

CHAPTER III

Armed Forces Disciplinary Control Board

*Michael S. Archer
U.S. Marine Corps
Jacksonville, NC*

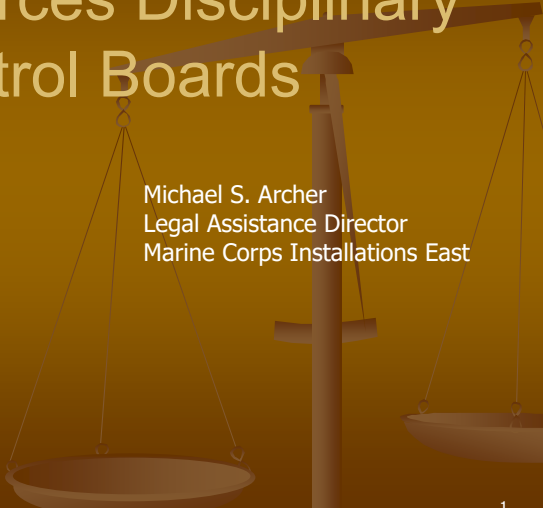
NORTH CAROLINA

BAR ASSOCIATION

seeking liberty + justice

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Armed Forces Disciplinary Control Boards

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Michael S. Archer
Legal Assistance Director
Marine Corps Installations East

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Reference

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- Joint Forces Regulation
 - AR 190-24 (Army)
 - OPNAVINST 1620.2A (Navy)
 - AFI 31-213 (USAF)
 - MCO 1620.2D (USMC)
 - COMDTINST 1620.1E (USCG)

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Purpose

- Eliminating conditions that adversely affect health, safety, welfare, morale, discipline in the armed forces
- Recommendations to commanders, including off limits designation, debarment

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Who is on the Board?

- Membership according to needs of command*

*Whoever the CO chooses

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Membership consideration to:

- Law enforcement
- Legal counsel
- Health
- Environmental protection
- Public Affairs
- Equal Opportunity
- Fire and Safety
- Chaplain
- Alcohol / Drug Abuse
- Community Services
- Consumer affairs

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Board Hearings

- Quarterly, and
- As needed


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How Does a Business Gain AFDCB Attention?

- Complaints of aggrieved consumers
 - Public enforcement action
 - Law enforcement reports
 - Media reports
 - Health Inspection Reports
 - On line complaints and sources
 - Court records
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Legal Assistance Attorney Input

- Taking statements, documenting business misconduct
 - Collection of evidence
 - Time consuming
 - Significant impact on AFDCB effectiveness
 - AFDCB has no investigators or subpoena power
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How Does a Case Get on the AFDCB Agenda?

- Pattern or practice
- Significant harm
- Quality / quantity of the evidence
- A judgement call by the AFDCB President

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Initial AFDCB Action on Agenda Items

- No further action
- Monitor / investigate
- Warning letter
- Show cause letter

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Hearing Procedures

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- Evidentiary rules
- Discovery
- No subpoena power
- Presence / absence of complaining witnesses
- Initial Review

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Hearing Procedures: Opportunity to Respond

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- Refute / minimize allegations
- Take Corrective action
- Opportunity to make statement & present evidence
 - Unsworn
 - Questioning by AFDCB

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AFDCB Recommendations

- No further action
- Monitor, request additional information
- Postpone
- Off limits designation
- Debarment of person(s)
- Revocation of permit
- Internal improvements
- Referral to other agencies

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Recommendation, Decision, and Appeal

- AFDCB recommendation to CO
- Written notice of CO decision
- Appeal decision "at any time," to AFDCB President
- AFDCB
 - Recommends approval / denial
 - May conduct additional investigation

