

Understanding the Disciplinary Process of the SCV

Any organization has to deal with the difficult but necessary task occasionally of disciplinary matters, and unfortunately the Sons of Confederate Veterans is no exception. This guide is designed help those involved (those needing to prepare charges, and those who have been accused) understand the system and how to get the most out of it. The system was incorporated into the Constitution adopted in 2006 in New Orleans. Some details of the system still needed to be addressed beyond what the Constitution outlined, though, so in 2010 the Disciplinary Committee (DC) recommended and the GEC adopted forms and procedures outlining the disciplinary process in more detail, and these were amended some more in 2011. It is important to use these forms if you are putting together charges. They can be obtained from the Adjutant-in-Chief, the Executive Director, or the chairman of the Disciplinary Committee. Some important things to understand about our system:

1) Only camps, divisions, the GEC and the organization in convention can proffer charges: Further, camps and divisions can only bring charges against one of their own members. It is simply too chaotic to let any member proffer charges on their own. However, this doesn't prevent any member from petitioning the camp or division in question, or even petitioning the GEC or convention, to proffer charges they think need to be proffered though.

2) Camps and divisions can judge their own membership: This is perhaps one of the more misunderstood aspects of the disciplinary process, but camps and divisions are entitled to be the judge of their own membership, with their own disciplinary procedures. If a camp or division wants to deal with a matter on their own that is fine (in fact it is often encouraged), understanding that the camp can only remove the member from their camp, and the division can only remove the member from their division. To remove a member from the SCV entirely, then charges must be proffered to the national organization by the camp or division. To illustrate, if a camp has a member who has committed some dastardly act, they don't have to wait to remove from the camp or otherwise discipline that member. The camp's options would include: discipline the member at the camp level and leave it be, discipline the member at the camp level and then file charges under the division's disciplinary system (if applicable), and/or proffer national charges, or to skip discipline at the camp and division levels and simply proffer national charges, among other variations. The main idea being that not every discipline matter has to go straight to the national level; it can be handled at any one of the three levels, all three levels, or any two of the three levels. This allows a camp and/or division to act quickly if need be, and then decide whether or not to proffer national (and/or division) charges. Alternatively, if the matter threatens to cause too much strife if handled at the camp and/or division levels, then it can be sent straight to the national level. This flexibility, while perhaps confusing, allows the system to meet the needs of different situations. In the case of a member who is removed from a camp and/or division, they will be placed in the headquarters camp.

3) **Discipline can take many forms:** Revocation of membership (expulsion) is only one possible outcome. Probation (suspension with conditions), suspension, censure and reprimand are other options. The adopted forms allow for the charging body (camp, division, GEC or convention) to state a recommended outcome, but the disciplinary committee is not bound by the recommendation.

4) **The Disciplinary Committee Adjudicates; The Inspector-in-Chief Investigates:** The Disciplinary Committee consists of seven members; two from each army plus the Inspector-in-Chief. The DC does not investigate matters, though it does have wide latitude in what to consider in making a decision, and can ask for evidence and testimony. However, the Inspector-in-Chief, at the direction of the Commander-in-Chief, conducts investigations. It is possible (though unusual) for the DC to consider a matter without an investigation by the Inspector-in-Chief, solely on the materials provided by the charging body and the accused.

5) **The process at the national level can take some time;** when charges are received by the Commander-in-Chief, he must immediately submit them to the DC chairman, but the matter is then usually held until the investigation is complete, and this can take varying amounts of time. It is possible for the DC to dismiss a matter without the charges ever being sent to the accused; for example, if the charges aren't prima facie - meaning that even if true no infraction would have occurred, the committee can simply dismiss the charges (acquit) . This is not normally the case, though, and when the Inspector's Report is received by the committee is usually when the accused will be notified of the charges. At that point, the accused has a reasonable time (considered to be 30 days) to respond in writing and provide any evidence to be considered. The DC will take some time (usually a few days) to go over the response of the accused, and then deliberate (normally) by teleconference. The deliberations are in executive session, meaning that members cannot reveal specifics of what was said; however a report with findings will be issued. The DC can choose to ask to hear from witnesses it desires, or none at all.

