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**JUDICIAL POLICY**



**VERSION 3.1 ◆ Apr 19, 2021**

# North American Railcar Operators Association, Inc.

## Judicial Policy

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The official operating language of NARCOA is English.

### Introduction

This Judicial Policy supersedes all previous editions. It has been written to be easier to understand and more user friendly. It has been simplified to allow all members to be able to better understand the workings of the Judicial Committee in greater detail. The points for each offense have been stated more clearly.

The railroads understand the importance of safety. To achieve this goal, they operate under various policies. The railroad industry operates by rules, understands rules and expects rules to govern all railroad operations. This policy provides guidelines and instructions for what will occur when individuals fail to abide by the rules of NARCOA.

### Judicial Committee Mission Statement

The Judicial Committee (“JC”) is a confidential forum for the investigation of incidents arising from NARCOA activities. The JC makes recommendations to the full NARCOA board for disciplinary actions. By providing a confidential forum for reporting and investigating the circumstances of incidents, the JC enforces the rulebook, operating procedure, policy, and appropriate member conduct while respecting the privacy of everyone. This confidential forum allows some investigations to be fully handled by the JC. JC reports sent to the full NARCOA board incorporate the facts of the investigation, citations of NARCOA governing documents, summaries of JC deliberations, and a recommendation for action. Judicial Committee Policy

### Definitions

1. Judicial Committee - The Judicial Committee will consist of five NARCOA members in good standing, four committee members and a Chairperson. No JC member may be an active Board member in order to isolate the JC from the Board. The three Committee Chairs - Rules, Safety, and Operations - will be consulted as necessary during JC discussions and during the Board review of the JC recommendations.
2. NARCOA Privileges - NARCOA privileges are defined as participation in or attendance at any NARCOA event as a participant or as a guest, voting in any NARCOA election, and the purchase of NARCOA insurance coverage.
3. Member Suspension - A member who is suspended loses NARCOA privileges for a period of time as defined by the JC policy. Insurance coverage premiums are not refunded due to suspension of NARCOA privileges. A suspended member remains a member of NARCOA during the suspension.

## Section 1. Incidents

- 1.01 An incident is defined as any event and / or occurrence involving one or more NARCOA members that results in personal or emotional injury, property damage, or reputational damage to a NARCOA affiliate, member, guest, host railroad, or third party.
- 1.02. Incidents may also arise from:
- 1) violations of the rulebook, operating procedure, or corporate policy, or
  - 2) maleficence, fraud, or misconduct.
- 1.03 Operator inattentiveness leads to incidents; these failures attributable to fatigue or distraction make up the majority of the JC incidents. Such failures include, but are not necessarily limited to:
1. Failure to adjust speed to conditions of light, weather, rail, or traffic
  2. Failure to recognize and account for the operator's own physical, mental, and emotional conditions
  3. Failure to observe conditions at rear of motorcar while backing
  4. Failure to yield right of way at grade crossings
  5. Failure to control speed or maintain ability to stop within an assured cleared distance ahead
  6. Failure to observe NARCOA operating rules or special instructions
  7. Failure to observe safe practices taught in NARCOA training programs or supervisory bulletins
  8. Failure to properly maintain on-track equipment to NARCOA standards.
  9. Failure to be attentive to the operator's surroundings.
- 1.04 Operator misconduct constituting an "incident" may include, but is not limited to, the following:
1. Use of profanity or derogatory language when unwelcome.
  2. Aggressive/threatening behavior and/or displays of anger.
  3. Airing of disputes pertinent to rules and governing standards in the presence of non-members.
  4. Persistent disruptive activity (via conduct, oral statements, or writings) which undermines respect for NARCOA or its governing bodies. The conduct may occur during excursions or outside the context of excursions.
  5. Solicitation of any kind directed towards NARCOA members.
  6. Any conduct which places NARCOA, its affiliates, its EC, or any member in disrepute.

**Remember: See something, Say something. Don't be part of a cover-up.**

## Section 2. Reporting Incidents

- 2.01 Excursion Coordinators are required to write and prepare reports of all incidents. Events resulting in rules violations, injury, property damage, or collisions must be reported in all cases. Reports should be made using the Incident or the Rules Violation Forms available on the NARCOA website.
- 2.02 The Excursion Coordinator will send the completed report to the NARCOA Insurance Administrator within 30 days of the date of the incident. Failure by the EC to file a timely detailed report may result in the JC recommending sanctions to the NARCOA Board of Directors. (See section IV.D) Phone calls alerting the Insurance Administrator, Area Director, or JC Chair to events are appreciated. However, timely forms are still required. These forms can be e-mailed.
- 2.03 The NARCOA Insurance Administrator will file the report with the insurance carrier as necessary or as specified by the insurance policy. The NARCOA Insurance Administrator will furnish a copy of the report to the JC Chair for possible action.
- 2.04 Incident reports involving operating procedure, corporate policy, maleficence, fraud, or misconduct may be initiated by anyone. Persons wishing to make a report shall write a letter or e-mail directly to the JC Chair; and include as much factual detail as possible. If desired, the letter writer may ask that his or her identity be held in confidence within the JC. Anonymous or unsigned letters will not be considered.

