



The American Legion  
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Dec 11, 2018

By E-mail and Mail

To: Doug Green, Commodore, (etc.,)

Subject: Confirmation of Termination of American Legion Yacht Club As A Program of Newport Harbor Post 291 For Refusal To Comply With National American Legion Rules

Greetings:

This is to confirm that at its meeting of December 6, 2018, the Executive Board of American Legion Newport Harbor Post 291 voted unanimously to terminate the present American Legion Yacht Club ("ALYC") as a program of Post 291.

This action is based upon, and made necessary by, the refusal of the ALYC, under your leadership as Commodore, and that of your immediate predecessor, Mike Berdine, to comply with the National American Legion's "Five Rules Of Subsidiary Corporations Or SAL And Riders Or Semi Independent Programs," referred to as the "Five Rules" of the parent National American Legion.

While it is unfortunate that this action had to be taken to terminate the ALYC, due to your refusal to comply with the National American Legion's "Five Rules," Post 291 members will not be without a yacht club: A new Post 291 Yacht Club will be established which will comply with the "Five Rules" and all policies of the National American Legion, as a program of Post 291.

The Executive Board's decision was not taken lightly but only after more than a year of effort to resolve this matter by good faith negotiation rather than litigation. However, all those efforts have failed. ALYC has left Post 291 with no choice: ALYC's continuing refusal to comply with National's "Five Rules" necessitates termination of the ALYC as a program of Post 291.

All Posts, including Post 291, are required to implement and enforce National's "Five Rules," and all Post programs, including the ALYC, are required to obey National's "Five Rules."

The National American Legion's "Five Rules" are mandated to ensure that all programs, including those which are incorporated, are under the "oversight and control" of the parent Post, just as the Post is under the "oversight and control" of the parent National American Legion.

Until the advent of Mike Berdine as ALYC Commodore in 2017, and you, Doug Green, as Berdine's successor in 2018, the ALYC—which has always identified itself and held itself out publicly as a "program" of Newport Harbor Post 291, including on its website—has not denied that it is subject to "oversight and control" by Post 291.

On the contrary, in 2008, in response to a complaint filed with the Department of California that the ALYC was operating independently without oversight and control by the Post, then ALYC Commodore Jon Reynolds assured the Department, in written response, that ALYC not only recognizes that it is subject to oversight and control by Post 291 but that Post 291 in fact was providing that oversight and control.

It was only upon those assurances by the ALYC Commodore that ALYC is under the oversight and control of Post 291 that the Department Judge Advocate replied that the ALYC would not have its ability to call itself the "American Legion" Yacht Club terminated. The Department warned, however, that ALYC could not use the name "American Legion" should it cease to operate under oversight and control of Post 291.

Notwithstanding, in 2017, then-Commodore Mike Berdine informed the Post 291 Executive Board that ALYC had purchased a boat for some \$72,000. Concern was raised as to why the ALYC did not notify and seek agreement from the Post in advance

of the purchase, since the Post could be liable should claims be brought arising from operation of the boat.

In response, by letter dated Sept. 8, 2017, Berdine informed the Post 291 Executive Board that: "ALYC is a separate and unique entity from Post 291," on the basis that it incorporated in 1967 as a non-profit "Social Club", tax exempt under IRS Code Section 501(c)(7), not 501(c)(19) as a veterans' organization. Thus, Berdine asserted for ALYC that it is not subject to general oversight and control by Post 291, even though Post 291 is the "parent" organization of ALYC.

More specifically, and internally contradictory, Berdine claimed for ALYC: "Since Post 291 is the organizational parent of ALYC, ALYC has a reporting, support and informational responsibility to Post 291. However, from business entity, financial reporting and tax perspective, the two organizations are totally separate." (Emphasis added.)

In short, the ALYC, under Berdine followed by you, Doug Green — effectively repudiated the assurances made to the Department in 2008 by then-Commodore Jon Reynolds that ALYC is a Post 291 program subject to oversight and control by Post 291 as its parent organization — by claiming now that it is a "totally separate" entity which is not subject to general oversight and control by Post 291 as are all other programs; and claiming that ALYC cannot be required to comply with the National American Legion's "Five Rules" as is required by National of all Posts and Post programs.

Shortly after receipt of the September 8, 2017, letter of Berdine stating that ALYC is "totally separate" from Post 291 and not subject to its oversight and control, as Commander of Post 291, I initiated a series of meetings with a committee of the ALYC in attempts to resolve this situation in good faith negotiations and not litigation —we are all veterans, after all, and we are all members of American Legion Post 291 first.

A major issue in those discussions and now is whether the ALYC can use the name "American Legion" in identifying itself, when it contends it is separate from Post 291; contends that it is not subject to general oversight and control by the Post; and contends it cannot be required to comply with the "Five Rules" of the National American Legion.

It was learned in those negotiations that the ALYC apparently had never formally requested authorization from the National Legion to use the name "American Legion Yacht Club." Therefore, as a gesture of good faith of Post 291, Judge Advocate Robert Wright, who chaired the Post 291 committee, after receiving authorization from you, convinced the National American Legion to officially authorize the ALYC to use the name "American Legion." JA Wright achieved this in negotiations with the National American Legion Judge Advocate and National Adjutant.

