

Dispute Resolution and Auxiliary Administrative Discipline

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Every person and organization experiences conflicts and disputes. When conflicts and disputes are ignored or addressed without care or skill, the result is often expensive, time consuming, tough on relationships and procedurally cumbersome. Alternative dispute resolution techniques are helpful to resolve disputes between Auxiliary members.

Unfortunately, some conflicts and disputes lead to inappropriate behavior that violates Auxiliary policy and subjects an Auxiliarist to discipline. This paper also gives an overview of Auxiliary Administrative Discipline as contained in the Auxiliary Manual.

Alternative Dispute Resolution (ADR) Techniques

Cooperative problem-solving is the most basic methods of dispute resolution. This informal process usually does not use the services of a third party and typically takes place when the concerned parties agree to resolve a question or issue of mutual concern. It is a positive effort by the parties to collaborate rather than compete to resolve a dispute. It may be the procedure of first resort when the parties recognize that a problem or dispute exists and that they may be affected negatively if the matter is not resolved.

Conciliation involves building a positive relationship between the parties to a dispute. A conciliator may assist parties by helping to establish communication, clarifying misperceptions, dealing with strong emotions, and building the trust necessary for cooperative problem-solving. Some of the techniques used by conciliators include providing for a neutral meeting place, carrying initial messages between/among the parties, reality testing regarding perceptions or misperceptions, and affirming the parties' abilities to work together.

Factfinding is the use of an impartial expert (or group) selected by the parties, an agency, or by an individual with the authority to appoint a factfinder in order to determine what the "facts" are in a dispute. The rationale behind the efficacy of factfinding is the expectation that the opinion of a trusted and impartial neutral will carry weight with the parties. Factfinders generally are not permitted to resolve or decide policy issues.

Facilitation techniques may be applied to decision-making meetings where a specific outcome is desired (e.g., resolution of a conflict or dispute). The term "facilitator" is often used interchangeably with the term "mediator," but a facilitator does not typically become as involved in the substantive issues as does a mediator. The facilitator focuses more on the process involved in resolving a matter.

The facilitator generally works with all of the meeting's participants at once and provides

procedural directions as to how the group can move efficiently through the problem-solving steps of the meeting and arrive at the jointly agreed upon goal. The method of facilitating is most appropriate when: (1) the intensity of the parties' emotions about the issues in dispute are low to moderate; (2) the parties or issues are not extremely polarized; (3) the parties have enough trust in each other that they can work together to develop a mutually acceptable solution; or (4) the parties are in a common predicament and they need or will benefit from a jointly-acceptable outcome.

Mediation is the intervention into a dispute or negotiation of an acceptable, impartial and neutral third party who has no decision-making authority. The objective of this intervention is to assist the parties in voluntarily reaching an acceptable resolution of issues in dispute. Mediation is useful in highly-polarized disputes where the parties have either been unable to initiate a productive dialogue, or where the parties have been talking and have reached a seemingly insurmountable impasse.

A mediator, like a facilitator, makes primarily procedural suggestions regarding how parties can reach agreement. Occasionally, a mediator may suggest some substantive options as a means of encouraging the parties to expand the range of possible resolutions under consideration. A mediator often works with the parties individually, in caucuses, to explore acceptable resolution options or to develop proposals that might move the parties closer to resolution.

Ombudsmen are individuals who rely on a number of techniques to resolve disputes. These techniques include counseling, mediating, conciliating, and factfinding. Usually, when an ombudsman receives a complaint, he or she interviews parties, reviews files, and makes recommendations to the disputants. Typically, ombudsmen do not impose solutions. The power of the ombudsman lies in his or her ability to persuade the parties involved to accept his or her recommendations. Generally, an individual not accepting the proposed solution of the ombudsman is free to pursue a remedy in other forums for dispute resolution.

Binding arbitration involves the presentation of a dispute to an impartial or neutral individual (arbitrator) or panel (arbitration panel) for issuance of a binding decision. The arbitrator's decision is similar to a decision made by a judge in a courtroom. The parties are not involved in the decision-making process, the main reason that arbitration is often seen as a last resort method of dispute resolution.

For other ADR techniques: <http://www.opm.gov/er/adrguide/Section1-a.asp>

USCG Auxiliary Administrative Discipline

Introduction

The **purpose** of Auxiliary administrative disciplinary action is to correct inappropriate behavior that violates the policies and procedures established by the Commandant to govern the Coast Guard Auxiliary and its missions.