6) **It doesn't work like Law and Order;** The disciplinary process does not work exactly like a criminal case, even a TV version, so if you are accused, don't rely on correlations to what a defendant in a criminal charge has rights to as being the case here. For example, the standard of proof is not "beyond a reasonable doubt". For the disciplinary committee it is usually something much closer to "a preponderance of the evidence". While that is lawyer talk, "beyond a reasonable doubt" means nearly 100% certain, whereas "preponderance of the evidence" only means 51% or more certain (or, simply that it's more likely than not). In a criminal case, the accused has a right to confront his accuser. That is not the case here. In a criminal charge, the court's highest priority is to preserve the rights of the accused. The disciplinary committee is charged primarily with considering what is best for the organization. This does not mean the DC is going to "railroad" anyone, as it also has a duty to be fair and fair-minded, and to preserve the rights of the accused *under our process*. In our case the accused's rights are: 1) To receive proper notice of the charges 2) To receive a copy of the charges and specifications 3) To have reasonable time (30 days) to respond to the charges 4) To have the DC deliberate on the matter 5) To receive notice of the results 6) To appeal to the GEC (in writing within 30 days of notice of the results), if desired in a guilty finding. Understand, though, the GEC can choose simply not to

hear the appeal; the right is to appeal, not a guarantee to have the appeal heard. During deliberations the Disciplinary Committee may choose to hear from the accused in person, or not. The accused's "day in court" is the response they are allowed to file, not necessarily a face-to-face or other in-person meeting with the committee. Typically the committee expects the accused's response to contain all the relevant information needed, and would only ask the accused (or any witness) to be present in the deliberations if there was some matter the committee wanted more information on.

If you are putting together charges, some things to keep in mind:

Our system calls for charges to be expressed as charges and specifications. The charge must be one allowed in the constitution: disloyalty, neglect of duty, dishonesty, conduct unbecoming or an act repugnant to the Constitution and Standing Orders. The specifications will be the particulars. For example: *Charge - Conduct Unbecoming, Specifications - On July 7th of the current year, Compatriot John Doe became involved in a disagreement with another member, after which Compatriot Doe went outside and threw a brick through the car window of the other member.* It is highly recommended that the camp or division Judge Advocate prepare the charges, though not required. The charges and specifications should be done on the form adopted for this purpose (contact the Adjutant-in-Chief, Executive Director, or Chairman of the Discipline Committee for a copy of the form), if possible. If the specifications are lengthy, they can be prepared on separate sheets and included with the form. Any supporting evidence should be included with the charging form.

Also, keep in mind if a camp or division has already taken disciplinary action on the matter, it only has 30 days in which to proffer those same charges to the national level.

While rules of evidence like one would be under in court aren't in play in our procedures, generally understood standards of evidence will have some bearing; for example, a letter from someone saying they heard that the accused did something wrong doesn't carry much weight (it would be "hearsay"). A letter from someone saying they themselves saw something is much better; a sworn statement (notarized) that someone witnessed something is best.

Keep in mind also that the members of the Disciplinary Committee won't likely be very familiar with the situation. Don't assume they know anything, even if it seems like "everybody" knows something happened, so include all pertinent facts and evidence. While these situations tend to be very emotional, try to stick to facts and evidence rather than feelings.

The DC does not publicly broadcast the status of disciplinary matters. If you would like an update, contact the Adjutant-in-Chief or the chairman of the Discipline Committee.

If you have been accused, some things to keep in mind:

It is important to file your response within the time given, for the committee will usually meet shortly after that time to deliberate, and you want them to have your side of things to consider. If

some extenuating circumstance might prevent you from a timely response, you can request additional time, but the committee is not obligated to grant it. You don't have to have the eloquence of a lawyer, but state as clearly as you can the facts and evidence which support you. It is quite possible you will not be asked to speak personally to the committee during its deliberations, so don't leave anything important out of your response. On the other hand, it's best not to rant and rave for 20 pages, because it will be harder for the DC to find pertinent material that might help you amongst all the ranting and raving. Emotions are understandable, but you are better served by setting them aside as much as possible and focusing on evidence that will help the DC see your side of the charges. If the charges stemmed from your actions in a matter of disagreement, don't spend all your time trying to convince the DC your side of the argument was right and ignore the actual charges. For example, if you had a disagreement with your camp commander, but are accused of striking him during the argument, it won't matter much if your side of the disagreement was "right". The DC will focus on what you were charged with, which is the striking.

