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Veterans of Foreign Wars of the United States

Office of the Adjutant General

[ARTICLE IX COMMITTEE CONSENSUS]

Draft - Bylaw, Manual of Procedure amendments by Article IX Committee May 2021

ARTICLE IX
Summary of Recommend Changes
May 2021

In 2019 the Commander-in-Chief appointed a committee to review the disciplinary process as defined in Article IX of the National Bylaws and Manual of Procedure. The committee was charged to think critically about how the present policies and procedures are applied in practice and how they might be modified to be more fair and efficient.

The following summary clarifies the committee's major recommended changes.

Materials Relied Upon

In addition to the incident report which serves as notice of an alleged offense and the investigative report which serves as the documented investigation into the alleged offense, materials relied upon are any and all other substantive materials or documentary evidence in which the action is based. Such materials must be delivered to the accused upon initiation of the disciplinary action. The Prosecutor is required to disclose to the accused any Additional Materials discovered subsequent to the initiation of the charges.

Summary Disposition

The accused may request Summary Disposition instead of requesting a Disciplinary Hearing. Under this procedure, the accused cannot contest that the facts alleged in the Charges and Specifications support a finding of guilt to an offense under one or more provisions of Section 902 of the Bylaws, but requests an assessment of the penalty by a Panel of members of the National Council of Administration independent of the initiating officer or designated initiating member. The decision of the Assessment Panel is not subject to appeal.

Resolution Agreement

The Prosecutor, with concurrence of the Panel President, and accused may enter into an Agreement finally resolving the Disciplinary Action. The Agreement shall be reduced to writing signed by the parties. The Agreement shall set forth in detail the terms of the Agreement, including any penalties that are agreed by the parties. A copy of any Agreement must be forwarded by the initiating officer or designated initiating member to the Commander-in-Chief. The agreement is not subject to appeal.

Removal of authority from Conventions to initiate actions

Department and National conventions are removed as bodies that may initiate disciplinary actions due to the fact, the body does not have the capacity to properly investigate, initiate and follow through on an alleged offense.

Timeline to set and conduct disciplinary hearings

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 appointing the Disciplinary Hearing Panel. 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.

Electronic delivery of documents

Upon mutual written consent of the initiating officer or designated initiating member and the accused, delivery of documents, to include initiating documents, may be electronic.

Electronic Disciplinary Hearings

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.

Guide to Conducting Disciplinary Actions

The Adjutant General shall prepare, and amend as necessary, a Guide to Conducting Disciplinary Actions. The Guide will supplement the Manual of Procedure and will provide explanation and direction concerning Disciplinary Action proceedings (i.e. instructions for charges and specifications, summary disposition, resolution agreement, and disciplinary hearings to include room plates and Panel President script).

Electronic access to Article IX of the National Bylaws, Manual of Procedure, Guide to Conducting Disciplinary Actions

The Special Order initiating the disciplinary action shall inform the accused concerning the manner in which copies of Article IX of the Bylaws and Manual of Procedure and the Guide to Conducting Disciplinary Actions may be obtained electronically. Digital files of Article IX and the Guide will be available for download on the document repository behind the member login at VFW.org.

Appeals

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. No appeal is authorized if the accused does not request a Disciplinary Hearing or requests a disciplinary hearing and fails to appear. Summary dispositions and resolution agreements are not subject to appeal.

ARTICLE IX – DISCIPLINE (BYLAW)

Sec. 901 - Discipline of Members.

Except as otherwise provided in the Congressional Charter, these Bylaws and the Manual of Procedure, no member shall be subject to the penalties authorized in Section 907 unless such member has been advised in writing of the Charges and Specifications, including any Materials Relied Upon with respect to those Charges, and afforded the opportunity to request that such charges be heard and determined at a Disciplinary Hearing or otherwise resolved, as provided and prescribed in this Article.

Sec. 902 - Offenses.

Members who have committed offenses recognized by the Veterans of Foreign Wars of the United States may be subject to Disciplinary Action and may be assessed the penalties provided in this Article. Offenses recognized by the Veterans of Foreign Wars of the United States are:

