

Discipline of Post Members Department of Oklahoma

This document is provided to assist officers and members. It is based on the By-law Article XII of the Oklahoma Constitution and By-laws (CBL) dated 23 July 2022. The red letters are Judge Advocate comments provided for clarification and are not intended to change the CBL intent. The current By-law remains the governing document until changed at a Department Convention.

1. All charges shall be made under oath, in writing, by the accuser or accusers. (Section 2) **Accuser implies it can be one person. The national Officer Guide recommends the accuser must be a member of the post, but this is not included in the National or Department CBLs. Evidence to support an allegation presented by an individual that is not a member of the post should be considered but the resulting charge, if any, should be presented by a member of the post. The charges are to be made under oath so as a minimum attestation should be noted by the signature or signatures of the accusing party.**
2. Charges shall be based upon disloyalty, neglect of duty, dishonesty or conduct unbecoming a member of The American Legion. (Section 2) **The Department CBL includes misfeasance and malfeasance but this conflicts with the National CBL which does not include them. The charge could also be the accused is a member of an organization which has its aim to overthrow the US government or subscribes to any group opposed to our form of government per the National CBL although it is not included in the Department CBL. The document should include specific allegations to support the charge and not simply repeat wording from the By-law. For example, what specific actions were deemed to be "conduct unbecoming". Evidence and/or a witness list should also be provided by the accuser.**
3. The charges shall be filed with the Post Commander or Adjutant. (Section 3) **The Commander or Adjutant would need to establish a date, time, and place for a hearing since it will be required in item 4 below. Consideration should be given to having the hearing at the next regular post meeting but must be within the time frame referenced in item 4 below.**
4. A copy of the charges shall be served upon the accused either by an officer of the Post who shall certify as to delivery of said charges into the presence of the accused, or by registered mail directed to the address of the accused shown on the current year's membership record of the Post. The copy of the charges so served shall contain a notice to the accused of the date, time and place of the hearing of such charges, such date to be not sooner than 15 days after service has been obtained. (Section 3)

5. Reasonable postponement should be accorded to permit the hearing to be held at such time as will best ensure the production of all real evidence bearing on the charges provided; however, that the accused may insist upon the hearing within 30 days of the service of charges upon the charged member. (Section 3) **An appropriate investigation may also be conducted if deemed warranted and the Commander may appoint an investigator or committee to do so. Any witnesses should be asked to attend the hearing. However, written statements by a witness may be considered if the witness cannot or will not agree to attend the hearing.**
6. **Punishment.** By a two-thirds majority of those present and voting, upon a finding of guilty a member may be reprimanded, suspended for a time not to exceed one year, or expelled from The American Legion. Notice of suspension or expulsion of any member shall immediately be sent to the Department Adjutant. The decision of the Post shall be final unless appealed. (Section 4) **Clear definitions are not provided for the offenses listed in item 2 above. The verdict rendered at the hearing determines if the evidence presented does, or does not, rise to a level warranting punishment.**
7. **Appeal.** Any member who has been so disciplined has the right to appeal to the Department Executive Committee, whose decision on appeal shall be final. Said appeal must be in writing and filed with the Department within thirty (30) days after the action appealed from is taken. (Section 5) **All documents should be preserved as a matter of record in case of an appeal. As a minimum, they would include the written charge, the notice provided to the accused with proof of receipt, and minutes from the hearing. Since a guilty verdict requires 2/3 majority of the members present, the vote should be a roll call vote documenting result.**
8. If the punishment is suspension or expulsion from The American Legion, the accused may also appear personally before an Appeals Committee named by the Department Commander, which Committee shall report its findings and recommendations to the Department Executive Committee. (Section 5)
9. When an appeal is taken, the Post shall be notified by Department and given at least twenty days within which to answer said appeal. When a request is made to appear before the Appeals Committee, the Post shall be given at least twenty days' notice and afforded an opportunity to also appear. (Section 6)

Post Decorum and Order

In order to maintain order and decorum within the Post facilities, nothing contained herein shall prohibit a Post, with or without a hearing, from suspending a member from the use of the Post facilities for a period not to exceed 90 days, provided however, that the member shall have the right to a hearing before the Post Executive Committee or the Post membership if the member requests same in writing within ten (10) days after being advised of said suspension and said hearing shall be held within ten (10) days after the Post is so notified. (Section 7)

It should be noted that the basis of this provision is to “maintain order and decorum”. This would imply a member has a history of being disruptive or has committed an overt act. It could also imply the member has ignored warnings. There is no guidance as to the decision maker: however, since appeal is to the Post Executive Committee it stands to reason the decision maker should be the Post Commander or Vice Commander in the absence of the Commander. The notice of suspension should be in writing delivered in person to the member or mailed via registered mail to the member’s address of record to establish the timeline to request a hearing.

Post Officer Removal

A Post Officer, after being given 30 days’ notice of the intended action, may be removed from office for neglect of duty, or conduct unbecoming the office the member holds, by action of two-thirds of the membership of the Post present and voting at a regular meeting and no formal charges shall be necessary to initiate such removal. Provided, however, that such Post Officer shall be entitled to know the reasons for such action and upon his/her request to be heard at a regular meeting in his/her own defense either before or after the action shall have been taken, and if this defense is first heard after the action has been taken, the membership of the Post shall reconsider his/her removal from office. (Section (8))

Simply stated the post elects the officers and can remove them for cause. This procedure implies a motion is made and approved by a 2/3 majority at a regular meeting. It also implies the accused officer may not be present at the meeting. If present, the accused could present the defense at the meeting or may request to be heard at the next regular meeting.

A Post CBL may address discipline within the post but must not conflict with the National or Department CBL. The Post CBL must be approved by the Department Judge Advocate (Oklahoma Department Constitution Article VIII, Section 3).

Dale Haynes
Judge Advocate
8 December 2024