



PROCEDURAL GUIDE
FOR
DISCIPLINARY ACTIONS

FOREWORD

In 1985, the Commander-in-Chief established a National By-Laws Study Committee to review the National By-Laws and Manual of Procedure and make recommendations to him to be submitted to the National Convention concerning proposed changes. That committee closely examined Article IX of the By-Laws and Manual of Procedure. The committee concluded that the court-martial procedures were too cumbersome to be used effectively and, at the same time, left too many questions unanswered. The committee attempted to develop a disciplinary procedure that, on one hand, protected the basic rights of a member to be told the reasons for which disciplinary action was being initiated and to be afforded an opportunity to respond and, on the other hand, the need for an effective procedure for disciplining members whose conduct violates the organization's rules.

The committee proposed a substantial revision of Article IX to the 89th National Convention. One of the cornerstones of that proposal was a recommendation that much of the procedural information formerly contained in the Manual of Procedure should be placed in a separate guide. The By-Laws and Manual of Procedure were unnecessarily lengthened by the provisions concerning courts-martial for which most members had no ongoing need. Moreover, the committee felt that the Commander-in-Chief and the National Council of Administration needed the flexibility to adjust the procedure if it were determined that changes were necessary, while leaving the basic rules governing disciplinary actions in the By-Laws and Manual of Procedure. The committee's proposal was adopted by the Convention.

Following the 89th National Convention, and on October 1, 1988, the National Council of Administration approved the initial version of this guide. After a two-year evaluation period, the National Council of Administration modified the procedure slightly and, on October 6, 1990, adopted this version of the Procedural Guide for Disciplinary Actions.

General Description of Procedures Established in Article IX

Introduction: Prior to the 1988 amendments to Article IX, it provided a court-martial procedure, including trial and automatic appeal to the Commander-in-Chief, that had to be followed in every instance, even if the member sought to be disciplined did not want a court-martial or did not care. This unwieldy process

caused unnecessary work and confusion. In many instances, the accused was not available or, if available, was not interested in having a hearing, yet the formalities of the entire procedure had to be followed.

The new procedure is designed to eliminate some of those difficulties while still preserving the basic right of the member to be advised of the charges against him and given an opportunity to be heard. In each instance, the member will be provided written copies of the Charges and Specifications against him. If the member does not request a hearing within twenty (20) days or advises the Commander in the meantime that a hearing is not desired, the Commander initiating the charges can proceed to set a penalty. It is hoped that this will eliminate the necessity of a full-blown trial in many cases where the accused member does not want one.

If a hearing is requested, the procedure for conducting that hearing, as set forth in Section 903 of the By-Laws and Manual of Procedure and in this guide, will be followed. That procedure is similar to court-martial procedures previously contained in Article IX, but simpler. For instance, a stenographic transcript is no longer necessary and a tape recording or videotape can be used. Moreover, appeal is no longer automatic. If the accused member desires to appeal, he must do so under Section 904.

Purpose and Use of This Guide: The By-Laws and Manual of Procedure provide the basic rules governing the grounds for, and conduct of, disciplinary actions. This Procedural Guide is designed to supplement the By-Laws and Manual of Procedure and should be read in conjunction with them. The guide is designed to provide both suggestions and instructions for some of the procedures set forth in Article IX of the By-Laws and Manual of Procedure, most specifically, Section 903 concerning conduct of a hearing. It does not, however, repeat all of the procedural matters covered in the By-Laws and Manual of Procedure. The By-Laws and Manual of Procedure should always be consulted first.

Section 901 – Discipline of Members

It is the purpose of Article IX to provide a procedure whereby members of the Veterans of Foreign Wars of the United States may be disciplined, while assuring that the member is given reasonable notice of the charges against him and is afforded an opportunity to request that those charges be heard and determined at a Disciplinary

Hearing. Generally, a member's membership may not be terminated nor may a member be relieved of office unless he is advised of the charges against him and given an opportunity to request and have a Disciplinary Hearing in accordance with the procedures in Article IX.

There are, however, three exceptions to this general rule: First, ineligible members may be removed in accordance with the procedures in Section 108 without following the procedures in Article IX. Secondly, Article IX does not apply to forfeiture of elective or appointive office for failure to provide proof of eligibility within sixty (60) days as required by Sections 216, 316, 414, 515 and 608. Thirdly, Article IX does not apply to removal of elective officers pursuant to Sections 220, 320, 418, 519, and 612 and does not apply to removal of appointive officers serving at the pleasure of an appointing officer.

Additionally, Article IX is not intended to apply to actions taken by a Post, County Council, District or Department to bar or suspend members from participating in activities or using clubrooms sponsored or conducted by them because those are activities and clubrooms under the direct control of the sponsoring unit pursuant to Section 709 of the By-Laws. Thus, it is not necessary to utilize the procedures in Article IX in connection with barring or suspending members from clubroom use.

