



The American Legion Department of Michigan

Rules of Procedure for the Trial of Post Members and/or Post Officers

Authorization:

This procedure was authorized in its present form by the Department Executive Committee on July 6, 2023, at the Annual Department Convention in Sault Ste Marie.

Purpose:

These procedures protect the rights of members and ensure that the Trial of a Legionnaire will be full and fair as required by Department of Michigan Constitution Article VII, Section 14.

Member Trial Procedures

1. That any charges brought against a Legionnaire, at Post level, must be a written charge, upon the charge of "Conduct Unbecoming a Member of The American Legion".
2. Upon receipt of such charge, the Commander of the Post, or when the Commander is absent, the officer properly acting in his stead shall appoint a Committee of three (3) Legionnaires, who are believed to be unbiased and who are not related to the facts of the case nor likely to be called as witnesses, to investigate the facts surrounding the charge.
3. When the Post Commander is the subject of the Charge, the Post Executive Committee shall appoint an Officer, 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, to assume the duties required of the Commander in this procedure.
4. Upon receipt of the committee's written report detailing specific facts, together with details of dates, times, names and addresses of witnesses, and a majority of the Committee's recommendation in writing to proceed to Trial of the issue of "Conduct Unbecoming a Member of The American Legion", the Commander shall immediately instruct the Committee to draft a complaint against the accused Legionnaire, notifying the Legionnaire of the charge, "Conduct Unbecoming a

Member of The American Legion”, and separating the various acts or events that the member has performed in violation of our code of conduct, written or unwritten, into separate numbered paragraphs, together with Notice that on _____ date and at _____ time, at the place of meeting of the American Legion Post, or such other convenient place as the Commander of the Post may select, a full and fair Trial of the issue will take place.

5. The Trial shall be held not less than twenty (20) days from the date the Commander shall send the requisite “Trial Notice” and not later than sixty (60) days from the date of the Investigating Committee’s final report.
6. The Commander shall, together with the Charge and Trial Notice, send by certified mail, to the accused Legionnaire’s last known mailing address, a copy of the Investigating Committee’s detailed written report, in total, detailing the dates, times, facts and witnesses regarding the charge of “Conduct Unbecoming a Member of The American Legion”.
7. The accused Legionnaire shall also, at the time of being served with such documents, as stated above, also be given a copy of these Trial Rules of Procedure.
8. Both the accused and the Post may be represented by attorneys at their respective costs.
9. A Trial of a Legionnaire will be full and fair as required by Department of Michigan Constitution Article VII, Section 14.
10. The Post shall be the judge of its own members; however, the Post members may designate, in its Constitution, By-Laws or otherwise, that a body smaller than a membership meeting of the Post may act in the members’ stead to try the issues. However, only Legionnaires may sit in judgment of a Legionnaire.
11. The Post Judge Advocate shall preside at the Trial and shall have the power and authority to pass upon the materiality and relevancy of all the evidence presented and shall have general power to prescribe the necessary and reasonable rules and regulations for the orderly procedure of the Trial.
12. In case of death, removal, vacancy, resignation, or disability of the Post Judge Advocate, it shall be the duty of the Department Commander, when duly notified by the Post Adjutant, to appoint a special Judge Advocate to fill the vacancy. Such special Judge Advocate so appointed shall have the authority, rights, and powers of a duly elected Post Judge Advocate. The post shall bear the expenses of any special Judge Advocate.
13. Either party may apply for a continuance before the day set for trial; however, it shall be accompanied by a written motion, supported by affidavit of the party so applying. Good and Substantial cause must exist before said motion is granted. The Presiding Judge Advocate shall pass on said motion.
14. The Post’s decision that a member has committed “Conduct Unbecoming a Member of The American Legion” shall be by majority vote of the hearing body finding such by the preponderance of the evidence.
 - A. The Trial Body may find an individual did not commit “Conduct Unbecoming a Member of The American Legion” with regard to some of the facts outlined in the committee’s Trial recommendation report, and still find that the accused committed “Conduct Unbecoming a Member of The American Legion” with respect to other facts contained within the committee’s Trial recommendation report. However, to preserve the

accused's right to appeal, the trying body must, in writing, tell the accused which allegations in the committee report he/she was found responsible for committing which constitute "Conduct Unbecoming a Member of The American Legion" and which accusations were dismissed by less than a majority of the hearing body's consensus by a preponderance of the evidence.

