

**THE AMERICAN LEGION
DEPARTMENT OF FLORIDA**



JUDGE ADVOCATE'S MANUAL

JUDGE ADVOCATE

The primary duty of the Judge Advocate is to supply advice based on your legal training or past American Legion experience, which have prepared you for the office. You are the interpreter of the Constitution and By-laws of your Post, District, or Area and at any time may be called upon by the Commander and other officers and members to rule on the legality of their actions and decisions insofar as they affect the good of The American Legion.

The Judge Advocate must protect the integrity of The American Legion and keep alight the torch of truth and fidelity that symbolizes the high and ennobling ideals under which The American Legion was founded. You must protect wisely that heritage.

The Judge Advocate can supply valuable assistance to other Post, District, or Area committees and officers. You should be available to the Service Officer for advice and to the Americanism Committee on matters relating to the education and naturalization laws. Any committee can benefit from the Judge Advocate's contacts with local government.

The Judge Advocate and Legal Committee are charged by the suggested Post Constitution with the duty of auditing Post financial accounts, which should be done annually just before the election of officers, or more frequently at their discretion.

Note: Should a Post Judge Advocate ever be

in doubt, or not sure, of the legality of his/her decision, contact the Department Judge Advocate for clarification.

A Judge Advocate should never answer questions or render a decision based on personal opinion.

A Post Judge Advocate must be familiar with the Post Constitution and By-Laws, and be reminded that they are the governing document for Post operations. Should you encounter a problem not covered by the Post Constitution and By-Laws, contact Department Headquarters.

A Post Judge Advocate along with the Post Constitution and By-Laws Committee should amend and update the Post Constitution and By-Laws every three years.

CONSTITUTION AND BY-LAWS

Each Post in the Department of Florida shall have its own Post Constitution and By-Laws, and they cannot conflict with the Constitution and By-Laws of The American Legion and the Department of Florida.

The Department of Florida Constitution, Article X, Section 11, states “The Post Constitution and By-Laws, together with any subsequent amendments, shall be approved by the Department Judge Advocate, with such approval confirmed by the Department Commander, and a copy filed with the Department Adjutant’s office, with certification

of approval issued to the Post before becoming effective.”

Any amendments to a Post’s Constitution and By-Laws must be approved by the membership of the Post, and signed by at least two Post officers. The amendment will then be sent to the Department Headquarters for processing. **Please do not send amendments directly to the Department Judge Advocate.** Doing so will result in a delay in processing. Once the amendment is reviewed by the Department Judge Advocate, it will be sent back to the Department Headquarters and signed by the Department Commander. A letter stating approval or changes that need to be made will be sent back to the Post by Department Headquarters.

The Post Officers Guide, pages 106 – 108 has a template for Post Constitution, and on pages 108 – 111 there is a template for Post By-Laws. These templates can be used by a new Post to establish their governing documents.

PARLIAMENTARY PROCEDURE

Parliamentary Procedure is the application of parliamentary law to the conduct of an organization. It is wise for all leaders to familiarize themselves with the accustomed technique of conducting a meeting. While it is important the members understand the fundamental rules of parliamentary procedure, this knowledge should be used only to insure order, to expedite business and to develop an organization that will cleave to the objects for

which it was organized. For a member to constantly raise points of order and to insist upon the strict observance of every rule in peaceable assembly, where there are members ignorant of those rules and customs, is but to defeat the opportunity of gradually accustoming the membership of the proper observance of parliamentary procedure.

It is important for an American Legion Post to adopt some authority on parliamentary law, and for the members to be familiar with both the specific and the general rules of the organization. A copy of the Post By-Laws should always be on the Commander's desk.

The order of business in a meeting of an American Legion Post is in the Post Officers Guide, and should be followed at all official meetings of The American Legion.

MOTIONS

The steps to take to make a motion and to vote on it are as follows:

1. Obtain the floor; The member rises and addresses the presiding officer, as Mr. or Madame Commander, give his/her name, and if the member is entitled to the floor, the chair repeats the name of the member. This recognition gives the member the right to speak. It is out of order for another member to stand before the member speaking is finished, or to remain standing after another member has been given the floor.