On the other hand, to the extent that conduct by a member in connection with some activity or clubroom is an offense under Section 902, disciplinary action under Article IX is appropriate. For instance, if a member embezzled money from a clubroom that was the property of the Post or was supposed to have been turned over to the Post, or falsified records submitted to the Post concerning such matters, that member could properly be subjected to discipline under Article IX. Punishment under Article IX is appropriate not because the member violated a duty owed to the clubroom, but because he violated a duty owed to the Post.

Section 902 – Offenses

Section 902 of the By-Laws contains an extensive list of matters constituting offenses recognized by the Veterans of Foreign Wars. If a member has not committed one of the enumerated offenses, he cannot be subjected to discipline under Article IX, no matter how ill-advised the member's conduct might have been. While the list is extensive, it is not intended to encourage disciplinary actions nor to infer that relatively minor offenses or personality conflicts are to serve

as the basis for such actions. Disciplinary actions under Article IX should not be undertaken lightly or without a firm belief that an offense has occurred and the offense is serious enough to merit the time and expense that must go into properly conducting a disciplinary action.

Some conduct may constitute an offense under several provisions of Section 902 and the member could, and should, be charged under all of those provisions for the same incident of misconduct. For instance, an embezzlement for which a member is criminally convicted might constitute a violation of subsections 6, 7, 11, 12, 13, 14 and perhaps some other subsections of Section 902. If there are several instances of the same type of misconduct, each instance should be described in a separate "specification" under each charge. Similarly, if there are a number of different types of misconduct, it is proper to charge the accused with each. Because it is difficult to predict what evidence might ultimately be produced at a Disciplinary Hearing, it is suggested that if a determination is made to proceed with a disciplinary action, the member be charged under each applicable subsection of Section 902.

Section 903 – Procedure for Disciplinary Action

In order to avoid the necessity of conducting Disciplinary Hearings when the accused member does not want one, the procedure requires that the accused member, after receiving the Charges and Specifications, must request a hearing if he wants one. It is only necessary to conduct the hearing if the member charged makes a request for such a hearing within the twenty (20) days specified in the By-Laws. Unless the member charged requests a hearing, no hearing need to be held.

(a) Initiation of Disciplinary Action. Section 903(a) of the By-Laws and Manual of Procedure describes who may initiate disciplinary actions. Generally, they are the Post Commander, acting upon instructions of a majority vote at a regular or special meeting, a Department Commander and the Commander-in-Chief. The Department Convention or Council of Administration and the National Convention or National Council of Administration may, by majority vote, instruct the Department Commander or the Commander-in-Chief, respectively, to institute an action. If the respective Commander fails or refuses to initiate a disciplinary action after being instructed to do so, another member may be instructed to initiate the action. If the Commander is the accused, the action must be initiated by higher authority.

(b) Necessary Requirements for Initiating an Action. Subsection 903(b) of the By-Laws makes it clear that a disciplinary action may only be initiated where: (1) There are reasonable grounds to

believe that an offense has been committed by the person charged; (2) Charges and Specifications have been prepared and are sworn under oath by an accuser other than the Commander initiating the disciplinary action; and (3) Those written Charges and Specifications have been properly delivered to the member charged. No disciplinary action can be taken, and no penalty can be assessed, against a member unless these three requirements are met.

(c) Preparation and Deliver of Charges and Specifications.

(i) Special Order. The Commander initiating a disciplinary action should do so by issuing a Special Order which will have attached to it the Charges and Specifications and which will advise the accused of his right to request a hearing.

The following is an example of the form of Special Order:

(Example)

Special Order No. _____
Headquarters, VFW Post No. (or Department) _____

To: (Name and address of accused)

Please be advised that a disciplinary action has been initiated against you pursuant to Article IX of the By-Laws and Manual of Procedure of the Veterans of Foreign Wars of the United States. Attached to this order is a copy of the Charges and Specifications.

Pursuant to Article IX of the By-Laws and Manual of Procedure, you are advised that you may request a Disciplinary Hearing. To request such a hearing, you must notify (name and address of initiating officer), in writing, within twenty (20) days of the date that this order and the Charges and Specifications attached to this order were personally delivered to you. The notification must specifically state that a Disciplinary Hearing is requested. If you do not request a Disciplinary Hearing within the time stated, disciplinary penalties may be imposed without such a hearing. Those penalties may include termination or suspension of membership and relief from office.

By order of _____

Commander, Post No. _____
(or Department)

Official _____ Adjutant

Note: Separate Special Orders should be issued with respect to each accused member.

In the event that the initiating officer is someone other than a Commander, the words "Special Order No. _____" will be deleted, but the remainder of the form should be used, except that it should be signed by the initiating officer.

