Michigan American Legion Training

■ What's the Difference?

One document or two?

### Constitution

■ The Constitution covers the fundamental principles but does not cover specific procedures for operating your post/district.

### Bylaws

- Bylaws are the goto source for how your post operates.
- Bylaws exist to give the organization structure.
- Bylaws define the posts operating rules and the rights and duties of the membership.

Constitution & Bylaws trump everything?

NOT EXACTLY

There is a hierarchy of rules that must be followed.

- 1. Statutes State and Federal Laws. If there is a conflict between your documents and the law, follow the law. Not optional.
- 2. Department and National Constitution & Bylaws.
- 3. Articles of Incorporation if your post is incorporated.

- 4. Post Constitution & Bylaws.
- 5. Parliamentary Authority as defined in your Constitution & Bylaws
- 6. Standing Rules
- 7. Customs

- WHEN WRITING CONSTITUTION & BYLAWS DO NOT GET TOO SPECIFIC!
- Do not make them into an encyclopedia of everything your post does. Resist putting in too many details. There is another place for details.
- Avoid specific days and dates in your Bylaws

Constitution & Bylaws are intentionally difficult to amend. It requires prior notice and a 2/3 majority vote to change.

- Where do you start?
- The Department of Michigan has placed a templet on the webpage to assist in writing Constitution & Bylaws.
- Review your previous Bylaws for specific ways your post elect or appoint officers or any other items unique to your post.

■ The Constitution usually will have the following articles:

Preamble
Name

Objects Nature

Membership Officers

Finance Charter Members

American Legion Auxiliary Sons of The American Legion

American Legion Riders Amendments

■ The Bylaws usually have the following articles:

Name
Management

Post Executive Committee
Duties of Officers

Delegates Appointments

Resolutions
Meetings

Notices
Rules of Order

Limitations of Liabilities Amendments

District Constitution & Bylaws are slightly different but also on the Department Website.

- We have a new Constitution & Bylaw written, now what?
- Follow your current Bylaws on how to notify your members and the necessary time frame?
- Read the changes requested the specified number of times your Bylaws require. -Good reason to review. Three readings are no longer necessary but still must be adhered to if in your Bylaws.

On the specified meeting date hold a vote on the amendments to the Constitution & Bylaws. It takes a 2/3 majority to pass.

- Ensure that the vote is recorded in the minutes.
- Send the amended Constitution & Bylaws along with a copy of the minutes to the Department Headquarters. <a href="mailto:adj@michiganlegion.org">adj@michiganlegion.org</a>
- It is helpful to send a list of changes made for the review, however, the Judge reserves the right to review the entire document when it is sent for review.
- Those documents will be sent to the Department Judge Advocate for review.

- Once the review is completed the post will receive either a letter detailing required and suggested changes or a letter of approval.
- The post then should make the required changes and consider the requested changes and return the Constitution & Bylaws to department headquarters.
- A final review will be done and a letter of approval will be sent to the post.

#### STANDING RULES

- This is where your specific administrative stuff should go.
- The Meeting is on the 3<sup>rd</sup> Wednesday at 7:00 pm.
- Nomination of Officers is in March, elections in April, installation in May.
- Post will not hold meetings in December.
- These types of specifics belong here. Standing Rules can be suspended or changed at any meeting with a majority vote.

### **CUSTOMS**

- This is the well we have always done it that way!
- That is fine, BUT these are the lowest ranking of the rules.
- If your custom violates ANY of the other rules then it is not allowed.

- If the issue is a bar issue then the post is the sole source for disciplinary action.
- The American Legion DOES NOT CHARTER BARS!
- However, even in bar punishment a member can not be prevented from attending Post Meetings without first having had a fair trial.

- The 2021 Officers Guide states:
- PRACTICE AND PROCEDURES IN THE EXPULSION OR SUSPENSION OF A MEMBER OF THE AMERICAN LEGION
- Many Departments and Posts have failed to adopt a method of practice or procedure for the suspension or expulsion of a member.
- The following is not mandatory for any post or department......

- The American Legion, Department of Michigan is NOT one of the departments that has failed to adopt a practice or procedure for discipline.
- Post, Districts, Counties, Zones and the Department MUST follow the procedure established by the department.

- Article IV, Section 2 of the Bylaws of The American Legion is as follows:
- "A post may suspend or expel a Post member from The American Legion only after providing the member due process and a proper showing of cause.

- Charges shall be based on disloyalty, neglect of duty, dishonesty and/or conduct unbecoming a member of The American Legion.
- All charges must be made under oath in writing by the accusers, and no member in good standing shall lose their membership until given a fair trial by the Post or Department in such manner and form as the Post or Department Bylaws and Post or Department Executive Committee shall prescribe."

RULES OF PROCEDURE FOR THE TRIAL OF POST MEMBERS AND/OR POST OFFICERS

- 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 if the Commander is absent, the officer properly acting in his stead, must appoint a Committee of three Legionnaires, 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. Upon receipt of the committee's written report detailing specific facts, together with details of dates, times, and 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.

- 4. The Trial shall be held not less than 20 days from the date the Commander shall send the requisite Trial Notice and not later than 60 days from the date of the investigating committee's final report.
- 5. The Commander shall, together with the charge and Trial Notice, send to the accused Legionnaire 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".

- 6. The accused Legionnaire shall also, at the time of being served with such documents, as above said, also be given a copy of these Trial Rules of Procedure.
- 7. Both the accused and the Post may be represented by attorneys at their respective costs.
- 8. A Trial of a Legionnaire will be full and fair as required by Department of Michigan By-Laws, Article IV, Section 4 (1).

9. 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 member's stead to try the issues. However, only Legionnaires may sit in judgment of a Legionnaire.

- 10. The Post's decision that a member has committed "conduct unbecoming a member of The American Legion" shall be by a majority vote of the hearing body finding such by the preponderance of the evidence.
- The Trial body may find an individual did not commit "conduct unbecoming a Legionnaire" 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 Legionnaire" 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 Legionnaire", and which accusations were dismissed by less than a majority of the hearing body's consensus by a preponderance of the evidence.
- In order 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 the Trial.
- Also, the Legionnaire may be found not responsible for all of the accusations and if so, all the charges are dismissed.

11. 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.

■ 12. Pursuant to Department of Michigan By-Laws Article IV, Section 4(1), an appeal from a decision of the Post of "conduct unbecoming a member of The American Legion" may be taken to the Department Executive Committee by filing written reasons therefor with the Department Adjutant within 30 days following the final action by the Post. The decision of the Department Executive Committee shall be conclusive, i.e., There is no appeal to any other body or authority.

■ 13. 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 toll or stop the running of the thirty days (30) time period contained in paragraph 12 above. If there is a reinstatement by the membership of the Post, the appeal to the Department Executive Committee becomes moot.

■ 14. Pursuant to Department of Michigan By-Laws, Article IV, Section 4(m), "Post officers may be removed by the Post for cause on 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 for members in Section (1) above. " 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.

■ 15. Pursuant to Department of Michigan By-Laws, Article IV, Section 4(i) "... 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 Executive Committee of the Department of the expelling Post for permission to be admitted to membership in another Post and shall be ineligible for membership until such permission is granted."

▶ 16. Pursuant to Department of Michigan By-Law, Article IV, Section 4(n), "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 adequately to 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."

- Under no circumstances should a member be brought up on charges while an outside legal involvement is still pending.
- Wait until the civil authorities and or Judge and Jury have rendered a verdict before the post takes any action.

