

TRIAL PROCEDURE GUIDE FOR AMERICAN LEGION TRIALS

(NOTE: Before any potential members of the jury are present in the courtroom, the judge may call for a pretrial hearing to make sure the accused is ready to proceed to trial. Those in attendance should be Judge, Prosecutor, Accused, Defense Counsel, Court Reporter or Recorder.

JUDGE: The court will come to order.

PROSECUTOR: The court is convened by direction of the Commander of (Post____) (District)(Area), in the letter dated _____. Copies of which have been provided to the Judge, Counsel, and the Accused, and to the Reporter/Recorder for insertion in the record.

PROSECUTOR: Are there any objections to the convening order, or are there any errors noted on the face of the convening order? (If any, so state.)

JUDGE: I note no (other) corrections.

PROSECUTOR: The prosecution is ready to proceed with the trial in the case of the American Legion Post Number _____ against Legionnaire _____, a member of Post _____, who is present in the court.

PROSECUTOR: Legionnaire _____ has been assigned to record the proceedings of this court and will now be sworn.

Do you swear (affirm) that you will faithfully perform the duties of the recorder to this court? So help you God. (If affirmed, omit: So help you God.)

RECORDER: I do.

PROSECUTOR: I have not acted as an investigating officer, judge, court member, judge advocate, or a member of the defense in this case, or as counsel for the accused at other proceedings involving the same general matter.

JUDGE: Legionnaire (Accused) _____, at this point in the trial it is appropriate that I advise you of your rights with regard to counsel. I am sure you have been previously told of your right to counsel, but I want to satisfy myself that you understand these rights.

First, you have a right to hire an attorney to represent you.

Second, you have a right to have a member of the American Legion represent you

Third, you have a right to have both assist in representing you.

Fourth, you may appear without representation by yourself.

Do you understand each and every one of these rights?

(If the accused wishes to proceed without counsel, this request may be granted by the judge if the judge decides the accused understands the right to counsel, has the intelligence and capacity

to appreciate the consequences of this decision, and comprehends the nature of the charges, proceedings, and permissible punishment.)

JUDGE: Legionnaire (Accused) Do you wish to be represented by Attorney _____?

If Defense Attorney is not present, ask Accused if he needs time to retain counsel and when will counsel be available for trial.

If Accused is proceeding "pro se" (without counsel), ask Accused if he/she is prepared to go to trial now. If the answer is no, ask the Accused when he/she will be prepared to proceed.

If the Accused answers "Yes" then proceed to trial.

JUDGE: Does the American Legion or the Defense desire to challenge the Judge for cause? If the answer is "No" proceed to Arraignment.

If the answer is "Yes" then the issues of whether the Judge has acted as an investigating officer, judge advocate, or counsel in this or a closely related case must be raised and addressed by the parties and considered by the judge. If the Judge has so acted the Judge should recuse himself from the case, state the reason on the record, adjourn the court, and report the action to the convening authority.

JUDGE: The challenge is (sustained) (denied).

ARRAIGNMENT

JUDGE: The accused will now be arraigned.

PROSECUTOR: The accused, counsel, recorder, and the judge have each been furnished with a copy of the charges.

Does the accused desire that they be read?

DEFENSE: The accused (waives the reading of the charges) (desires that the charges be read).

JUDGE: [Prosecutor will read the charges.] [The reading of the charges may be omitted.]

The charge(s) and specification(s), the name and description of the accuser, the accuser's affidavit, and the reference to trial, will be copied verbatim into the record.

PROSECUTOR: The charges are signed by _____ [accuser's name] a member of American Legion Post Number _____; are properly sworn to before a Notary Public; and are properly referred to this court for trial by _____, Commander, Post _____, the convening authority.

PROSECUTOR: The charges were served on the accused by _____, on _____, 202_.

JUDGE: To Accused: Legionnaire _____, how do you plead? (If NOT GUILTY proceed to Voir Dire.) (Examination of prospective jurors)

TRIAL PROCEDURE GUIDE FOR AMERICAN LEGION TRIAL

(With Judge and Prospective Jury Members sitting after a Pretrial Hearing)

JUDGE: The court will come to order.