(ii) Charges and Specifications. The concept of "Charges and Specifications" is taken from the military Manual of Courts-Martial. Conceptually, the "charges" are supposed to identify the law (the subsection of By-Law 902) that has been violated and the "specifications" are to provide a factual description of the conduct constituting the violation. The same conduct might violate several subsections of Section 902 so that there could be several charges with specifications that describe the same conduct. If there are multiple incidents of the same type of conduct, those multiple incidents would be reflected as separate specifications under a charge. For instance, assume that a Post Quartermaster converts to his own use dues money paid to him. Depending on the facts, that misconduct could result in separate charges under subsections 4, 11, 12, 13 or 14 of Section 902 so that there could be up to five different charges, each with a specification that factually describes the same acts. If the same Quartermaster engaged in the same misconduct on more than one occasion, there could be several specifications, each factually describing a separate instance, under each charge.

The following is an example of Charges and Specifications based upon a Post Quartermaster wrongfully taking and using Post money in two different situations: endorsing a dues payment check to himself and writing a check to himself on the Post's account, forging the Post Commander's countersignature:

(Example)

Charges and Specifications

Charge (1): Violation of Article IX, subsection 4 of Section 902 of the National By-Laws, Veterans of Foreign Wars of the United States — Disobedience or disregard of the provisions of the Congressional Charter, By-Laws, Manual of Procedure, Ritual, General Orders or laws and usages of the Veterans of Foreign Wars of the United States.

Specification (1): In that Comrade _____, then

Quartermaster of _____ Post No. _____, VFW, did, at _____ (city) _____, on or about the _____ day of _____, 20 _____, convert to his own use and benefit the proceeds of a check drawn on the account of _____ and payable to Post No _____, in the sum of _____, which check was intended for dues and which check Comrade _____ endorsed and collected for himself in violation of his duties as Quartermaster according to the provisions of Section 218 of the National By-Laws.

Specification (2): In that Comrade _____, then Quartermaster of _____ Post No. _____, VFW, did, at _____ (city) _____, on or about the _____ day of _____, 20 _____, convert to his own use and benefit the funds of said Post in account of _____ in that Comrade _____ improperly drew a check payable to himself on that account which payment was not authorized by the Post and which check was not properly countersigned by the Post Commander in violation of his duties as Quartermaster according to the provisions of Section 218 of the National By-Laws.

Specification (3): (Here state the specific facts with respect to any similar incidents.)

Charge (2): Violation of Article IX, subsection 8 of Section 902 of the National By-Laws, Veterans of Foreign Wars of the United States — Conduct prejudicial to good order and discipline or conduct unbecoming a member in his relations to the Veterans of Foreign of the United States or other members.

Specification (1): In that Comrade _____, then Quartermaster of _____ Post No. _____, VFW, did, at _____ (city) _____, on or about the _____ day of _____, 20 _____, convert to his own use and benefit the proceeds of a check drawn on the account of _____ and payable to Post No. _____ in the sum of _____ which check Comrade _____ endorsed and collected for himself which conduct is prejudicial to good order and discipline and unbecoming a member in his relations to the Veterans of Foreign Wars of the United State and other members.

Specification (2): In that Comrade _____, then Quartermaster of _____ Post No. _____, VFW, did, at _____ (city) _____, on or about the _____ day of _____, 20 _____, convert to his own use and benefit the funds of said Post in account _____, in that Comrade _____ improperly drew a check payable to himself on that account which payment was not authorized by the Post and which check was not properly countersigned by the Post Commander which conduct is prejudicial to good order and discipline and unbecoming a member in his relations to the Veterans of Foreign Wars of the United States and other members.

Charge (3): Violation of Article IX, subsection 11 of Section 902 of the National By-Laws, Veterans of Foreign Wars of the United States — Preparing or signing a false record, return, regulation, order or other official document of or concerning the Veterans of Foreign Wars of the United States, knowing it to be false, or making any other false official statement with intent to deceive.

Specification (1): In that Comrade _____, then Quartermaster of _____ Post No. _____, VFW, did, after receiving the dues check of _____ did, on or about _____, prepare, sign and submit a false transmittal to Department and National Headquarters failing to report the receipt of such dues payments as required by the provisions of Section 218 of the By-Laws and Manual of Procedure.

Specification (2): (If, as a result of making the un-authorized payments to himself, the Quartermaster falsified official documents to cover up the unauthorized payment, then a separate specification could be made under this charge making that allegation.)

Specification (3): (Again, if there are similar incidents of the same conduct, they should be stated here.)

Charge (4): Violation of Article IX, subsection 12 of Section 902 of the National By-Laws, Veterans of Foreign Wars of the United States — Selling or otherwise disposing of money or other property belonging to the Veterans of Foreign Wars of the United States, any Post, County Council, District or Department without proper

authority.