The **authority** and **procedures** for disciplinary action are found in the Auxiliary Manual, (AUXMAN) Chapter 3, Sections F-K.

Preliminary Investigation. Initial procedures for all disciplinary actions include:

1. Any member of Coast Guard Forces (active, Reserve, Auxiliary, civilian) who believes policies have been violated may request a preliminary investigation.
2. This request may be oral or in writing and shall be made to the senior elected leader at the lowest level of the organization capable of handling the complaint, normally the Flotilla Commander. The Director may assist in determining the appropriate level of organization to address the complaint.
3. Prior to instituting any disciplinary action, the facts surrounding the circumstances and the offenses (if any) must be determined, including matters in defense or explanation.
4. The elected leader may ask for further information from the complainant or may appoint an Auxiliarist or committee (two or three members of Coast Guard Forces) to determine the facts.
5. If an Auxiliarist or committee is appointed, the elected leader must inform the suspected Auxiliarist that an accusation regarding them has been made and that an appointed Auxiliarist or committee is looking into the matter. The suspected Auxiliarist has the right to address, in writing, the appointed Auxiliarist or committee before any report is made to the elected leader.
6. Within fifteen days of receipt of the investigation report, the elected leader shall make a determination, in consultation with the DSO-LP or DC-L, as to whether the facts as presented could be a violation of Auxiliary policy that might subject an Auxiliarist to discipline.
7. If the preliminary fact-finding doesn't support a violation, the elected leader must notify the complainant in writing that either no action or only minor corrective action (training, counseling) will be taken.

8. If a minor violation has been committed, the subject Auxiliarist shall be advised of the unacceptable conduct, specific deficiencies, and acceptable standards of performance through informal disciplinary action as deemed appropriate by the elected leader.

Informal Disciplinary Action

Informal disciplinary action involves an elected leader correcting minor violations of Auxiliary policy and documenting that action. The subject shall be advised of the unacceptable conduct or standards, specific deficiencies, and acceptable standards. Action taken is documented in the Auxiliarist's file. The documentation will be removed from the Auxiliarist's file after 2 years (up to 3 years for a Letter of Caution). The elected leader or Director keeps a separate permanent record for the sole purpose of documenting prior discipline should the need arise.

Infractions that may warrant informal disciplinary action include:

- Flagrant and/or repeated uniform or grooming violations.
- Unintentionally compromising or mishandling examinations, privacy act information, or sensitive official message traffic or correspondence.
- Unwarranted violations or abuse of the chain of leadership and management.
- Knowing failure to follow procedures, directives, rules, or policies.
- Misrepresentation in official correspondence or reports.
- Misrepresenting Coast Guard authority, rank, title, or position.
- Failure to follow established written patrol procedures.
- Violation of published Auxiliary web policies and guidelines.

Appropriate sanctions for minor infractions include:

- Instruction
- Counseling
- Oral reprimand
- Denial of web privileges
- Letter of Caution

A **counseling session**, ideally consisting of a frank discussion among the elected leader, the complainant, and the subject Auxiliarist, may facilitate corrective action. The elected leader documents the counseling session as part of the documentation of action taken.

A **Letter of Caution** is an informal, corrective letter issued to the Auxiliarist by the elected leader or the Director. The Letter advises the Auxiliarist of the specific improper actions found to have occurred, states that any statements submitted by the Auxiliarist were considered, and notes how the facts influenced the decision for the chosen course of action. The Auxiliarist is notified that a written reply may be made within thirty days and

that the reply will be retained, along with the Letter of Caution, for a specified period not to exceed three years without the concurrence of both the DCO and the Director.

Formal Disciplinary Action

After the preliminary investigation is completed, the elected leader may deem the violation to be too serious to be resolved by informal disciplinary action. The elected leader shall notify the DCO and the Director in writing, via the chain of leadership and management of a recommendation to commence **formal disciplinary action**. All supporting documents and the factual basis for the recommendation shall be included.