The National American Legion granted conditional permission to the ALYC to use the name "American Legion Yacht Club" by a letter to Post 291 JA Wright dated April 10, 2018, signed by National Adjutant Daniel S. Wheeler. Importantly, that letter expressly states: "The use of the name 'The American Legion' is acceptable as long as the post has control of the club as a program of the post and it follows the 'Five Rules of Subsidiary Corporations (copy attached)."

Commodore Green, under your and Berdine's leadership, ALYC has continued to fail to agree to comply with the "Five Rules" of the National American Legion in the seven months since the National American Legion's letter dated April 10, 2018, which expressly stated ALYC must comply with the "Five Rules" and be under the control of Post 291 in order to use the name "American Legion."

Therefore, due to ALYC's refusal to comply with the Five Rules, the Executive Board voted at its September 6, 2018, meeting to suspend the ALYC as a program unless and until ALYC agreed to comply with the Five Rules of the National Legion. Had the ALYC at any point agreed to comply with the Five Rules, and adopt new Bylaws expressly providing for that compliance, the suspension would have been rescinded.

As to the need for updated Bylaws which would include compliance with the "Five Rules" mandated by the National American Legion, JA Wright presented at the Sept. 6, 2018 Executive Board meeting a draft which included material from a previous initial draft by you, Doug Green, and a more detailed draft by Past Commodore Jon Reynolds. The Board voted to adopt the composite draft of JA Wright, subject to any changes that the ALYC might want to request at or before the next month's meeting on Oct. 4, 2018.

At the Oct. 4, 2018, Executive Meeting, you, Doug Green, as Commodore, did request a number of changes. Almost all of those requested changes were accepted and made part of the new ALYC Bylaws. With those changes incorporated, the Board voted to adopt the new Bylaws.

Also, at the Oct. 4, 2018, Executive Board meeting, JA Wright expressly asked you, Doug Green, as Commodore, whether the ALYC would comply with the National American Legion's "Five Rules." You stated "no," ALYC would not comply.

A Special Meeting of the Executive Board was therefore held on October 18, 2018, on the issue of what action should be taken if the ALYC would not comply with the "Five Rules."

The Executive Board voted to terminate the ALYC as a Post 291 program effective December 6, 2018, if the ALYC failed to comply with the "Five Rules" on or before the ALYC's final meeting of the year on December 5, 2018. Notice of the Executive Board's action was served on the ALYC on October 25, 2018, by the Post 291 Adjutant.

At the Executive Board meeting of December 6, 2018, you and other members, but not Berdine, appeared and participated. As Commodore, you, Doug Green, were allowed to speak for the ALYC. You stated, among other things, that the ALYC had not and would not comply with the National American Legion's "Five Rules."

Thus, the ALYC, under the leadership of you, Doug Green, as Commodore and Mike Berdine as Jr. Past Commodore, have left Post 291 with no choice but to terminate the ALYC as a program. The "Five Rules" which ALYC refuses to obey are not the rules of Post 291—they are the "Five Rules" of the National American Legion. As such, Post 291 is mandated to enforce those "Five Rules" on all Post programs and is itself subject to sanctions, including loss of its charter, for dereliction and neglect of duty if the Post refuses to enforce rules of the parent National American Legion.

Therefore, after the failure of more than a year of effort to resolve this dispute through good faith negotiations, the Executive Board, reluctantly but necessarily adopted a motion at the December 6, 2018, meeting to terminate the ALYC as a program of Post 291, based on ALYC's refusal to comply with the "Five Rules" of the National American Legion.

In conclusion, ALYC has chosen not to operate as a program of Post 291, not to be subject to the National American Legion's requirement of control by the Post of all programs, and not to be subject to compliance by all with National's "Five Rules." as are all Post programs.

Instead, ALYC has chosen to insist it is a "totally separate" corporate entity immune from the policies of the National American Legion, including control by the parent Post and compliance with the "Five Rules." ALYC has further chosen litigation over good faith negotiation, and is now suing the Post and all members of Executive Board — including those of us who are members of the ALYC, including myself, First Vice Commander, Mike Schubert, Junior Past Commander, Jess Lawson and Past Commodore, "Skipper Tim" Bercovitz.

The ALYC having chosen to be a separate corporate entity as stated by then-Commodore Mike Berdine in his Sept. 8, 2017, letter, and not a program of the Post, so be it. The ALYC is no longer a program of the Post and is free to go its own way as it chooses to operate as a yacht club separate from Post 291.

ALYC is free to remove any of its property, including its boats, and continue as a yacht club "totally separate" from Post 291. Contact me to arrange removal of property you claim.

As you go your way as a "totally separate" corporate entity, Post 291 will establish a new Post 291 yacht club which will operate, as it should and must, as a program subject to the rules and policies of The American Legion, including the "Five Rules" of the National American Legion.

A handwritten signature in black ink, appearing to read "Doug Nye", is written over a horizontal line. The signature is stylized and somewhat cursive.

DOUG NYE, Commander

American Legion Newport Harbor Post 291