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**Section 3. Misconduct**

- 3.01 Misconduct is defined as any act by a Member that violates the integrity of NARCOA.
- 3.02 Misconduct shall be reported (“Initial Report”) to the Area Director and directly to the Judiciary Chair. Misconduct includes failing to follow the directions of the EC, or to respect the EC’s authority. Failure to report injuries, property damage, collisions, or other accidents is misconduct. The Area Director investigates and creates a Director’s Report. Within 30 days of receipt of the Initial Report, the Director shall send the Initial Report and a Director’s Report to the JC Chair.
- 3.03 Misconduct involving maleficence or fraud may be first reported (“Initial Report”) to the Area Director or may be reported directly to the Judiciary Chair; by letter and include as much factual detail as possible. If desired, the letter writer may ask that his or her identity be held in confidence within the JC. Anonymous or unsigned letters will not be considered.

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**Section 4. Point System**

- 4.01 Rulebook Violations - Each violation is evaluated individually and assigned a point value from the list below. Points for all violations are then totaled.
  - 1 Use of wheel shunts at NARCOA events
    - a. Arriving with shunts installed. 6 points
    - b. Operating on track equipment with shunts installed. 10 points
    - c. Actively using shunts or refusing to remove shunts. 15 points
  - 2. Electronic Devices Rule Violations (e.g. operator takes photographs, makes a cell phone call, or transmits on a “wide band” radio) 5 points
  - 3. Failure to follow operating rules 4 points
  - 4. Excessive speed above the announced speed limit or excessive speed for the conditions (e.g. greased rail, wet rail, or misaligned track) 3 points
  - 5. Missing required equipment (e.g. tow bar) 2 points
  - 6. Use of embargoed equipment (e.g. hockey stick bent pins) 2 points
  - 7. Rule book violations not listed above or elsewhere in this policy 2 points
- 4.02 Incidents - Each component of an incident is evaluated individually and assigned a single point value from the list below. Points for all components are then totaled.
  - 1. Physical damage to vehicle or object caused by minor contact costing less than \$50 to repair 1 point per vehicle
  - 2. Physical damage to vehicle or object caused by moderate contact, costing over \$50 to repair, but not disabling from operating safely 3 points per vehicle
  - 3. Disabled vehicle due to collision, de-rail, ruptured gas tank, etc. 5 points per vehicle
  - 4. Rear end collision 3 points
  - 5. Independent operation outside of the organized group without the knowledge and permission of the Excursion Coordinator and the host railroad. The operator is no longer with the group and therefore is no longer sharing the excursion’s track authority. Operating on track without proper WRITTEN permission FROM THE PROPER AUTHORITY, during or within the context of an excursion is prohibited. Verbal permission may only be obtained by the Excursion Coordinator and passed on to the participants as part of a scheduled excursion. Members are not to contact any railroad employee during an excursion for special permission. In addition, depending on the circumstances a misconduct charge may also be applied. A second (and third) occurrence of independent operation as described here by the same member at any time, will be treated as a primary (and secondary) occurrence of Bootlegging. (See section VII.D) 6 points

- 4.03 Personal injury and other misconduct - Each person injured is evaluated individually and assigned a single point value from the list below. Points for all injured persons are then totaled.
- |   |           |
|---|-----------|
| 1. Injury of a minor nature   | 1 point   |
| 2. Injury requiring an EMT, doctor, or emergency room treatment   | 8 points  |
| 3. Injury requiring hospitalization greater than 24 hours or any catastrophic injury (e.g., re long term therapy) | 12 points |
| 4. Other misconduct not causing physical injury   | 5 points  |
- 4.04. Late filing of incident reports by excursion coordinators, reports of rules violations or misconduct by any member, or failure to reply with supplemental information requested by the excursion coordinator or by the JC Chair.
- All initial reports are due within 30 days of the occurrence of the incident, rules violation or misconduct. All requests of the excursion coordinator or the JC Chair are due within 14 days of the request.
  - Late filing beyond the due dates will be assessed 1 point. An additional point will be assessed for each additional week that the report or request is late. Once 11 points are assessed the member will be subject for suspension under the current points suspension process.
- 4.04 Consideration may be given to the operator of a motorcar rendering assistance by towing or pushing a disabled motor car if that operator was determined to have not contributed to any incident that occurs during that process.
- 4.05 Points assessment by the JC will be reported to the Board of Directors as outlined in section VI.E. The TOTAL points allowable will be reported; however, a limit of 15 points will be assessed against a given member at any time unless the Board of Directors decides that there are severe extenuating circumstances.