1. Disloyalty to the United States of America.
2. Failure to fulfill the Member's Obligation as stated in the VFW Ritual or the obligations taken upon installation to any office.
3. False representation or deliberate concealment concerning eligibility for membership or for any office, or knowingly acquiescing in or permitting ineligible persons to become members or officers.
4. Disobedience or disregard of the provisions of the Congressional Charter, Bylaws, Manual of Procedure, Ritual, or General Orders or any of the laws and usages of the Veterans of Foreign Wars of the United States or order of the Commander-in-Chief or the Bylaws or general orders of any Post, County Council, District or Department or the lawful orders of any Commander thereof.
5. Conviction of, or entering a guilty or no contest plea to, a felony, or to a misdemeanor or ordinance violation involving moral turpitude, in any court in the United States.
6. Conduct prejudicial to good order and discipline or conduct unbecoming a member in their relations to the Veterans of Foreign Wars of the United States or other members.
7. Divulging any of the private business of the Veterans of Foreign Wars of the United States or any Post, County Council, District or Department, without proper authority.
8. Preparing or signing any false record, return, order or other official document of or concerning the Veterans of Foreign Wars of the United States or any Post, County Council, District or Department, knowing it to be false, or making any other false official statement.
9. Selling or otherwise disposing of money or property without proper authority or willfully or negligently damaging, destroying or losing any such money or property belonging to the Veterans of Foreign Wars of the United States, or to any Post, County Council, District, or Department.
10. Aiding, abetting, counseling, concealing, commanding, conspiring, soliciting, procuring or causing to be done any act which, if done, would be punishable under this Article.
11. Knowingly conveying or causing to be conveyed in any form false information concerning military records.
12. Knowingly providing false information or statements in connection with the initiation of charges against any member or with respect to Disciplinary Actions under this Article.

Sec. 903 - Procedure for Disciplinary Actions.

(a) Preliminary Requirements with Respect to the Initiation of Disciplinary Actions

1. Disciplinary Actions may be initiated only when there are reasonable grounds to believe that an offense recognized in Section 902 of these Bylaws has been committed by the person charged and an incident report and other appropriate documentation demonstrating the commission of the offense has been submitted to the appropriate Post or Department Commander or Commander-in-Chief.
2. Prior to the initiation of a Disciplinary Action, a Post or Department or its respective Commander or the Commander-in-Chief, shall appoint an individual or committee to investigate alleged offenses and report the results of the investigation in writing.
3. No Disciplinary Action may be initiated with respect to the act or acts of a member that have been the subject of an ongoing or completed Disciplinary Action.

(b) Authority to Initiate Disciplinary Action:

1. A Post may, acting by two-thirds vote at a regular or special meeting, instruct the Post Commander to initiate an action with respect to a member of the Post.
2. A Department Commander may initiate an action with respect to any member within the Department.
3. The Department Council of Administration may, by two-thirds vote, instruct the Department Commander to initiate an action with respect to any member within the Department.
4. The Commander-in-Chief may initiate such action with respect to any member of the Veterans of Foreign Wars of the United States.
5. The National Council of Administration may, by two-thirds vote, instruct the Commander-in-Chief to initiate an action with respect to any member.
6. If the respective Commander fails or refuses to initiate a disciplinary action after being instructed to do so, another member may be designated to initiate the action.
7. If the Commander is the accused, the action must be initiated by higher authority. In the event the Commander-in-Chief is the accused, the National Council of Administration shall designate a member to initiate the disciplinary action.

(c) Procedure for Initiating a Disciplinary Action:

1. Disciplinary Actions must be initiated by the preparation and delivery of written Charges and Specifications and Materials Relied Upon with respect to those Charges and Specifications to the accused member.
2. The Charges and Specifications shall be issued under and attached to a Special Order of the Initiating Officer or designated initiating member. The Special Order shall make specific reference to the right to a Hearing or Summary Disposition and the rights of appeal afforded by these Bylaws. The Special Order shall also inform the accused concerning the manner in which copies of Article IX of the Bylaws and Manual of Procedure and the Guide to Conducting Disciplinary Actions may be obtained electronically.
3. Charges and Specifications and Materials Relied Upon with respect to those Charges and Specifications shall be prepared and delivered in the manner described in Section 903 of the Manual of Procedure. Materials Relied Upon will include any incident report, the investigative report and documentary or other evidence demonstrating reasonable grounds that an offense has been committed.
4. The written Charges and Specifications and Materials Relied Upon shall be delivered personally to the accused or delivered by registered or certified mail return receipt

requested to the last known address of the accused member. A copy thereof must be forwarded to the next higher authority. Posts shall forward a copy to the Department Commander. If delivered to the accused in person, the member making such delivery shall sign and submit a report attesting to same. The Adjutant shall retain copies of any mail receipt or attestation of personal delivery.

