

GUIDE TO DISCIPLINARY ACTION

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Foreword:

Article IX Disciplinary Action is how we, as an organization, hold each other accountable when members have allegedly committed offenses as listed in Section 902 of the National Bylaws.

A disciplinary action is initiated only when an incident has been reported and an investigation into the incident has established that reasonable grounds exist to believe a member has committed a recognizable offense under Section 902 and where the penalty being sought affects the member's right of membership.

A disciplinary action does not apply when the intent of the action is solely to suspend a member's Post privileges, such as access to the canteen/clubroom.

Purpose and Use of This Guide.

The Bylaws and Manual of Procedure provide the basic rules for disciplinary actions, and this procedural guide is designed to supplement those basic rules. This guide is designed to provide both suggestions and instructions for some of the procedures set forth in Article IX of the Bylaws and Manual of Procedure; however, this guide does not replace the Bylaws and Manual of Procedure which should always be consulted first.

CHAPTER ONE

Information for the Accused Member

You have been informed that a VFW Disciplinary Action has been initiated against you, what does that mean exactly?

In short, there has been an allegation that you did something that violated one or more of the offenses listed in Section 902 of the National VFW Bylaws.

For this to happen an allegation was documented also known as an Incident Report and was sent to your Post or Department Commander or the Commander-in-Chief who then authorized an investigation into the alleged offense or offenses and the investigator(s) found reasonable belief that you committed the offense(s).

After conducting their investigation, a written report on the results of their investigation was submitted back to the respective Commander that authorized the investigation. You may or may not have been involved in this investigative process and may or may not have known about it.

As a result of the findings of the investigation a decision was made to initiate the Disciplinary Action against you. This does not mean that you have been found guilty, what it does is ensure that your right to respond to the allegations is protected, but only for a limited time. This will not go away no matter how much you ignore it.

First and foremost, as a member in this organization, you have rights. As the accused, Section 901 of the National Bylaws states, “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.”

In other words, the bylaws entitle you to notice of the charges levied against you as well as any evidence or “materials relied upon” used to support those charges. The bylaws also provide you the opportunity to resolve the action through a method of your choosing.

First let’s talk about the documents you have been sent, what their purpose is and what they look like.

Form DA-1 — This is the Special Order initiating the disciplinary action and advising you of your rights as the accused. This order may include suspension from an elected or appointed position pending the final decision of the disciplinary action pursuant to Section 905 as authorized by the Commander-in-Chief or Department Commander at their discretion.

<u>SPECIAL ORDER INITIATING DISCIPLINARY ACTION</u>	
Special Order No. _____	Date: _____
Headquarters, VFW Post No. (or Department) _____	
To: <Insert Accused Name & Address>	
Please be advised that a disciplinary action has been initiated against you pursuant to Article IX of the Bylaws 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), Materials Relied Upon, Request for Hearing (DA-6), Request for Summary Disposition (DA-8). Pursuant to Article IX of the Bylaws and Manual of Procedure, you are advised that you may request a Disciplinary Hearing or a Summary Disposition. To request a Disciplinary Hearing or Summary Disposition, you must notify: <Insert Name of Commander (Initiating Officer) & Address> In writing, within fifteen (15) days of the date that this order was received by registered or certified mail or either personally delivered to you. If not using the attached forms DA-6 or DA-8, the notification must specifically state that a Disciplinary Hearing or Summary Disposition is requested and sent via Registered or Certified Mail. 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. If you do not request a Disciplinary Hearing or Summary Disposition within the time stated, the initiating officer may order penalties pursuant to Section 903(d) of the National Bylaws. Copies of Article IX of the National Bylaws and Manual of Procedure as well as the Guide to Conducting Disciplinary Actions may be obtained electronically behind the member login at VFW.org or by request made to the National Headquarters. By order of _____ Commander (Initiating Officer) _____ Post Name & Post No. (or Department) Official: _____ Adjutant	
FORM DA-1	

This form should also include information on how to obtain digital copies of Article IX of the Bylaws and Manual of Procedure as well as this guide. Also provides the information for who you should send any request for a hearing or summary disposition.

Form DA-2 – This form will list out what the Charges and Specifications are that you have been accused of.

A “Charge” is one of the twelve offenses as listed in Section 902 of the National Bylaws.

A “Specification” is a concise description of the specific incident related to the corresponding charge.

Examples:

Charge 1: (902.6) 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.

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.	
Initiating Officer (Name & Signature) _____ Date _____	
Official: _____	
Adjutant (Name & Signature) _____ Date _____	
(If additional Charges and Specifications are required, continue on a separate page and attach to this form.)	
FORM DA-2	

Specification 1: Since assuming the position of Post Commander, Comrade Smith’s unbecoming conduct of yelling and cussing at members during business meetings has been prejudicial to good order and directly resulted in Post members to abandon the meeting which prevented business from being conducted due to a lack of a quorum.

Specification 2: Since assuming the position of Post Commander, Comrade Smith's unbecoming conduct of yelling and cussing at members and guests during Post social activities has been prejudicial to good order and directly resulted in Post members and guests to leave the Post property feeling unwelcome and unappreciated.

Charge 2: (902.9) 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 any Post, County Council, District, or Department.

Specification 1: On or about October 24, 2019, Comrade Smith as Post Commander did disburse Post funds without proper authority to include ATM cash withdrawals.

Materials Relied Upon – This is the evidence being used against you and supports the charges and specifications being levied against you. All documentation to be utilized in the disciplinary action proceedings against you to prove that an offense was committed must be sent to you. At a minimum this must include the following.

- Incident Report – Is the first formal documented proof that details that an incident has occurred in which an offense may have been committed. There is no official form with the title “Incident Report” and this report can be nothing more than an email or a signed letter.

- Other documents that must be included in the package sent to you are;

Form DA-8 – Request for Summary Disposition form. This is the form you use if you know the charges are true but want your penalty to be decided by members outside of your Department.

<u>REQUEST FOR HEARING</u> 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 in accordance with Section 903 of the National Bylaws and Manual of Procedure.	<u>REQUEST FOR SUMMARY DISPOSITION</u> 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 summary disposition in accordance with Section 903 of the National Bylaws and Manual of Procedure. I understand under this procedure I cannot contest that the facts alleged in the Charges and Specifications, but request 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.
_____ Accused Name & Signature	_____ Date

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

Failure to send either one of these forms back with your signature and date on it in the manner prescribed will not stop or delay the process.

Failure to submit or send either form in a timely manner forfeits your rights as a member of the VFW and allows the initiating officer to decide your guilt or innocence and what punishment should be administered up to termination of membership.

Options as the Accused.

As the accused you have several options in how you want to respond to the Disciplinary Action.

Summary Disposition.

In a Summary Disposition you choose not to contest the charges and specifications levied against you and request an unbiased assessment panel be assigned to review all evidence and determine a penalty based on the evidence.

