

# DISCIPLINARY PROCESS TRAINING



## Serious Post Violations

2017

Presented by

Dept. of Ohio Judge Advocate

# INTRODUCTION

- As Canteen Violations are considered minor violations. At times more serious violations occur.
- These violations are against the post or its members and some may even violate State and Federal laws.
- They can include: Theft (misappropriation), Dishonesty (Malfeasance), Dereliction (neglect) of duty, Conduct unbecoming an AMVET member etc..
- These types of violations are handled differently than canteen violations, even if they occur in the canteen.
- Punishment could include Post Suspension, Post Expulsion and possibly criminal charges.

❖ The Best disciplinary Hearing

❖ Is the one that was avoided !.

❖ Always try to talk the problem out before resulting to charges and disciplinary action.



❖ If charges and a hearing cannot be avoided.  
Treat the matter and the member  
professionally, **with courtesy and respect.**

# Respect

GIVE IT



TO GET IT

# OVERVIEW

- Amvets Chain of Command
- Definitions
- National & Department CBL & UPCBL
- Trial Procedures
- Q/A

# AMVET CHAIN OF COMMAND



- AMVETS Post issues start at the Post level. If the issues are not resolved, or if they are appealed, they should be directed to: District Commander or District Judge Advocate.
  - If the issue is not resolved at the District level, said issue is then and only then presented to the Department Commander.
- The Department Commander will then assign a Deputy Inspector General (IG) to investigate the issue.

# AMVETS CHAIN OF COMMAND

- The Deputy IG will report his/her findings to the Department Commander, Department IG, and Department JA for a decision and possible adjudication.
- Notification regarding adjudication will be dispersed to the Post Commander.
- **Do Not Jump The Chain of Command!**
- **It was frowned on in the military its also frowned on in Amvets.**





# AMVETS CONSTITUTION & BYLAWS

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National  
Department  
Uniform Post

# NATIONAL CBL *ARTICLE V*

## DISCIPLINE OF POSTS AND POST MEMBERS

### Section 1.

- Each post of AMVETS shall be the judge of its own membership, subject to the provisions of the constitution and bylaws of the national and department organizations.

### Section 2

- (a) Members may be suspended or expelled by a post, a state executive committee or the National Executive Committee on a proper showing of cause.
- Written charges, which shall be furnished the member involved at least 30 days prior to the date set for the hearing, shall be based on disloyalty, neglect of duty, dishonesty or conduct unbecoming a member of AMVETS.

## NATIONAL CBL ARTICLE . V

(b) The National Executive Committee shall provide a uniform code of procedure to be followed in effecting the suspension or expulsion of members, and said code of procedure shall establish a method of appeal (*Appendix B*).

**Section 3.** Any member who has been suspended or expelled in accordance with Section 2 hereof has the right of appeal.

In the event the suspension or expulsion is imposed by the post, the appeal shall be to the department executive committee.

In the event the suspension or expulsion is by the department executive committee, the appeal shall be to the National Executive Committee.

## DEPT. CBL *ARTICLE VII.*

### *Membership*

- **Section 4**
- **A)** No person expelled by one Post shall be eligible for membership in another Post without the consent of the expelling Post or the consent of the State Executive Committee (hereinafter referred to as “SEC”) after hearing an appeal.
- **B).** No member may be expelled from membership in AMVETS without due process as provided for in the National Constitution and By-Laws Uniform Code for Suspension or Expulsion of a Member. (**Appendix B of the NCBL**)

## DEPT. CBL. ARTICLE XX

- **Section 2**
- All questions affecting the eligibility for Office and conduct of Post Officers shall be determined by the Post involved, which shall be the final authority. Any suspension or expulsion of a member shall conform to the National Uniform Code of Procedure for the Suspension or Expulsion of a Member.

# DEPT. CBL. ARTICLE XX

- **Section 3**
- Any member whose membership is suspended or forfeited may appeal to the next highest level applicable from that which heard the charges and specifications, *i.e.* from Post Executive Committee to District Commander and District Judge Advocate; from District to State Commander (see Chain of Command). Notice of Appeal must be filed with the appellate body no later than fifteen (15) days after the imposition of the penalty. Said Notice must be in writing and must further conform to the National Uniform Code of Procedure for the Suspension or Expulsion of a Member. (NCBL appendix B)

# UPCBL

- **ARTICLE XX. DISCIPLINE OF MEMBERS**
- The discipline of Post members shall be as provided in the National By-Laws, Article V and the Uniform Code of Procedure for the Suspension or Expulsion of a Member. **(NCBL Appendix B)**



