

## **RULES GOVERNING TRIALS**

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

1. Any disciplinary action against any Member or Officer where the potential punishment is suspension or expulsion from The American Legion, or in the case of an Officer, the removal from office, 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. The trial shall be held as set forth below.

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 Florida 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 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.

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. The procedure of the trial shall be as follows:

A. Within fifteen (15) days of the charges being served on the Accused, the Judge Advocate shall conduct an arraignment.

1) The Judge Advocate will read to, and assure that the Accused understands the charges being brought against the Accused, and that the Accused understands that they have a right to plead not guilty and to the assistance of representation at trial from another willing Legionnaire or a Florida licensed attorney at the Accused's expense.

2) The Judge Advocate will ask the Accused whether they plead not guilty or guilty and enter the plea into the record.

B. At the next regularly scheduled meeting of the Post, the first order of business will be to select a jury. A jury will consist of no less than five (5) Legion members of the Post. The Judge Advocate may allow up to eleven (11) jurors if the Post has sufficient membership to warrant a larger jury. A jury must consist of an odd number of members.

1) A jury shall be selected using the following procedure:

a) The Judge Advocate will announce the date, time, and location (Post Home) of the trial.

b) The Judge Advocate will inquire if any Post members will be unavailable for the trial or if there is a reason they can not or should not serve on the jury.

c) All available Legionnaires will randomly be given a piece of paper/flash card with a number of 1 through \_\_\_\_ (number of perspective jurors).

- d) After the Judge Advocate has set the number of Legionnaires to serve on the jury, the jurors will present in order of the number they were randomly given.
  - e) Both the Prosecution and the Accused will then have an opportunity to question each prospective juror.
  - f) The Prosecutor and Accused shall each have the right to strike at least one (1) prospective juror. Additional strikes may be permitted by the Judge Advocate depending upon the size of the jury pool.
  - g) Once the allotted strikes are spent, or the Plaintiff or Accused does not wish to use a strike, the first \_\_\_\_ (number of jurors) will be the jury.
  - h) The Judge Advocate may allow two (2) additional jurors to be seated as alternate jurors. These jurors will be used in the event a selected juror is unable to serve at the time of the trial.
- 2) The Judge Advocate will assure that each juror and the Accused is given written notice of the time, date, and location of the trial.
  - 3) The Post will notify the District Commander at least ten (10) days in advance of the trial, providing the date, time, and location where the trial is to be held. The District Commander shall detail a District Officer to attend the trial as an observer.
13. The start of the trial shall be the reading of the charges in front of the jury.
14. 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. The Accused shall be allowed to testify in his/her own defense, if he/she so desires.
15. 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.
16. Once the witnesses have been heard and the Accused has been heard (if desired), all persons other than the individuals sitting as jury shall retire from the meeting room and the jury shall commence to deliberate, taking a separate vote on each charge as to whether the Accused is guilty or not guilty. There must be a majority vote of guilty, on each charge, for the Accused to be found guilty of that particular charge.
17. If the Accused is found guilty, 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. Expulsion means no longer eligible to be a member of The American Legion (requires a 67% affirmative vote from the jury). 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.
18. The verdict and a brief summary of the evidence heard at the trial shall be presented at the next general membership meeting of the Post. The Post membership shall act on the verdict by ratifying same, or reducing the conviction or sentence awarded by the jury. In no event can the membership increase the punishment, or act on or change any not guilty verdict.
19. 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 appeal, including filing deadlines, shall be governed by those rules enacted by the Department Executive Committee entitled "Rules Governing Appeals."
20. The Post must inform the Accused of their right to appeal the outcome of the trial to The American Legion, Department of Florida.
21. If the Accused is expelled from The American Legion, the Post must submit to the Department Headquarters a complete copy of the following: (1) the sworn or verified written charge(s), (2) the Summons served to the Accused, and (3) the transcription or summary of the trial proceedings. These documents are necessary for the Department to initiate the process of recording the expulsion in the National membership system.
22. 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 at a Post 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, the Summons, 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.

## NOTICE OF APPEAL

*Any appeal taken from a trial held at a Post within the jurisdiction of the American Legion, Department of Florida shall be governed by the addendum to the Department By-Laws titled "Rules Governing Appeals"*

*A 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**.*

**Date of Trial:** \_\_\_\_\_

**Location of Trial:** \_\_\_\_\_

**Accused:** \_\_\_\_\_

**Judge Advocate:** \_\_\_\_\_

**Witness(es):** \_\_\_\_\_

\_\_\_\_\_

**Counsel(s):** \_\_\_\_\_

**Accuser(s):** \_\_\_\_\_

**Jurors:** \_\_\_\_\_

\_\_\_\_\_

**Verdict:** \_\_\_\_\_

*Provide a concise and specific statement of why the Accused believes he or she did not receive a fair trial.*

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*Provide a brief summary of the testimony of each and every witness.*

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*Provide a concise statement of the final disciplinary action taken by the charging entity.*

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**Date:** \_\_\_\_\_

**Printed Name of Accused:** \_\_\_\_\_

**Signature of Accused:** \_\_\_\_\_

*Attached to this Notice of Appeal shall be:*

- *A copy of the charge(s) against the Accused.*
  - *A copy of the Summons.*
  - *Any evidentiary material such as papers or photographs used during the trial.*
- If no such documents were used, then this shall be so stated.*

*A copy of this Notice of Appeal must be delivered to the Commander of the charging entity contemporaneous with delivery to the American Legion, Department of Florida.*

*The entity that brought the charges shall have a right to respond to any allegation 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.*

**Send a copy of this notice to:**

**The American Legion, Department of Florida ATTN:  
Department Adjutant  
1912 A Lee Road Orlando, FL  
32810**