Infractions that may warrant formal disciplinary action include:

- Any action which may or does bring discredit to the Coast Guard or Auxiliary, including violation of the Commandant's zero tolerance policy on drug/alcohol abuse, as evidenced by a conviction for driving under the influence while identified as an Auxiliarist or acting in an Auxiliary capacity.
- Refusing to follow regulations for the wearing of the Auxiliary uniform or insignia, including misrepresentation as a Coast Guard officer or petty officer, or flagrant or repeated misuse of rank, titles, or insignia.
- Misuse of Coast Guard or Auxiliary funds or property.
- Repeated actions prejudicial to the good order of the Auxiliary or any of its programs, as documented in the Auxiliarist's record.
- Failure to follow appropriate Equal Employment Opportunity Commission, civil rights laws, and/or the Commandant's Human Relations and Sexual Harassment Policy.
- Any knowingly false official statement, oral or written, to include enrollment application data submissions, facility offer of use and inspection forms. This includes forging signatures on any official document and/or falsifying of records.
- The use of a Coast Guard boat loaned to, or in the custody of, the Auxiliary or an Auxiliary unit owned boat, aircraft, vehicle, mobile trailer or radio, without proper Coast Guard orders or for unauthorized purposes.
- Breaches of electronics and communications protocols or any other public communications media, so as to reflect discredit or to publicly embarrass the Coast Guard or Auxiliary.
- Any other actions that, in the Director's judgment, warrant disenrollment proceedings.

Potential consequences of formal disciplinary action include:

- Letter of Reprimand
- Revocation of certifications and duties of office (elected and appointed)
- Suspension or revocation of Auxiliary rights and privileges
- Disenrollment

Procedures for formal disciplinary action include:

1. If the DCO, with the counsel of the DSO-LP and Director, concludes that formal disciplinary action is warranted, then, the DCO shall commence formal disciplinary action within thirty days of the receipt of the recommendation by an Auxiliary elected leader.
2. Auxiliarists who are the subject of formal disciplinary action, including disenrollment and/or the issuance of a Letter of Reprimand, shall, prior to imposition of the discipline, be provided notice of the allegations that prompted the action and an opportunity to respond to those allegations.
3. The Director shall inform the subject of formal disciplinary action in writing of the allegations against them. The written notice should clearly state the reason for the proposed action as well as facts and information upon which the Director has based the action. The letter shall also inform the Auxiliarist of their right to respond.
4. Within 30 days from mailing the notification required above, the Auxiliarist may submit a written statement either admitting, denying, or admitting with an explanation of the allegation(s). Any denials not made in good faith may alone sufficient basis to warrant additional disciplinary action. This written response is in addition to anything submitted during the investigation.
5. The DCO will review the request for formal discipline and the investigation record, and will then make recommendations as to appropriate sanction(s) (if any). This report shall be in writing and forwarded to the Director with a copy to the DSO-LP. Normally, the appropriate sanction will consist of a Letter of Reprimand. If the recommendation is for disenrollment, the entire investigation package shall be forwarded to the Director for further consideration.

A Letter of Reprimand is a formal corrective letter issued to an Auxiliarist by the DCO or Director. Before issuing the Letter of Reprimand, the Director and DCO should discuss the situation and agree on the appropriate wording for the letter. The Letter of Reprimand will discuss the specific improper action(s) and the acceptable standards. It will include consideration of any written statements submitted by the subject Auxiliarist and how such statements influenced the decision. References to any previous disciplinary action(s) may be included. The subject Auxiliarist will be advised that a written reply may be made within thirty days of receipt of the Letter of Reprimand, and such a reply will be retained by the Director, along with the Letter of Reprimand.

Length of Discipline. A Letter of Reprimand is valid up to three years, but shall not exceed three years without the concurrence of both the DCO and Director. The time period for non-availability for elected and appointed offices, including vacating elected or appointed office, and the denial of a right for the wearing of any insignia or past officer pin for such office, shall be determined by the Director and DCO.

Disenrollment becomes appropriate for certain offenses that are so unacceptable that they may cause such serious discredit to the organization's core values and principles. The authority for disenrolling an Auxiliarist rests with the Commandant, who has delegated this authority to the Director. The Director makes these decisions following the disciplinary procedures contained in the AUXMAN.

Temporary Suspension During Formal Proceedings

The Director is authorized to temporarily suspend any certifications, duties of office (elected and appointed), or membership of an Auxiliarist during formal disciplinary proceedings that may lead to disenrollment. An Auxiliarist under suspension is not entitled to any Auxiliary rights or privileges except as may be determined by the Director.