Specification (1): In that Comrade _____, then Quartermaster of _____ Post No. _____, VFW, did, at _____ (city) _____, on or about the _____ day of _____, 20 _____, convert to his own use and benefit the proceeds of a check drawn on the account of _____ and payable to Post _____, in the sum of _____, which check was intended to be a dues payment which Comrade _____ endorsed and collected for himself without proper authority, thereby disposing of money or property belonging to the Post.

Specification (2): In that Comrade _____, then Quartermaster of _____ Post No. _____, VFW, did, at _____ (city) _____, on or about the _____ day of _____, 20 _____, convert to his own use and benefit the funds of said Post in account _____ in that Comrade _____ improperly drew a check payable to himself on that account, thereby disposing of the property of the Post without proper authority.

Specification (3): (Here describe any other incidents of similar conduct.)

On my oath or affirmation as a member of the Veterans of Foreign Wars of the United States, I declare that I have a reasonable belief that the above-described act or acts have been committed.

Accuser(s)

Initiating Officer

In the foregoing example, if the errant Quartermaster also engaged in other types of misconduct that constituted a separate offense under Section 902, those instances should be added as additional charges. It is appropriate to bring all known charges in a single action and inefficient, as well as unfair, to bring separate

actions piecemeal against an accused unless the circumstances, such as the unavailability of all the evidence or pendency of criminal action, requires postponement of action on some charges.

It should also be noted that the same facts may form the basis of charges against more than one member. To the extent that other members shared in the ill-gotten money, they could be charged with some of the same offenses. To the extent that other members had a duty to check the Post's books and didn't, they may have failed to perform their duties in violation of subsection 902(4) or subsection 902(14). To the extent that other members aided or assisted the errant Quartermaster in taking the money or covering it up, they may be charged with violating subsection 902(15).

Accusers. The accusers should be members with firsthand knowledge concerning the facts alleged or the ability to lay the proper foundation for documentary or other evidence that establishes the violation. When preparing Charges and Specifications, consideration should be given to the sources of evidence for proving the violation and whether that evidence can be made available for presentation, either in the form of witnesses with firsthand knowledge of the events, credible documents that show the violation occurred or testimony concerning statements or admissions the accused made that demonstrate that the violation occurred.

(iii) Delivery. Charges and Specifications must be delivered to each of the accused personally or by mailing a copy to his last known address, certified mail, return receipt requested. It is not necessary that there be a signed receipt from the accused, so long as there is a postal receipt indicating delivery to the accused's last known address. The person personally delivering or mailing the charges to the accused's last known address shall make a written, signed statement that he has personally delivered or mailed, by certified mail, the Charges and Specifications stating the date of such delivery or mailing. This statement, or the post office receipt indicating the mailing of the certified letter, return receipt requested, along with a copy of the Charges and Specifications, and the postal receipt indicating delivery should be retained by the Adjutant

(d) How Hearings Are to Be Requested. Section 901(d) of the By-Laws and Manual of Procedure specifies how a member is to request a Disciplinary Hearing if one is desired. That request must be made in writing and mailed by registered or certified mail, return receipt requested, postmarked not later than twenty (20) days from the receipt of the Charges and Specifications and must be addressed to the Commander initiating the action or, in the event

that the charges are not initiated by the Commander, to the person initiating the charges.

(e) Procedure Where No Hearing is Requested.

Section 903(e) of the By-Laws describes the procedure to be followed in the event that a Disciplinary Hearing is not requested within the time limit prescribed by that section.

(f) Procedure – Disciplinary Hearing Requested.

In the event that the accused member requests a Disciplinary Hearing within twenty (20) days and in the manner prescribed in Section 903(d) of the By-Laws, the following procedures apply:

(i) Appointment of Panel.

The Commander initiating the disciplinary action (or his successor) shall issue a Special Order appointing a Disciplinary Hearing Panel. The order shall detail at least six (6) members, in addition to a president, to the panel. In the event that the Commander initiating the disciplinary action is the accuser, the Department Commander (or Commander-in-Chief, if the Department Commander is the accuser) will issue the order. If the Commander initiating the disciplinary action expects to be a witness with respect to factual matters which the accused is likely to dispute and the Commander believes that panel members detailed by him may not, by reason of the fact that the Commander will testify, afford the accused an impartial hearing, the Commander should request that the Special Order appointing the panel be issued by higher authority. That request should be made in writing.

The Special Order shall also state the time and place of the Disciplinary Hearing. Such hearing shall be held at a place reasonably convenient to the accused and shall be held at a reasonable time. In no event may such hearing be scheduled earlier than five (5) days from the receipt of the accused's Request for Hearing unless the accused consents in writing. The same panel may be appointed to hear more than one (1) case. Related cases may be heard at the same time, provided that complete records, as specified in subparagraph (v) below, are maintained for each accused.

