. Both sides shall have the opportunity to cross-examine each witness after direct testimony is given.

- f. **Rules Concerning Evidence.** Evidence may be testimonial or documentary. Testimonial evidence is evidence given in the form of testimony by witnesses. All testimony shall be taken under oath or affirmation by all parties testifying.

Documentary evidence includes items presented in the form of exhibits which show or demonstrate factual matters. An adequate showing of authenticity (i.e., that the document is an original or a true and correct copy of the original) must be made with respect to documentary evidence.

A Panel may base its decision on either direct or circumstantial evidence. Direct evidence consists of testimony or documents which, if believed, would directly prove or disprove facts. Circumstantial evidence consists of testimony or documents which, if true, would prove or disprove facts or circumstances from which, either alone or in connection with other facts, the existence or nonexistence of a fact in issue could be inferred.

Hearsay evidence consists of testimony based upon the out-of-court statements of persons or documents, i.e., what some other person told the witness or upon something seen by the witness in a document that is not presented. Hearsay testimony is given less credence because there may be no opportunity to cross-examine the person who actually heard or saw the incident or wrote the document. While hearsay evidence can be considered by the Panel because of a belief that a sufficiently trustworthy basis exists for considering the evidence, it should be considered with an appreciation that the evidence is less credible. Hearsay evidence may be fully considered without that limitation if the witness is testifying concerning something the accused has said or the evidence consists of reinforcing documents or letters prepared or signed by the accused.

Books of account or business records are generally admissible. Evidence must be relevant and material. Evidence is not relevant or material when it does not tend to prove or disprove an issue in the case or the President rules that it's not material to the issue at hand.

The President will exclude improper evidence to which an objection is sufficiently made. Presidents may, on their own initiative, exclude other improper evidence. Excluded evidence should not be considered by the Panel. The President should note any evidence which was offered but excluded, giving the reason therefore, and any instances where objection was made but the evidence was admitted over such objection, noting the objection. The Recording Officer must include all rulings with respect to evidentiary objections in the record.

The President should protect every witness from insulting or improper questions, harsh or insulting treatment and unnecessary inquiries into private affairs. It should also forbid any inquiries into irrelevant matters intended to merely annoy witnesses or other pertinent parties.

- g. **Closing Arguments.** After both sides have rested, the prosecution commences its closing arguments. The defense follows and the prosecution closes with rebuttal argument.
- h. **Deliberations of the Panel.** The Panel sits in closed session during the deliberation on the findings and sentence. Each case shall be decided on its own merits and the Panel shall give due regard to all of the circumstances, including the length of time between the alleged offense and the initiation of the Disciplinary Action. Deliberations should include full and free discussion of the evidence at hand. The Panel must consider each charge and specification separately and make a determination whether the accused is guilty or not guilty on each charge and specification.
- i. **Standard of Proof.** In order to convict the accused of an offense, the Panel must be reasonably satisfied that the accused is guilty of the offense.
- ii. **Conviction and Sentencing.** There must be a two-thirds majority vote in order to convict on any charge and specification. If, in computing the number of votes required, a fraction results, such fraction will be counted as one; thus, where five members are to vote, the requirement that two-thirds concur is not met if less than four concur. The sentence must likewise be determined by a two-thirds majority vote. The sentence should be commensurate with the offense committed.
- i. **Findings and Sentencing.** The findings and sentence shall be announced by the President in open hearing after deliberations are complete. In the event the accused or their counsel was not present at the hearing, a copy of the Findings and Sentence (Form DA-4) shall be mailed to the last known address within seven days after the hearing.
- j. **Record of Hearing of Disciplinary Action.** The President shall prepare a Form of Record of Disciplinary Action (Form DA-5).

Sec. 904 - Appeal.

Appeals shall only be based on errors in the hearing procedure or the interpretation of the Congressional Charter, Bylaws, Manual of Procedure, or laws and usages of the organization that prejudiced the outcome. An appeal is not a new hearing of the case and new witnesses or evidence will not be considered.

Failure of the member to comply with the following rules are grounds for denying the appeal.

(a) Rules Applicable to all Appeals.

A proper appeal shall:

- 1. Be in writing, timely filed and properly delivered.
- 2. State the facts of the case based on the evidence introduced at the Hearing.
- 3. Make a clear and concise statement of the reason or reasons upon which the member claims the case was erroneously decided.
- 4. State the relief requested by the member.

(b) Appeals from Post Actions. Appeals to the Department Commander will be made within thirty (30) days of the imposition of penalties by a Disciplinary Hearing Panel. All appeals shall be mailed by registered or certified mail, return receipt requested, to the Department Commander at the Department Headquarters.

Upon receipt of a proper written appeal, the Department Commander shall request that the Adjutant maintaining the Trial Record forward the same to the Commander within fifteen (15) days. The Department Commander will provide a copy of the written appeal to the Prosecutor, who shall have fifteen (15) days from the receipt of the copy to make a written response directly to the Department Commander with a copy to the accused.

