

Disciplinary Action



Prior to a complete revision of Article IX of the National By-Laws in 1988, it provided for 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 procedure now in place was 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, Manual of Procedure and the Procedural Guide for Disciplinary Actions, 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 of the By-Laws.

The By-Laws and Manual of Procedure provide the basic rules governing the grounds for, and conduct of, disciplinary actions. The 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 instruction 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.

Should the need arise, you may obtain a copy of the Procedural Guide for Disciplinary Actions from your Department Headquarters.

Disciplinary Action

Frequently Asked Questions

1. Can a District Commander initiate a Disciplinary Action?
NO. The District Commander is not in the loop when it comes to Disciplinary Actions.
2. What happens if the accused is the Post Commander?
If the Post Commander is the accused, the action must be initiated by the next higher authority. (Remember the District is not in the loop and therefore, the Department Commander would be the one to initiate the action.)
3. What if a Post Commander initiates an action and then expects to be a witness with respect to factual matters, can he appoint the panel?
NO. He should request the Special Order appointing the panel be issued by the higher authority, which would be the Department Commander.
4. Is Article IX used to bar or suspend members from participating in Post social activities or using the clubrooms?
NO. These activities and clubrooms come under the direct control of the sponsoring unit pursuant to Section 709 and the House Committee should handle this type of matter.
5. What happens if the accused fails to accept the Special Order and Charges and Specifications sent by certified, return receipt mail?
A signed receipt from the accused is not necessary, so long as there is a postal receipt indicating delivery to the accused's last known address. If the accused fails to request a hearing within the twenty (20) days allotted, the Initiating Officer takes whatever action he deems appropriate to include the ordering of any penalties prescribed in Section 907.
6. Once a hearing is scheduled, can the accused ask for postponement for cause?
YES. He must make a written request to the President of the Hearing Panel explaining the reason for the continuance. The Panel President then confers with the panel and notifies all parties and panel members in writing of the rescheduled date if the continuance is granted.
7. Once the panel is selected, can it be changed?
YES. Each side, the prosecutor and the defense, have one preemptory 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 of the panel for good cause. In this instance, the remaining members of the panel vote on the question. No member may be excused for cause when the effect is to reduce the number of panel members below three (3), including the President.

8. How many votes does it take to convict?

There must be a two-thirds (2/3) majority vote in order to convict on any charge and specification.

9. How is the panel's decision announced?

The Findings and Sentence are announced by the President in an open hearing after the 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, a copy of the Findings and Sentence shall be mailed to his last known address within seven (7) days after the hearing.

10. Does the accused have any recourse after the panel has made its decision?

The accused may appeal the decision by appealing to the next higher authority. If the action is brought by a Post Commander, the appeal is to the Department Commander, etc.

SPECIAL ORDER INITIATING DISCIPLINARY ACTION

Special Order No. _____ Date _____

Headquarters, VFW Post No. (or Department) _____

To: _____

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 (Form DA-2).

You may request an optional mediation as part of the proceedings by using the attached Form DA-6, Request for Mediation/Hearing. Mediation, if requested, will be conducted first and will be final (no further appeal) if you agree with the proposed settlement resulting from that action. If mediation proves unsatisfactory in your opinion or if mediation is not desired, you may still have a Disciplinary Hearing, requested again on Form DA-6.

You must notify _____
in writing, within fifteen (15) days of the date that this order and the attached Charges and Specifications were delivered to you. If you do not, disciplinary penalties may be imposed without these proceedings. Penalties may include termination or suspension of membership and relief from office.

By order of _____

Commander, Post No. _____
(or Department)

Official _____ Adjutant

CHARGES AND SPECIFICATIONS

Charge (1): _____

Specification (1):

Specification (2):

Charge (2): _____

Specification (1):

Specification (2):

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

(If additional Charges and Specifications are required, continue on a separate page and attach to this form.)