A Special Order substantially in the following form should be used:

(Example)

Order Appointing a Disciplinary Hearing
Panel and Special Order

No. _____
Headquarters, VFW Post No. (or Department) _____
Place _____
Date _____

Upon orders* of _____ (Commander's name), Post Commander (or Department, etc.), Veterans of Foreign Wars, a Disciplinary Hearing Panel is appointed to meet at _____ (place) at _____ (time) on _____, 20 _____, or as soon after this date as practicable for the purpose of trying such person or persons as may be properly brought before it, including: _____ (name(s) of accused) _____.

Detail for the Panel

Comrade _____ of Post No. _____

Comrade _____ of Post No. _____, President
of Panel

Comrade _____ of Post No. _____, Prosecutor

Comrade _____ of Post No. _____, Defense
Counsel

(The accused may choose to be represented by a lawyer or other lay counsel if he desires.)

By order of _____

Commander of _____

Official _____ Adjutant

*If the Commander has, because he expects to be a witness, requested that the panel be appointed by higher authority (i.e., the Department Commander with respect to a Post Disciplinary Hearing or the Commander-in-Chief with respect to a Department Disciplinary Hearing), the word "request" will be substituted for "orders" and the Special Order will be signed by the higher authority.

In the event that appointees are unable to serve or the time or place of a hearing must be changed, a supplemental Special Order may be issued.

(ii) Continuance. The Hearing Panel may, for reasonable cause, postpone and/or reschedule the hearing. A party desiring that the panel postpone or reschedule the hearing shall make such request in writing addressed to the president of the panel, stating the reasons for such request. The president, after conferring with panel members, shall determine whether a continuance should be granted. All parties and panel members shall be advised in writing of the rescheduled date.

(iii) Additional Charges. New and separate charges, known as "additional charges," or additional specifications to the original charges can be heard by the panel, provided that the accused is given adequate notice of such additional charges or specifications in order to give him an adequate opportunity for defense.

(iv) Personnel of the Panel. Only members of the Veterans of Foreign Wars of the United States in good standing shall sit on a Disciplinary Hearing Panel. No blood relative of the accused or any accuser or witness for the prosecution shall be appointed to the panel.

a. President. The president shall be acquainted with the hearing procedures and be either a lawyer or a member well acquainted with the Veterans of Foreign Wars and its By-Laws. The president may seek the assistance of a lawyer or another person well-versed in the procedure for disciplinary actions to advise him during the course of a disciplinary action. Subject to the direction of the panel, the president shall maintain order and give the necessary directions for the conduct of the proceedings. He shall take proper steps to expedite matters and shall speak and act for the panel. In addition, he shall have the same duties, powers and privileges as other members.

The president shall rule upon all questions concerning the admissibility of evidence, the competency of witnesses, continuances, adjournments, recesses, motions and orders and on the propriety of

any argument or statement of counsel. If a member of the panel objects to the ruling of the president, the panel will vote on the ruling to which objection is made.

b. Prosecutor. The prosecutor shall prosecute the disciplinary action. He shall present the evidence supporting the Charges and Specifications. He shall not be a member of the panel. The prosecutor should not be a witness with respect to disputed factual matters. He may, however, provide evidence concerning procedural matters.

c. Defense Counsel. The accused shall have the right to select his own professional or lay counsel. The accused may employ or select a private lawyer at his own expense. In the event the accused is not present or not represented by counsel of his choosing, the appointed Defense Counsel shall represent the accused. In the event that no Defense Counsel has been appointed or Defense Counsel is not present, the panel shall appoint a lay counsel. Appointed counsel will guard the interests of the accused by all legitimate means. Defense Counsel, whether selected or appointed, shall not be a member of the panel nor an accuser. Defense Counsel should not be a witness with respect to disputed factual matters. He may, however, provide evidence concerning procedural matters.

(v) Record. It is not necessary to make a verbatim stenographic transcript of the proceedings. If possible, the hearing should be tape recorded or videotaped and the tapes retained. The president should take reasonable steps to assure that all testimony is recorded and that all speakers and exhibits are adequately identified in the record. Whether or not the proceedings are recorded, the president of the panel shall take notes or cause notes to be taken that summarize the substance of the testimony of the witnesses and exhibits, the arguments of counsel, the objections and rulings on matters brought to the attention of the panel and other matters of significance occurring in the course of the proceedings. Such notes shall be retained with the record of the proceedings.

The complete record, after completion of the hearing, should include copies of:

a. Special Order advising of the initiation of a disciplinary action.

b. Charges and Specifications.

c. The written statement that the Charges and Specifications have been personally served or mailed to the accused in accordance with Section 903 (c) (iii) and the return receipt, if any.

d. The Request for hearing made by the accused.

- e. The Order Appointing the Panel.
- f. The tape recording or videotape of the proceedings, if any.
- g. The president's notes of the proceedings.
- h. Any exhibits admitted into evidence.
- i. The Form of Record of a Disciplinary Action.
- j. The Findings and Sentence.