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### Section 5. Point Accumulation

- 5.01 Assignment of points is additive with all violations being assessable. For example, a motorcar travelling too fast for conditions rear ends the car in front and causes minor damage to both cars. The point assignment would be 3 points for the rear end collision, plus 3 points for the excessive speed, plus 1 point for each car damaged: total 8 points.
- 5.02 Any member accumulating 11 points or more at any given time, will have his or her NARCOA privileges suspended for one year from the date the Board took the last disciplinary action.
- 5.03 After one year, and each year thereafter, from the date of the last Board disciplinary action, 5 points will be removed from the operator's total points assessed.

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### Section 6. Judicial Committee Responsibility and Activity

- 6.01 The JC Chair possesses wide latitude and freedom of action. The JC Chair may decide at his or her sole discretion that there is insufficient information or known facts about events to warrant further action. The JC Chair may discuss any information known to the JC in confidence with the NARCOA President. The JC Chair takes responsibility for investigating incidents and presenting facts to the whole committee. The JC Chair decides whether to contact, or not contact, members or other witnesses regarding incidents. In their deliberations, members of the JC have wide latitude and freedom to consider information or personal experience, not presented by the Chair. The committee will generally follow the procedure below; but is not required to do so exactly in every case.
- 6.02 After receipt of the initial report, the JC Chair is the only person who gathers information, presents it to the committee for discussion, and seeks additional information at the request of the committee members. No other committee member is to contact anyone else outside the committee during an active investigation. Doing so will be considered misconduct.

- 6.03 The JC Chair will assign a unique NARCOA incident number to aid in filing of incidents and to maintain confidentiality. This number will be created from the calendar date of the incident (Year, Month, Day) followed by the number of incidents in that year. For example: 21/01/23(2) would be assigned to an incident that occurred on January Twenty Third of 2021 followed in parenthesis by the chronological number of incidents that year. This unique number will be used in all communication regarding that specific incident. This includes communication with the EC, accused member, witnesses, JC committee discussions, Board of Director discussions, etc.
- 6.04 By NARCOA policy, the President is the only person that may speak for NARCOA. If the JC Chair or any committee member feels that information is needed from the host railroad; the Chair will defer to the President for such contact.
- 6.05 After information is gathered, the JC Chair presents the incident to the whole JC where the incident is discussed; usually by e-mail, or by conference call at the discretion of the Chair. Members of the committee may request additional information. After considering the known facts, the governing rules, and photographic evidence; the committee tries to arrive at a consensus recommendation to the NARCOA Board of Directors for disciplinary action. The form of the Chairpersons report to the Board is flexible. The JC Chair may summarize the committee's discussion and recommended action to the Board, or the Chair may forward committee e-mails of various opinions. Regardless the JC Chair will act as the sole communicator between the JC committee and the Board of Directors. JC actions are to be completed within 60 days of the JC Chair's receipt of the incident report.
- 6.06 In all cases Actual disciplinary action is the prerogative of the Board of Directors ("BOD"), not the JC. The BOD shall possess absolute discretion to follow or disregard the JC's recommendations as the BOD sees fit.
- 6.07 Should an incident occur that the President or the JC Chair determines is severe, urgent and in need of a rapid resolution in the interest of the preservation of NARCOA, the President may elect to bypass the JC and present it to the full BOD for an immediate decision to be made by the BOD alone.
- 6.08 Any injuries resulting in professional medical care may result, in the discretion of the BOD, in immediate suspension of NARCOA privileges for all involved persons until investigation is complete; provided, however, that no such suspension may last longer than ninety (90) days. This interim suspension shall not be deemed a disciplinary action and shall not be considered during assessment of points as described in Article IV above.
- 6.09 The BOD may elect to suspend a member indefinitely or permanently in instances deemed severe and detrimental to the preservation of NARCOA. Such a motion must be decided by a minimum 2/3 vote of the BOD.
- 6.10 In addition to any points assessment or suspension, the BOD can add an educational requirement with or without the recommendation of the JC. The nature and scope of the educational component will be determined by the Board of Directors. The member may be temporarily suspended from NARCOA activities until timely completion of the educational component. The education addition will be undertaken by the Board of Directors as a separate, discussion, motion and vote after agreement of points assessment.
- 6.11 Where disciplinary action was not recommended to the BOD; the JC Chair shall have latitude to write "caution" letters to members; where actions or words might not be considered in the best interest of NARCOA. Copies of these letters will be given to the President and Secretary.
- 6.12 The BOD will designate who shall notify the member(s) of disciplinary action.
- 6.13 Records of the BOD's disciplinary action shall be kept by the corporation secretary in the corporate minutes; by the current JC Chair (with records to be given to successor Chairpersons); and forwarded to the Membership Chair for inclusion in restricted fields of the corporation electronic data base. All these records are confidential.
- 6.14 Subject to as much confidentiality as reasonably can be obtained the NARCOA President may discuss JC recommendations and disciplinary actions by the Board with the Insurance Administrator, the insurance carrier, and any host railroad involved in events.