Essentially what this means is that you do not want to fight the charges, or the charges have merit, and you want VFW Members from outside of your state (Assessment Panel) to look at the charges, listen to you and look at your evidence if you have any. You are pleading guilty and they in turn after reviewing evidence will make a decision about what type of punishment to render under Section 907.

This is not an opportunity for you to review the evidence the prosecution will use against you. It is also not an opportunity to see what the other side has before deciding to ask for a Hearing. All the evidence to be used against you has been submitted and must be shared with you as the prosecution comes into possession of it after the Disciplinary Action has been started.

When you agree to Summary Disposition you are agreeing that the charges have merit and that you are guilty of one or more of the Charges. You however will have opportunity to discuss what your punishment will be with the Assessment Panel members that hear your case. This is where you can explain your actions and the situation to an unbiased group of members not from your state or even your conference.

Please note that no appeal can be made if you agree to Summary Disposition from the Summary Disposition itself or the punishment the Assessment Panel decides on.

In cases where the punishment is termination of membership, then the matter must be reviewed by the Commander-in-Chief who will either agree or disagree with the punishment. If the Chief disagrees with terminating your membership, then the Chief will determine what the lesser punishment will be as listed in Section 907 of the National Bylaws.

Request for Summary Disposition shall be made on a DA-8 form that will have been included with the documents sent to you. You must return the DA-8 form via registered or certified mail and it is imperative that you keep a copy of the receipt showing date of mailing to establish that you did so within the 15-day window for responding.

Why would I choose a Summary Disposition instead of a Panel Hearing?

You believe that you will not get a fair trial even with neutral members or that you will get punishment not commensurate with the allegations.

Disciplinary Hearing.

A Disciplinary Hearing is your opportunity to contest all or some of the Charges and Specifications levied against you. This process affords you the ability to select your own lay counsel, retain private legal representation at your own expense, or represent yourself to give arguments, present and/or dispute evidence in front of a panel of your peers.

Request for a Disciplinary Hearing shall be made on a DA-6 form that will have been included with the documents sent to you. You must return the DA-6 form via registered **or** certified mail and it is imperative that you keep a copy of the receipt showing date of mailing to establish that you did so within the 15-day window for responding. Once you ask for a Disciplinary Hearing you cannot come back later and ask for Summary Disposition if you do not like how the process is going.

Once the Initiating Officer receives your signed and completed Form DA-6 they will appoint a President of the Panel, a Prosecutor, a panel of VFW members to hear the case. They will also set a time and location for the hearing. This will be done on Form DA-3 and a copy of this form will be sent to you.

The President of the Panel serves as the facilitator of the hearing and has broad authority over the hearing. As the accused this is the person you can communicate with on issues such as time & place, rescheduling, challenges, evidence, etc. See duties of Panel President in this manual.

ORDER APPOINTING A DISCIPLINARY HEARING PANEL AND SPECIAL ORDER	
Special Order No. _____	Date: _____
Headquarters, VFW Post No. (or Department): _____	
In Accordance with the provision of section 903 of the National Bylaws and Manual of Procedure, the following Disciplinary Panel is hereby assigned:	
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. _____, President of Panel
The following have been identified as participants in the hearing:	
Comrade _____	of Post No. _____, Prosecutor
Comrade _____	of Post No. _____, Defense Counsel
The Disciplinary Hearing Panel shall convene 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 _____.	
By order of _____	Commander (as appropriate)
Post Name & Post No. (or District or Department as appropriate)	
Official: _____	Adjutant

One issue you will want to decide is whether you would like to use electronic communications or email to qualify as service of important documents. There is no formal form for this and a simple email to the Panel President, if he/she has not sent you one, stating that you consent with electronic delivery is all that is required.

Once the Panel President and Prosecutor have been identified you should inform them if you will have counsel, either lay (member or non-member who is not an attorney) or professional (attorney). This is at your own expense as is the production of witnesses and all other aspects of your defense.

Once a Panel has been set as identified in Form DA-3 you have the following options.

Do nothing.

Essentially you are waiving your rights that will result in the action moving forward to include the Initiating Officer more than likely finding you guilty and ordering penalties pursuant to Section 907.

It's important to understand that when you waive your rights the action or prescribed penalties are not subject to appeal.

Prior to the Hearing you may request a Resolution meeting.

A Resolution is an agreement entered into by you, the Prosecutor, and the Hearing Panel President to resolve the disciplinary action without the need for the hearing. This is much like a pretrial diversion in that you can visit with the prosecutor and the panel president for the purpose of having the issues decided before it is formally presented in front of the panel members. If you agree to a resolution meeting, you are not obligated and can withdraw from the negotiations at any time and proceed to the panel hearing.

The request must be made prior to the hearing proceedings or before an appeal from the results of the hearing have been submitted to the next higher authority.

A request for a resolution can be made directly to the Prosecutor and/or Panel President in writing or verbally if it is acknowledged by all parties.

Should all parties come to a Resolution agreement that agreement must be in writing and signed by all parties, Resolutions once finalized are not subject to appeal.

Panel Hearing

Panel hearings while not a court of law (civil or criminal) are conducted in a very similar fashion. **None of the rules used in civil and criminal courts apply in Disciplinary Actions** as this is a fraternal matter which will be resolved by use of the VFW Bylaws as well as laws and usages of the organization.

NOTE: No later than ten (10) days prior to the disciplinary hearing date, both the Prosecutor and the accused member shall provide a list of all witnesses who plan to participate in the hearing proceedings to the Panel President along with any other information or materials that either party intends to introduce as evidence that has not been previously disclosed. On the day of the hearing, the Panel President will rule on the competency of the witnesses in accordance with Section 903(f).1.f of the Manual of Procedure.

The Panel President serves as what would be considered the judge and handles all issues related to the proceedings, the Prosecutor is the person who has been appointed to present the case against you, you are the defense, and you are allowed to have lay or professional counsel or you can represent yourself.

There will be a person known as the recorder that will be recording the proceedings and they may or may not have audio and/or video recording capabilities. The Panel President may also close the proceedings to only participants or they may open it up for spectators.

The Panel President will have opening remarks and an outline on how the hearing process works. This includes any challenges you or the prosecution might have against any of the panel members, swearing in of the panel members, affirmation of the charges and specifications you are faced with, opening remarks from the prosecutor and you, production of the evidence being used against you, production of your evidence defending your position, closing arguments, panel deliberation behind closed doors and announcement of outcome and any possible penalties.

Opening Statement – This is where you explain to the panel members what you plan to prove and why it exonerates you. The time for this is decided by the Panel President and can be anywhere from 3-10 minutes long. The Prosecutor will have the same time to explain what they hope to prove and why they believe you are guilty. Basically, this is the time you have to explain why you are innocent without producing any evidence.