The accused shall then have ten (10) days from the date of such response to make a further written submission to the Department Commander, with a copy to the Prosecutor. The Department Commander shall decide the appeal and inform the accused and the Post Commander in writing as to the determination. The decision of the Department Commander is final unless within fifteen (15) days an appeal is made to the Commander-in-Chief. Such an appeal must be mailed by registered or certified mail, return receipt requested, to the Commander-in-Chief at National Headquarters in Kansas City.

Upon receipt of a proper written appeal, the Commander-in-Chief will request that the Department Commander forward the Trial Record, together with any papers submitted by the parties on appeal. The Commander-in-Chief will, within thirty (30) days, decide the matter and inform the member, the pertinent Post Commander and the Department Commander of that decision. The decision of the Commander-in-Chief is final unless an appeal is made to the National Council of Administration within fifteen (15) days of the Commander-in-Chief's decision. Such appeal must be mailed by registered or certified mail, return receipt requested, to the Chairman of the Committee on Appeals of the National Council of Administration at National Headquarters in Kansas City.

Upon receipt of a proper written appeal, the Chairman of the Committee on Appeals shall request the Commander-in-Chief forward the Trial Record and any papers submitted by the parties on appeal. The Chairman shall advise the member of a time and place that the matter will be considered and decided. The member shall have the right to appear, at their own expense, personally or by counsel, at such time and place as the matter is considered. By agreement between the Chairman and the accused member, the matter may be considered electronically. Upon a recommendation by the Committee on Appeals, The National Council of Administration shall decide the appeal and subsequently inform all concerned of its decision in writing.

- (c) **Appeals from Department Actions.** Appeals from Disciplinary Actions initiated by the Department Commander or Department Council of Administration shall be to the Commander-in-Chief. Such an appeal must be made within thirty (30) days of the imposition of sentence by the Disciplinary Hearing Panel. All appeals must be mailed by registered or certified mail, return receipt requested, to the Commander-in-Chief at National Headquarters in Kansas City.

Upon receipt of a proper written appeal, the Commander-in-Chief shall request that the Adjutant maintaining the Trial Record forward the same within fifteen (15) days. The Commander-in-Chief will provide a copy of the written appeal to the Prosecutor, who shall have fifteen (15) days from the receipt of the copy to make a written response directly to the Commander-in-Chief, with a copy to the accused, who shall have ten (10) days to submit a reply. The Commander-in-Chief shall decide the appeal and inform the accused and the Department Commander. The decision of the Commander-in-Chief is final unless an appeal is made to the National Council of Administration within fifteen (15) days. Such appeal shall be made in the manner specified in the foregoing subsection (b) for appeals to the National Council of Administration for cases initially appealed to the Department Commander.

- (d) **Appeals from National Actions.** Appeals from Disciplinary Actions initiated by the Commander-in-Chief or National Council of Administration shall be to the National Council of Administration. Such an appeal must be made within thirty (30) days of the imposition of sentence by the Disciplinary Hearing Panel. All appeals must be mailed by registered or certified mail, return receipt requested, to the Chairman of the Committee on Appeals of the National Council of Administration at National Headquarters in Kansas City.

Upon receipt of a proper written appeal, the Chairman of the Committee on Appeals of the National Council of Administration shall request the Trial Record. The Chairman will provide a copy of the written appeal to the Prosecutor who may, within fifteen (15) days, submit a written response, with a copy to the accused who shall have ten (10) days to submit a reply.

The Chairman shall advise the member of a time and place that the matter will be considered. By agreement between the Chairman and the accused member, the matter may be considered electronically.

The member shall have the right to appear, at their own expense, personally or by counsel, at such time and place where the matter is considered.

Upon recommendation by the Committee on Appeals, the National Council of Administration will decide the appeal and subsequently will inform the accused in writing of its decision. That decision is final.

- (e) **Timeliness of Appeals to the National Council of Administration.** Appeals received greater than thirty (30) days before the next scheduled regular meeting will be heard at that meeting. Appeals not within this timeframe may, at the discretion of the Commander-in-Chief, be referred to the Committee on Appeals and Council for deliberation at a future scheduled meeting.

Sec. 905 - Suspension from Office.

To effect a suspension under Section 905 of the Bylaws, the Commander-in-Chief, or the Department Commander having jurisdiction, will issue a Special Order notifying the member, the Commander-in-Chief and the respective Post, County Council, District or Department Commander of such action.

Sec. 906 - Prima Facie Case.

Under Section 906, it is not necessary for the Prosecutor to prove again what has already been established by a conviction or guilty plea. To meet the prosecutor's burden of proof, the Prosecutor must present certified copies of the court records. The burden then shifts to the defense to show the record is not true and correct or is otherwise inaccurate.

Sec. 907 - Penalties. (See Section 907 of the Bylaws)

Sec. 908 - Administrative Actions. (See Section 908 of the Bylaws)

(End of Article IX)