The suspension must be in writing, detailing the reason and length of the suspension, and shall specify in writing what rights or privileges (if any) the suspended Auxiliarist retains during the suspension.

An Auxiliarist who receives notice of temporary suspension may appeal the Director's action to the Director's supervisor. The temporary suspension remains in effect unless overturned on appeal.

Appeals of Disciplinary Actions

Appeals may be made for both informal and formal disciplinary actions in accordance with Chapter 3, Section J of the AUXMAN.

Appeals of informal disciplinary actions taken by an Auxiliary elected leader shall be filed within thirty days directly with the senior Auxiliary elected leader at the next higher level in the chain of leadership and management. There is no further appeal.

Appeals of DCO's formal disciplinary action must be filed with the appropriate ARCO within thirty days. The ARCO's decision is final.

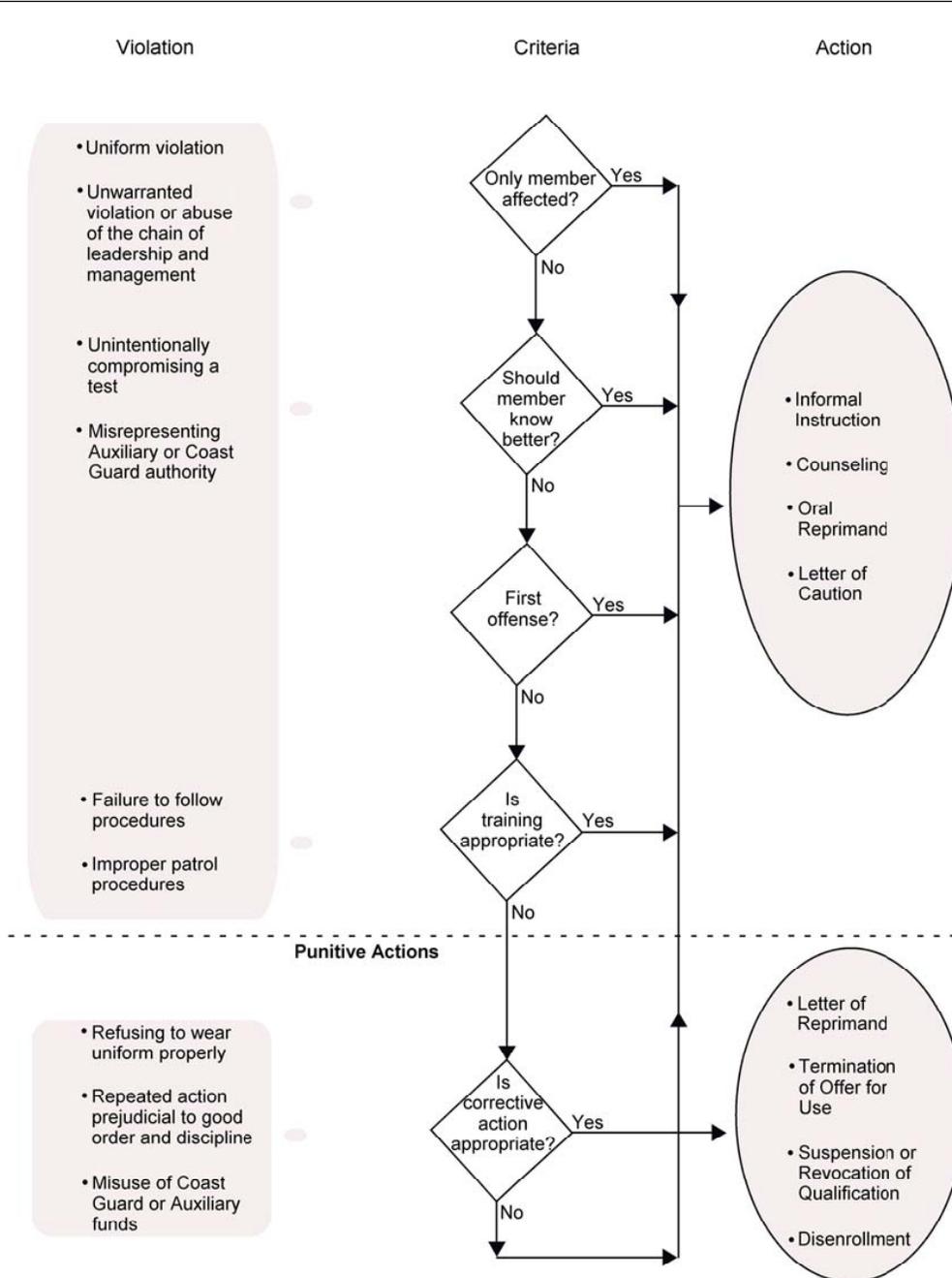
Appeals of the Director's formal disciplinary action must be filed with the Director's supervisor within thirty days. The supervisor's decision is final.