5. Prescribed forms for the initiation and conduct of Disciplinary Actions under this Article shall be as described in the Manual of Procedure.
6. Guide to Conducting Disciplinary Actions. The Adjutant General shall prepare, and amend as necessary, a Guide to Conducting Disciplinary Actions. The Guide will supplement the Manual of Procedure and will provide explanation and direction concerning Disciplinary Action proceedings.
7. Upon mutual written consent of the initiating officer or designated initiating member and the accused, delivery of documents, including the initiating documents may be electronic.

(d) Procedure if Summary Disposition or Disciplinary Hearing is not Requested. If the accused member does not properly request a Summary Disposition or Disciplinary Hearing as provided, in these Bylaws, within fifteen (15) calendar days of the receipt of the Charges and Specifications or, if the accused member, prior to the expiration of the fifteen (15) day period or after requesting Summary Disposition or Disciplinary Hearing, advises the Commander or the designated initiating member that a Summary Disposition or Disciplinary Hearing is not desired or fails to participate in those procedures, the accused will be deemed to acknowledge the sufficiency of the evidence and guilt of the Charges and the Commander or the designated initiating member may then take such action as is deemed appropriate, including the ordering of any penalties prescribed in Section 907 of these Bylaws, subject to the following provisions:

1. If initiated by the Post, the Commander or the designated member initiating the charges, must have concurrence by majority vote of the Post to order any penalties prescribed in Section 907 of these Bylaws.
2. If initiated by the Department Commander, the Department Commander may order any penalties prescribed in Section 907 of these Bylaws, subject to the concurrence of a majority of the Department Council of Administration.
3. If Charges were initiated by the Department Council of Administration, the Council shall, by majority vote, order any penalties prescribed in Section 907 of these Bylaws.
4. If initiated by the Commander-in-Chief, the Commander-in-Chief may order any penalties prescribed in Section 907 of these Bylaws, subject to review by the National Council of Administration. the concurrence of a majority of the National Council of Administration.
5. If Charges were initiated by the National Council of Administration, the Council shall, by majority vote, order any penalties prescribed in Section 907 of these Bylaws.

Notification of penalty shall be mailed to the accused's last known address by registered or certified mail return receipt requested.

No appeal is authorized if the accused does not request a Disciplinary Hearing.

(e) Procedure for Summary Disposition.

The accused may request Summary Disposition instead of requesting a Disciplinary Hearing. Under this procedure the accused cannot contest that the facts alleged in the Charges and Specifications support a finding that the accused has committed an offense under one or more provisions of Section 902 of these Bylaws, but requests an assessment of the penalty by a Panel of members of the National Council of Administration independent of the initiating officer or designated initiating member.

1. Procedure for requesting Summary Disposition. Summary Disposition must be requested in writing within fifteen (15) calendar days of the receipt of the Charges and Specifications by the accused. Summary Disposition must be requested by directing the request to the initiating officer or designated initiating member, who shall, within five (5) calendar days of receipt of the request, forward it through proper channels to the Commander-in-Chief, all as prescribed in the Manual of Procedure.
2. Upon receipt of a timely request for Summary Disposition, the Commander-in-Chief shall appoint three (3) members of the Committee on Appeals of the National Council of Administration to the Assessment Panel, designating one (1) member as the Chairman. The Panel members appointed must not be members of the same Department or geographical area as the accused or the initiating officer or designated initiating member.
3. The Assessment Panel may hear the matter electronically. The procedure for conducting the Summary Disposition shall be as set forth in the Manual of Procedure.
4. Disposition by the Assessment Panel. After reviewing the evidence presented and arguments of the parties, the Panel will separately determine the appropriate penalty and the Chairman will notify the parties and the Commander-in-Chief in writing.
5. No Appeal shall be permitted from the decision of the Assessment Panel, provided, however, a decision to terminate the member is subject to concurrence by the Commander-in-Chief.

(f) Procedure if Disciplinary Hearing is Requested.

If the accused member desires a Disciplinary Hearing, the accused member must, within fifteen (15) calendar days of the receipt of the Charges and Specifications, request the Hearing. The request must be in the manner prescribed in the Manual of Procedure.

1. The Disciplinary Hearing shall be conducted in the manner prescribed in the Manual of Procedure, as it may be supplemented by the Guide to Conducting Disciplinary Actions.
2. In the event a Disciplinary Hearing is requested and the accused fails to appear, the action shall continue as if no Hearing had been requested.

(g) Resolution prior to Hearing or during Appeal.

The Prosecutor, with concurrence of the Panel President, and accused may enter into an Agreement finally resolving the Disciplinary Action from which no appeal may be taken. The Agreement shall be reduced to writing signed by the parties. The Agreement shall set forth in detail the terms of the Agreement, including any penalties that are agreed by the parties. A copy of any Agreement must be forwarded by the initiating officer or designated initiating member to the Commander-in-Chief.

