


Appendix B: Suspension or Expulsion of Members

UNIFORM CODE OF PROCEDURE FOR THE SUSPENSION OR EXPELLSION OF A MEMBER





In most societies it is understood that members are required to be of honorable character and reputation, and certain types of associations may have particular codes of ethics to enforce. Although ordinary societies seldom have occasion to discipline members, an organization or assembly has the ultimate right to make and enforce its own rules, and to require that its members refrain from conduct injurious to the organization or its purposes . No one should be allowed to remain a member if their retention will do this kind of harm



Last ditch

Formal disciplinary procedures should generally be regarded a drastic step reserved for serious situations or those potentially so. When it appears that such measure may become necessary, proper and tactful handling of the case is of prime importance. It is usually in the best interests of the organization first to make every effort to obtain a satisfactory solution of the matter quietly and informally.

Definitions


- Accuser – one who brings charges against
- Appellate – having to do with appeals
- Certified mail – To guarantee mail (request a return receipt)
- Charges – Sets forth an offense.
- Counsel – a lawyer or group of lawyers
- Exonerate – to declare or prove blameless
- Expulsion – expelling or being expelled
- Forfeited - to lose or be deprived of
- Guilt – the state of having done a wrong or committed an offense
- Guilty – having guilt
- Hearing – an appearance before a judge, investigative committee
- Incumbent – resting upon as a duty or obligation
- Oath – a declaration based on an appeal to God that one will speak the truth
- Prosecute – to conduct legal action against
- Rebuttal - to contradict or oppose
- Relevancy – pertinent
- Societies – an organized group with some interest in common
- Specifications – State what the accused is alleged to have done.
- Suspension – to exclude as a penalty from a office , school, etc.
- Trial – a hearing and deciding of a case in a court of law

UNIFORM CODE OF PROCEDURE FOR THE SUSPENSION OR EXPULSION OF A MEMBER

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

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.




Article XII, Section 1(b), of the AMVETS National Constitution

Section 1.

(b) A state executive committee may suspend or expel any department member for misappropriation of AMVET department funds.

Article V, Section 2, of the AMVETS National Bylaws

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.

What did the last 2 slide mean?

- Things bounce around in CBLs and if a reference is not taken into consideration it could mislead the reader into believing they are acting correctly when in fact they are not.
- The opening statement in this procedure tells us, by reference to Art. XII and Art. V, the National, State, or Post may suspended or expel a member.
- (a),(b),(c),(d)&(e) list reason which are self explanatory .

Charges Under oath

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.

Action:

- The cause, date, time, place, and any other information to support the charge must be put in writing.
- The charges must be made under oath and be signed by the accuser. Section 2 contains one of the reasons that most posts are overruled on appeal - Under oath means sworn to.
- The following must be contained in the charges language "Sworn to and before me and signed in my presence" and then notarized. This is standard procedure for most notaries however it is incumbent upon the person filing the charges to make sure it is included in the charge.
- It is also the responsibility of the post executive board to make sure the proper oath is in the charge.

Filing of Charges

Section 3. All charges and specifications shall be filed with the post 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.

Actions

- **Charges must be filed with the post commander (or the Adjutant if the charge is against the post commander) .**
- **In 5 (five) days set up a hearing date, place, and time and notify the person being charged by certified mail (return receipt requested) .**
- **The hearing can not be held in less than 30 days from the date of the notice to the member.**
- **Department commander only acts if the charges are filed against a member at large.**

Hearings

Section 4. 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.

Action:

- Charges and specifications shall be heard by the executive committee of the post
- The member complained about shall have the right to be represented by counsel
- The member complained about shall have the right to cross-examine the accuser or accusers and witnesses presented against the member
- No member who has charges preferred against them or who has preferred charges against a member shall sit in judgment in any capacity that may decide the matter.
- Department commander only acts if the charges are filed against a member at large
- The SEC will take action only in the case of a Member at Large

Who's in charge?

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.

Action

- The Post Judge Advocate shall prosecute the Charges
- A court reporter is allowed to be in attendance

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.

Action

In most cases the Commander will preside and decide all questions as to the relevancy of evidence and the regularity of the proceedings.

Decisions, Decisions, Decisions

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.

Action:

- A quorum must be present to conduct the hearing.
- The first decision to be made is; will the voting be by secret or open vote. This decision is made by the Post Executive Committee by a majority of those in attendance
- Vote to find out if the charges are legit if not they may be dismissed
- If the charges are legit a vote is taken as to the guilt or innocence of each charge.
- A two thirds majority is required to deem the member guilty.