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

(g) Procedure at Hearing. In the event that a Disciplinary Hearing is requested, the procedure for conducting such hearing shall be as follows:

(i) Selection of the Panel – Challenges. The entire panel shall initially be seated. Each side shall then be allowed one peremptory challenge, that is, no reason need be given, nor is any cause necessary, to exclude that member from the panel.

Each side may challenge any remaining member or members, but those members 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 remaining members of the panel will vote on the question. Where a majority of the remaining members sustain the challenge, the member shall be excused. The Hearing Panel shall not proceed with fewer than three (3) members. No member may be excused for cause when the effect is to reduce the number of panel members below three (3), including the president.

In the event that the president is challenged peremptorily or removed for cause, the remaining members shall vote one of their number as president and he shall thereafter perform that function.

Members of the panel shall swear or affirm that they will judge the case fairly and impartially.

(ii) Plea to the Charges. After the panel is selected, the Charges and Specifications shall be read to the accused by the president unless the accused advises the panel that he has read the charges and they need not be read. The accused shall be required to plead guilty or not guilty to each charge and specification separately. The plea will be recorded on the Form of Record for Disciplinary Actions.

(iii) Objections. In order to help the president and the panel avoid mistakes in procedure and in the admission of evidence and to

give them an opportunity to correct, or reduce the adverse effects of, mistakes in procedure or the admission of evidence, it is important that the parties make an objection to those mistakes in time for the president and panel to act. Thus, if there have been procedural errors in initiating the disciplinary action, preparing and delivering the Charges and 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.

(iv) Opening Statement. The prosecutor, followed by 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.

(v) Order of Presentation. The prosecutor introduces his evidence first. When the prosecution rests, the defense may introduce its evidence. 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.

Counsel for both sides shall have the opportunity to cross-examine each witness after direct testimony is given.

(vi) Rules Concerning Evidence. The following rules will cover most questions concerning evidence that will come before hearings of this kind.

Evidence may be testimonial or documentary. Testimonial evidence is evidence given in the form of testimony by witnesses.

Testimony of members of the organization shall be taken on their honor as comrades. The evidence of persons not members shall be taken under oath or affirmation. Documentary evidence (including items other than documents) is 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 Hearing 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. (Example: Where the witness states he saw the accused take Post property or actually commit the act of which the accused is accused.)

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. (Example: Where the witness states that he found the Post property in the home of the accused, or evidence that can be connected with evidence bearing directly on some material fact.)

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. (Example: Witness says that "B" said he had seen the accused take the property.) The reason this testimony is given less credence is that there is 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 Hearing Panel if the Hearing Panel believes 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 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. The panel will exclude improper evidence to which objection is made. It may, on its own initiative, exclude other improper evidence. Excluded evidence should not be considered by the Hearing 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 panel should protect every witness from insulting or improper questions, harsh or insulting treatment and unnecessary inquiries into his private affairs. It should also forbid any inquiries into irrelevant matters intended to merely annoy the witness.

(vii) Closing Arguments. After both sides have rested, the prosecution commences its closing arguments. The defense follows and the prosecution closes with rebuttal argument.

(viii) Deliberations of the Panel. The panel sits in closed

session during the deliberation on the Findings and Sentence. This 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.

In deciding the case, the sentence should be commensurate with the offense committed. For example, where the act of which the accused is found guilty involves dishonesty, a sentence of dishonorable discharge would normally be reasonable, but where the charge is of a lesser degree, such as refusing to heed lawful orders of superior officers, a sentence of suspension for a definite period of time may be more appropriate. In any event, each case shall be decided on its own merits and the panel shall give due regard to all of the circumstances.

a. Reasonable doubt. In order to convict the accused of an offense, the panel must be reasonably satisfied that the accused is guilty of the offense.

b. Two-thirds (2/3) Majority Required. There must be a two-thirds (2/3) 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 (1); thus, where five (5) members are to vote, the requirement that two-thirds (2/3) concur is not met if less than four (4) concur. The sentence must likewise be determined by a two-thirds (2/3) majority vote.

(ix) Findings and Sentence. Following is the form recording Findings and Sentence:

(Example)

Findings and Sentence

The panel was closed (or adjourned for the purpose of taking a ballot) and reported back as follows:

On all Charges and Specifications _____ (not guilty or guilty)*

Or

On Charge 1, Specification 1 _____ (not guilty or guilty)

On Charge 1, Specification 2 _____ (not guilty or guilty)

On Charge 2, Specification 1 _____ (not guilty or guilty)

On Charge 3, Specification 1 _____ (not guilty or guilty) _____

The panel imposed the following sentence: _____

Prosecutor

President of the Panel

Date _____

*Can be used only if there is one charge and specification or there are multiple Charges and Specifications but the accused has been found either guilty or not guilty on all of them.

(x) Announcement. The Findings and Sentence shall be announced by the president in open hearing after deliberations are complete. In the event the accused was not present at the hearing but the accused has been found either guilty or not guilty on all of them, a copy of the Findings and Sentence shall be mailed to his last known address within seven (7) days after the hearing.