(h) The Adjutant General shall prepare such forms as are necessary to facilitate actions under this Section. Such forms shall be an Appendix to the Manual of Procedure.

(i) Computation of Time.

Whenever in this Article an action is to be taken or completed by a certain number of days it shall be calendar days, unless the final day is a Sunday or National holiday, in which case it shall be the next calendar day that is not a Sunday or a National holiday.

Sec. 904 - Appeal.

Except where otherwise provided in this Article, a member on whom Disciplinary Action is taken under this Article shall have the right to appeal such action. Any appeal under this Section must be made in writing and mailed by registered or certified mail, return receipt requested, and postmarked no later than the date due, as prescribed in the Manual of Procedure. The time for an

appeal shall be calculated beginning the date upon which the decision appealed from was delivered to the accused or to the accused last known address. The Commander-in-Chief may grant an extension, provided the request is received prior to the expiration of the time originally prescribed and the request is for good and sufficient cause. If the member fails to properly appeal the action, the appeal will not be considered.

Appeals to the Department Commander. Appeals from Disciplinary Actions initiated by a Post will be to the Department Commander. The decision of the Department Commander shall be final unless an appeal is timely made to the Commander-in-Chief. The decision of the Commander-in-Chief shall be final unless an appeal is timely made to the National Council of Administration. The decision of the National Council of Administration is final.

Appeals to the Commander-in-Chief. Appeals from Disciplinary Actions initiated by a Department Commander or Department Council of Administration shall be to the Commander-in-Chief. The decision of the Commander-in-Chief shall be final unless an appeal is timely made to the National Council of Administration. The decision of the National Council of Administration shall be final.

Appeals to the National Council of Administration. Appeals from Disciplinary Actions initiated by the Commander-in-Chief will be to the National Council of Administration. The decision of the National Council of Administration is final.

Computation of Time. See Section 903(i) of these Bylaws.

Nothing herein shall be construed as preventing the Commander-in-Chief from enforcing the provisions of the Congressional Charter, these Bylaws, the Manual of Procedure, Ritual or laws or usages or the duties of the office, regardless of any pending appeal.

Sec. 905 - Suspension from Office.

At any time after charges are initiated on a member holding office, the Commander-in-Chief or Department Commander having jurisdiction, may at their discretion suspend the accused member from an elected or appointed position pending a final decision on the disciplinary action, provided that, with respect to salaried positions, said suspension will be with pay. During the suspension of a Post, County Council, District or Department Commander, the office shall be temporarily filled by the Senior Vice Commander. Suspensions affected under this section are not subject to appeal under any provision of these Bylaws.

Sec. 906 - Prima Facie Case.

If the accused member has been convicted of a felony, misdemeanor or ordinance violation for conduct that subjects the accused member to discipline under Section 902, certified copies of the judicial record or guilty plea shall be conclusive evidence of a violation subjecting the member to discipline unless the record is proven not to be a true and correct copy or is otherwise subject to challenge as inaccurate.

Sec. 907 - Penalties.

Penalties for offenses recognized by the Veterans of Foreign Wars of the United States shall be:

1. Reprimand.
2. Suspension of certain rights of membership for a specified period of time.

3. Suspension or removal from office.
4. Suspension from membership for a specified period of time.
5. Termination of membership.
6. Other administrative actions deemed appropriate.

Except as provided in Section 905, no penalty in a Disciplinary Action will be effective if an appeal is current and not finally adjudicated. The penalty shall be carried into effect at such time as a decision is final and by execution of an appropriate Special Order by the Department Commander, Commander-in-Chief or the National Council of Administration.

Sec. 908 - Administrative Actions.

A member who has been suspended from any Post by sentence of Disciplinary Action properly executed, will be administratively transferred to Department Member-at-Large. Upon completion of the suspension of membership, a transfer is permitted in accordance with the provisions of Section 107 of the National Bylaws.

In the event that a member transfers their membership and reasonable grounds exist to initiate disciplinary action, for conduct prior to such transfer, the Department Commander or the Commander-in-Chief may transfer the member back to the jurisdiction where the disciplinary action will be initiated.

Any member or former member sentenced will be allowed one opportunity to petition directly to the Commander-in-Chief to have their conviction pardoned or their sentence commuted provided at least five years of the pertinent sentence have been served.

(End of Article IX)

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ARTICLE IX – DISCIPLINE (MOP)

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 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 initiated 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. 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 Sentence.** 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)