2. Make the Motion; The member then states the motion. In order to state a motion properly, members of the organization should become accustomed to using words "I move that" when introducing the motion.
3. Second the Motion; If anyone wishes the matter discussed and voted upon, a member says, "I second the motion." If the motion is not seconded, the Chair may say "There being no second, the motion is not before the assembly, or the motion died due to the lack of a second." (Note: Consult your parliamentary authority for the motions that do not require a second.)
4. State the Motion; After the motion is seconded, the chair then states, "It has been moved and seconded, (state the wording of the motion) is there any discussion?"
5. Discussion; After a motion has been made and seconded it is before the assembly for consideration and discussion. Speakers to the motion must (1) be entitled to the floor, (2) address their remarks to the presiding officer, (3) be courteous in their language and avoid all personalities.
6. The Question; After sufficient opportunity has been given the debate, The Chair repeats the motion and says, "Are you ready for the question?" After waiting a moment if no one claims the floor, the Chair then says, "All those in favor of the motion as stated, say Aye. All opposed to the motion as stated, say No."
7. Announce The Vote; The Chair says, "The ayes have it and the motion is passed, or the No's have it and the motion is defeated," as the case may be. In the event of a tie vote, the motion fails unless the Chair votes Aye

in order to pass the motion. A tie vote loses because every motion must be approved by at least a majority.

MOTIONS THAT REQUIRE AN AUDIT

In the case of the Post Finance Report, Club Room Report, Lounge Report or any motion that deals with funds, the proper motion should be, “ I move that the Finance Report, (or whatever Committee is reporting regarding monetary amounts) be approved for audit.”

If the motion passes the report is approved, and must be made available for audit whenever the Constitution and By-Laws call for an audit.

INVESTIGATIONS

Often conflicts of personalities or different opinions on management styles will result in conflicts within a Post. In most cases these conflicts involve the Post lounge, financial concerns or other issues involving Post operations. These matters should be resolved by the Post leadership whenever possible.

If the concern involves the upper echelon of the Post leadership, or is not properly addressed at the Post level, the District Commander should be contacted for assistance. The District Commander will work with the Post directly to provide advice, recommendations, and act as a mediator when needed.

If the District Commander is unable to easily resolve the matter and further investigation is recommended, a member of that Post must submit a letter to the Department Headquarters providing a detailed outline of the concern, violations of National, Department and/or Post Constitution and By-Laws, actions already taken (contacted Post leadership and/or District Commander) and evidence if possible. The letter must be signed by a current paid member of the Post. Once received, the Department Commander will review the request and determine if an investigation is warranted.

If the Department Commander determines that further investigation is needed, he/she will assign a Department representative (usually the District Commander) to conduct an investigation with the authority of the Department. The Department representative will conduct a detailed investigation and attempt to resolve any outstanding issues. A report will be submitted to the Department Commander following the investigation.

If the investigation reveals further concerns and the Department representative is unable to resolve the situation, the Department Commander may assign the Department Internal Affairs Commission to further investigate and assist the Post in resolving the issues.

The Department Internal Affairs Commission has the authority per the Department By-Laws, Article IV, Section 7, to “assume complete management of all of the affairs of the Post.” If this occurs, control will be returned to the Post

membership at the earliest opportunity if it is determined that such return of control is in the best interest of the Post and the Department of Florida. It is important to note that all expenses of the Internal Affairs Commission during the investigation process are the responsibility of the Post being investigated.

RULES GOVERNING TRIALS

These rules shall govern any and all trials held by The American Legion Department of Florida or any Post within The American Legion Department of Florida.

1. Any disciplinary action where the potential punishment is suspension or expulsion from The American Legion, or in the case of an Officer, the removal from office, against any Member or Officer shall be upon sworn or verified written charges by the accuser(s).
2. Said sworn or verified written charges shall be filed with the Adjutant of the Convening Authority.
3. A copy of the sworn or verified written charges shall be served upon the Accused, either in person or by certified mail with proof thereof by a return receipt.
4. The Adjutant of the Convening Authority shall cause to be served upon the Accused, in the same manner as above mentioned, a Summons for the Accused to appear on a specified date, time, and location for a trial. No trial shall be held until fifteen (15) days have lapsed from the time of service of the charges upon the Accused.

5. The accuser(s) must be a Member(s) of the same Post as the Accused and shall set forth the charges of disloyalty, neglect of duty, dishonesty, and/or conduct unbecoming a Member of The American Legion in terms whereby the Accused shall be able to determine what conduct is being complained of, which shall at a minimum, include the date, time, place, and the details of the offensive conduct, in order that the Accused may properly prepare a defense.
6. The Accused may appear at the trial in person, through written answer, or with counsel. Counsel may be a member of The American Legion or a licensed attorney.
7. Either the Convening Authority or the Accused may apply for a continuance before the day of the trial. However, such a request must be in writing, show just cause for said request, and be sworn to by the moving party. The presiding Judge Advocate shall rule on any such motion filed.
8. The Judge Advocate of the Convening Authority shall preside at the trial and shall have the power and authority to pass upon the materiality and relevancy of any evidence presented, and shall have general power to prescribe the necessary and reasonable rules and regulations for the orderly procedure of said trial.
9. In the event that the Judge Advocate of the Convening Authority is unable to preside at the trial, the Department Commander shall be noticed of said inability, and the Department Commander will then appoint a Judge Advocate from within the physical jurisdiction of The American Legion

Department of Florida, to preside over the trial. The Post shall bear the expense of any Judge Advocate so appointed.