Proceedings – These start with the Prosecutor calling witnesses or producing evidence. Any evidence used against you must be provided a minimum of ten (10) days prior to the hearing, you must also do the same and present any evidence to the prosecutor as well. Written witness statements are considered evidence and should be included with the materials relied upon or within the specified time above.

You will be allowed to cross examine witnesses for the prosecution as well as examine and challenge all evidence used against you.

After the prosecution is done, you are allowed to call your witnesses and present your evidence for which the prosecution can cross examine and repudiate or challenge.

Do not be surprised if members of the panel ask you questions or to clarify a statement you or the prosecutor or witness make. They have that right. You do not get to ask them questions.

Closing statements – This is where you get to summarize your defense and what you believe you have proven. Please know our rules allow the Prosecutor to give the first closing statement and save a portion or all their time to give a second closing argument after you give yours. As the defense you do not have that right.

Panel discussion – This is when the Panel members retire to a room, or the President clears the room and the Panel members including the Panel President debate about guilt or innocence and any punishment or penalties.

Should you believe the verdict was skewed or unjust due to violations of the bylaws or other processes in the panel hearing you can appeal the verdict and findings. If you are wanting to appeal because you do not agree with the outcome, then know your appeal will be denied.

In an appeal, you must specifically state what violation there was in the process and how that affected the outcome. Appeals are not a place to relitigate the case.

Here is a list of things you should do.

Dress professionally.

Act professionally.

Be prepared to ask questions.

Bring paper and pen to take notes on.

Be respectful and courteous.

Here is a list of things you should not do.

Bully or speak in a threatening or condescending tone to witnesses against you or the prosecutor.

Argue with or yell at the Panel President, Prosecutor, witness, or anyone else in the room.

Chew tobacco or gum.

Have the appearance of being angry or bitter.

Do not speculate and be clear and concise in your responses.

CHAPTER TWO

Initiating Officer or Designated Initiating Member

As the Initiating Officer in a Disciplinary Action, you have been assigned dual responsibilities. The 1st is the responsibility to the organization by ensuring the integrity of the bylaws are followed. 2nd is the responsibility to observe the rights afforded to the accused pursuant to the bylaws. Failure to do so may result in the action being dismissed or remanded back and you could be forced to start the action from the beginning.

Rights of the Accused.

1. To be notified. According to Section 901 a member has the right to be notified in writing of the Charges and Specifications and the materials relied upon to support those Charges and Specifications.

Required documents to be delivered with regards to a disciplinary action being initiated against a member. (Sent registered or certified mail, hand delivered, or by electronic means (i.e. email) with consent of all parties.)

Rights of the Accused.

- 1. To be notified.**
- 2. To be heard**
- 3. To contest**
- 4. To appeal**

- **Form DA-1** – Special Order initiating the disciplinary action and advising the member of their rights as the accused. This order may include suspension from an elected or appointed position pending the final decision of the disciplinary action pursuant to Section 905 as authorized by the Commander-in-Chief or Department Commander at their discretion.

- Should also include information on how to obtain digital copies of Article IX of the Bylaws and Manual of Procedure as well as this guide.
- **Form DA-2 – Charges and Specifications.**
 - Charges should be defined as the exact offense in Section 902 that has been violated.
 - Specifications are the description of the specific incident or violation of that offense.
- **Materials Relied Upon** – All documentation to be utilized as evidence in the disciplinary action proceedings to prove that an offense was committed by the member. (Must include)
 - Incident Report – Is the first formal documented proof that details that an incident occurred in which an offense may have been committed. The incident report shall be made in writing to ensure consistency in the events that transpired and shall serve as permanent record of the incident.
 - Investigative Report – Is utilized to detail the results of an investigation by an appointed individual where alleged offenses may have occurred.
 - Investigations should be conducted by an unbiased party with experience regarding the incident in question.

- To conduct a proper investigation the appointed individual should be thorough and detail oriented and must ensure that all aspects of the incident are reviewed to include the perspective of the aggrieved and the accused.
- All other exhibits to be entered into evidence. (Must support the investigative report's findings)
 - Witness Statements
 - Financial Records or Reports
 - Video/Audio Evidence
 - Other Records or Reports
- **DA-6** – Request for Hearing form.
- **DA-8** – Request for Summary Disposition form.

2. To be heard. According to Section 901 a member has the right to be afforded the opportunity to request that such charges be heard and determined at a Disciplinary Hearing or otherwise resolved, as provided and prescribed in Article IX. This can be done through the accused members request for either a Summary Disposition or Disciplinary Panel Hearing by using either the **DA-6** – Request for Hearing form or the **DA-8** – Request for Summary Disposition form that you send to them as part of the Disciplinary Action package.

Please note that if the accused fails to timely submit either of these forms or notice within the fifteen (15) days by either registered or certified mail then they have waived their rights to be heard, when this happens Section 903 (d) applies.

3. To Contest. According to Section 903 (f) (1) (g) (ii) of the Manual of Procedure a member as “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.” The accused or their Defense Counsel has the right to challenge Panel members for good cause. State objections to procedural issues. Question evidence, cross examine witnesses, present evidence and introduce their own witnesses. Provide both an opening and closing statement to the Panel.

4. To appeal. According to Section 904 a member has the right to 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.” 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.”

Requirements of the Bylaws based on actions of the accused.

Scenarios Based on the Decision of the Accused

The Accused Waives their Right to a Hearing or Summary Disposition; Does Nothing.

Keep in mind that a request for hearing or summary disposition must be made within fifteen (15) days of the receipt of the Special Order initiating the action.

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 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.

The Accused Requests a Summary Disposition.

If a Summary Disposition is requested then upon receipt you must forward the request within five (5) calendar days to the Commander-in-Chief, who shall appoint three (3) members of the National Council of Administration to act as the Assessment Panel who will evaluate the matter and decide on the prescribed penalties pursuant to Section 907.

This decision is not subject to appeal by the accused.

The Accused Requested a Disciplinary Hearing.

Upon receipt of a request for hearing you must issue a Special Order appointing a Hearing Panel on form DA-3 within forty-five (45) calendar days.

Additionally, the hearing date must be within forty-five (45) calendar days from the date of the Special Order appointing the panel unless a continuance is granted.

You will need to work with the Post or Department Adjutant to issue the Special Orders.

When setting a Disciplinary Hearing consider the following:

If you or the designated initiating member is the accuser or plans to present testimony as a witness during the hearing, then you must send a formal request in writing to the next higher authority outlining these facts and requesting that they appoint the Hearing Panel (when doing so please provide desired date, time, and location of the hearing as well as potential panel members).

Panel Members – Should be comprised of an odd number (5-11) of unbiased members from various locations with no connection to the accused or the aggrieved.

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.