# ***NCBL APPENDIX B: SUSPENSION OR EXPULSION OF MEMBERS***

- **UNIFORM CODE OF PROCEDURE FOR THE  
SUSPENSION**

**OR EXPULSION OF A MEMBER**

(Adopted Pursuant to Article V, Section 2, of AMVETS  
National Bylaws)

## NCBL APPENDIX B:

- **Section 1.**

- In addition to the provisions of Article XII, Section 1(b), of the AMVETS National Constitution and Article V, Section 2, of the AMVETS National Bylaws, members may be suspended or expelled for any one or more of the following reasons:

- (a) failure to comply with any obligation imposed on members under the constitution and bylaws;
- (b) any violation of law that reflects unfavorably on the name *AMVETS*;
- (c) any other conduct unbecoming an AMVET;
- (d) ineligibility for membership at time of acceptance into membership; or
- (e) procurement of membership by fraud or deception.

← Theft Dept. Funds

Susp. of Post Charter

## ***NCBL APPENDIX B:***

- **Section 2.**
- Any member of AMVETS may prefer charges against any other member, alleging any of the foregoing causes for suspension or expulsion.
- Such charges shall be made under oath, setting forth the time and place of the offense or other basis for the charges, as near as may be practicable, and signed by the accuser.
- Filing of charges determined by the hearing authority to be frivolous shall constitute conduct unbecoming an AMVET.

## ***NCBL APPENDIX B:***

- **Section 3.**
- All charges and specifications shall be filed with the commander of the post to which the member complained about belongs or if said member be a member-at-large, then with the department commander.
- On receipt of said charges and specifications, said respective commander shall, within five days, send a copy thereof by certified mail to the member complained about, together with a notice fixing a date, place and time of a hearing to be held not less than 30 days after said date of mailing.

**Ohio AMVETS**  
**Letter of Complaint - Official Write up Form**

Please Check One ☒ Letter of Complaint ☐ Official Write-up

Date of Complaint/Write-up \_\_\_\_/\_\_\_\_/\_\_\_\_

Time of Complaint/Write-up \_\_\_\_\_

Name or Names of Individuals involved:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Place of Complaint or Offense (Check one)

☐ Canteen ☐ Grounds ☐ Dist. ☐ Dept.

Canteen Rule Violated (1-15) \_\_\_\_\_

Dept. CBL/UPCBL Violated  
Section/Number \_\_\_\_\_

1. **COMPLAINTS:** Any complaint, no matter how trivial it may appear, will be answered within a timely manner. To make your complaint flow faster, please check the area in which your complaint is about:  
☐ Canteen/Club Room ☐ Post Grounds  
☐ District Function/Venue ☐ Department Function/Venue
2. **OFFICIAL WRITE-UP:** All official write-ups will appear before the Board of Trustees. For official write ups, please check one of the following of whom this write up is about:  
☐ Dept./Dist./Post Officer ☐ Bartender / Employee  
☐ Member ☐ Guest
3. Any complaint or write up that is not signed and dated **will not** be considered for review or action.
4. On Official Write-ups, you may be required to appear at the Board of Trustee Meeting for further clarification of your write up. ***Failure to appear when requested, without notifying the board, MAY result in the dismissal of the write up.***
5. Use the reverse side of this form to fill in the details of your complaint/write-up. Attach additional sheets as necessary.

Printed Name	Signature	Date

Witness	Printed Name	Signature	Date

Date Received: \_\_\_\_/\_\_\_\_/\_\_\_\_ Reviewed By \_\_\_\_\_

## NCBL APPENDIX B:

- **Section 4.** *not the trustees or 3 member panel*  
Said charges and specifications shall be heard by the executive committee of the post or, in the instance of a member-at-large, by the executive committee of the department, at which said hearing the member complained about shall have the right to be represented by counsel and to cross-examine the accuser or accusers and witnesses presented against the member.
- No member against whom charges have been preferred, or who has preferred charges against another member, shall sit in judgment on any panel hearing or deciding the matter.

## ***NCBL APPENDIX B:***

- **Section 5.**
- The post or state judge advocate, as the case may be, shall prosecute the charges and the attendance of a court reporter shall be permitted.
- **Section 6.**
- The presiding officer of said executive committee shall decide all questions as to the relevancy of evidence and the regularity of the proceedings.