PROSECUTOR: The court is convened by direction of the Commander of (Post _____) (District)(Area), in the letter dated _____. Copies of which have been provided to the Judge, each member of the jury panel, Counsel, the Accused, and to the Reporter/Recorder for insertion in the record. The charges have been properly referred to this court for trial. Legionnaire _____ has been assigned to record the proceedings of this court and has been previously sworn.

JUDGE: I am _____, the Judge Advocate for _____, and I have been detailed to preside over this trial by _____, the convening authority.

Will the Prosecutor please introduce yourself to the jury panel?

Will counsel please introduce yourself(ves) to the jury panel?

PROSECUTOR: The prosecution is ready to proceed with the trial in the case of the American Legion Post Number _____ against Legionnaire _____, a member of Post _____, who is present in court.

JUDGE: The members of the Jury will now be sworn. All persons please rise.

PROSECUTOR: Do you, state your name, swear that you will faithfully perform all the duties incumbent upon you as a member of this court; that you will faithfully and impartially try, according to the evidence, your conscience, and the rules applicable to trials in the American Legion, the case of the accused now before this court; and that you will not disclose or discover the vote or opinion of any particular member of the court upon the findings or sentence unless required to do so in due course of law. So help you God.

JURORS: I do.

JUDGE: You may be seated. The court is assembled.

JUDGE: Does the prosecution or the defense intend to call any member of the jury panel as a witness? (If so, such member or members should be excused from the jury panel.)

Are any of the spectators intended to be called as witnesses by either side? If so, are there any objections to them remaining in the courtroom? (If objections are made, the prospective witnesses should be excused from the courtroom by the judge.)

JUDGE: Members of the court, the accused has an absolute right to be tried before a panel of impartial court members. Therefore, it is mandatory that you disclose any and all reasons that may exist that would keep you from being fair and impartial to both sides. The following reasons are proper grounds for challenge: that the member is not eligible to serve on a jury in an American Legion trial due to lapse in membership for nonpayment of dues; that you are not a member of this post; that you are an accuser, a witness for the prosecution, or a witness for the defense; that you are an investigating officer, a judge

advocate, a convening authority, or have served as counsel for either side; that you have formed or expressed a positive and definite opinion as to the guilt or innocence of the accused; or any other reasons which would cast substantial doubt as to the legality, fairness or impartiality of the trial.

JUDGE: Does any member know the accused or counsel for either side? (If affirmative, judge should establish whether that relationship may influence that member's deliberations.)

Does any member of the jury employ any other member of the jury? (If affirmative, see above.)

Does any member of the jury have pressing business which will prevent you from devoting your full time and attention to this case?

Is any member of the jury aware of any facts or circumstances which gave rise to the charge(s)?

JUDGE: The charge(s) are: (Read exactly the CHARGE(S) from the Convening Authority's Letter.)

Will each member agree to follow the law as given to you by me?

Has any member of the jury heard any details of this case from the news media?

Is any member aware of any other matter which you believe may be a ground for challenge by either side against you?

JUDGE: PROSECUTOR may ask questions of the members of the jury if you wish.

JUDGE: DEFENSE may ask questions of the members of the jury if you wish.

JUDGE: Does either the Prosecution or the Defense wish to challenge any member of the jury for cause?

JUDGE: Does either side wish to exercise their right to a single peremptory challenge of a juror?

JUDGE: The accused was arraigned at a hearing conducted before the jury entered the courtroom. At that hearing a plea of NOT GUILTY was entered.

(If multiple charges and guilty pleas were entered to some charges, but other charges are still going to be tried by a jury, it is advisable to have a conference with the defense and the prosecutor to discuss the specific language to use in informing the jury. This will be unusual in a Legion trial as the most common charge is conduct unbecoming a member of the American Legion. However, the following language is provided:

JUDGE: Members of the court, you are advised that the accused has pleaded guilty to less than all of the charges. I have accepted the accused's plea(s) and entered the following findings: _____. Therefore, this portion of the trial is limited to a determination of the accused's guilt or innocence of the charge(s) to which the accused has pleaded not guilty, namely _____. You are advised that, concerning the contested charge(s), no inference whatsoever adverse to the

accused may be drawn from the guilty plea(s), nor may the guilty plea(s) be considered in any way as evidence going to the contested charge(s).

