

# AMERICAN LEGION AUXILIARY: Q&A re TRANSFERRING MEMBERS

*The following information includes advice from The American Legion National Judge Advocate/ALA Counsel General Philip Onderdonk and the ALA's National Parliamentarian Chris Dicky*

As a result of initiatives promoted by the American Legion Auxiliary (ALA) National Membership Committee and the ALA Centennial Strategic Plan Goal 1 Team to Enhance Membership Strength, the American Legion Auxiliary National Constitution & Bylaws and Standing Rules was amended by the 2016 ALA National Convention delegates to remove barriers to membership retention and make it easier for a member to transfer to a new unit. The adopted change in the ALA's National Standing Rule X – UNITS, Item 3 simplifies and clarifies the manner in which an existing member may transfer her membership to a different unit; it states:

*A member who is not subject to suspension or membership revocation under due process is eligible to transfer her membership provided she has paid her membership dues to her current unit for either the current year or immediate past membership year. A member transferring to a new unit must pay current year dues to either her current unit or to the unit into which she wishes to transfer.*

*Evidence of paid membership includes:*

- 1. ALA Membership Card*
- 2. Verification of membership by ALA Department or National Headquarters membership records*
- 3. Other documentation verifying payment of current or immediate past year membership dues such as a cancelled check or receipt; or*
- 4. When verifying documentation is not available, a sworn statement that the member's membership dues payment was tendered.*

The change has raised a few questions stemming from how some units have handled membership transfers in the past. The following Questions and Answers address those questions received at National Headquarters in the months following enactment of the changes.

## **Q 1. Many of our units vote on accepting members who wish to transfer into their unit. Is that a problem or must they accept them, whether they want to or not?**

**A.** If a member is not suspended, not been formally charged, or has not had her membership revoked, and she has paid her dues or is prepared to pay her dues to a different/new unit, she is a member of the ALA in “good standing” as defined in our national governing documents. All members have the same rights and obligations with respect to all matters of membership, as set forth in or authorized by the entity's governing documents.

All members in good standing have the same rights, benefits, and obligations of membership including but not limited to the right to attend or not attend meetings, the right to run for or not run for office as the individual member in good standing deems appropriate, the right to transfer or relinquish her membership, and the obligation to pay her dues and uphold the Code of Ethics and core values of the ALA. Members' rights to vote are as defined in the entity's Constitution and Bylaws which may not discriminate on the basis of race, creed, color, religion, age, handicap or national origin. Note: Because the ALA is incorporated as an all-female organization, the ALA does have the right to not allow males to join the ALA.

A unit may still vote on accepting the membership transfer or not, but the unit cannot deny the transfer based on a criteria prohibited by law as stated above, such as ethnicity, age, etc. An ALA member's unbecoming behavior does not automatically take away her rights as a member. A unit is advised against voting to deny a transferring member unless the unit has something in writing

from the current unit, department or intermediate body that substantiates why the member, who otherwise is in good standing, is not acceptable to the new unit. For example, if the member's current unit provides written documentation to the unit to which the member wishes to transfer that the member continually exhibits behavior unbecoming an Auxiliary member such as dishonesty, neglect of duty, bullying, alcohol abuse, etc., then the new unit may vote to not accept the transfer on the basis of written testimony from the current unit. A phone call/conversation does not substantiate cause to deny or grant a transfer.

A transfer denial should be based on written evidence from the current unit. Units that deny a membership transfer based on hearsay run the risk of being sued. Units that provide written statements about a member's behavior/character that is not attested by those witnessing the behavior or otherwise based on credible evidence about the behavior run the risk of being sued.

**Q 2. When we hear that a member who wants to transfer to our unit has an alcohol problem, we do not accept the transfer. Our department now tells us we must accept her. Why?**

**A.** See Q 1 Answer above. Unit practices, policies or rules cannot deny the rights of a member in good standing; *membership transfer cannot be used inappropriately to avoid disciplining a member*. If a member has not been formally charged, suspended or had her membership revoked and she is a member in good standing as defined in the ALA National Constitution & Bylaws and Standing Rules, she cannot be denied a transfer of her membership based on gossip. To deny her membership transfer without written evidence is discriminatory. It violates her rights and subjects the unit to lawsuit and liability risk. The unit to which the member wishes to transfer should request that the current unit to which she belongs provide a written statement that it has observed her bad behavior as a result of her excessive alcohol consumption or cite evidence of her encounters with the law over alcohol use violations.