## ***NCBL APPENDIX B:***

- **Section 7.**
- On the conclusion of the hearing, a vote shall be taken first as to whether there is a basis for the charge or charges and, if by the vote hereinafter mentioned, it is determined that there is none, the charges may be dismissed. If the charges are not dismissed, then a vote shall be taken on the guilt or innocence of each of the charges and each of the specifications.
- A two-thirds vote of the members of the executive committee hearing the charges and specifications shall be required to sustain any charge or specification. Voting herein provided for shall be secret or open as said executive committee may, by majority vote thereof, determine.

## ***NCBL APPENDIX B:***

- **Section 8.**
- If any charge or specification is sustained, then the member shall be deemed to be guilty thereof and the officer presiding at the hearing shall then put the question of the degree of punishment as to whether there shall be a suspension from the benefits of membership and, if so, for how long; or an expulsion from membership.

## ***NCBL APPENDIX B:***

- **Section 9.**
- Any member whose membership is suspended or forfeited may appeal to the next highest level applicable from that which heard the charges and specifications, i.e., from post executive committee to state executive committee, from department executive committee to National Executive Committee.
- Notice of appeal must be filed in writing with the appellate body not later than 15 days after the imposition of the penalty.

## ***NCBL APPENDIX B:***

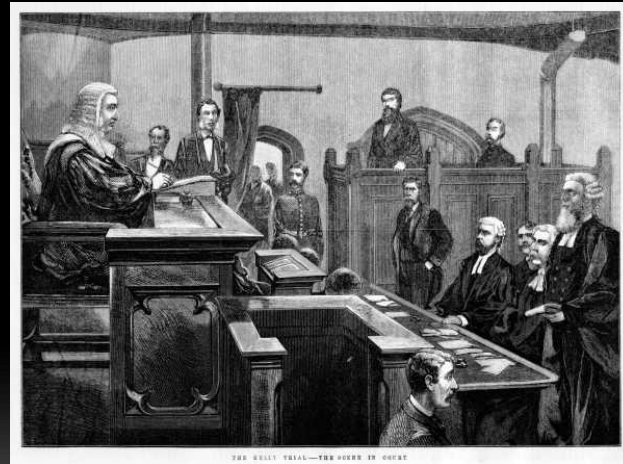
- **Section 11.**
- The decision of the appellate body at either level shall be binding and final.
- **Section 12.**
- The procedure for the hearing of an appeal by the department executive committee shall be prescribed by the department judge advocate and the procedure for the handling of any appeal to be heard by the post executive committee shall be prescribed by the post judge advocate.
- No such procedure at any level, however, shall be inconsistent or in conflict with the national, department or post constitution and bylaws or this code.



- Trial Process

# WHAT TO REMEMBER BEFORE A TRIAL

- Each step in conducting a hearing / trial provides due process for the members. And must be recorded.( in writing or by voice recording )
- Remain Professional
- Keep order (don't let the trial turn into a shouting match)
- Stay Calm (Keep everyone else calm)
- Be patient
- Be Courteous
- Keep it focused on the facts
- Follow all procedures
- Above all be fair & Objective



# TRIAL PROCEDURES

- Setting:
- To include only Executive board members, Accused with counsel and the JA & court reporter (no spectators, audience or witnesses)
- The Hearing room is set so all board members can see and hear the accused and the Judge Advocate.
- The accused and defense council (if present) and the Judge Advocate should be at a separate tables before the board.
- Have the Adjutant, court reporter (if present) in a location where every word can be heard.
- Have an area where witnesses may sit away from the accused.
- The Provost Marshal should be positioned by the exit to call witnesses.

# TRIAL PROCEDURES

- Announce the trial will be held in executive session
- Call to order
- Have the Adjutant read all the charges and specifications aloud as well as any trial rules the chair may have.
- Ask the accused how they plea on each of the charges and specifications.
- If the accused pleads guilty to any or all charge(s) or specification(s) the trial ends and the board goes into the punishment phase.

# TRIAL PROCEDURES

- If The accused pleads not guilty the trial proceeds as follows:
- Ask the JA for opening Statement
- Ask accused or defense council for opening statement.
- Opening and closing statements are not mandatory, either the JA or the accused may refuse to give either or both.
- Limit the amount of time for these statements. Do not allow either side to start rambling about things that do not pertain to the facts of the case.