- B. In other words, the Trial Body must state that the accused has been found to have committed "Conduct Unbecoming a Member of The American Legion" by violating the applicable paragraphs of the reporting committee's recommendation for Trial. And the accused must be informed that he or she was found not responsible for whatever paragraph numbers may be appropriate from the reporting committee's recommendation for Trial. Also, the Legionnaire may be found not responsible for all of the accusations and if so, all the charges are dismissed.
15. If the accused fails to answer the charges, in manner and form as set forth herein, the charges stated shall be taken as confessed and the recommendation for expulsion or suspension shall be granted.
 16. Upon finding a member has committed "Conduct Unbecoming a Member of The American Legion" the same Post Trial Body shall, at the same time, by majority vote, then fashion a punishment for the conduct, which may be any punishment proportional to the infraction and may be as serious as suspension or expulsion from The American Legion or any lesser punishment which is reasonable and proportional to the infraction.
 17. Within thirty (30) days after judgment of expulsion or suspension is made and recorded, ONLY the accused may make an appeal in manner as set forth in Article VII, Section 14 of the Department of Michigan Constitution, by filing written reasons therefor with the Department Adjutant. However, the Department Executive Committee may designate that the Department Administrative Committee may hear this appeal.
 18. 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.
 19. Upon appeal the Department Judge Advocate shall preside at the trial and shall have the power and authority to grant a continuance to either party if deemed for the best interest of the Legion; to pass upon the materiality and relevancy of all the evidence presented and shall have general power to prescribe the necessary and reasonable rules and regulations for the orderly procedure of trial.
 20. 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.

Supplementary Rules and Regulations

21. Discipline of Post Members and Post Officers must be carried out in full compliance with this procedure. Any deviation will invalidate the charges brought against the Post Member or Officer.
22. Intermediate Appeal: Many Posts have an intermediate appeal step in their Constitution and/or By-Laws, whereby a member who has been suspended or expelled from The American Legion and/or the Post may appeal to the membership body at a Post meeting for reinstatement. This step, if recognized by a Post, remains in effect, however, such an intermediate step does not stop the running of the thirty (30) day-time period contained in paragraph 17. If there is a reinstatement by the membership of the Post, the appeal to the Department Executive Committee or to the Department Administrative Committee becomes moot.
23. Post Officers: Pursuant to Department of Michigan Constitution Article VII, Section 15 Post Officers may be removed by the Post for cause upon written charges of which the members of the Post shall be the sole judges. The procedure and right of appeal shall be the same as provided to Post members. However, Officers must be tried before a membership meeting of the Post, rather than a smaller body, as it was the membership of the Post that elected them as Officers.
24. Permission to Transfer: Pursuant to Department of Michigan Constitution, Article IV, Section 6 “. . . no person who has been expelled by a Post shall be admitted to membership in another Post without the consent of the expelling Post. He/she may then appeal to the Department Executive Committee for permission to be admitted to transfer membership to another Post and shall be ineligible for membership until such permission is granted.”
25. Failure to Discipline Members: Pursuant to Department of Michigan Constitution Article VII, Section 16, “The Department Executive Committee, after Notice and Hearing, may suspend or recommend for revocation, the charter of a Post which violates the National Constitution and By-Laws of The American Legion or the Department By-Laws or which fails to adequately discipline any of its members for any such violation, and may provide for the government and administration of such Post or the membership thereof, during such suspension or upon such revocation. The Department Executive Committee shall provide the method for suspending or recommending the revocation of the charter of a Post.”

Amendments:

This Rule of Procedure may be amended by the Department Executive Committee, at any meeting where a quorum is present.

Approved: **July 6, 2023**