

ADMINISTRATIVE HEARING MANUAL, UNIQUE PROCEDURES

OPINION NO. 25-01. ADOPTION OF WELL-INTENDED BUT UNIQUE PROCEDURES OUTSIDE THE ADMINISTRATIVE HEARING MANUAL IS NOT PROPER WHERE PROCEDURES ARE PROVIDED FOR BY THE ADMINISTRATIVE HEARING MANUAL.

QUESTION PRESENTED:

Where the Department Administrative Hearing Manual provides a delineated mechanism for 1) objecting to perceived or alleged bias in Post Accusatory Hearing Proceedings, 2) replacement of challenged Hearing Officers, and/or 3) transfer of a proceeding to a neutral venue, **is adoption of well-intended but unique procedures outside the Administrative Hearing Manual proper where procedures are provided for by the Administrative Hearing Manual?**

FACTS:

Certain members of Post 16 have complaints regarding the officers and leadership of their post and they intend to file formal accusations against them.. The complainants are concerned with suspected inability of those officers and leaders to conduct proceedings fairly since many of the accused are also in District and Area positions of leadership.

These concerns have been passed on to the Department Adjutant who has 1) asked this office to provide guidance on how to procedurally respond to these suspicions in a formal accusation and hearing process, and 2) made three suggestions outside the Department's Administrative Hearing Manual as to how the Post hearing could proceed.

To our knowledge, the complainants have not yet filed any charges against any Post 16 officers and leaders.

ANALYSIS:

The procedures at each level within the Department of California to receive charges, prepare and present accusations, conduct pre-hearing conferences, evidentiary hearings and process appeals are described in the Administrative Hearing Manual ("AHM") which has the same weight and effect as all other bylaws of this Department. Bylaws of the Dept. of Calif., Article XVII, sec. 2.

The method for filing complaints is clearly set forth in Title II, section 1 of the AHM. Upon filing, specific steps **MUST** be implemented by the Post Commander, Post Adjutant and Post Judge Advocate to process the complaint. Title II, sections 2 and 3. If any of the parties, complainant(s) or accused, believe a fair hearing cannot be held, the AHM provides detailed procedures for challenging and transferring the proceedings. Title II, sec. 4; Title III, sec. 1, 2, 3, 4.

If the complainants or the accused, after completion of pre-hearing motions to resolve any suspected unfairness, then complete the Post Hearing and still believe the proceedings were unfair, they are entitled to present their appeal to the Department. AHM, Title IV, sec. 7.

CONCLUSION AND DIRECTION:

There is no suggestion by any party or the Department Adjutant that the Administrative Hearing Manual lacks appropriate procedures to ensure fairness and no conflict of interest; and the AHM seemingly provides procedures sufficient to respond to any suspected conflicts of interest and unfairness.

Since the AHM provides seemingly adequate procedures, there is no basis for going outside the AHM and adopting the suggestions presented to this office.

Therefore, the Office of the Department Judge Advocate directs those involved to

- A) carefully consult the Administrative Hearing Manual (and in particular Titles II and III);**
- B) carefully and meticulously proceed according to those AHM provisions; and**
- C) should those parties involved thereafter be dissatisfied, proceed under Title IV.**

This Office also suggests that the Department Adjutant respond to similar requests from other posts to ensure consistency throughout the Department.

Dated January 24, 2025.

[signed]
John L. Minnella, Esq.
Judge Advocate

[signed]
Joseph F. Fenton, Esq.
Associate Judge Advocate