

# **Disciplinary Guide for Commanders and Judge Advocates**



**AMVETS Department of Florida**

# Discipline Guide for Commanders and Judge Advocates

## PURPOSE

This handbook is intended as a guide for Post Commanders and Judge Advocates. It is an unofficial manual for discipline policies and procedures within the AMVETS Department of Florida. It is **not** a replacement for the appropriate Constitutions and Bylaws.

## AMVETS DISCIPLINE PHILOSOPHY

The AMVETS discipline procedures are designed to balance the member's individual rights with the need for good order within our organization, while also allowing for the correction of inappropriate behavior. AMVETS members do not forfeit their constitutional rights when they join, or when they violate our standards. They maintain the right to face their accuser and they have the right against self incrimination. AMVETS cannot be disciplined without due process and punishment can only be administered following a finding of guilt at a hearing. One of our primary discipline objectives is that each Post will be the judge of its own membership.

Discipline of employees is covered by State and Federal Statutes. All employees must have a job description and the Post must have a personnel policy that specifically addresses the discipline process.

## RESPONSIBILITIES

### Post Commanders

Post Commanders have the sole responsibility for discipline matters within their Post. They are the only officer authorized to formally forward charges to an accused member. This is not a shared responsibility with the Executive Committee. Commanders can only delegate their discipline authority under special circumstances which are outlined below. Commanders are expected to handle discipline matters with the utmost discretion and confidentially. They have the authority to arbitrate settlements of formal charges when it is in the best interest of the Post. Commanders are expected to recuse themselves from all cases where they have first hand knowledge or where there is even an appearance of a conflict of interest. Commanders are also expected to keep records relating to discipline and to be accountable for their actions.

### Judge Advocate

The Post Judge Advocate is the primary advisor to the Commander on discipline matters. They are expected to be the procedural expert within the Post. The Judge Advocate may be called upon by the Commander to investigate discipline matters for the Commander and to prepare for the prosecution of charges. The judge Advocate acts as the prosecutor at all grievance hearings.

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Post Judge Advocates are expected to handle discipline matters with the utmost discretion and confidentiality.

## Executive Committee Members

Executive Committee Members are expected to sit in judgment on "Category A" charges. They are expected to recuse themselves from all cases where they have first hand knowledge or there is even an appearance of a conflict of interest. They are expected to keep all discipline matters confidential. Executive Committee members are expected to hear appeals of "Category B" charges.

## Grievance Committee Chair

The Grievance Committee Chair, appointed by the Commander, is responsible for determining all matters of relevancy during the hearing, and for maintaining order during the grievance hearing proceedings. The chair will only vote in case of a tie.

## AMVET Members

AMVET Members are expected to sit in judgment when appointed by the Commander. They are expected to recuse themselves from all cases where they have first hand knowledge and there is even an appearance of a conflict of interest. They are expected to keep all discipline matters and deliberations confidential. There is an expectation of honesty regarding all discipline matters.

## **TYPES OF GRIEVANCES**

Florida Department of AMVETS recognizes two categories of infractions for which a member can be disciplined. Category A and Category B.

Category A is for the most serious offenses. Category A complaints must be filed within 45 days of discovery (statute of limitations). If the charges filed are against an AMVET then they are heard by the Post Executive Committee. If the charges are against a member of a subordinate organization, they are forwarded to the Department Commander who will forward to the appropriate Department Subordinate Organization for their further handling. If the charge is against the Commander, it is forwarded to the Department Commander for his further handling. If an AMVET member is found guilty of a Category A charge, the member may be suspended or expelled from AMVETS.

Category B charges are for violation of House Rules. Category B complaints must be filed within 15 days of the incident. All Post members enjoy the same privileges, responsibilities and rights within the AMVETS Post canteen. It does not matter whether they are an AMVET, Auxiliary, Sons or Juniors member. Once they are a member of a Post they are expected to conform to the same set of published House Rules. Because Category B offenses relate to

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behavior issues within the canteen; the maximum punishment, if found guilty, is the permanent denial of canteen privileges.

Category B charges apply to all members with canteen privileges. If the accused is a member of the Ladies Auxiliary or Sons of AMVETS, their Category B charges are processed by the Post Commander the same as an AMVET member. Commanders are authorized to appoint Auxiliary and Son members to the Grievance Committee for Category B hearings. When the Commander chooses to do so, they should request a representative from the Ladies President or the Sons Commander. When they function as a member of a Grievance Committee, they have the same responsibilities as an AMVET member.