ORDER APPOINTING A DISCIPLINARY HEARING PANEL AND SPECIAL ORDER	
Special Order No. _____	Date: _____
Headquarters, VFW Post No. (or Department): _____	
In Accordance with the provision of section 903 of the National Bylaws and Manual of Procedure, the following Disciplinary Panel is hereby assigned:	
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. _____
Comrade _____	of Post No. _____, President of Panel
The following have been identified as participants in the hearing:	
Comrade _____	of Post No. _____, Prosecutor
Comrade _____	of Post No. _____, Defense Counsel
The Disciplinary Hearing Panel shall convene 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: _____	
By order of: _____	
Commander (as appropriate)	
Post Name & Post No. (or District or Department as appropriate)	
Official: _____	
Adjutant	

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. Go to Chapter 4 for a detailed explanation on duties of the Panel Members.

Panel President – Should be versed in disciplinary action procedures and familiar with the hearing proceedings. Go to Chapter 3 for detailed explanation on duties of the Panel President.

Prosecutor – Should be versed in disciplinary action procedures and familiar with the hearing proceedings. Should also understand the initiating officer's intent in the matter and be able to provide informed recommendations for any prescribed penalties to the panel. It is the prosecutor's job to provide the reasons why the Panel members should find the accused guilty. They can also recommend a punishment. Go to Chapter 5 for a detailed explanation on duties of the Prosecutor.

Date, Time & Location - Ensure that the timelines are adhered to and contact all panel members to confirm availability for the desired date, time and location.

Electronic Hearings - While electronic hearings can eliminate travel for all parties and save the initiating body (Post or Department) money, there are important considerations for successful implementation.

Accessibility - Additional accommodations may be required to ensure all parties are able to participate in an electronic hearing.

Evidence - Section 903 of the Manual of Procedure details the rules concerning evidence and these rules must still be observed in an electronic hearing. The process for submitting evidence electronically so that all parties can view it as well as how objections to evidence will be made and observed must be decided well in advance.

What's next?

Once you have initiated the Disciplinary Action and set the Panel based on the request of the accused you are pretty much done except for consultation with the Prosecutor on the desired outcome of the action. However, there are several other requirements that you will need to attend too based on the actions of the accused if;

The Accused Fails to Appear for the Hearing.

In the event the accused requested a hearing and fails to appear the action **must** continue as though no hearing was requested at all. Therefore, the disciplinary hearing panel should **not** continue with the hearing process and simply annotate on the DA-5 that the accused did not appear and defer the action back to the Initiating Officer or designated initiating member so they may prescribe any penalties pursuant to Section 907. See **The Accused Waives their Right to a Hearing or Summary Disposition; Does Nothing.**

NOTE: In all the scenarios listed above ensure that the accused is properly notified of all prescribed penalties. Also understand that these penalties do not take effect until the accused has been informed of and afforded every right to appeal and the action is properly adjudicated by a Special Order issued by the Commander-in-Chief.

After the conclusion of the hearing proceedings the Panel President shall ensure all required documents have the appropriate signatures and are forwarded to the next higher authority to include:

[illegible]

- **The Accused Requested a Hearing and is Appealing the Disciplinary Hearing Panel's Decision.**
 - In order for the accused to have the ability to appeal the disciplinary hearing panel's imposed penalty, the accused or their predetermined counsel must be present for the hearing proceedings whether conducted in person or electronically.
 - If the hearing was conducted accordingly and the accused has submitted a proper and timely appeal to the next highest authority in accordance with Section 904, then the Prosecutor will have the ability to submit a rebuttal to the appeal and in turn the accused will be able to submit a final response to that rebuttal.
- **The Accused Fails to Appear for the Hearing.**
 - In the event the accused requested a hearing and fails to appear the action must continue as though no hearing was requested at all. Therefore, the disciplinary hearing panel should not continue with the hearing process and simply annotate on the DA-5 that the accused did not appear and defer the action back to the initiating officer or designated initiating member so they may prescribe any penalties pursuant to Section 907.
- **The Accused Waives their Right to a Hearing or Summary Disposition; Does Nothing.**
 - Keep in mind that a request for hearing or summary disposition must be made within fifteen (15) days of the receipt of the Special Order initiating the action.

- If the accused responds in writing that they wish to waive their rights to a hearing or summary disposition **or** does not respond, then the action continues, and you or the designated initiating member may prescribe any penalties pursuant to Section 907.
- Ensure that any and all penalties prescribed pursuant to Section 907 are affirmed by proper authority.
 - Post Initiated – You must have concurrence by majority vote of the Post to order any penalties.
 - Department Initiated – Subject to the concurrence of a majority of the Department Council of Administration.

NOTE: In all the scenarios listed above ensure that the accused is properly notified of all prescribed penalties. Also understand that these penalties do not take effect until the accused has been informed of and afforded every right to appeal and the action is properly adjudicated by a Special Order issued by the Commander-in-Chief.

CHAPTER THREE

Information for Panel President

The duties and responsibilities of the Panel President shall commence upon the issuance of the Special Order assigning the panel (Form DA-3) and are defined in Section 903(f)(1)(f) of the Manual of Procedure.

The Panel President's duties are most easily broken down into three sections: prior to the hearing, during the hearing, and after the hearing.

Once appointed, the Panel President assumes responsibility for the hearing process. Prior to the hearing, the Panel President rules on all questions concerning requests to change the date, time, location, or structure (i.e. virtual, in person, or hybrid) of the 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. You are not required to automatically grant these requests as many times defendants will request a rescheduled date to simply delay the proceedings. All Panel members and parties shall be advised in writing of the rescheduled date and time, provided the hearing is not unnecessarily delayed. The Panel President shall also decide if the hearing is open to spectators or closed.

Additionally, 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 or evidence not previously disclosed under Section 903 that either party intends to introduce as evidence at the Disciplinary Hearing.

During the hearing, the President shall maintain order and give the necessary directions for the conduct of the proceedings. This is most effectively done by knowing the disciplinary hearing procedures,

setting clear expectations for all parties (Panel Members, Prosecution, Defense, witnesses, etc.), and being firm with your rulings. The “General Rules Concerning the Conduct of Hearings” is detailed in Section 903(f)(2), but additionally a sample introductory statement as well as an outline of proceedings is included with this guide to assist you.

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 also maintain a record of all proceedings prior to the hearing, which shall be included in the record.

After closing arguments, the Panel President is responsible to preside over the closed panel deliberation. It is important to brief the Panel on the “Standard of Proof” and process for “Conviction and Sentencing.”

Finally, the Panel President must work with the Recording Officer to assure the trial record is complete with the required signatures and forwarded to the appropriate authority.

INTRODUCTORY STATEMENT
FOR THE
PRESIDENT OF A DISCIPLINARY HEARING PANEL

Call to Order.

Comrades, please take your places.

This proceeding shall be conducted pursuant to Article IX of the Bylaws and the Manual of Procedure of the Veterans of Foreign Wars of the United States.