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**Section 7. Penalties for Incidents, Rule Violations and Misconduct by NARCOA members in addition to those in preceding sections**

- 7.01 Any fatality or severe injury resulting from an Operator's negligence will result in the removal of all NARCOA privileges for 36 months from date of Board action.
- 7.02 When eleven (11) points or more are accumulated, the member's NARCOA privileges will be removed for 12 months from date of last Board action. After one year and each year thereafter, from the date of last Board action, 5 points will be removed from the operator's total points assessed.
- 7.03 Any combination of three (3) incidents, misconduct, rulebook, or policy violations over a 36-month period, regardless of point total may result in NARCOA privileges being removed for 12 months from the date of last Board action.
- 7.04 Any operator found guilty of using track without proper WRITTEN permission FROM THE PROPER AUTHORITY, outside the normal context of an excursion (Bootlegging) will result in NARCOA privileges being removed for 12 months from the date of Board action. A second Bootlegging offense will result in NARCOA privileges being removed for 60 months from the date of the last Board action. Note that this differs from section IV.B.5; however, a second (and third) occurrence of IV.B.5, will be considered a primary (and secondary) occurrence of Bootlegging.
- 7.05 Any operator found guilty of malicious damage to property, vandalism, or theft from another Member or Host Railroad will result in NARCOA privileges being removed for 12 months from the date of Board action. A second offense will result in NARCOA privileges being removed for 60 months from the date of the last Board action.
- 7.06 Any operator found guilty of violation of NARCOA rule 4.03, 'Alcohol and Drugs' or Rule 4.04, 'Weapons' on railroad property will result in NARCOA privileges being removed for 12 months from the date of board action. A second conviction will result in NARCOA privileges being removed for 60 months from the date of the last Board action.
- 7.07 Recommendations by the JC for misconduct shall consider circumstances of the incident to decide if the act was "willful" or "not willful," and with or without "malice."
1. A "willful" act is one done intentionally, as distinguished from an act done carelessly or inadvertently.
  2. "Malice" is malevolence, the quality of threatening evil.
  3. Misconduct may include, but is not limited to, any derogatory actions against NARCOA or its members, or against any railroad or its associates, which may harm NARCOA in any way.
  4. Points assessment
 

a. Non-Willful Misconduct	0-3 points
b. Willful Misconduct without Malice	3-6 points
c. Willful Misconduct with Malice	6-12 points
- 7.08 Falsifying information on any NARCOA form or document at any time including during a NARCOA report or investigation will be considered misconduct.
- 7.09 NARCOA members disregarding Insulation/Shunting Rule 1.02 may be assessed both a rulebook violation as well as Misconduct.
- 7.10 When disciplinary action results in the removal of a member's NARCOA privileges, the Operations Chair will notify all Excursion Coordinators, the Insurance Administrator, the Membership Committee, and the Webmaster of the member's loss of privileges.

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## Section 8. Appeal Process

- 8.01 The JC makes recommendations to the full NARCOA Board for disciplinary action. Actual disciplinary action is done by the Board of Directors, and not by the JC.
- 8.02 If a member wishes to appeal NARCOA disciplinary actions, such appeal is to the entire Board at the annual Board of Directors meeting. Appeals should have some real basis such as omissions of fact. To commence an appeal, the member should contact his or her Area Director or the President. Appeals of disciplinary action resulting in loss of NARCOA privileges don't have to wait until the annual meeting. The Area Director or President will present the member's appeal to the Board as soon as possible.
- 8.03 The appellant's attendance is desired, but not required, at the annual Board of Directors meeting. The appeal will be heard during a closed executive session. If the appellant is not present at the meeting, the Area Director or President will present the appeal on behalf of the member.
- 8.04 If the appellant is present at the annual Board of Directors meeting at the time designated by the president, the process will be as follows:
1. Appellant, and any witnesses, are invited in and seated.
  2. The President will read a statement of activity that led to the JC / BOD action and subsequent decision.
  3. Appellant will make a statement of the basis for his or her appeal; and elicit any testimony from witnesses. A general discussion will follow.
  4. Appellant and witnesses will be asked to step outside.
  5. BOD and JC Chair (if present) will discuss the appeal.
  6. BOD vote to allow in full or part the appeal; or deny the appeal. This vote may be delayed by the Board to consult with outside professionals or witnesses.
  7. Appellant will be notified by mail of the decision.
  8. Case closed, case not to be discussed outside the board room.

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