## GRIEVANCE PROCEDURES

Discipline procedures begin when a member in good standing charges another. These charges must be notarized and filed with the Commander. The Commander is expected to determine if the charges are valid. If the Commander finds the charges not valid, he notifies the individual submitting the charges that there is no basis for the charge. And the case is closed. If it is determined the charges are frivolous, the accuser may be charged with a category A charge.

If valid, the Commander determines if a suspension, pending the hearing, is warranted. The Commander forwards the charges to the accused via certified mail, with a return receipt. The notification letter must contain: the specific charge, specifications relating to the specific charge, the category of charge, the date, time and place of hearing. The charge sets forth an offense, that is an act or conduct that may cause penalty under the governing rules of which the accused is alleged to be guilty. A specification states what the accused is alleged to have done, if true, constitutes an instance of the offense indicated in the charge. The hearing date can be no sooner than 30 days from the post mark date to allow the accused time to prepare a defense. The accused must be given a copy of the original notarized charges. They also must be advised they have right to be represented, but they must be present for their representative to be recognized; they may also have a recorder present, all at their own expense. They must be notified the hearing will take place whether they attend or not. If a suspension is warranted it must be outlined in the letter.

The Commander appoints a minimum of five members to hear the grievance. No member with first hand knowledge of the incident may sit in judgment. If it is a Category A offense the members should be from the Post Executive Committee. If it is a Category B offense the members should not be from the Post Executive Committee, because they may be needed to hear a possible appeal of the case. The Commander also appoints a Committee Chair; the Committee Chair will determine all questions of relevance and will only vote in case of a tie.

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The Post Judge Advocate acts as the prosecutor during the hearing. If the member is represented, the representative will speak for the accused who will remain silent. Witnesses are allowed in the hearing room only while they are being questioned. Following a presentation of the both the prosecutions case and the defense the Committee is left alone to deliberate. Grievance Committee members are the only ones in the room during deliberations. These deliberations are secret and not recorded. The committee must first decide if there is a basis or foundation for the charge, if yes, they determine guilt or innocence. A vote of two thirds is required to determine guilt. If not guilty, the case is closed. If the accused is found guilty the Committee must determine the proper punishment.

The Judge Advocate and the accused are then notified of the findings. The accused should also be officially notified in writing of the results and their appeal rights. All grievance hearings and deliberations are closed. Only the results should be made available to the membership. For example: AMVET John Smith was found guilty of conduct unbecoming of an AMVET and the punishment is, "he is banned from the Post and placed in MAL (Member At Large) status".

Because the accused is presumed innocent until proven guilty, the Grievance Committee is expected to have a full hearing to conclusion regardless of the presence of the accused. The accused is still expected to be officially notified of the hearing results and their appeal rights. The accused must be notified that they only have 15 days to appeal the sentence of the grievance committee.

### APPEALS

Members who have had a grievance hearing, where they are found guilty have the right to appeal. Appeals are reserved to ensure the rights of the members have not been abused; error is the normal basis to review the actions. In other words, appeals need to be based on a mistake in the proceedings that substantially affects the rights of the member and undermines the fairness and integrity of the system. The appeal process is not designed or empowered to rehear the case and replace the judgment of the body who originally heard the case. The member requesting an appeal must specify the procedural errors that have led to a violation of their rights. The case should be thoroughly reviewed to determine if there is merit in the appeal items the member has brought forward.

These appeals will be referred to one level above where the original hearing was held. Appeals must be filed with the appropriate Commander within 15 days. If the hearing was for a Category A offense the appeal must be filed with the Department Commander. If the hearing was for a category B offense the appeal must be filed with the Post Commander

For an appeal of a Category A charge, the Department Commander and the Department Judge Advocate will provide a recommendation to the

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Department Grievance Committee. The Committee's decision regarding the appeal is final.

For an appeal of a Category B charge, the Post Commander will refer the appeal to the Post Executive Committee. The Committee's decision regarding the appeal is final.

The committee considering the appeal must decide to uphold or deny the appeal. Following a decision to uphold, they have the authority to negate or reduce the punishment. They also have the authority to refer the charge back to the original committee if they believe a fair and impartial hearing can still be achieved. Under no circumstances can the Committee increase the punishment.