This proceeding is a Disciplinary Action Hearing for the accused, Comrade(s) _____ Post No. _____, located in _____. This action was initiated by the preparation and delivery of Special Order (Form DA-1), Charges and Specifications (Form DA-2), Materials Relied Upon which included; the signed incident report, the investigative report and documentary or other evidence, as well as the Request for Hearing (Form DA-6) and Request for Summary Disposition (Form DA-8) in accordance with Section 903 of the National Bylaws and Manual of Procedure. As outlined in Special Order No. _____, issued by (Post, Department, National HQ) _____ and signed by (Post Commander, Department Commander, Commander-in-Chief) _____. The accused has invoked their right under the Bylaws to request a Disciplinary Hearing.

Special Order dated _____, issued by (Post Commander, District Commander, Department Commander, or Commander-in-Chief) _____ appointed a Disciplinary Hearing Panel. That Order reads as follows:

(Read the Special Order appointing the Disciplinary Panel (DA-3). If there has been a later order issued changing the detail for the Panel, the President should also read the new order or at least the names of any substituted members or other changes.)

The primary purpose of this hearing is to afford Comrade _____ notice of the Charges and evidence against him/her and give him/her an opportunity to respond to those Charges and that evidence.

This hearing will be closed (or open)¹ to spectators.

Before we get too far down the road, I would like to explain our process for today's hearing.

As indicated in the order appointing a disciplinary hearing panel, I have been designated to act as President of the Panel. In addition to having the same duties, powers and privileges as other members of the Panel, I am charged with maintaining order and giving the necessary directions for the conduct of this Hearing. Questions and objections should be directed to the President. The President will rule upon all questions concerning the admissibility of evidence, the competency of witnesses, continuances, adjournments, recesses, motions and orders as well as on the propriety of any argument or statement of counsel. I may consult with other members of the Panel before ruling upon some matters. If a member of the panel objects to the ruling, that member may request that a vote be taken by the Panel on that ruling.

Under our procedures, it is not necessary to have a verbatim transcript of these proceedings. A videotape or tape recording is sufficient. We will be using a (videotape) (tape recorder). I would ask that all participants cooperate in not talking over one another and in using their best effort to assure that the proceedings are properly

¹ Disciplinary Actions can be closed or open; closing the hearing to spectators helps maintain the integrity of the proceeding. If not specified by higher authority, this decision is made by the Panel President.

recorded. Be sure you identify yourself when you first speak on a matter. The witnesses will identify themselves as part of their testimony. Exhibits and other documents are always referred to by some identifying information such as the exhibit number or the date of the document so people listening to the tape will know who is talking and what they are talking about. These proceedings are not intended to be held as a formal court proceeding. We are all not lawyers and this isn't a courtroom; however, we do have some rules to follow that are intended to help provide for a full and fair hearing and to move this proceeding along in an orderly and efficient manner. Persons to be called as witnesses, will be sequestered until called upon. Once they have provided their testimony and it's been determined that they are not subject to being recalled by either the prosecutor or the defense, they shall be dismissed.

The first order of business will be the selection of the Panel. The entire panel shall initially be seated. Each side may challenge any member or members, but those members may be removed only for good cause. Good cause includes, but is not limited to, prejudice for or against a party, financial or other interest in the outcome or inability to afford an impartial hearing. The challenging party shall state the reasons upon which that party believes good cause exists. When a member of the panel is challenged for cause, the 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 the panel members below three.

After the Panel is selected, they will swear to judge the case fairly and impartially and will be seated.

After the Charges are read and the defendant has pleaded, the defense counsel will have an opportunity to raise and have considered by the panel any objections he has to the procedure as far as the initiation of the Charges, the adequacy of the Charges to fairly inform the defendant of the offenses, and the conduct of the hearing to that

point. Hopefully, any procedural problems can be straightened out to everyone's satisfaction at the time.

After that, each side, beginning with the Prosecutor, will have an opportunity to make a ____minute² opening statement outlining what each believes the issues are and what each expects to show by the evidence. (If there is more than one defendant, defense counsel will be given the same amount of time for each.) After opening statement, the prosecutor will introduce his evidence. The prosecutor must introduce evidence that will support the Charges and Specifications in order to prove an offense.³ When the prosecution rests, the defense may proceed to introduce evidence. Each side may then present rebuttal evidence, with the prosecutor going first. Counsel for both sides shall have the opportunity to cross-examine each witness. If an objection is made, the President will rule on that objection, consulting with the members of the Panel as necessary.

After all of the evidence is completed, each side, will have an opportunity to make a ____minute closing argument.⁴ The prosecutor will go first and may save a part of his allotted time for rebuttal.

After closing arguments, the Panel will retire and decide the case.

This will conclude my introductory statements. Are there any questions?

If not, then we shall proceed with the Panel Selection.

(The following outline will guide you through the Disciplinary Hearing but be sure to refer to Section 903 – Procedure for Disciplinary Actions.)

² The Panel can decide how long to allow. Five to ten minutes would usually be sufficient.

³ The President should make sure that the prosecutor realizes he has an obligation to demonstrate, with testimony or other evidence, even if it consists only of testimony by a witness of what the defendant said that might constitute an admission of the offense. The prosecutor cannot simply state or argue the facts to the Panel.

⁴ Again, the Panel can decide how long to permit for closing arguments. Additionally, all parties should be reminded that the Disciplinary Panel has an obligation to receive, review, and evaluate the testimony of all parties. If testimony or evidence is presented indicating that additional violations of the Bylaws or Manual of Procedure may have occurred, or obviously false statements have been placed into the record, they will be referred to the Department Commander, or Commander-in-Chief for further review and action as appropriate.

DISCIPLINARY HEARING PANEL PRESIDENT OUTLINE

1. Panel Selection
 - a. Challenging of Panel Member(s)
 - i. Prosecutor
 - ii. Accused (or Counsel)
 - b. Swearing in of Panel
2. Charges & Specifications
 - a. Reading of
 - b. Accused Plea (to each charge and specification)
 - c. Procedural Objections
 - i. Accused (or Counsel)
3. Opening Statements
 - a. Prosecutor
 - b. Accused (or Counsel)
4. Introduction of Evidence
 - a. Prosecutor
 - b. Accused (or Counsel)
5. Rebuttal Evidence
 - a. Prosecutor
 - b. Accused (or counsel)
6. Closing Argument
 - a. Prosecutor
 - b. Accused
7. Panel Deliberation
8. Panel Decision

(Note: Be sure to utilize the Form of Record of Disciplinary Action (DA-5), and Findings and Sentencing Form (DA-4).)

CHAPTER FOUR

Information for Panel Members

The ideal Panel Member is an attentive listener as the primary duties of the panel is to listen to arguments from the defense and prosecution in order to make informed decisions as it pertains to the conviction and sentencing of the accused.

Although Panel Members are not required to be Bylaws experts, it is important they come prepared with a current copy of the Podium edition for reference.

