

## **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 charge(s) by the accuser(s).

2. Said sworn or verified written charge shall be filed with the Adjutant of the Convening Authority.

3. A copy of the sworn or verified written charge(s) 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. The trial shall be held at the next regularly scheduled general membership Post Meeting after fifteen (15) days have lapsed from the time of service of the charge(s) upon the accused.

5. The accuser(s) must be a member(s) of the same Post as the accused and shall set forth the charge(s) 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. At any time before the trial commences, the charge(s) may be amended. However, if the charge(s) are amended, the accused must be served with the amended charge(s) and allowed fourteen (14) days before the trial can commence at a regularly scheduled general membership Post Meeting.

11. The entire trial, including all votes taken, will be conducted by the Post Judge Advocate or a Judge Advocate appointed by the Department Commander.

12. At the regularly scheduled general membership Post Meeting where a quorum is present, the trial is the first order of business. Prior to the start of the trial, the membership will need to determine if the votes to determine guilty/not guilty and any other punishment will be taken viva voce (by voice) or by ballot.

13. Only Post members in good standing sitting in attendance at the regularly scheduled general membership Post Meeting will be the jury to hear the trial.

14. The start of the trial shall be the reading of the charge(s) in front of the membership.

15. All testimony of witnesses must be taken under oath. The accused shall have the right to confront and cross examine any witnesses against him/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. The accused shall be allowed to speak in his/her own defense, if he/she so desires.

16. 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 Post which arranges for the recording/reporting of the trial shall be responsible for any cost associated therewith.

17. Once the witnesses have been heard and the accused has been heard (if desired), the accused shall retire from the meeting room and the Post members present shall proceed at once, and without debate, to vote on the guilt or innocence of the accused, taking a separate vote on each charge(s).

18. If the accused is found guilty by a majority vote of the members present and voting, a second vote will be taken to determine if the accused will be permanently expelled from The American Legion, suspended from The American Legion or a lesser punishment as determined by a majority vote. In no case shall a member be permitted to vote who was not present at the commencement and during the entire progress of the trial. Expulsion means no longer eligible to be a member of The American Legion (requires a 67% affirmative vote from members present). Suspension means suspended from The American Legion for a maximum of the remainder of the current membership year and one additional membership year. A not guilty verdict dictates no punishment.

19. Such decision at the next regularly scheduled general membership Post 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 appeal, including filing deadlines, shall be governed by those rules enacted by the Department Executive Committee entitled "Rules Governing Appeals."

20. 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 Convening Authority or any appeal is waived.

2. The Notice of Appeal shall contain the following:

a. The date, location, participants (accused, Judge Advocate, witness(es), counsel(s), accuser(s), 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 Convening Authority.

e. Attached to the Notice of Appeal shall be a copy of the charge(s) 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 Convening Authority contemporaneous with delivery to The American Legion, Department of Florida.

3. The entity that brought the charge(s) 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 Convening Authority'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 Convening Authority, through a representative designated by the Convening Authority'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 Department 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.