Remorse and repentance may not hurt; in a criminal trial, maintaining innocence throughout is somewhat expected. In our case, working with a member who admits a mistake and shows remorse might encourage the DC that keeping such a member would be in the best interests of the organization. A member who remains adamant he has done no wrong when it's pretty clear there was a problem is harder to work with, and keeping such a member will seem less likely to be in the best interest of the organization to the DC.

It is important that your evidence be as good as possible, as described above. It is OK to get help in preparing your response. If you have a disability which will make it difficult for you to prepare a response, you can contact the Adjutant-in-Chief or Chair of the Discipline Committee to inform him of that fact. There is no obligation to find assistance for you, but if made aware, the Adjutant/chairman might be able to offer a suggestion or find someone who can assist you.

While we've mentioned at a few points there isn't an obligation to find you assistance or extensions of time, and that the DC's primary concern is the good of the organization, don't hesitate in asking for help or an extension of time if you truly need it. Treating accused members fairly *is* in the best interest of the SCV, and there will be a strong inclination by the Chairman and the DC to provide assistance or additional time if circumstances truly seem to call for it.

Special Emphasis on Understanding the Implications of Standing Order 9.5

Many of the cases which come before the SCV Disciplinary Committee involve a charge that Standing Order 9.5 has been violated, and this section is an effort to provide education and perhaps save some future, avoidable, difficulties. Standing Order 9.5 is the SCV's ban on legal actions without GEC approval:

No legal action against or on behalf of the general organization Sons of Confederate Veterans, its officers and/or members shall be undertaken or entered into by any member or group of members of the Sons of Confederate Veterans in which that member or group of members proposes to act as (a) representative(s) or agent(s) of the Sons of Confederate Veterans without

prior approval of the General Executive Council. If a proposed legal action is presented to the General Executive Council for approval, the petition shall be distributed in writing to all members of the Council prior to the filing of the same. The petition shall state the name(s) and address(es) of the party (parties) against whom the petition is proposed to be filed. The affirmative vote of the members of the Council shall be necessary for Council approval of such legal action. If any legal action is filed without the approval of the Council, the member(s) filing such action shall be subject to expulsion from the Sons of Sons of Confederate Veterans in accordance with the provisions of the Constitution and Standing Orders which relate to expulsion of members.

This section leaves no loopholes, and the penalties are severe. This results from a time, not too long ago, when legal actions - many of them after-actions of the failed coup attempt of 2005 - severely drained our finances (which are of course desperately needed in the fight to promote our ancestors' good name). Further, we should be adults enough to resolve conflicts within the organization without taking them to court and make a public spectacle of airing dirty laundry. This section of the standing orders is intended to make sure any legal actions aren't entered into lightly or improperly (a member, camp or division entering into civil action can create serious liability - as well as cost - issues for the entire organization if done improperly). In recent findings, the Disciplinary Committee has interpreted:

1) This section has no loopholes, save filing of routine criminal complaints (someone stole camp property, for example and a police report was filed), and defending against criminal charges done in the proper execution of SCV duty (for example, an SCV member displays a battle flag in a place and manner which is appropriate and in conjunction with an SCV event, but some bigot complains and the member is falsely cited for trespassing or some such nonsense - as happened in Concord in the Childress case). Even in this latter case, keeping the GEC apprised of the situation is advisable. Otherwise, if it's a legal action which has as a party of any kind the SCV (or any subdivision - camp, division, committee, etc.), or an SCV officer or member in their capacity as officer or member, **do not enter into it without GEC approval**. This cannot be emphasized enough.

2) Defendants who have been charged with a 9.5 violation typically claim their suit wasn't "on behalf" of the SCV, however this shows a lack of understanding of how the law works. In order to file a suit involving an internal organizational matter, there has to be "standing". In other words, if you think your division commander isn't following some constitutionally mandated procedure and is therefore harming the division, if you file suit to force compliance you must do it in your capacity as a member of the organization, otherwise if you simply file as an individual you don't have "standing" and the suit will be dismissed by the court. If you file with standing, then *by definition* you are doing so "on behalf" of the organization. You can't have it both ways. You might think of it as a suit against a misbehaving division commander, but you are in fact filing the suit on behalf of the SCV (as well as against the SCV, since you've named an officer as defendant).

Members and officers should also keep in mind that it is best practice to exhaust administrative remedies before considering legal actions and GEC approval. In the case above, you should seek to resolve the issue in the division executive council, the division in convention or any other means which might be available under the applicable constitution and by-laws. If you don't do those things (perhaps claiming your complaint wouldn't get a fair hearing or some similar

excuse) and take the matter straight to court, in addition to the court likely dismissing for failure to exhaust administrative remedies, you will almost certainly find yourself removed from the SCV and the problem you sought to correct left unaddressed.

