

**Judge Advocate's Manual**

## THE JUDGE ADVOCATE

The primary duty of the Judge Advocate is to supply advice based on your legal training or past American Legion experience, which have prepared you for the office. You are the interpreter of the Constitution, By-Laws and operational policies of your Post, County, or District and at any time may be called upon by the Commander and other officers and members to rule on the legality of their actions and decisions insofar as they affect the good of The American Legion.

The Judge Advocate must protect the integrity of The American Legion and keep alight the torch of truth and fidelity that symbolizes the high and ennobling ideals under which The American Legion was founded. You must protect wisely that heritage.

The Judge Advocate can supply valuable assistance to other Post, County, or District committees and officers. You should be available to the Service Officer for advice and to the Americanism Committee on matters relating to the education and naturalization laws. Any committee can benefit from the Judge Advocate's contacts with local government.

The Judge Advocate and Legal Committee are charged by the suggested Post Constitution with the duty of auditing Post financial accounts, which should be done annually just before the election of officers, or more frequently at their discretion.

**Note: Should a Post Judge Advocate ever be in doubt, or not sure, of the legality of his/her decision, contact the Department Judge Advocate for clarification.**

**A Judge Advocate should avoid answering questions or rendering a decision based on personal opinion, alone. A written record should be maintained of all such communications.**

**A Post Judge Advocate must be familiar with the Post Constitution and By-Laws, and be reminded that they are the governing documents for Post operations. Should you encounter a problem not covered by the Post Constitution and By-Laws, contact Department Headquarters.**

**A Post Judge Advocate along with the Post Constitution and By-Laws Committee should amend and update the Post Constitution and By-Laws every three to five years.**

## CONSTITUTION AND BY-LAWS

Each Post in the Department of Ohio shall have its own Post Constitution and By-Laws, and they cannot conflict with the Constitution and By-Laws of The American Legion or The American Legion Department of Ohio. As recommended by Roberts Rules of Order (Newly Revised) They may be combined into a single document if the amendment procedure for both documents is identical.

**The Department of Ohio Constitution, Article X, Section 11, states "The Post Constitution and By-Laws, together with any subsequent amendments, shall be approved by the Department Judge Advocate, with such approval confirmed by the Department Commander, and a copy**

filed with the Department Adjutant's office, with certification of approval issued to the Post before becoming effective."

Any amendments to a Post's Constitution and By-Laws must be approved by the membership of the Post, and signed by at least two Post officers. The amendment will then be sent to the Department Headquarters for processing. Please do not send amendments directly to the Department Judge Advocate. Doing so will result in a delay in processing. Once the amendment is reviewed by the Department Judge Advocate, it will be sent back to the Department Headquarters for filing. A letter stating approval or changes that need to be made will be sent back to the Post.

The Post Officers Guide, pages 106 – 108 has a template for Post Constitution, and on pages 108 – 111 there is a template for Post By-Laws. These templates can be used by a new Post to establish their governing documents. Modern practice is often to combine these into a single document when the amendment procedure for both is identical.

### **PARLIAMENTARY PROCEDURE**

Parliamentary Procedure is the application of parliamentary law to the conduct of an organization. It is wise for all leaders to familiarize themselves with the accustomed technique of conducting a meeting. While it is important the members understand the fundamental rules of parliamentary procedure, this knowledge should be used only to insure order, to expedite business and to develop an organization that will cleave to the objects for which it was organized. For a member to constantly raise points of order and to insist upon the strict observance of every rule in peaceable assembly, where there are members ignorant of those rules and customs, is but to defeat the opportunity of gradually accustoming the membership of the proper observance of parliamentary procedure.

It is important for an American Legion Post to adopt Roberts Rules of Order (Newly Revised) as its authority on parliamentary law, and for the members to be familiar with both the specific and the general rules of the organization. A copy of the Post Constitution and By-Laws should always be on the Commander's desk at meetings and should be available for review by any member of the organization.

The order of business in a meeting of an American Legion Post is in the Post Officers Guide, and should be followed at all official meetings of The American Legion.