10. The jurors for the trial shall be selected from the members of the Post that brought the charges. The Convening Authority shall select five (5) such members and the Accused shall select five (5) such members. All members selected must be in good standing. Any member so selected shall be disqualified to serve as a juror if they are an accuser or witness at the trial.
11. If any juror so selected states that he or she cannot fairly and impartially render a verdict in accordance with the evidence, then the presiding Judge Advocate shall strike those individuals as jurors.
12. Both the Convening Authority and the Accused shall have the right to strike two (2) jurors from the panel without showing any cause for such challenge. If the number of jurors is reduced below six (6), then each Party shall select one (1) additional juror.
13. The jury actually selected to hear the facts shall consist of at least six (6) individuals.
14. If six (6) impartial individuals cannot be selected from the Post then the presiding Judge Advocate shall so notify the Department Commander and the Department Commander shall detail additional members from The American Legion, within the Department of Florida to act as jurors. The entity bringing the charges shall be responsible for any cost associated therewith.
15. At any time before the trial commences, the charges may be amended. However, if the charges are amended the Accused must be

- served with the amended charges and allowed fourteen (14) days before the trial can commence.
16. All testimony of witnesses must be taken under oath. The Accused shall have the right to confront and cross-examine any witnesses against him or her. No written statements, whether sworn or not, shall be admitted into evidence if the person who wrote the statement is not present to confront and be cross examined by the Accused or counsel.
 17. Either the Convening Authority or the Accused shall have the right to have the trial and associated proceedings recorded by tape, video, or court reporter. The entity which arranges for the recording/reporting of the trial shall be responsible for any cost associated therewith.
 18. The jury's decision must be presented to the membership of the Post at the next regularly scheduled meeting of the Post. At that meeting, the membership of the Post can approve, disapprove, or modify the findings of the jury and any punishment awarded. Such decision at the general membership meeting of the Post shall be binding upon the Accused and the Post unless the Accused, within forty five (45) days from such decision, appeals to The American Legion, Department of Florida. Any appeals, including filing deadlines, shall be governed by those rules enacted by the Department Executive Committee entitled "Rules Governing Appeals."
 19. In the event of a conflict between these Rules and either the Constitution or By-Laws of The American Legion, Department

of Florida, the Constitution and/or By-Laws shall be controlling.

RULES GOVERNING APPEALS

Any appeal taken from a trial held within the jurisdiction of The American Legion, Department of Florida shall be governed by these rules.

1. A Notice of Appeal, in accordance with the attached form entitled "Notice of Appeal" must be received within forty five (45) days of the final action of the entity bringing the charges or any appeal is waived.
2. The Notice of Appeal shall contain the following:
 - a. The date, location, participants (Accused, Judge Advocate, witnesses and jurors) and verdict.
 - b. A concise and specific statement of why the accused believes he or she did not receive a fair trial.
 - c. A brief summary of the testimony of each and every witness.
 - d. A concise statement of the final disciplinary action taken by the charging entity.
 - e. Attached to the Notice of Appeal shall be a copy of the charges against the Accused and any evidentiary material such as papers or photographs used during the trial. If no such documents were used, then this shall be so stated.
 - f. A copy of the Notice of Appeal must be delivered to the Commander of the charging entity contemporaneous with

delivery to The American Legion,
Department of Florida.

3. The entity that brought the charges shall have a right to respond to any allegations or statements in the accused's Notice of Appeal. Said response shall be in writing and filed with the Department Adjutant within sixty (60) days from the charging entity's decision.
4. The Department Adjutant shall schedule the appeal at the next regularly scheduled meeting of the Department Executive Committee.
5. At the hearing on the appeal before the Department Executive Committee, both the accused, either in person or through counsel, and the charging entity, through a representative designated by the charging entity's Commander or counsel, shall have five (5) minutes to argue their points on appeal. The points on appeal are limited to whether the accused received a fair trial.
6. Any member of the Executive Committee may question either party.
7. The Department Judge Advocate will preside over any such appeal.
8. Upon the Department Executive Committee rendering a decision on the appeal, the Department Judge Advocate shall reduce said decision to writing and direct said opinion to be distributed to each member of the Department Executive Committee, the Accused, and the Convening Authority.

