



## 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 or the By-Laws.

#### 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.

No person shall sit in judgement of a Legionnaire who filed the charge or was a party to the charge or has a vested interest to the outcome of the trial. Any person found to have a conflict of interest shall be recused.

A "Convening Authority" shall be defined as the Post 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 or other locations as designated by the Department Commander, however the Department may hold the trial by using remote meeting technology.

## 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). Each charge shall be listed numerically.

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 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 of the same District, or the District Commander of the same District, the Department Judge Advocate, or a Department Elected Officer. However, prior to charges being filed by a Member or Department Officer who is not a member of the Accused Post, The Post of the Accused member shall be notified of the pending charge, and the post shall have thirty (30) days to bring a charge against the Accused.

4. After the sworn charges have been received by the Adjutant of the Convening Authority, the accused is ineligible to transfer to any other post until after the Disposition of the trial and any appeals to the verdict are exhausted. Except when the accused files a request to transfer to a post that has agreed to accept the accused member, providing the accusing post agrees to the transfer.

5. The Post being the lowest Convening Authority shall have jurisdiction over the charges by an Accuser of the same Post; however, The Accuser may request to file the sworn and verified written charge with any higher Convening Authority. The request shall be accompanied by a signed affidavit as to why the Accuser believes that a lower Convening Authority will not be impartial and be submitted to the District Adjutant who shall send the request to Department Adjutant. The

Department Judge Advocate shall determine if Good and Substantial cause exist before such request is granted.

6. The Department will be the Convening Authority and shall have jurisdiction over the charges by an Accuser of a Department Officer, a Zone or District Commander, and a Department Committee Chairperson or Department Committee member when acting within the capacity of their committee duties.

7. No charge may be filed against any member if more than one (1) year has passed since the date that the offense became known to the accuser, Except when civil or criminal charges have been filed against the accused, the charges shall be postponed until the case in court is completed.

The Commander of the Convening Authority shall appoint three Legionnaires, not familiar with the case, to investigate the charges. If the charges are found to be valid the Convening Authority shall move forward with the case.

8. 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 Authority shall assume the duties required of the Adjutant in this procedure.

9. 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.

10. The Accuser(s) shall set forth the charges of disloyalty, neglect of duty, dishonesty and /or conduct unbecoming a member of The American Legion. All charges must be made under oath in 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, disloyalty, neglect of duty, dishonesty and /or conduct unbecoming a member of The American Legion. All charges must be made under oath in 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.

Conduct Unbecoming refers to behavior that is considered inappropriate, unethical, impedes an officer's ability to perform their duties, or is damaging to an individual's reputation, or the reputation or public image of the Post, the Department, or The American Legion.

Conduct Unbecoming also encompasses actions that violate rules, regulations or laws, or violates the unwritten rules of normal behavior.

11. The Accused may appear at the trial in person, 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 recommended penalty as listed in Article III, Section 1 of this procedure shall be granted.

12. 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 by the presiding Judge Advocate, must exist before said motion is granted. The trial presiding Judge Advocate shall rule on all motions at the trial.

13. 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. The trial shall be conducted similar to a Municipal civil court trial.

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

15. 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 of the Accused. The Convening Authority shall select at least five (5) such members and no more than eleven (11) members, provided the total number of members appointed shall be an odd number. 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 Convening Authority may strike one (1) member from the trial board without showing any cause for such a challenge. If the number of trial board members is reduced below five (5), then the convening authority shall select additional trial board members as required in Section 1, who may not be challenged except for cause.

4. If five (5) impartial trial board members cannot be selected from the Post, the convening authority shall so notify the Department Commander through the Department Adjutant, who shall appoint additional members in good standing and who are 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.

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. When The Department is the Convening Authority, the Trial Board shall be the Department Judge Advocate, without vote and five (5) Past Department Commanders with vote, selected by the Department Commander who are believed to be unbiased and who are not related to the facts of the case nor likely to be called as a witness.

## ARTICLE III – VERDICT

1. The Convening Authority trial board verdict may include not guilty or guilty. A guilty finding must be based on clear and convincing evidence.

The 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.

2. When the Convening Authority is not the Post:

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 on any punishment imposed.

The Commander of the Convening Authority shall appoint two (2) Tellers to count the ballots. The Tellers shall certify that the election results are true and correct.

A. 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, in writing to Department Adjutant.

1) A decision by the post membership on a trial verdict that orders expulsion or suspension of a person from membership in the American Legion, The Post Adjutant shall, within Fifteen (15) days, notify the Department Adjutant of said decision.

B. If the post members vote to reject the trial board's findings of guilty and the proposed punishment by a trial held by a Convening Authority other than the post, the charges against the accused shall be reinstated, and a new trial process will begin using the sworn statements and evidence from the previous trial. The Department will be the Convening Authority and will have jurisdiction over the new trial. The trial may be held at the location of the Convening Authority choosing, and the Post shall Pay any and all costs incurred for the new trial.

C. Should the Post members vote to accept the trial board's findings of Guilty but reject the punishment imposed, The Post Adjutant, shall within Twenty (20) days of the date of post vote notify the Department Adjutant that the post is appealing the punishment to the Department Appeal Hearing Body.

Post are reminded that the Department Constitution states: The Department Executive Committee, after notice and hearing, may suspend or recommend for revocation, the charter of a Post 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.

## ARTICLE IV - 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 concise statement of the final disciplinary action taken by the charging entity.
- D. A copy of the decision at the Post general membership when the Convening Authority is not the post.
- E. After the Notice of Appeal, the Convening Authority shall provide 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. A summary of the testimony of each witness, a written transcript or recording of the trial.
- F. A copy of the Notice of Appeal must be delivered to the Commander of the charging entity at the same time that 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 twenty (20) 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 Appeal Hearing Body shall be the Department Judge Advocate, without vote and five (5) Past Department Commanders with vote, selected by the Department Commander, who has not previously served on the Trial board in *this case*, who is not a member of the same post as the accused, and who are believed to be unbiased and not related to the facts of the case nor likely to be called as a witness.

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

The issues to be decided by the Department Appeal Hearing Body shall only include whether the accused received adequate due process, the trial was held in full compliance with this Trial Procedure, consideration of the weight of evidence presented during the trial, and the penalty imposed, if any.

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

7. Any member of the Department Appeal Hearing Body may question either party.

8. Upon the Department Appeal Hearing Body rendering a decision on the appeal, by majority vote, the Department Judge Advocate shall reduce said decision to writing and direct the opinion to be distributed to each member of the hearing body, the Accused, District Commander, and the Post Commander.

9. The Accused may within thirty (30) days from such decision, appeal the decision of Department Hearing Body in writing to the Department Adjutant.

10. When an appeal is Requested by Accused, The Department Commander shall call for a meeting of the Department Executive Committee within twenty (20) days.

11. 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.

12. The Department Judge Advocate shall determine the process of the appeal to the Department Executive Committee and shall preside at the appeal hearing.

13. The DEC Committeeman, Alternate Committeeman, or other Representatives to the DEC from District of the accused, along with the Zone Commander who represents the accused's District shall be recused from the appeal hearing and shall be without voice or vote on the issue.

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

**Conflicts:**

In the event of a conflict between these Rules and the Constitution or Bylaws of Department of Michigan. The Constitution or Bylaws shall be controlling.

**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

Amended: February 8, 2026, at the Winter Meeting in Port Huron

## Process Flow Chart