PRESENTATION OF PROSECUTION CASE

JUDGE: The prosecution may make an opening statement, if it so desires.

PROSECUTOR: The prosecution has (no) (an) opening statement.

(Usually, the prosecutor will outline the theory of the case, briefly telling the jury what it is going to hear and the planned order of presentation. The defense counsel may then present an opening statement or reserve the right to do so at the close of the prosecution's case.)

PROSECUTOR: The prosecution calls as a witness _____.

JUDGE: (To Witness) Do you swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God.

WITNESS: I do.

PROSECUTOR: State your full name and American Legion Post number. (Witness answers.)

Do you know the accused in this case?

Please point to him, if you see him, and call him by name. (Witness responds.)

PROSECUTOR: Let the record reflect that the witness pointed to the accused.

PROSECUTOR: Continues to examine the witness about the facts the witness has knowledge of, including any documents or photo or video images, sound recordings, etc., and when completing examination of the witness should state as follows: "The prosecution has no further questions of this witness."

DEFENSE: Defense Counsel, or an unrepresented accused, may then examine the witness, or may decline to do so by stating, "The defense has no (further) questions of this witness."

PROSECUTOR: May conduct redirect examination (and the defense may then conduct re-cross examination until concluded. The Judge may limit this if no additional information is obtained.)

JUDGE: (The JUDGE may decide to permit members of the jury to ask questions of the witnesses after the PROSECUTOR and the DEFENSE have concluded their questioning. To avoid repetition of questions, a proposed method of doing this would be to have a tablet available for jurors to write down their questions and have the tablet picked up by the Sergeant at Arms and delivered to the JUDGE. The JUDGE can then ask the question(s) of the witnesses, preserving the anonymity of the juror(s) asking the questions. The JUDGE may also decide to permit the jury to call witnesses or recall witnesses at the end of the

trial. The jurors should be advised of the early in the proceedings so they can list such witnesses on their tablet and so that the JUDGE can make the witnesses subject to being recalled when they are excused from the witness stand.)

This process continues until the PROSECUTION has had the opportunity to call all its witnesses and present all its stipulations of fact (if any) at which time the PROSECUTOR states: "The prosecution rests."

PRESENTATION OF DEFENSE CASE

DEFENSE: The defense has (no) (an) opening statement.

DEFENSE: The defense calls as a witness _____.

JUDGE: (Swears in witness using language above.)

[It is possible that the accused may wish to testify in his own behalf. If this should occur, the JUDGE should swear the ACCUSED to tell the truth as for all witnesses. However, in case the ACCUSED is unrepresented the JUDGE should also inform the ACCUSED that his testimony at this stage will be under oath, and will be subject to rebuttal by the Prosecution, and can be used against the ACCUSED for any legal purpose, including the formation of a case for false swearing or providing false testimony under oath.]

This process continues until the DEFENSE has had the opportunity to call all its witnesses and present all its stipulations of fact (if any) at which time the DEFENSE will announce: "The defense rests."

JUDGE: Does the prosecution have any rebuttal? At this time the PROSECUTOR may call or recall witnesses or present other different evidence in rebuttal; thereafter, the DEFENSE may call or recall witnesses or present other evidence in surrebuttal. Upon completion of rebuttal testimony, the PROSECUTOR should announce: "The prosecution has no further evidence to offer. Does the defense have any further evidence to offer?"

DEFENSE: The defense (does)(does not).

JUDGE: Does the jury wish to have any witness called or recalled?

JURY: We (do) (do not).

ARGUMENT AND INSTRUCTIONS

After all the evidence has been presented by both sides, the JUDGE may hold a hearing outside of the presence of the jury to discuss the preparation of individual VERDICT FORMS for each member of the JURY. If this is determined to be done, separate forms would need to be prepared which would indicate each charge followed by a place to mark GUILTY or NOT GUILTY for each charge, or whether the jury will simply be polled by voice vote. If a voice vote is taken and is too close to call, the JUDGE may ask for a hand vote or a vote by standing for GUILTY and then for NOT GUILTY. Whichever process is determined to be appropriate by the PROSECUTOR and by the DEFENSE, as finally agreed to by the JUDGE, this will need to be explained to the JURORS before they are directed to deliberate.