## **SUSPENSION OF MEMBERSHIP AND MEMBERSHIP PRIVILEGES**

The suspension of member's privileges prior to a hearing is a tool Commanders can use to help maintain good order within the Post. These suspensions pending hearings are not punishment; they are intended to protect both the accused member and the membership from what can be a contentious situation. Punishment can only occur after a finding of guilty at a hearing.

These suspensions can only be imposed after the Commander has received notarized charges and determined they are valid. Post Commanders are expected to use discretion when imposing suspensions prior to hearings. The suspension can only be from the time the Commander notifies the accused until the hearing.

If a member is charged with a "Category A" offense, the commander is authorized to suspend their AMVETS membership pending their hearing. When an AMVETS membership has been suspended, they are not allowed on Post property except for their hearing. Any violation of this can be considered trespassing.

If a member is charged with violating house rules, "Category B" offense, Commanders are authorized to suspend the members' canteen privileges only, pending their hearing. If canteen privileges have been suspended, members are still allowed to participate in AMVET, Auxiliary and Sons functions and meetings. They are not allowed to enjoy the canteen and must leave the premises after the function or meeting. They are not eligible to be signed in as a guest.

Bylaws, Standing Rules, House Rules and Commanders can not automatically impose suspensions on members. Any such imposition would violate the members' right to due process.

Bartenders/servers within canteens still maintain the authority to deny alcohol service to intoxicated members and to ask them to leave the premises for

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the night. These actions are not considered a suspension of privileges. They can be no longer than 24 hours.

## **INVESTIGATIONS**

Commanders have the authority to investigate and arbitrate charges. If following an investigation, the Commander finds no grounds for charges he is not bound to forward such charges. As with all matters of discipline investigations must be performed with the utmost confidence.

## **ARBITRATION**

The goal of arbitration is a just settlement between the accused, the accuser and the Post. Arbitration needs to occur after the Commander determined there is a basis for the charges and before hearings begin. Commanders have the responsibility and authority to arbitrate settlements. This is not a shared responsibility of the Post Executive Board and like other matters should be held in confidence.

## **SPECIAL CIRCUMSTANCES**

Certain circumstances may require a modification to the normal procedures to ensure a fair conclusion to discipline matters.

### Charges of a Criminal Nature

If AMVET discipline charges are brought concerning a criminal matter, Commanders should work with law enforcement and allow them to determine if the member is going to be criminally charged. It is strongly suggested that the AMVET discipline procedures run in concert with the criminal proceedings. If you begin AMVET proceedings before law enforcement has made any decisions, you may jepordise their proceedings. You also do not want the individual to use the AMVETS actions to their advantage with law enforcement. It could be embarrassing for the Post if you hurry proceedings and find the member not guilty while the court finds them guilty or vice versa. Once law enforcement has charged the member you can use that action to begin AMVET discipline proceedings. Commanders should delay Grievance Hearings until the conclusion of any legal actions. The court findings can and should be used during the grievance.

### Commander as Accuser

In some circumstances the Commander may be the person who brings charges against a member, in other words the Commander is the accuser. In this situation, the Commander gives their notarized charges to the First Vice Commander and then removes themselves from all decisions regarding the case.

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In these cases, the Vice Commander has all the responsibilities and authorities of the Commander for the particular case. They are expected to handle the matters without influence, input or consultation from the Commander. The Commander is expected to participate as the accuser only.

### Judge Advocate Not Available

If the Post Judge Advocate is not available to perform their duties for a particular case the Commander may appoint another AMVET to assume these responsibilities for the particular case only. This appointment must be a member of the Post. The Commander cannot appoint a member of another post to be the Judge Advocate.

### Executive Committee Members Not Available

If sufficient numbers of unbiased Executive Committee members are not available for a hearing the Commander shall appoint other AMVETS members. If possible the Commander should attempt to get the Post membership's approval of the appointments.

### Charges Against Post Commanders

Charges against Post Commanders are handled at the Department level. Because of the nature of the duties and responsibilities of a Post Commander, notarized charges against a Post Commander are sent to the Department Commander.