(xi) Form of Record of Hearing. In addition to the notes to be maintained by the president of the panel, the president shall also prepare a Form of Record of Disciplinary Action substantially in the form shown:

(Example)

Form of Record of Disciplinary Action

Proceedings of a Disciplinary Hearing Panel convened at _____
_____ (city) _____ on _____, 20____, pursuant
to an order issued by _____.

Present

Comrade _____ of Post No. _____, President of
Panel

or the accused stated that he had read the charges, and he responded as follows:

(Example)

Pleas

To all Charges and Specifications _____ (not guilty or guilty)*

Or

To Charge 1, Specification 1 _____ (not guilty or guilty)

To Charge 1, Specification 2 _____ (not guilty or guilty)

To Charge 2, Specification 1 _____ (not guilty or guilty)

To Charge 3, Specification 1 _____ (not guilty or guilty)

The following witnesses testified:

The following documents were used in evidence:

The defense was given full opportunity to examine each witness. Yes_____ No_____

The rights of the accused as a witness were explained to him. Yes_____ No_____

An argument was made by the Defense Counsel on behalf of the accused. Yes_____ No_____

The accused did (not) take the witness stand in his own defense.

The accused was (not) present at trial.

President

Section 904 – Appeal

Under the procedure existing before the 1988 amendments to Article IX, court-martial proceedings were automatically laid before the Commander-in-Chief for review, whether or not the accused desired an appeal. As amended in 1988, the member will have to specifically act to request an appeal of a court-martial proceeding. The procedure is similar to the procedure under Section 109 of the By-Laws.

Failure of the member to comply with the following rules, including the requirement that each appeal state the facts of the case based on the evidence introduced at the hearing, state clearly the reasons why the case was erroneously decided and state the relief requested, are grounds for denying the appeal.

The procedure is as follows:

(a) Appeals to the Department Commander. Appeals to the Department Commander shall be made within thirty (30) days of the imposition of penalties by a Disciplinary Hearing Panel or, in the case when no hearing is requested, the imposition of penalties by the initiating officer. All appeals shall be made in writing and shall be mailed by registered or certified mail, return receipt requested, to the Department Commander at Department Headquarters. The written appeal shall:

(1) State the facts of the case based on the evidence introduced at the hearing (if a hearing has been held).

(2) Make a clear and concise statement of the reason or reasons upon which the member claims the case was erroneously decided.

(3) State the relief requested by the member. Upon receipt of a proper written appeal, the Department Commander shall request that the Adjutant maintaining the Trial Record forward the same to him within fifteen (15) days. The Department Commander shall also 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 directed to the Department Commander. The prosecutor shall mail a copy of his written response to the accused. The accused or his counsel shall have ten (10) days from the date of such response to make further written submission to the Department Commander. Thereafter, the Department Commander shall decide the appeal and shall inform the accused and the Post Commander in writing as to his determination.

The decision of the Department Commander shall be final

unless within fifteen (15) days an appeal is made to the Commander-in-Chief. Such an appeal must be made in writing and mailed by certified mail, return receipt requested, to the Commander-in-Chief at National Headquarters in Kansas City. The written appeal shall:

(1) State the facts of the case based on the evidence introduced at the hearing (if a hearing has been held).

(2) Make a clear and concise statement of the reason or reasons upon which the member claims the case was erroneously decided.

(3) State the relief requested by the member.

Upon receipt of a proper written appeal, the Commander-in-Chief shall request that the Department Commander forward to him the Trial Record, together with any papers submitted by the parties on appeal. The Commander-in-chief shall, within thirty (30) days, decide the matter and inform the member, the Post Commander and the Department Commander of that decision.

The decision of the Commander-in –Chief shall be final unless an appeal is made to the National Council of Administration within fifteen (15) days. Such appeal shall be in writing and shall be mailed by certified mail, return receipt requested, to the National Council of Administration at National Headquarters in Kansas City. The written appeal shall:

(1) State the facts of the case based on the evidence introduced at the hearing (if a hearing has been held).

(2) Make a clear and concise statement of the reason or reasons upon which the member claims the case was erroneously decided.

(3) State the relief requested by the member.

Upon receipt of a proper written appeal, the National Council of Administration shall request that the Commander-in-Chief forward the Trial Record and any papers submitted by the parties on appeal. The National Council of Administration shall advise the member of a time and place that the matter will be considered and decided. The National Council of Administration shall determine the manner in which the matter will be considered. The member shall have the right to appear, at his own expense, personally or by counsel, at such time and place as the matter is considered.

The National Council of Administration shall decide the appeal and shall inform all concerned of its decision in writing.