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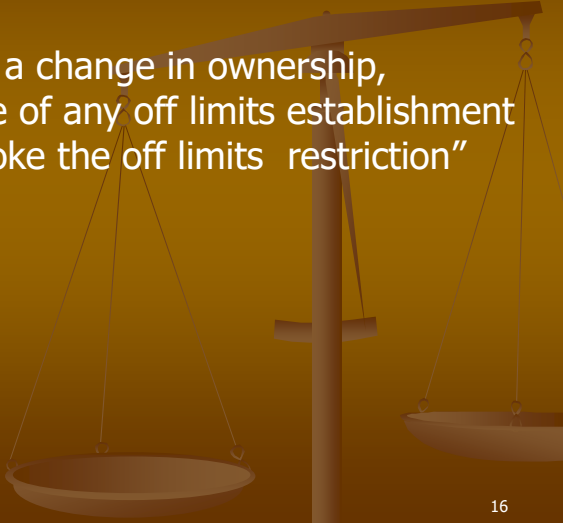
Business Responses to AFDCB



- Correction of problem
 - To avoid off limits designation
 - To remove off limits designation
- Go out of business
- Evasion
 - Change name, location, ownership, business filings

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“As a matter of policy, a change in ownership, management, or name of any off limits establishment does not, in itself, revoke the off limits restriction”
Para 2-6(a)



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AFDCB Strengths

- Knowledge, experience of members
- Potent sanction available
- Likelihood of CO following recommendations

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AFDCB Weaknesses

- Difficulties in evidence gathering
- Lack of compulsory process
- No assigned investigators
- Limited range of options
- Difficulty of off limits enforcement
- Time consuming

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Emergency Procedures

- Emergency off limits order by CO
- Prior to AFDCB hearing
- Expedited hearing as priority matter

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Effect of Off Limits Designation

- Entering area is a crime under the UCMJ
- Publication

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Categories of Recurring Issues

- Dangerousness: victimization
- Illegal narcotics
- Blackmail potential
- Force protection
- Health / Sanitation
- **Consumer issues**

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Consumer Issues

- Prop mgr noncompliance w/ SCRA or NC law
- Auto repair fraud
- Auto sales fraud
- Consumer electronics fraud
- Vape and cigar shops / illegal narcotics sales
- Theft by cleaning service
- Food delivery service
- Restaurant sanitation ratings

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Consumer Issues (cont)

- Landscaping /construction issues
- Predatory lending
- Crime conducive conditions
- Serious dangerous offenses
- Life insurance fraud

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Examples

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The Dangerous Bar

- Serious assaults by bouncers
- Drugs, arson, auto theft
- No remediation
- Public Nuisance Action
- Off limits designation
- Out of business

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The Dangerous Bar (2)

- Homicides & crime at / near premises
- Remediation
- No participation by proprietor in crime
- No off limits designation

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The Crooked Mechanic

- Numerous serious complaints
- Numerous unpaid court judgements
- Failure to appear at AFDCB
- Off limits Designation

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The Predatory Lender

- Consumer electronics at inflated prices
- Triple digit, undisclosed interest
- Public enforcement action
- Failure to appear before AFDCB
- Off limits designation

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The Naughty Bar

- Front for prostitution
- Secret video recording
- Law enforcement raid
- Arrests
- Off limits designation

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The Distant Car Seller

- "Great deals" in Virginia
- "Free" transportation
 - But how to get back?
- Bait and switch
- Selling cars you don't own
- Public enforcement
- Off limits designation

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The On Line Landscaper

- Failure to perform
- Putting business off limits that has no physical location

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The Problem Property Manager

- Military lease termination violations
- Excessive damage charges
- Misleading info
- Lack of timely repairs
- Remediation
 - Change contracts
 - Change procedures
 - Proper info
 - Refunds
 - Contract termination
- MOU / No off limits designation

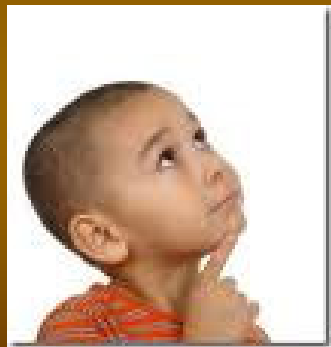
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The Food Delivery Wars

- Traffic violations
- Unlawful solicitation
- Unlawful posting of materials
- Narcotics possession
- Assaults among delivery businesses
- Non cooperation w/ law enforcement
- Force protection issues
- Results: Various debarment, prosecution, off limits, permit removal

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QUESTIONS?



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