During the hearing, Panel Members will have an opportunity to ask questions through the Panel President unless the Panel President grants the Panel the ability to pose questions directly.

During closed deliberation, Panel Members are entitled to review all evidence submitted as well as listen to the recording of witness testimony and arguments.

Before and after the hearing, it is important Panel Members do not discuss their personal opinions of the case or the proceedings until after all appeals have been decided and the action has been adjudicated.

In order to convict the accused of an offense, there must be a two-thirds (2/3) vote by the Panel for each charge and specification.

CHAPTER FIVE

Information for Prosecutor

Responsible for presenting the evidence supporting the Charges and Specifications, the ideal Prosecutor is highly organized and prepared to execute their arguments. The Prosecutor may not act as a witness but may provide advice concerning procedural matters.

Prior to the hearing, the Prosecutor has collected, organized, and prepared to present all evidence and witnesses that support the charges and specifications. The Prosecutor is responsible for contacting the witnesses and assuring they are ready to give testimony in the order called.

During the hearing, the Prosecutor will assure copies of documents to include evidence are provided to each Panel Member as well as the Defense.

After the hearing, the Prosecutor is responsible for providing a rebuttal to any appeal pursuant to Section 904 of the National Bylaws and Manual of Procedure. Additionally, the Prosecutor may be called to present arguments in front of the Committee on Appeals if the action is appealed to the Council of Administration.

CHAPTER SIX

Information for 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].

Once the Recording Officer has assured the trial record is complete, the Recording Officer shall deliver the record to the respective Adjutant who will forward to the appropriate authority.

Afterword:

A committee comprised senior VFW members with practical experience in law and the disciplinary procedures of our organization worked to revise Article IX of the National Bylaws and Manual of Procedure for over a year before their recommended revisions were adopted in 2021. Prior to this revision, the organization's disciplinary procedures had not been updated since 1985.

While it was the hope of the committee that these revisions would provide a more just disciplinary process for the member, this Headquarters relies on feedback from leaders and members who put these revisions to practice.

Please direct any suggestions, questions, comments, or concerns with Article IX of the National Bylaws, Manual of Procedure, disciplinary action forms, or this training guide to Info@vfw.org.

APPENDIX

INTRODUCTORY STATEMENT
FOR THE
PRESIDENT OF A DISCIPLINARY HEARING PANEL

Call to Order.

Comrades, please take your places.

This proceeding shall be conducted pursuant to Article IX of the Bylaws and the Manual of Procedure of the Veterans of Foreign Wars of the United States.

This proceeding is a Disciplinary Action Hearing for the accused, Comrade(s) _____ Post No. _____, located in _____. This action was initiated by the preparation and delivery of Special Order (Form DA-1), Charges and Specifications (Form DA-2), Materials Relied Upon which included; the signed incident report, the investigative report and documentary or other evidence, as well as the Request for Hearing (Form DA-6) and Request for Summary Disposition (Form DA-8) in accordance with Section 903 of the National Bylaws and Manual of Procedure. As outlined in Special Order No. _____, issued by (Post, Department, National HQ) _____ and signed by (Post Commander, Department Commander, Commander-in-Chief) _____. The accused has invoked their right under the Bylaws to request a Disciplinary Hearing.

Special Order dated _____, issued by (Post Commander, District Commander, Department Commander, or Commander-in-Chief) _____ appointed a Disciplinary Hearing Panel. That Order reads as follows:

(Read the Special Order appointing the Disciplinary Panel (DA-3). If there has been a later order issued changing the detail for the Panel, the President should also read the new order or at least the names of any substituted members or other changes.)

The primary purpose of this hearing is to afford Comrade _____ notice of the Charges and evidence against him/her and give him/her an opportunity to respond to those Charges and that evidence.

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Before we get too far down the road, I would like to explain our process for today's hearing.

As indicated in the order appointing a disciplinary hearing panel, I have been designated to act as President of the Panel. In addition to having the same duties, powers and privileges as other members of the Panel, I am charged with maintaining order and giving the necessary directions for the conduct of this Hearing. Questions and objections should be directed to the President. The President will rule upon all questions concerning the admissibility of evidence, the competency of witnesses, continuances, adjournments, recesses, motions and orders as well as on the propriety of any argument or statement of counsel. I may consult with other members of the Panel before ruling upon some matters. If a member of the panel objects to the ruling, that member may request that a vote be taken by the Panel on that ruling.

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After the Panel is selected, they will swear to judge the case fairly and impartially and will be seated.

After the Charges are read and the defendant has pleaded, the defense counsel will have an opportunity to raise and have considered by the panel any objections he has to the procedure as far as the initiation of the Charges, the adequacy of the Charges to fairly inform the defendant of the offenses, and the conduct of the hearing to that

point. Hopefully, any procedural problems can be straightened out to everyone's satisfaction at the time.

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After closing arguments, the Panel will retire and decide the case.

This will conclude my introductory statements. Are there any questions?

If not, then we shall proceed with the Panel Selection.

(The following outline will guide you through the Disciplinary Hearing but be sure to refer to Section 903 – Procedure for Disciplinary Actions.)

² The Panel can decide how long to allow. Five to ten minutes would usually be sufficient.

³ The President should make sure that the prosecutor realizes he has an obligation to demonstrate, with testimony or other evidence, even if it consists only of testimony by a witness of what the defendant said that might constitute an admission of the offense. The prosecutor cannot simply state or argue the facts to the Panel.

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DISCIPLINARY HEARING PANEL PRESIDENT OUTLINE

1. Panel Selection
 - a. Challenging of Panel Member(s)
 - i. Prosecutor
 - ii. Accused (or Counsel)
 - b. Swearing in of Panel
2. Charges & Specifications
 - a. Reading of
 - b. Accused Plea (to each charge and specification)
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 - b. Accused (or Counsel)
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 - b. Accused (or Counsel)
5. Rebuttal Evidence
 - a. Prosecutor
 - b. Accused (or counsel)
6. Closing Argument
 - a. Prosecutor
 - b. Accused
7. Panel Deliberation
8. Panel Decision

(Note: Be sure to utilize the Form of Record of Disciplinary Action (DA-5), and Findings and Sentencing Form (DA-4).)

SPECIAL ORDER INITIATING DISCIPLINARY ACTION

Special Order No. _____ Date: _____

Headquarters, VFW Post No. (or Department) _____

To: <Insert Accused Name & Address>

Please be advised that a disciplinary action has been initiated against you pursuant to Article IX of the Bylaws 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), Materials Relied Upon, Request for Hearing (DA-6), Request for Summary Disposition (DA-8).