If CLOSING ARGUMENTS are to proceed immediately after this hearing, it will be necessary to have someone prepare the VERDICT FORMS while arguments are presented and while any final instructions are given to the JURY by the JUDGE. If there will be a recess for a meal break, or overnight, then the PROSECUTOR is usually assigned to prepare such forms as are necessary.

The possible punishments should be discussed during this hearing, so that both sides can argue to merits of the case and also argue the possible sentence which the JURY may impose. A decision whether to require a verdict of GUILTY or NOT GUILTY on each charge may be discussed by the parties, especially if there are multiple charges, and a ruling made by the JUDGE. If there is only one charge, then the process can be simplified by explaining that if the jury returns a verdict of NOT GUILTY, that will be the end of the trial. However if there is a verdict of GUILTY on the only charge, then the JURY must decide upon the sentence from the options which are possible in the case. (Example: Removal from office; suspension from membership (and, if suspended, for how long a period up to one year); expulsion from the American Legion)

The length of time for argument of the parties should be discussed. Complex cases may require longer time for arguments. Equal amounts of time should be allotted to each side. The Prosecutor has the burden of proof and goes first and last to allow rebuttal of the Defense argument. The Prosecutor may reserve time for the final closing argument and the Recorder, or the Sergeant at Arms should run a stopwatch to alert the Judge as to the time with warnings at three minutes to each side. [Keep in mind that Supreme Court arguments of Death Penalty cases seldom last more than 30 minutes a side.]

At the conclusion of all matters raised at the hearing, the JUDGE will request the Sergeant at Arms to reassemble the JURY, the PROSECUTOR, the DEFENSE COUNSEL, the ACCUSED, the RECORDER and alert any spectators. When all are reassembled in the courtroom the JUDGE will direct as follows:

JUDGE: The court will come to order.

PROSECUTOR: All parties to the trial who were present when the court recessed are now present (except _____).

JUDGE: The prosecutor may make an opening argument. (At this time the prosecutor should explain the requirements of each charge and describe the evidence which was presented to establish the accused is guilty of such charge(s). Documents which were presented by witnesses or by stipulation should be shown by the prosecutor to the jurors during the

opening argument and may be passed to the jurors so they can examine the items. Recordings may be replayed during the argument as well. (Remember the time limits.) All such documents and recordings should be marked as exhibits so they can be tracked in the record and any transcript made from the recorded record.

JUDGE: Time. The defense (counsel) may now argue. (The defense counsel, or self-represented accused should explain any defense arguments based only upon evidence, or a lack of evidence, presented during the course of the trial. Examples are: insufficient documentation of accounts, absence of eyewitnesses, justification of behavior such as self-defense or necessity. The accused if self-represented should avoid making additional factual claims not raised during the evidentiary testimony of the Defense case. The accused is still under oath if the accused was previously sworn as a witness. If this is done, the prosecutor may request the JUDGE to reopen the prosecution's case to present rebuttal testimony.

JUDGE: Time. The prosecutor may close. (The prosecutor may rebut argument of the defense, highlighting errors or demonstrating greater weight of the evidence. Remember the time limits. The prosecutor should ask for a verdict of GUILTY on all counts and request a sentence appropriate to the charge(s) and the specific facts of this case as they support the charge(s).

JUDGE: Time. Counsel, the accused, and the reporter will join me in a hearing when the court closes. The JURY will now meet in a closed session. No one may enter the room where the JURY is deliberating. The documents, photographs, and recordings admitted into evidence will remain with the JURY. If the JURY wishes to view recordings, let the Sergeant at Arms know and we will reassemble to play the materials. When the JURY is done deliberating and is ready to decide the issues of GUILTY or NOT GUILTY, please let the Sergeant at Arms know to reassemble the court.

If the JURY will remain in place in the courtroom, the JUDGE, COUNSEL, the ACCUSED, and the RECORDER may adjourn to another meeting room or to a location away from the courtroom to determine if there will be any mitigation evidence presented by the defense such as medical conditions, an apology, restitution payments or offers.