Appeals of disenrollment must be submitted to the District Commander within thirty days. The District Commander's decision is final.

No appeal, once submitted, will in any way suspend the implementation of any disciplinary action once issued during the processing of the appeal.

Disciplinary Action Decision Tree

from AUXMAN page 3-22



How to Address Your Concerns Using the Chain of Leadership

By CAPT Barry P. Smith, USCG_Chief Director of Auxiliary

http://cgaux.info/g_pcx/administration/policy/col.html

Whether you've been in the Auxiliary for years or are new to the organization eventually you will have a question, concern, or idea you would like addressed. Hopefully, when you first entered the Auxiliary you received training on the proper way to obtain appropriate answers. As a new Auxiliarist myself, I recently received this training and I wanted to share with you some helpful information that may assist you in getting your questions answered expeditiously.

Most of the questions you might have are simple and can be answered by flotilla members. Sometimes, a question comes up that isn't easily answered and requires additional effort to find the answer. Who is the correct person to answer your question? What do you do if your question goes unanswered, or the question is not answered completely? If it is a contentious or sensitive issue, how can you get it addressed with the least amount of provocation?

The first thing I recommend you do is try to find the answer yourself. Numerous sources of information are available that can assist you in educating yourself. Regional and locally produced publications or nationally distributed publications such as the Navigator can help keep you informed. Two excellent sources of Auxiliary information are the Office of the Chief Director's site, <http://www.cgaux.info> and the Auxiliary site, <http://nws.cgaux.org>.

They contain a variety of information including publications, links, and search tools. If you don't have a computer at home, most public libraries have computers with internet access and a librarian can quickly show you how to access information. A helpful feature both sites contain is a contact section that allows you to submit a question via e-mail. I recently asked my staff to pose a question to each site to see how long it would take to get an answer. The question posed to the Auxiliary site was answered in an amazing 21 minutes. Both sites strive to make a response within 24 hours. Most Directors of Auxiliary (DIRAUX) maintain sites with features similar to the Chief Director and Auxiliary sites.

If you can't find the answer to your question on your own, I urge you to use your Chain of Leadership (COL). It is worth emphasizing the guidance in Chapter 1, Section C of the Auxiliary Manual, COMDTINST M16790.1F. The Auxiliary Manual can be easily found on the Chief Director's site in the Manuals section and this very important section states the following:

In the Auxiliary, the phrase "chain of leadership and management" describes a system of communication and responsibility providing for an effective and efficient path for relaying information through all organizational levels. The process is best described as a chain of leadership and management rather than a chain of command, as no military command authority exists.

Auxiliary elected leaders must convey policy accurately and consistently to Auxiliary unit members via the chain of leadership and management. Likewise, all Auxiliarists are expected to use the chain of leadership and management for giving and getting information and voicing appropriate concerns. All members should recognize that the elected leader's experience offers a great potential to solve problems.

When correspondence is submitted via another Auxiliary elected or appointed leader in the chain of leadership and management, that Auxiliarist is obligated to rapidly endorse and forward correspondence as required. Good leadership and management demand the existence of proper channels for Auxiliarists to follow and respect, except as otherwise provided or directed. This process assures that every activity is well monitored and carried out by the ablest members, prevents confusion and delay of actions, and allows for orderly and courteous flow of information.

Auxiliarists should keep in mind that the Director is a vital source of Coast Guard information who provides the latest guidance on special projects and routine Auxiliary administration. Auxiliarists must utilize the chain of leadership and management in communicating ideas, information, and requests. This process is important for the orderly conduct of organizational activities and is proven to actually speed work results, since many solutions are found directly at the flotilla or division leadership level (emphasis added).

