



THE AMERICAN LEGION DEPARTMENT OF MICHIGAN

Rules of Procedure for the Trial of Members

Authorization:

This procedure was authorized in its present form by the Department Executive Committee on September 25, 2024, at the Annual Fall Conference in Traverse City, Michigan.

Purpose:

This procedure protects the rights of Members and ensures that the Trial of a Legionnaire will be full and fair as required by the Department of Michigan Constitution Article VII Section 16.

Procedure:

This procedure shall govern all trials held by The American Legion Department of Michigan or any Post within The American Legion Department of Michigan as set forth in the Constitution or the By-Laws of the Department of Michigan.

Discipline of Members must be carried out in full compliance with this procedure. Any deviation will invalidate the charges brought against the Member or Officer at any level.

A "Convening Authority" shall be defined as the Post, the District, or the Department who has jurisdiction over the charges and the trial.

The "Convening Authority" shall be determined by the Accuser's position; either a member of the same Post, a member of the same District, or a Department Officer as defined in this procedure.

The Convening Authority shall hold the trial at the Accused's Post or in the Accused's District, or at the Department Headquarters.

ARTICLE I. COMPLAINT AND SUMMONS

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 and verified written charges by the accuser(s).

2. Said sworn and verified written charges shall be filed with the Adjutant of the Convening Authority. The oath must be sworn to before a notary public or before a Post, District or Department Adjutant, and shall be substantially in this form: "Do you solemnly swear (or affirm) that the contents of this document are true and correct, and that you signed it freely, so help you God?"

The Notary or Adjutant shall affix their signature near that of the Accuser, together with "signed and sworn before me on date."

3. The Accuser who swears to the charges must be a member of the same Post, a member or the District Commander of the same District, the Department Judge Advocate, or a Department Elected Officer.

4. The Accuser may request to file a sworn and verified written charge with any Convening Authority in the Department of Michigan. However, the request shall be accompanied by a signed affidavit as to why the Accuser believes that a lower Convening Authority will not be impartial. The Department Judge Advocate shall determine if Good and Substantial cause exist before such request is granted.

5. A copy of the sworn or verified written charges shall be served upon the Accused by the Adjutant of The Convening Authority, either in person with proof of service or by certified mail to the last known address with proof thereof by a return receipt.

When the Adjutant of The Convening Authority is the subject of the Charge, the Adjutant of the next higher Convening Authority shall assume the duties required of the Adjutant in this procedure.

6. The Adjutant of the Convening Authority shall cause to be served upon the Accused, in the same manner as above stated, a Summons for the Accused to appear on a specified date, time, and location for a trial. No trial shall be held less than twenty (20) days and not later than 60 days from the date of service of the charges upon the Accused. If the acts of the Accused have resulted in civil or criminal charges being filed in the courts of a Municipality,

County, State, or of the United States, the matter shall be postponed until the case in court is completed.

The Accused Legionnaire shall also, at the time of being served with such documents, as above said, be given a copy of these Trial Rules of Procedure.

7. The Accuser(s) shall set forth the charge of conduct unbecoming a Member of The American Legion, or in case of an elected Officer the charge may include malfeasance, misfeasance, or nonfeasance in office or conduct unbecoming a Member of The American Legion, 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.

8. 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.

If the Accused fails to answer the charges, in manner and form as set forth in this procedure, the charges stated shall be taken as confessed and the recommendation for expulsion, suspension, or removal from office shall be granted.

9. Either the Convening Authority or the Accused may apply for a continuance before the day of the trial. However, such a request shall be accompanied by a written motion, supported by an affidavit of the party so applying. Good and Substantial cause, as determined as by the presiding Judge Advocate, must exist before said motion is granted. The trial presiding officer shall rule on any motions filed.

10. 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. A guilty finding must be based on clear and convincing evidence.

11. If the Judge Advocate of the Convening Authority is unable to preside at the trial, the Commander Convening Authority shall appoint a Judge Advocate from within the same district.

12. The Adjutant of the Convening Authority shall provide a copy of the charges, summons and answer to the District Commander, who may appoint an official observer to attend the trial.

ARTICLE II. TRIAL BOARD & TRIAL PROCEDURE.

1. The members of the trial board shall be members of the American Legion in good standing in the Department of Michigan. Preferably, they should be selected from the members of the Post or District of the Accused. The Convening Authority shall select at least five (5) such members and no more than seven (7) such members. No person may be selected as a member of the trial board if they are an accuser, or is related to the facts of the case, or is likely to be called as a witness at the trial.