If the JURY has a question, requests to rehear testimony, requests to review or rehear recordings, the Court will reassemble to hear the request and decide on the response.

If the JURY advises it is ready to reach a verdict, the court shall reassemble in the courtroom.

JUDGE: The court will come to order. Members of the JURY, are you prepared to announce your verdict?

JURY: We are.

JUDGE: As to the Charge, how many of you find the Accused to be GUILTY?

As to the Charge, how many of you find the Accused to be NOT GUILTY?

(Repeat for each additional Charge, if any. Follow agreed upon process of counting votes, if required.)

JUDGE: (If the Accused is found NOT GUILTY of all Charges, the JUDGE will announce this to all present, and may thank the JURY members for their service, avoiding any praise or criticism of the verdict.)

JUDGE: The court is adjourned.

JUDGE: (If the Accused is found GUILTY of one or more of the Charges, the JUDGE will announce the verdicts as to each Charge.)

SENTENCING

JUDGE: The defense may now present appropriate matters to the JURY on the issue of sentencing if the defense so desires. (Defense counsel, or the accused, if self-represented, may offer witnesses or documents, or stipulated materials, in mitigation or extenuation. The accused may also offer testimony under oath, following advisement of the right against self-incrimination, if not previously advised during the trial.) The accused may also offer unsworn testimony in mitigation or extenuation of the charge(s) of which the accused stands convicted. The unsworn statement is not evidence, and the accused cannot be cross-examined upon it, but the prosecutor may offer evidence to rebut anything contained in the statement. The statement may be oral, or in writing, or both. The accused may make the statement themselves, or it may be made by their counsel, or by both. Legionnaire _____ do you understand what I have told you?

ACCUSED: (Yes)(No)

JUDGE: If you wish to make a statement please have your counsel inform me, or you may answer by yourself if you are self-represented.

DC/ACCUSED: _____.

JUDGE: Does the defense have anything further to offer?

DC/ACCUSED: The defense rests.

JUDGE: Does the prosecution have any evidence it wishes to introduce in rebuttal?

PROSECUTOR: (No sir.) (Yes sir. I call as a witness _____.) (Yes sir. I offer Prosecution Exhibit ____ for Identification.) If concluded, state: "The prosecution has nothing further."

JUDGE: Does the JURY wish to have any witness called or recalled?

JURY: (Yes.) (No.)

JUDGE: Prosecutor may make an opening argument upon Sentencing.

PROSECUTOR: (May argue for a particular sentence or simply explain the options to the JURY.)

JUDGE: The defense may now argue.

DC/ACCUSED: (Explain mitigation, extenuation, ask for understanding, offer restitution, request no sentence be imposed, offer to resign office, apologize.)

JUDGE: Prosecutor may close, if desired.

PROSECUTOR: (May rebut, or briefly request a specific sentence or waive further argument.)

JUDGE: Explain options available as agreed at pretrial hearings.

JUDGE: The court will be closed while the JURY deliberates. JURY members may elect to proceed to in open session with voice votes, or hand votes, or standing to show votes, as they wish. If the JURY deliberates in secret, upon arriving at a sentence they should advise the Sergeant at Arms who will summon the participants and the spectators to the courtroom.

JUDGE: The court will come to order.

Have you arrived at a sentence?

JURY: (Yes.) (No, we have need for further instructions.)

JUDGE: Please announce your sentence.

JURY: The Jury, in closed session and upon secret written ballot, (two-thirds) (three-fourths) (all) of the members present at the time the vote was taken concurring, sentences you to:

(Suspension from all privileges of membership in the American Legion for a term of ____ months, not to exceed a total of 12 months from the date of this verdict, or the date of affirmance of an appeal taken from this verdict if your sentence has been stayed until the later date. However you may attend regular post meetings if all other obligations of membership are current and there are no outstanding claims or charges pending against you.)

Expulsion from the American Legion and all affiliated organizations.

JUDGE: Members of the JURY we thank you for your service.

JUDGE: Legionnaire _____, you have heard the sentence of your comrades. You are entitled to file an appeal within forty (40) days, in accordance with Article IV, Section 3 of the By-Laws of The American Legion, with the Executive Committee of the Department of Florida as provided in the By-Laws of the Department of Florida