Dealing with "problem people" issues is understandably uncomfortable, but a unit cannot use denial of transfer as a way to avoid having to discipline a "problem member". Her current unit should address her behavior problems. If it does not do so, then the transfer into your unit should be accepted. Then, your unit can discipline her if her behavior is a problem.

**Q 3. If we accept a transferring member into our unit who turns out to be dishonest, what should we do?**

**A.** The unit has a responsibility to discipline the member. Two things to consider about discipline: 1) there is discipline that does not affect the member's standing in the organization, and 2) discipline that is in the form of suspension or revocation that does take away her rights, and therefore she is no longer a member in good standing as defined in the ALA's national governing documents.

For example, a unit can issue a reprimand to a unit member whose behavior warrants some type of reprimand, such as bad behavior to others. The unit has an obligation to make sure the member receiving the reprimand knows what the rules are and that she understands them. A reprimand does not take away the member's rights; she is still a member in good standing who has been disciplined by a verbal or written reprimand.

If the offensive behavior is repeated, the unit can mete out more serious discipline under due process and suspend or revoke her membership. A suspension can also include conditions required of the unit to "right the wrong". For example, a member could be suspended for weeks or months – up to 12 months – and also be required to do some specific thing as an act of apology.

A member may be suspended repeatedly, but a vote to suspend a member's membership may not exceed one year, which is the term of the chair of a department's governing board. Revocation of membership terminates the member from the organization. The ALA National Bylaws and Standing Rules address the requirements for disciplinary action requiring due process. (Note: The *Unit Handbook* is being revised and will become known as the *Unit Guide*. A special guide on How to Discipline a Member is being developed by the Legion's National Judge Advocate, ALA National Parliamentarian, National Secretary, and National Treasurer.)

**Q 4. A unit in our community sent us a transfer for a member who they say is a bully. We heard the same from another unit in a nearby town where she used to belong. However, our experience with this member has been good so we question if their claims are true. How should we handle? We want more members but don't need any "bad" ones.**

**A.** If she has not been disciplined by the other units, and if her membership is not suspended or revoked, she still has rights as a member. One right of membership in the ALA is the right to transfer. She must be allowed to transfer to a different unit, and that can include your department headquarters unit. A unit that denies her transfer based solely on hearsay has violated the member's rights and risks legal liability. But hearsay does indicate an obligation for the unit to investigate further. The unit to which she wishes to transfer should request that the other unit(s), department, or intermediate body provide something in writing that documents the reasons why she is an unacceptable member.

The key point is that if there is a "bad apple" who is transferring her ALA membership around, at some point a unit needs to discipline her, if indeed she is a bad apple. Remember, a department has the authority to discipline a unit for failure to discipline a member.

But if a "good apple" is trying to transfer from a "bad orchard", then she is the one we stand to lose unless her being a "member in good standing" is protected. It is important to the future of the ALA for a unit to try to determine if the problem is with the member herself or with the unit(s) to which she belongs.

If your experience with a transferring member has been good and you receive nothing in writing from the other unit(s), department or intermediate body, then your unit is advised to accept the transfer. If the member starts to exhibit unacceptable behavior, then the unit to which she currently belongs has an obligation to discipline her for the unacceptable behavior. Remember, discipline can be anything from a verbal or written reprimand to a suspension or revocation of her membership.

If a unit has doubts about the acceptability of a member wishing to transfer into that unit, it is advisable to suggest the member transfer to your department headquarters unit while encouraging her to volunteer with your unit. Transferring her to the Department Unit protects her rights as a member. Then later, after your unit has looked into the "hearsay", if there is nothing forthcoming in writing from her previous unit, your unit can invite the member to transfer from the department headquarters unit to your unit.

#### **Notes:**

- In spirit of fostering a culture of goodwill, departments should recognize and assist units in mentoring members whose behavior has become unacceptable.
- ALANHQ is developing a resource for depts./units on how to discipline members – how to talk with them, actions to take, etc.; guide/tool/resource targeted to become available in late 2017.
- The ALA Unit Guide (formerly known as the Unit Handbook) is being revised; membership transfer information will be updated.