Also keep in mind that review of cases by the GEC can provide benefits; GEC members often have experience, or can call on members with experience, in cases like yours. If a division needs to file suit against the state for denying a specialty tag for example, running the suit as required past the GEC might reveal a weakness in the legal strategy which was addressed in another division's efforts and resources can be provided to help. In matters of internal conflict, the GEC or members of the GEC might be able to act as mediators, resolving the matter without further acrimony or public suit.

The Disciplinary Committee urges division commanders to educate their officers and members about these matters in Standing Order 9.5. The SCV is a fraternal organization, and we should treat one another as brothers in the vindication of the Cause for which our ancestors fought. Yes, our ancestors often quarreled severely amongst one another, but that doesn't mean we should do likewise (quarreling being a personal vendetta or political fight, as opposed to a healthy debate). Quarreling hurt their efforts, and it hurts ours. Our Constitution and Standing Orders have the means to deal with disagreements (and if these documents need improving, we have the means to change them).

We pray that our disagreements are honest ones, and that we find ourselves able to trust in the wisdom of and abide by the decisions of our own councils, committees and conventions rather than public courts.

After the Decision: If the Disciplinary Committee acquits, then the matter is over (the constitution states unequivocally the matter "shall be dropped"). Not even the GEC can change an acquittal decision of the Disciplinary Committee. If found guilty, the accused has a right of appeal to the GEC. This appeal must be made in writing, within 30 days of delivery of the guilty finding to the accused. Your best chance in an appeal is to demonstrate a concrete reason why the the appeal should be granted; if you just appeal and say it is because you think the Disciplinary Committee is crooked, that won't work very well compared to citing a section of the constitution which you think the DC applied improperly. If an appeal is made, the GEC can decide to hear the appeal or not. The right is to appeal, not necessarily to be heard. It needs to be understood that the GEC sometimes has considerable time between meetings. If an appeal is made, it could literally be a few months before there is a meeting of the GEC in which to place appeal request on the agenda. While the appeal must be made within 30 days, the time before the GEC considers the appeal is undetermined. The GEC has several options it can take with an appeal: 1) it can decide simply not to hear the appeal 2) It can decide to hear the appeal. The form, materials and procedures in which the GEC can decide to hear the appeal are virtually unlimited. It can be as little as the GEC discussing the matter for a few minutes, or as broad as a full hearing with testimony etc. 3) The GEC could remand the decision back to the Disciplinary Committee. In this case the decision is not overturned per se, but the GEC is asking the DC to reconsider it in light of some concern or finding the GEC has expressed. After considering the remanded matter, the DC then could either decide to reverse or uphold its previous decision.

If you have been placed on probation:

In the case of suspension with conditions (probation), you must be very careful to observe the terms laid down. If you have a question, say you have been told to refrain from attending any SCV functions for a period of time and a public Confederate event is being held which you are uncertain is an SCV sponsored event (maybe it is being put on by the UDC), contact the division commander to make sure it is OK for you to attend this event. Do not assume anything. It is also unwise to look for technical loopholes in the conditions. The DC may not agree the loophole exists (so, again, ask before acting on what you think is a loophole). Generally the DC tasks the division commander where you reside with enforcement of suspension conditions, however, the DC can consider an accusation you have violated conditions from anyone, and can even act sua sponte (on its own). Also keep in mind that if you are accused of violating suspension conditions, your rights at that point are not the same as when first charged in the case. If you are accused of violating your suspension terms, your remaining rights are:

- 1) 10-day notice. You will be sent a 10-day notice that you have been accused of violating conditions, but it is not required that it be sent by some confirmed method, but merely by a method reasonably believed to reach you (email, regular mail, in addition to registered, etc. are acceptable). This notice can be sent to you by either the Adjutant-in-Chief, or the chair of the DC.
- 2) Right to respond (within the 10 days).
- 3) Right for the DC to consider the accusation.
- 4) Right to appeal to the GEC (within 30 days, in writing) if the DC finds that you are guilty of violation of terms.

Presented to the General Executive Council by the SCV Disciplinary Committee and approved at the February 18, 2012 GEC Meeting at Elm Springs, Tennessee