(b) Appeals to the Commander-in-Chief. Appeals from disciplinary actions initiated by the Department Commander 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 or, where no Disciplinary Hearing is requested, the imposition of penalty. All appeals shall be made in writing and shall be mailed by certified mail, return receipt requested, to the Commander-in-Chief at National Headquarters in Kansas City. The written appeal shall:

(1) State the facts of the case based on the evidence introduced at the hearing (if a hearing has been held).

(2) Make a clear and concise statement of the reason or reasons upon which the member claims the case was erroneously decided.

(3) State the relief requested by the member.

Upon receipt of a proper written appeal, the Department Commander shall request that the Adjutant maintaining the Trial Record forward the same to him within fifteen (15) days. The Commander-in-Chief shall also 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 directed to the Commander-in-Chief. A copy shall be mailed to the accused or his counsel. They shall have ten (10) days to submit a reply. Thereafter, the Commander-in-Chief shall decide the matter and inform and accused and the Department Commander of his decision.

The decision of the Commander-in-Chief shall be 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 (a) for appeals to the National Council of Administration for cases initially appealed to the Department Commander.

(c) Appeals to the National Council of Administration.

Appeals from disciplinary actions initiated by the Commander-in-Chief shall be to the National Council of Administration. Such an appeal must be made within thirty (30) days of the imposition of sentence by a Disciplinary Hearing Panel or, where no hearing is requested, the imposition of sentence by the initiating officer. All appeals shall be made in writing and shall be mailed by certified mail, return receipt requested, to the National Council of Administration at National Headquarters in Kansas City. The written appeal shall:

(1) State the facts of the case based on the evidence introduced at the hearing (if a hearing has been held).

(2) Make a clear and concise statement of the reason or reasons upon which the member claims the case was erroneously decided.

(3) State the relief requested by the member.

Upon receipt of a proper written appeal, the National Council

of Administration shall request that the Adjutant maintaining the Trial Record forward it within fifteen (15) days. The Council shall also provide a copy of the written appeal to the prosecutor who may, within fifteen (15) days, submit a written response directed to the National Council of Administration. If a response is submitted, it shall be mailed to the accused or Defense Counsel, who may file a response thereto within ten (10) days. The National Council of Administration shall advise the member of a time and place that the matter will be considered and decided. The National Council of Administration shall determine the manner in which the matter will be considered. The member shall have the right to appear, at his own expense, personally or by counsel, at such time and place as the matter is considered.

The National Council of Administration shall decide the appeal and shall inform the accused in writing of its decision. That decision shall be final.

(d) Computation of Time. Whenever this Procedural Guide for Disciplinary Action requires action, with respect to appeals, within a specific number of days it shall mean calendar days. The time shall be calculated beginning with the day upon which the decision at the previous level was either hand delivered or mailed by registered or certified mail, return receipt requested, to the last known address of the member.

Any required action by the member must be made in writing and mailed by registered or certified mail, return receipt requested, and postmarked not later than the date due. The Commander-in-Chief may, at his sole discretion, grant an extension provided the request is received prior to the expiration of the time frame originally prescribed and that the request is for good and sufficient cause.

(e) Timeliness of Appeals to the National Council of Administration: Appeals to the National Council of Administration must be properly written and received in the National Headquarters not later than thirty (30) days prior to the convening of a National Council of Administration to be considered at the meeting. Appeals not received as described above may, at the discretion of the Commander-in-Chief, be referred to the council for deliberation at its next regularly scheduled meeting.

Section 905 - Suspension from Office

Section 905 of the By-Laws authorizes the Commander-in-Chief or the Department Commander to suspend an accused member from office pending a final decision on a disciplinary action. Under Section 905 of the Manual of Procedure, such a suspension is effected by notifying the member in writing at his last known address and notifying the Post, County Council, District or Department of such action. The Commander-in-Chief or Department Commander is not required, however, to suspend the accused member in every instance. The Commander-in-Chief or Department Commander may use their discretion in determining whether or not such suspension is necessary or appropriate.

Section 906 – Prima Facie Case

The term “prima facie” is a legal term used to describe something that is legally sufficient to establish a fact or a case unless disproved. Oftentimes, if an accused member has been convicted by a court of law of a felony, misdemeanor or even an ordinance violation, that member will not be available for, or amenable to, a disciplinary action. Nonetheless, a disciplinary action would be appropriate. A disciplinary action would be initiated and conducted in the same manner as any other disciplinary action, but, under this section, it would not be necessary for the prosecutor to prove again what the civil authorities have already proven and established in the criminal trial. To establish guilt at the Disciplinary Hearing, all the prosecutor needs to do is present a certified copy of the court record of conviction. The burden then shifts to the accused to show that the record of conviction is not a true and correct record.

Section 907 – Penalties

Section 907 of the By-Laws sets forth the penalties which may be imposed upon a member found guilty at a Disciplinary Hearing. Those are the only penalties that may be imposed by a Disciplinary Hearing Panel.

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