

## 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.