2. If any trial board member 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 from the trial board.

3. Both the Accused person and the accuser may strike one (1) member from the trial board without showing any cause for such a challenge. If the number of jurors is reduced below five (5), then the convening authority shall select additional jurors as required, who may not be challenged except for cause.

4. If five (5) impartial trial board members cannot be selected from the Post or District, the convening authority shall so notify the Department Commander, who shall appoint additional members in good standing and who is believed to be unbiased and who is not related to the facts of the case nor likely to be called as a witness. The Post holding the trial shall be responsible for any costs associated therewith.

5. 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.

6. 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 be confronted and cross examined by the Accused or Counsel.

7. The Convening Authority shall have the trial and associated proceedings recorded by tape, video, or court reporter. The Post holding the trial shall be responsible for any cost associated therewith.

8. The trial board verdict may include not guilty or guilty. Penalty imposed may include reprimand, probation on specified terms, removal from office, suspension of membership for not more than one (1) year, or expulsion from membership in The American Legion.

9. Except in case of acquittal, The trial board's decision, along with the minutes or transcript of the trial, a copy of the sworn written charges and other evidence used in the trial shall be presented to the membership of the Post of which the Accused is a member, at the next regularly scheduled meeting of the Post.

At that meeting, the membership of the Post, shall vote by secret ballot to approve, or reject the findings of the trial board and any punishment imposed. The District Commander shall appoint four (4) tellers to count the ballots, two tellers (2) shall be appointed from the Post and two tellers (2) shall be appointed from the District.

Should the membership approve the actions of the trial board, the decision of the Post shall be binding upon the Accused unless the decision is appealed, ONLY the Accused may within thirty (30) days from such decision appeal the verdict, to Department Adjutant.

If the post members vote to reject the trial board's findings, the charges of the accused shall be reinstated, and a new trial process will begin. The next higher Convening Authority will have jurisdiction over the trial. The trial may be held at a location of the Convening Authority choosing, and the Post shall Pay any and all costs incurred for the new trial.

10. The Post Adjutant shall, within 30 days of a decision of the post membership on a trial verdict that orders expulsion or suspension of a person from membership in the American Legion, notify the Department Adjutant of the of said decision.

11. In the event of a conflict between these Rules and either the Constitution or Bylaws of The American Legion, or Department of Michigan, the National Constitution and/or Bylaws shall be controlling.

ARTICLE III. RULES GOVERNING APPEALS

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

1. A Notice of Appeal must be received by the Department Adjutant within thirty (30) days of the final action, or any appeal shall be waived. The notice of appeal shall contain the following:

- A. The date, location, names of participants (Accused, Judge Advocate, witnesses, and trial board members) and verdict.
- B. A concise and specific statement of why the Accused believes he or she did not receive adequate due process and a fair trial.
- C. A summary of the testimony of each witness, a written transcript or recording of the trial.
- D. A concise statement of the final disciplinary action taken by the charging entity.
- E. A copy of the decision at the Post general membership.
- F. 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.
- G. A copy of the Notice of Appeal must be delivered to the Commander of the charging entity at the same time it is delivered to The Department Adjutant.

2. 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 date of the notice of appeal.

No additional evidence shall be admitted on appeal.

3. When an appeal is Requested by Accused, it shall be the duty of the Department Adjutant to notify all parties of the date, time, and place of such hearing on the appeal. The appeal hearing may be held in person or by using remote meeting technology. This notice should be given, if possible, at least ten (10) days before the meeting.

4. The Department Hearing Body shall be either the Department Executive Committee or the Department Administrative Committee as designated by the Department Commander.

At the appeal hearing both the Accused (either in person or through counsel) and the representative of the charging entity's Commander, shall have ten (10) minutes to argue their points on appeal.

The issues to be decided by the Department Hearing Body shall only include, whether the Accused received adequate due process, a fair trial, consideration of the weight of evidence presented at trial, and the penalty imposed, if any

5. Any member of the Department Executive Committee or the Department Administrative Committee hearing the appeal may question either party.

6. The Department Judge Advocate will preside over the appeal and shall advise the Department Commander as to the compliance with these rules in the conduct of the trial.

7. Upon the Department Executive Committee or the Department Administrative Committee rendering a decision on the appeal, by majority vote, the Department Judge Advocate shall reduce said decision to writing and direct said opinion to be distributed to each member of the hearing body, the Accused, District Commander, and the Post Commander.

8. The decision of the Department Executive Committee, or the Department Administrative Committee, shall be conclusive, there is no appeal to any other body or authority.

Amendments:

These Rules of Procedure may be amended by the Department Executive Committee at any meeting where a quorum is present.

Approved: September 25, 2024