### Charges Against a Member of the Ladies Auxiliary, or Sons of AMVETS by an AMVET

If an AMVET charges a member of the Ladies Auxiliary, or the Sons of AMVETS for an offense other than violating the House Rules; the Post Commander forwards these charges to the Department Commander. The Department Commander will forward the charges to the appropriate Subordinate Organization for their further handling.

### Charges Against an AMVET by a Member of the Ladies Auxiliary, or Sons of AMVETS

Members of subordinate organizations may not initiate charges against a member of AMVETS, except for violations of House Rules.

## **OTHER CONSIDERATIONS**

### Record Keeping

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Commanders should keep written records of all actions related to discipline. They should communicate in writing with the accused and the accuser. If they need an investigation this appointment should also be done in writing. They should keep a timeline with dates and times of all conversations and actions. These records need to be securely maintained for a minimum of one year following the end of all appeals.

## Timeliness of Actions

There is a five-working day requirement for the Commander to take action on charges. If the Commander cannot determine validity of charges within five days they need to formally task someone in the Post to investigate, preferably the Judge Advocate. They should also notify the accuser that they have acted on the charges and begun an investigation. They should also remind the accuser of the need for continued confidentiality.

There is a minimum of 30 days required before a hearing can take place. There is no stated maximum time frame. Commanders are expected to settle matters in a timely manner and to delay discipline is not conducive to good order and discipline. Commanders are accountable for excess delays. Delaying grievance hearings because of pending criminal proceedings is allowed.

AMVETS has a statute of limitations for discipline matters. Category A charges must be filed within 45 days of discovery, while Category B must be filed within 15 days of occurrence.

## Member in Good Standing

An AMVET member is in good standing when they are fully paid up in all accounts and there are no charges pending against them. Only members in good standing can charge other members.

## Retaliation

Retaliation against an AMVET who in good faith filed charges against another member will not be tolerated.

## Observing Discipline Actions of Subordinate Organizations

The disciplinary actions of a subordinate organization will be observed by the Post of AMVETS to which that subordinate organization belongs to. In the statement above, the use of the word observed is defined as "recognized or obeyed". If for example the Ladies Auxiliary suspends a member from their organization, then the Post cannot allow that individual to be in the Post as a guest.

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## **SUGGESTED GRIEVANCE HEARING RULES AND PROCEDURES**

### **Rules**

Hearings are closed meetings  
Chair will decide all matters of relevancy  
All proceedings will be recorded  
Secret with exception of the results when approved  
Representation if you choose to be represented the representative is your spokesperson  
    You will not be permitted to speak.  
2/3 Majority required to determine guilt  
Expectation is that all will be truthful  
    Not sworn  
Accused must be present for their representative to be recognized.  
The accused and their representative are the only people in the room during all proceedings except deliberations.  
Findings should be followed up in writing

### **Procedures**

Explain Rules  
Review the Order of proceedings

Order of Proceedings  
    Read Charges and specifications  
    Plea to each Charge  
    Opening statements  
        Prosecution First  
        Defense  
    Prosecution presents case  
    Defense presents case  
    Rebuttals  
    Summaries or closing statements  
        Defense  
        Prosecution  
    Deliberations  
        Uphold charges (guilty)  
        Dismiss charges (not guilty)  
    If guilty  
        Punishment  
    Notification  
        Accused  
        JA  
        Commander  
        Follow up in writing  
    Appeal Notification

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## SAMPLE NOTIFICATION LETTER “CATEGORY A” WITH SUSPENSION

### POST LETTERHEAD

Date: \_\_\_\_\_

Subject: Official Notification of Disciplinary action

To:

An investigation of your conduct as a member of AMVETS Post \_\_\_\_\_, is completed and it is determined that there is a basis for the charges. Accordingly, you are being charged with two Counts of Category A charges of conduct which reflects unfavorable upon the name of AMVETS. A hearing has been scheduled on (month, date, year), at (time) at AMVETS Post \_\_\_\_\_ located at (address). The Post Executive Committee will hear the charges and the Post Judge Advocate will prosecute the case.