# TRIAL PROCEDURES

- Judge Advocate examination:
- Ask Judge Advocate to call and question the first witness
- Ask Accused to question (cross examine) the first witness.
- Continue in this order until all JA witnesses have been called.
- Excuse each witness after they have completed their testimony, but ask that they stay in the building in case they are asked to return. (during re-cross).

# TRIAL PROCEDURES

- Defense examination:
- Defense calls and questions their first witness.
- JA cross examines defense witness.
- Continue until all defense witnesses have been called.
- Again excuse each witness after they have been questioned.  
Ask that they stay in the building in case they are asked to return (Re-cross)
- This ends the first examination phase on to round 2

# TRIAL PROCEDURES

- Re-cross examination:
- Ask the Judge Advocate if they would like to recall any of the previously interviewed witnesses for further questions by both sides. Starting with the prosecution and ending with the defense.
- Continue until all JA requested witnesses have been recalled and questioned by both sides.
- Ask the defense if they would like to recall any of the previously interviewed witnesses for further questions by both sides starting with the Defense and ending with the JA.
- Continue until all Defense requested witnesses have been recalled and questioned.
- At this time all witnesses can be released as the examination phase is now complete. Witnesses are not permitted to remain in hearing room.

# TRIAL PROCEDURES

- Closing Statement:
- Ask for closing statements, Defense first ending with the JA.
- The Accused is asked to leave the hearing room. (They can remain in the building if they wish to return after deliberation by the board to receive the verdict and the final disposition or they may leave the post.)
- Judge Advocate is asked to step out and is not part of the deliberation phase.
- Now the Hard Part.....

# DELIBERATION

- Once the board is alone
- ***NCBL Appendix B Section 7***
- On conclusion of the hearing, a vote shall be taken first as to whether there is a basis for the charge or charges and, if by the vote hereinafter mentioned, it is determined that there is none, the charges may be dismissed. If the charges are not dismissed, then a vote shall be taken on the guilt or innocence of each of the charges and each of the specifications.
- A two-thirds vote of the members of the executive committee hearing the charges and specifications shall be required to sustain any charge or specification. Voting herein provided for shall be secret or open as said executive committee may, by majority vote thereof, determine.

# DELIBERATION

- ***NCBL Appendix B: Section 8***
- If any charge or specification is sustained, then the member shall be deemed to be guilty thereof and the officer presiding at the hearing shall then put to question of the degree of punishment, as to whether there shall be a suspension from the benefits of membership and, if so, for how long; or an expulsion (**Indefinite suspension**) from Post membership.

# REMEMBER

- Unless the punishment was an indefinite suspension from the post, (which should be used rarely) The board needs to remember that the defendant is a valuable member of the post that made a mistake.
- They should be treated fairly and respectfully.

## Respect

GIVE IT



TO GET IT

# VERDICT

- If the accused is still in the building and agrees to re-enter the meeting room He or She may be given the Verdict be it innocent or guilty and the determined punishment.
- If they have left the building or refuses to re-enter the hearing room send the disposition to the accused by Certified Mail.
- Either way they must be mailed (certified) a copy of the disposition.
- Thank the accused for their time. If they were found guilty, remind them they have exactly 15 days (from the date of imposition of the penalty) to file an appeal request to the next higher authority.
- Give them the contact information to that authority if they request it.



- Frequently asked questions

# QUESTION

If a member from another post comes into your post and commits serious violation.

How is this Violation handled?



# ANSWER

- Per Appendix B Section 3
- All charges and specifications shall be filed with the commander of the post to which the member complained about belongs or if said member be a member-at-large, then with the department commander.

# QUESTION

- Can a Veteran write up a member of a subordinate organization for a serious violation?



# ANSWER



- The complaint would be filed as normal with the Commander of the post.
- The Post Commander would turn it over to the appropriate subordinate Commander or President for adjudication by the subordinate organization.
- Note:
- If the Victim of the offense was a Veteran, the Post Commander should monitor (monitor Only) the subordinate organizations process and results.

# QUESTION

- Can a Son or Auxiliary member charge a Veteran with a serious violation?



# ANSWER

## No!

- A subordinate member can not file charges on a Veteran.
- If a subordinate witnessed a Veteran committing a serious violation.
- The subordinate would write a letter of complaint on the standard form and submit it to the Post Commander for investigation.

# QUESTIONS

- Do not hesitate to ask questions !
- Questions should be directed to the District Commander or District JA if they can not assist they will direct you to call the Dept. Judge Advocate. Remember the chain of command

Bobby Swigart