Pursuant to Article IX of the Bylaws and Manual of Procedure, you are advised that you may request a Disciplinary Hearing or a Summary Disposition. To request a Disciplinary Hearing or Summary Disposition, you must notify:

<Insert Name of Commander (Initiating Officer) & Address>

in writing, within fifteen (15) days of the date that this order was received by registered or certified mail or either personally delivered to you. If not using the attached forms DA-6 or DA-8, the notification must specifically state that a Disciplinary Hearing or Summary Disposition is requested and sent via **Registered or Certified Mail**. 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. If you do not request a Disciplinary Hearing or Summary Disposition within the time stated, the initiating officer may order penalties pursuant to Section 903(d) of the National Bylaws.

Copies of Article IX of the National Bylaws and Manual of Procedure as well as the Guide to Conducting Disciplinary Actions may be obtained electronically behind the member login at VFW.org or by request made to the National Headquarters.

By order of _____
Commander (Initiating Officer)

Post Name & 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.

Initiating Officer (Name & Signature) Date

Official:

Adjutant (Name & Signature) Date

(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

Special Order No. _____ Date: _____

Headquarters, VFW Post No. (or Department): _____

In Accordance with the provision of section 903 of the National Bylaws and Manual of Procedure, the following Disciplinary Panel is hereby assigned:

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

The following have been identified as participants in the hearing:

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

The Disciplinary Hearing Panel shall convene 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: _____

By order of: _____
Commander (as appropriate)

Post Name & Post No. (or District or Department as appropriate)

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: _____
(Guilty or Not Guilty)

OR

On Charge 1, Specification 1: _____

On Charge____, Specification_____

On Charge____, Specification_____

On Charge____, Specification_____

On Charge____, Specification_____

On Charge____, Specification_____

On Charge____, Specification_____

On Charge____, Specification_____

On Charge____, Specification_____

The panel imposed the following sentence: _____

Prosecutor (Name & Signature)

President of the Panel (Name & Signature)

Date

Accused or counsel (Name & Signature if present)

Note: In the event the accused is not present, a copy of the Findings and Sentence shall be mailed to the accused 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. _____, Panel Member
Comrade _____ of Post No. _____, Panel Member
Comrade _____ of Post No. _____, Panel Member
Comrade _____ of Post No. _____, Panel Member
Comrade _____ of Post No. _____, Panel Member
Comrade _____ of Post No. _____, Panel Member
Comrade _____ of Post No. _____, Panel Member

ABSENT

Comrade _____ of Post No. _____, _____
Comrade _____ of Post No. _____, _____
Comrade _____ of Post No. _____, _____

The accused received notice of the Charges and Specifications in accordance with Section 903(b) and requested a hearing. Yes___No___

The following panel members were challenged (for cause) and excused:

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

Challenges for cause were made by the defense to panel member(s):

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

Accused (or Defense Counsel) stated that he had no objection to trial by any member remaining on the panel. Yes____No____

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

On Charge 1, Specification 1: _____

On Charge_____, Specification:_____

On Charge_____, Specification:_____

On Charge_____, Specification:_____

On Charge_____, Specification:_____

On Charge_____, Specification:_____

On 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? Yes_No____

An argument was made by the Defense Counsel on behalf of the accused? Yes__No__

The accused took the witness stand in own defense? Yes_No____

The accused was present at the trial? Yes____No____

President of the Panel Name & Signature

REQUEST FOR HEARING

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

The following have been identified as participants in the hearing:

Accused _____
Name and Signature

Defense Counsel _____, (if known)
Name, Member #, Post # (if applicable)

As a result of this action, I request a hearing in accordance with Section 903 of the National Bylaws and Manual of Procedure.

Accused Name & Signature Date

Note: This request is to be mailed, registered or certified mail, and must be received within fifteen (15) days by the initiating authority listed on the Special Order (Form DA-1).

NOTIFICATION OF PENALTY (NO HEARING/SUMMARY DISPOSITION REQUESTED)

(Insert Date)

(Accused Name), Member
VFW Post XXXX
Address 1
City, State, ZIP

*Certified Mail Return Receipt Requested
No.*

Comrade (Accused Name):

Special Order No. XXXX initiated an Article IX Disciplinary Action against you. The order, along with the required copies of the Charges and Specifications (Form DA-2), Materials Relied Upon, Request for Hearing (DA-6), Request for Summary Disposition (DA-8) were sent to you certified mail, return receipt requested pursuant to Section 903 of the VFW Manual of Procedure. You were advised that you may request a Disciplinary Hearing or Summary Disposition; you failed to do so.

As such, and in accordance with Section 903 of the National Bylaws, In the event that the accused member does not properly request a Disciplinary Hearing or Summary Disposition within fifteen (15) days or, prior to the expiration of the fifteen (15) day period, advises the Commander or the designated member initiating the action that a Disciplinary Hearing or Summary Disposition is not desired, the Commander or the designated member initiating the charges, may take such action as is deemed appropriate including the ordering of any penalties pursuant to Section 903(d) of the National Bylaws.

Therefore, I have ordered with concurrence of the Post the penalty of (state penalty; if desired you may add the reason for your penalty, but it is not required.)

Pursuant to Section 903(d) of the National Bylaws, this order is not subject to appeal.

By order of: _____
Commander (date)

Post No.

Official: _____
Adjutant (date)

cc:
Department Adjutant

NOTIFICATION OF PENALTY (NO HEARING/SUMMARY DISPOSITION REQUESTED)

(Insert Date)

(Accused Name), Member
VFW Post XXXX
Address 1
City, State, ZIP

*Certified Mail Return Receipt Requested
No.*

Comrade (Accused Name):

Special Order No. XXXX initiated an Article IX Disciplinary Action against you. The order, along with the required copies of the Charges and Specifications (Form DA-2), Materials Relied Upon, Request for Hearing (DA-6), Request for Summary Disposition (DA-8) were sent to you certified mail, return receipt requested pursuant to Section 903 of the VFW Manual of Procedure. You were advised that you may request a Disciplinary Hearing or Summary Disposition; you failed to do so.

As such, and in accordance with Section 903 of the National Bylaws, In the event that the accused member does not properly request a Disciplinary Hearing or Summary Disposition within fifteen (15) days or, prior to the expiration of the fifteen (15) day period, advises the Commander or the designated member initiating the action that a Disciplinary Hearing or Summary Disposition is not desired, the Commander or the designated member initiating the charges, may take such action as is deemed appropriate including the ordering of any penalties pursuant to Section 903(d) of the National Bylaws.

Therefore, I have ordered with concurrence of the Department Council of Administration the penalty of (state penalty; if desired you may add the reason for your penalty, but it is not required.)

Pursuant to Section 903(d) of the National Bylaws, this order is not subject to appeal.

By order of:

Commander (date)

Department

Official:

Adjutant (date)

cc:

Adjutant General

REQUEST FOR SUMMARY DISPOSITION

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 summary disposition in accordance with Section 903 of the National Bylaws and Manual of Procedure. I understand under this procedure I cannot contest that the facts alleged in the Charges and Specifications, but request 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.