Charges are as follows:

**COUNT 1 – “Causing an altercation at the Post with another AMVETS member”:** (AMVETS National Bylaws, Appendix B, Section 1.(c))

**Specification 1.** At approximately 1930 hours on December 21, 2016 you struck AMVET Jones numerous times knocking him to the floor. It took three other AMVETS to restrain you. (AMVETS National Bylaws, Appendix B, Section 1. (c))

**COUNT 2 – “Refusing to leave the Post when ordered by the Post Commander”:** (AMVETS National Bylaws, Appendix B, Section 1. (c))

**Specification 1.** At approximately 1945 you were instructed to leave the Post by Commander Smith. You refused to leave and the local authorities were called to have you removed. (AMVETS National Bylaws, Appendix (c))

**Specification 2.** Upon your departure from the Post you tipped over the POW/MIA chair at the display. (AMVETS National Bylaws, Appendix (c))

You are hereby officially informed that the Grievance Hearing will be conducted in accordance with those procedures set forth in “Robert’s Rules of Order” Chapter XX, as implemented by the AMVETS National Bylaws, Appendix B, and the AMVETS Department of Florida Bylaws, Article VIII. You are directed to be present at this hearing. The hearing will take place with or without your presence. You may be represented by counsel and you have a right to face your accusers. Your counsel must be a current member of Florida AMVETS. Your counsel will not be recognized unless you are present. You may also employ a “Court Reporter” to take accurate minutes of this hearing. Your counsel and the “Court Reporter” will be at your personal expense.

Your AMVETS membership privileges have been suspended pending resolution of this matter. This means that you are not eligible to participate in any Post functions, committee meetings, nor the Post Canteen. Specifically, you are not permitted on Post

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property until the date and time of your hearing. Your presence on AMVETS property will constitute a trespass, legal authorities will be called and you will be prosecuted to the fullest extent of the law. I further direct that you conduct yourself accordingly.

All questions concerning this hearing must be forwarded to my office, in writing. Your total cooperation in resolving this matter will be greatly appreciated.

Yours Truly,

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Post Commander

Attachments:

Attach a copy of notarized complaints

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## SAMPLE NOTIFICATION LETTER “CATEGORY B” WITH SUSPENSION

Date:

Subject: Official Notification of Disciplinary action

To:

An investigation of your conduct as a member of AMVETS Post \_\_\_\_\_, is completed and it is determined that there is a basis for the charges. Accordingly, you are being charged with two Counts of Category B charges of violation of house rules. A hearing has been scheduled on (month, date, year), at (time) at AMVETS Post \_\_\_\_\_ located at (address). The Post Executive Committee will hear the charges and the Post Judge Advocate will prosecute the case.

Charges are as follows:

**COUNT 1 – “Writing check #2015 which was returned account insufficient funds”:** (AMVETS Post \_\_\_\_\_, House Rule # \_\_\_\_\_)

**Specification 1.** On December 21, 2016, you cashed a personal check for \$25.00 at the Canteen. On December 26, 2016, the check was returned to the Post for insufficient funds. The first incident happened October 12, 2016 and you were cautioned that writing checks with insufficient funds would not be tolerated.

**COUNT 2 – “You used profanity against night bartender Janice Smith when she returned your check #2015 for \$25.00 showing insufficient funds”:** (AMVETS Post \_\_\_\_\_, House Rule # \_\_\_\_\_)

**Specification 1.** At approximately 1915 on December 27, 2016 you swore repeatedly at Bartender Janice Smith when she returned your insufficient fund check #2015.

You are hereby officially informed that the Grievance Hearing will be conducted in accordance with those procedures set forth in “Robert’s Rules of Order” Chapter XX, as implemented by the AMVETS National Bylaws, Appendix B, and the AMVETS Department of Florida Bylaws, Article VIII. You are directed to be present at this hearing. The hearing will take place with or without your presence. You may be represented by counsel and you have a right to face your accusers. Your counsel must be a current member of Florida AMVETS. Your counsel will not be recognized unless you are present. You may also employ a “Court Reporter” to take accurate minutes of this hearing. Your counsel and the “Court Reporter” will be at your personal expense.

Your AMVETS Canteen privileges have been suspended pending resolution of this matter. This means that you are still allowed to participate in AMVET, Auxiliary and Sons functions and meetings. You are not allowed to enjoy the canteen and must leave the premises after the function or meeting. You are not eligible to be signed in as a guest.

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All questions concerning this hearing must be forwarded to my office, in writing. Your total cooperation in resolving this matter will be greatly appreciated.

Yours Truly,

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Post Commander

Attachments:

Attach a copy of notarized complaints