

THE AMERICAN LEGION

DEPARTMENT OF OHIO

**UNIFORM CODE FOR THE CONDUCT OF DISCIPLINARY
PROCEEDINGS**

This Code shall govern all trials held by The American Legion Department of Ohio or any Post within The American Legion Department of Ohio as set forth in the By-Laws of the Department of Ohio. This code shall govern all trials held by the American legion Department of Ohio or any post within the American Legion Department of Ohio as set forth in the By-Laws of the Department of Ohio. This code is enacted by order of the Department of Ohio Executive Committee as mandated in Article V of the By-Laws.

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 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. 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 his/her signature near that of the accuser, together with "signed and sworn before me on date."
3. The accuser or accusers who swear to the charges must be a member of the same post or a District or Department elected officer.
4. A copy of the sworn or verified written charges shall be served upon the accused by the Post Adjutant, either in person or by certified mail with proof thereof by a return receipt.
5. 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 until fifteen (15) days have lapsed from the time of service of the charges upon the Accused. If the acts complained of have resulted in criminal charges being filed in the criminal courts of a Municipality, County, State or of the United States, the matter shall be tabled until the criminal case is completed.
6. The accuser(s) shall set forth the charges of disloyalty, neglect of duty, dishonesty, and/or conduct unbecoming a Member or Officer 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.

7. 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.
8. 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 and show just cause for said request. The trial presiding officer shall rule on any such motion filed.
9. 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.*
10. If the Judge Advocate of the Convening Authority is unable to preside at the trial, the District Commander shall be noticed of said inability, and the District Commander will then appoint a Judge Advocate or other suitable presiding officer as an ad-hoc Judge Advocate from within the physical.
11. 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 Ohio. Preferably, they should be selected from the members of the Post that brought the charges. 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 witness at the trial. No member of the trial board may be members of the appointing executive committee.
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 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 then the convening authority shall so notify the District Commander, who shall detail additional members from The American Legion in good standing within the District. 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 acquittal or guilty. Penalty imposed may include reprimand, probation on specified terms, suspension of membership for not more than one (1) year, or expulsion from membership in the American Legion.
9. The trial board decision shall be presented to the membership of the Post at the next regularly scheduled meeting of the Post. At that meeting, except in case of acquittal, the membership of the Post may approve, disapprove, or modify the findings of the trial board and any punishment imposed. Such decision at the general membership meeting of the Post shall be binding upon the Accused and the Post unless the Accused, within thirty (30) days from such decision, appeals to The American Legion, Department of Ohio.
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 Adjutant of the Department of Ohio of said decision.
11. In the event of a conflict between these Rules and either the Constitution or Bylaws of The American Legion, Department of Ohio, the Constitution and/or Bylaws shall be controlling.

ARTICLE III. RULES GOVERNING APPEALS

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

1. A Notice of Appeal must be received by the Adjutant of the Department of Ohio within thirty (30) days of the final action of the entity bringing the charges 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. 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 Adjutant of The American Legion, Department of Ohio.
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 charging entity's decision. No additional evidence shall be admitted on appeal.
3. The Department Adjutant shall schedule the appeal at the next regularly scheduled meeting of the Department Executive Committee.
4. 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 ten (10) minutes to argue their points on appeal. The sole issue to be decided by the Department Executive Committee on appeal is whether the accused received adequate due process and a fair trial and shall not include consideration of the weight of evidence presented at trial or the penalty imposed, if any.
5. Any member of the Department Executive Committee may question either party.
6. The Department Judge Advocate will preside over the hearing of such appeal and may advise the Department Executive as to compliance with these rules in the conduct of the trial.
7. Upon the Department Executive 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 Department Executive Committee, the Accused, and the Convening Authority.
8. Appeals of a decision of any post denying permission of a suspended or expelled member to be admitted to membership in another post shall be heard by the Department Executive Committee with substantially the same procedure set forth herein.