Accused Name & Signature

Date

Note: This request is to be mailed, registered or certified mail, and must be received within fifteen (15) days by the initiating authority listed on the Special Order (Form DA-1).

Section 907 Penalties & Sentencing Considerations

Any penalty imposed under Section 907 of the National Bylaws must be reasonable. For any such penalty to be determined reasonable, the rationale must be provided based on an analysis that includes, but may not be limited to, certain factors. Failure to include the rationale for the penalty removes the presumption that the penalty is reasonable in regard to the offense committed.

In determining any penalty for offenses, a member has been found guilty of, the following factors should be considered.

1. The nature and seriousness of the offense and its relation to the member's duties, position, and responsibilities, including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated:
2. The member's position in the Veterans of Foreign Wars, including supervisory or fiduciary role, contacts with the public, and prominence of the position:
3. The member's past disciplinary record or pattern of behavior as it is known at the time of sentencing:
4. The member's past contributions to the Veterans of Foreign Wars and its mission, including length of membership, volunteer activities, and performance in appointed or elected positions:
5. Consideration of the penalty based on consistency and fairness in reference to penalties which have or may be imposed upon other members for the same or similar offenses:
6. The impact of the offense to the reputation of the Veterans of Foreign Wars and its members to include perception from outside the organization:

7. The clarity and/or frequency in which the member was put on notice of any rules that were violated in committing the offense or had been warned about the offense in question:
8. The potential positive or negative effect on the guilty member and subsequent effects on the aggrieved member(s):
9. Mitigating and/or aggravating circumstances surrounding the offense such as personality problems, cognitive skills, harassment, bad faith, malice, or provocation on the part of others involved in the matter:
10. The adequacy and effectiveness of an alternative penalty to deter such conduct in the future by the member or others. Can a lesser penalty provide the same outcome or effectiveness as a more extreme penalty.

When a determination of guilt is made, the authority imposing any penalty establishes a presumption that there is a connection between the misconduct and the penalty when the findings include an explanation as to why said authority reached its determination.

Any officers or appointed members involved in evaluating any disciplinary action appeal shall balance the needs of the Veterans of Foreign Wars to maintain good order and discipline with the membership rights bestowed upon a member by the National Bylaws.

The penalty must be reasonable based on the facts and circumstances of each case. Where a lesser penalty set forth in Section 907 of the National Bylaws achieves the proper balance, the lesser penalty may be imposed.

Penalty Guidelines & Examples

The following information should be used as a guide to help assist in determining and assigning penalties for those members who have been found guilty of offenses recognized in Section 902 of the National Bylaws and Manual of Procedure.

These penalties shall be assigned only after proper imposition by the Initiating Officer with concurrence from the designated authority as outlined in Section 903(d)1-5 of the National Bylaws or by Resolution Agreement, Summary Disposition, or Disciplinary Hearing Panel.

In looking at Section 907 a wide range of penalty options are available after considering the impact the incident or act had to the Post, District, Department and National VFW.

1. Reprimand.

A reprimand is an official formal censure or expression of disapproval administered to a person found guilty of a violation under Section 902 of the National Bylaws. Reprimands must be in writing and detail the overall disapproval for the members behavior, performance, or actions. Typically reprimands specifically state the issues at hand, consequences of the actions and the expectations for improvement.

***NOTE:** Since reprimands are a recognized penalty under Section 907, the issuance of a reprimand without initiating and following the procedures for Article IX is prohibited.*

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

Per the National Bylaws every VFW member has the following rights and Section 907 (2) allows those rights to be suspended as part of a penalty. Keep in mind that any suspension of certain rights of membership may have a direct and unintended impact on other rights afforded.

- a. To attend Post, District, Department and National business & committee meetings (*Suspending meeting attendance rights may affect other rights of membership listed below.*)
- b. To vote
- c. To make, second and debate motions

- d. To serve as a delegate
- e. To hold office
- f. To serve on a committee
- g. To transfer membership pursuant to Section 107
- h. To appeal – *(Right of appeal cannot be suspended or revoked as it pertains to this section.)*

The second part of 907 (2) states for a specified period of time. Keep in mind that a suspension is not the same as a revocation. Suspension infers a temporary loss while a revocation infers permanent loss. As such the suspension of one or more membership rights can only be temporary.

Most government agencies and court systems list temporary as one (1) year or less with three (3) months as the minimum. While three (3) months to one (1) year is a guideline the totality of the circumstances may dictate a shorter or longer period of time. If this is the case, you should look at other options available that might serve the same purpose while communicating the degree and severity of the penalty.

3. Suspension or removal from office.

Removal from office specifically applies to the members' right to hold or continue to hold an elected or appointed office or committee position. Removal from office as a penalty pursuant to Section 907 works in conjunction with the officer removal process in Section 220, 420, 520 & 620 in that our Bylaws dictate such removal is only in place for the remainder of the term for which the member was elected or appointed.

Suspension from elected or appointed office or committee positions is not a removal as it applies to future offices that may be held and requires a time limit or end date. Therefore, when imposing a suspension from office the penalty should be specific in establishing the time period in which the member will be unable to hold specific positions.

Most cases of suspension from office are from one (1) to five (5) years and cover elected and appointed offices or committee positions. While one (1) to five (5) years is a guideline the totality of the circumstances may dictate a shorter or longer period of time. If longer than five (5) years one should look at other options available that might serve the same purpose while communicating the degree and severity of the penalty.

Also, any imposed penalty of suspension from holding office should consider whether it is for a specific office or any and all offices and should also designate that the position which cannot be held is at the Post, District, Department or National level or a combination of any and all levels.

4. Suspension from membership for a specified period of time.

This penalty strips a member of all membership rights but only for a specific period of time. This essentially means their membership status is on hold and they no longer enjoy the rights or privileges of being a member of the VFW for the time established. The time guidelines on this are five (5) – ten (10) years. While five (5) to ten (10) years is a guideline the totality of the circumstances may dictate a shorter or longer period of time. If longer than ten (10) years one should look at other options available that might serve the same purpose while communicating the degree and severity of the penalty.

5. Termination of membership.

This penalty should only be reserved for the most egregious of actions or conduct that would or did bring or tend to bring dishonor upon the VFW.

6. Other administrative actions deemed appropriate.

This is the imposition of sanctions or penalties that are independent of or assigned in conjunction with any other penalty listed in Section 907.

Some examples are as follows.

- Public or personal apology.
- Written or verbal apology.
- Training
 - Initial
 - Supplemental
 - Corrective
- Restitution or restoration (Fines cannot be included).
- Complying with mandates of court or legal authorities.
- Transfer to Department Member at Large for a specified amount of time.

NOTE: Section 908 of the National Bylaws allow any member or former member one opportunity to petition directly to the Commander-in-Chief to have their conviction pardoned or their sentence commuted provided that at least five (5) years of the pertinent sentence have been served.