Suspension or expulsion

- 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.
- Action:
 - The executive board must decide on suspension and for how long the member will be suspended **OR** if the member is to be expelled.
 - The executive board, nor any other entity of the post, shall not place a member into the status of a member at large.

Appeal

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.

Action:

- The member in question has 15 (fifteen) days from the time they are notified of their suspension or expulsion to send an appeal letter to the State or national Executive Director .
- If the appeal is late or if none is received in the 15 (fifteen) day time frame then said member must abide by the decision of the ruling body.

National officers

Section 10. In the event charges are filed against any national elected or appointed officer, such charges shall be heard by the National Executive Committee or a subcommittee appointed by it in accordance with the general outline set forth above, with the right of appeal in the event of a suspension or expulsion to the next national convention.


- Action:
- National officers have a hearing by the NEC and the appeal is to the next National Convention.



Binding and final

Section 11. The decision of the appellate body at either level shall be binding and final.

Action:

- The decision made by the appellate body is final and no other appeals are available.
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Appeal procedure

Section 12. The procedure for the handling of any appeal to be heard by the National Executive Committee or the national convention shall be prescribed by the national judge advocate. 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.

- Action:
 - The Judge Advocate sets the procedure for the appellate hearing



Q&A's

- Q. Should the hearing be in Executive session?
- A. Yes, hearings are to be in executive session as the member or the post have no right to make public any information that may have been obtained in any investigation pertinent to the case
- Q. Is hearsay admissible?
- A. Yes, it is difficult to impossible for a society to obtain legal proof of facts in a disciplinary case. Therefore hearsay evidence is admissible.
- Q. Do we have to swear in our witnesses?
- A. No, witnesses are not sworn.
- Q. Should the member be given the right to be present at the hearing?
- A. Yes, all members have the right to due process – that is to be informed of the charges, given time to prepare their defense, to appear and defend themselves and to be fairly treated.

Q&A's

- Q. Do I need a copy of the notification letter after it was sent to the accused?
- A. Yes, a copy of the charges and the notification letter along with the return receipt attached as proof the accused was informed of the charges and notified of the hearing.
- Q. What if the member is a no show at the hearing ?
- A. The trial proceeds as if the member was in attendance and it is brought to a conclusion.
- Q. Are witnesses allowed to remain in the hearing room?
- A. No, the witnesses are only allowed in the room while they are testifying.



Open the trial

1. At the trial , in calling the meeting to order, the chair should call attention to the fact that the meeting is in executive session, and to the attendant obligation of secrecy.
2. The chair shall verify, by inquiring of the adjutant that the accused was furnished a copy of the charges and notification of the hearing.
3. The adjutant shall read the charges and specifications.
4. The chair ask the accused how they pleads –Guilty or not guilty- first to each specification in order and then to the charge.
5. If a guilty plea is made their need be no trial. And after a brief statement of the facts you may go directly to the determination of the penalty.
6. If a not guilty plea is made the trial proceeds.

Trial step by step

7. Opening statements by both sides.
8. Testimony of witness by the organization
9. Testimony of defense witnesses.
10. Rebuttal witnesses on behalf of the organization then on behalf of the defense.
11. Closing arguments by both sides.
12. Until the completion of the closing arguments by both sides no one is entitled to the floor other than the prosecutor and the defense and they must address the chair except when questioning a witness.
13. The chair first explains all the steps then calls for them in order.

Trial step by step cont.

14. Cross-examination, re-direct-examination, and re-cross-examination of a witness is permitted, and witnesses may be recalled as the occasion dictates.
15. When closing arguments have been completed the accused must leave the room. Only members of the executive board may remain in the hearing room.
16. The chair then states "The question before the board is: is member (name) guilty of the charge and specification preferred against him/her".
17. Each of the specifications and then the charge, is read, opened to debate and voted on separately-several votes may be delayed and voted on a single ballot.

Trial step by step cont.

18. If the accused is found guilty of one or more of the specifications but not the charge, a lesser charge should be moved and voted on.
19. If the accused is found guilty the chair announces that the next item of business is the determination of the penalty.
20. One of the members of the executive board makes a motion for a penalty, this motion is debatable and amendable.
21. Upon the demand of a single member the question of guilt and the question of penalty must be voted on by ballot.
22. For expulsion a two thirds vote is required.
23. After the voting is completed, the accused is called back into the hall and advised of the results.