**ORDER APPOINTING A DISCIPLINARY HEARING
PANEL AND SPECIAL ORDER**

No. _____
Headquarters, VFW Post No. _____

Department of _____

Place _____

Date _____

Upon orders of _____, Commander
of _____, Veterans of Foreign Wars, a
Disciplinary Hearing Panel is appointed to meet at _____
at _____ 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: _____

DETAIL FOR THE PANEL

Comrade _____ of Post No. _____
Comrade _____ of Post No. _____
Comrade _____ of Post No. _____
Comrade _____ of Post No. _____
Comrade _____ of Post No. _____
Comrade _____ of Post No. _____
Comrade _____ of Post No. _____
Comrade _____ of Post No. _____
Comrade _____ of Post No. _____, President of Panel
Comrade _____ of Post No. _____, Prosecutor
Comrade _____ of Post No. _____, Defense Counsel

By order of _____

Commander of _____

Official _____ Adjutant

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: _____

On Charge 1, Specification 1: _____

On Charge _____, Specification _____: _____

On Charge _____, Specification _____: _____

On Charge _____, Specification _____: _____

On Charge _____, Specification _____: _____

On Charge _____, Specification _____: _____

On Charge _____, Specification _____: _____
(attached additional sheets, if necessary)

The panel imposed the following sentence: _____

Prosecutor

President of the Panel

Date

Note: A copy of this form will be mailed to the accused at the last known address within seven (7) days after the hearing.

FORM OF RECORD OF DISCIPLINARY ACTION

Proceedings of a Disciplinary Hearing Panel convened at _____
_____ on _____, 20_____, pursuant to an order issued by

PRESENT

Comrade _____ of Post No. _____, President of Panel
Comrade _____ of Post No. _____, Prosecutor
Comrade _____ of Post No. _____, Defense Counsel
Comrade _____ of Post No. _____, Member
Comrade _____ of Post No. _____, Member
Comrade _____ of Post No. _____, Member
Comrade _____ of Post No. _____, Member
Comrade _____ of Post No. _____, Member
Comrade _____ of Post No. _____, Member
Comrade _____ of Post No. _____, Member

ABSENT

Comrade _____ of Post No. _____, Reason: _____
Comrade _____ of Post No. _____, Reason: _____
Comrade _____ of Post No. _____, Reason: _____
Comrade _____ of Post No. _____, Reason: _____

The accused received notice of the charges and specifications in accordance with Section 903 of the National By-Laws and requested a hearing: Yes ___ No ___

Challenges for cause were made on panel member(s) _____

Such challenges were sustained as to panel member(s) _____

The members of the panel were sworn. Yes ___ No ___

The Charges and Specifications were read to the accused, or the accused stated that he had read the charges, and he responded as follows:

PLEAS

To all Charges and Specifications: _____

Or

To Charge _____, Specification _____: _____

To Charge _____, Specification _____: _____

To Charge _____, Specification _____: _____

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 the trial.

President

REQUEST FOR MEDIATION/HEARING

I have received Special Order No. _____ dated _____ with attached charges and specifications, indicating that a disciplinary action has been initiated.

As a result of this action, I request:

_____ a hearing with pre-hearing Mediation (if mediation proves unsatisfactory).

_____ a hearing without pre-hearing Mediation.

(Accuser)

(Note: This request must be mailed within fifteen (15) days of receipt of the Special Order (Form DA-1), to the person listed on the Special Order.)

RECORD OF MEDIATION

As a result of a request for pre-hearing mediation by the accused and with the mediation having now been completed, the following is the result agreed upon by all parties:

___ No agreement has been reached during this pre-trial mediation; a hearing date shall be scheduled within fifteen (15) days of said meeting.

All parties concerned understand that this form (DA-6) and all other documents related to this action must be forwarded to the Commander-in-Chief, for the issuance of a Special Order imposing the above agreed upon penalty. **There is no further appeal.**

(Mediation Officer)

(Initiating Officer)

(Accused)