What does this reference from the Auxiliary manual boil down to? Auxiliarists, upon entry and when appointed to higher offices, "pledge to abide by the governing policies established by the Commandant." Thus, Auxiliarists have pledged to make use of the chain of leadership to have questions, concerns, and ideas addressed. The chain of leadership is required to rapidly act on issues presented to them. What should an Auxiliarist do if they believe the COL is unresponsive, or is the source of the problem? The process to get a response is actually quite simple even if the COL is perceived as a problem. The following paragraphs explain how to best handle those situations.

The next step is to document your request in writing. Depending on the matter, an e-mail may suffice. If you choose to send an e-mail, I strongly recommend you send it to one individual only. Only include others on the e-mail if necessary

and definitely do not send it to a distribution list. If you send a letter it should be clear, concise and include all information necessary to clearly explain the issue. Both e-mails and letters should be sent up the COL starting at the lowest level possible, and the COL is responsible for rapidly moving your correspondence up the chain as required. If you perceive a problem with the chain, I do not recommend automatically skipping a link in the chain or going outside of the chain.

Always allow sufficient time for action to be taken and try sending follow-up correspondence at least once more if required. If you do not get a response to your inquiry after writing twice don't give up, just move on to the next step. Send correspondence to the next level of the COL. When moving to this step, be sure to explain what actions have already been taken to get your issue resolved. Also, when moving up the COL, include the leader you are going above on the copy line. This informs them you are continuing your request for assistance - and you are not going outside the chain. You could continue this process up the chain to the National Commodore or beyond to the Commandant's Chief Director of Auxiliary, but going that far usually isn't necessary. If the links of the COL from the member to the Commandant are unfamiliar to you, I recommend you review figure 1-1 of the Auxiliary manual.

One point to remember is that sometimes the official response the COL provides to a question, concern, or idea isn't the one you may have hoped for. Thoughtful consideration must be given before requesting that the COL reconsider the issue. Unless there is additional information that substantially amplifies the issue, I don't recommend requesting a second look. When an official reply is made to an issue, it is normally upheld and supported if an appeal is made to a higher authority.

Here, in the Office of the Chief Director (G-PCX), we receive correspondence on a regular basis that Auxiliarists send to various government officials including the President, Congressmen, Senators, Cabinet Secretaries, Governors, and the Commandant. The questions range from very simple, such as uniform item questions, to complex funding and personnel issues. In most cases, the information that the individual sought could have been answered easily without seeking the aid of senior governmental officials. Additionally, by the time a letter is routed through official channels and is received in G-PCX it has been in the system for some time, and we are tasked with a quick, "drop all we are doing to support others," reply in order to route it back through the system. There is a very formal process that must be followed when these letters are answered, and valuable staff time is taken away from other Auxiliary projects to answer what often are routine questions more appropriately directed to the COL. A letter routed "up" the Auxiliary COL allows more flexibility and research time than one being routed "down" from a Senator for immediate action. If a letter routed up the chain is received and requires research that will take more than a few days, I will send correspondence to the originator acknowledging receipt of the letter and inform them I will provide a thorough answer as soon as possible.

A common factor shared by the vast majority of the letters written to government officials answered by G-PCX is that they contain incomplete information, or inaccurate information. In some cases the issue is distorted enough that if the governmental official receiving the letter took the individual at their word, they might not get the "big picture" or might think the Coast Guard unworthy of their support. Unfortunately, the individual writing the letter seldom has all of the facts. Even well intentioned letters to government officials can have adverse effects. For instance, requests for funding for a specific Auxiliary initiative can cause funds to be cut from another Auxiliary or Coast Guard project. That is one reason the COL is so important, so we can coordinate efforts to ensure funding for the projects most beneficial to the Auxiliary.

There are times when seeking the aid of a senior government official to resolve an issue is the right course of action – especially if the COL is not responsive. This article is not an attempt to discourage the choice to take that action, but it should be regarded as a remedy of last resort. I encourage you to send the National Commodore or myself a note outlining your concern, and allow us an opportunity to respond to it before going to your Congressman or the President. My personal experience as an active duty Coast Guardsman and as an Auxiliarist supports my belief that the Chain of Command and Chain of Leadership when given the opportunity will take appropriate action to meet the needs of its members and support the best interests of the organization. I encourage you to follow the procedures I have outlined to have your questions, concerns, or ideas addressed. Semper Paratus – and have a great Coast Guard day.