### **MOTIONS**

The steps to take to make a motion and to vote on it are as follows:

1. Obtain the floor; The member rises and addresses the presiding officer, as Mr. or Madame Commander, give his/her name, and if the member is entitled to the floor, the chair repeats the name of the member. This recognition gives the member the right to speak. It is out of order

for another member to stand before the member speaking is finished, or to remain standing after another member has been given the floor.

2. Make the Motion; The member then states the motion. To state a motion properly, members of the organization should become accustomed to using words "I move that" when introducing the motion.

3. Second the Motion; If anyone wishes the matter discussed and voted upon, a member says, "I second the motion." If the motion is not seconded, the Chair may say "There being no second, the motion is not before the assembly, or the motion died due to the lack of a second." (Note: Consult your parliamentary authority for the motions that do not require a second.)

4. State the Motion; After the motion is seconded, the chair then states, "It has been moved and seconded, (state the wording of the motion) is there any discussion?"

5. Discussion; After a motion, has been made and seconded it is before the assembly for consideration and discussion. Speakers to the motion must (1) be entitled to the floor, (2) address their remarks to the presiding officer, (3) be courteous in their language and avoid all personalities.

6. The Question; After sufficient time, has been given for debate, The Chair repeats the motion and says, "Are you ready for the question?" After waiting a moment if no one claims the floor, the Chair then says, "All those in favor of the motion as stated, say Aye. Any opposed to the motion as stated, say No."

7. Announce the Vote; The Chair says, "The ayes have it and the motion is passed, or the No's have it and the motion is defeated,". In the event of a tie vote, the motion fails unless the Chair Votes Aye to pass the motion. A tie vote loses because every motion must be approved by at least a majority.

### **MOTIONS THAT REQUIRE AN AUDIT**

In the case of the Post Finance Report, Club Room Report, Lounge Report or any motion that deals with funds, the proper motion should be, "I move that the Finance Report, (or whatever Committee is reporting regarding monetary amounts) be approved for audit."

If the motion passes the report is approved, and must be made available for audit whenever the Constitution and By-Laws call for an audit.

### **INVESTIGATIONS**

Often conflicts of personalities or different opinions on management styles will result in conflicts within a Post. In most cases these conflicts involve the Post lounge/canteen, financial concerns or other issues involving Post operations. These matters should be resolved by the Post leadership whenever possible.

If the concern involves the upper echelon of the Post leadership, or is not properly addressed at the Post level, the County or District Commander should be contacted for assistance. The County or District Commander will work with the Post directly to provide advice, recommendations, and act as a mediator when needed.

If the County or District Commander is unable to easily resolve the matter and further investigation is recommended, a member of that Post must submit a letter to the Department Headquarters providing a detailed outline of the concern, violations of National, Department and/or Post Constitution and By-Laws, actions already taken (contacted Post leadership and/or District Commander) and evidence if possible. The letter must be signed by a current paid member of the Post. Once received, the Department Commander will review the request and determine if an investigation is warranted.

If the Department Commander determines that further investigation is needed, he/she will assign a Department representative (usually the District Commander) to investigate with the authority of the Department. The Department representative will conduct a detailed investigation and attempt to resolve any outstanding issues. A report will be submitted to the Department Commander following the investigation.

#### **REVOCATION, CANCELLATION OR SUSPENSION OF POST CHARTERS**

The National American Legion mandated procedure for this type of action is found in the “Uniform Code of Procedure for the Revocation, Cancellation or Suspension of Post Charters” published in the American Legion Officers Guide.

## **USE AND CONTROL OF THE AMERICAN LEGION EMBLEMS AND TRADEMARKS**

The National American Legion rules for use and control of the American Legion Emblems and Trademarks are found in the American Legion Officers Guide, the American Legion Name and Emblem Protection Guide (available on-line) and the Flag and Emblem Catalog. Post and Department Subsidiary Organizations or Corporations, including the Baseball Programs, American Legion Charities, Inc., Sons of the American Legion and American Legion Riders, must comply with the following rules, mandated by Federal Trademark law and the National American Legion Policy :

1. All officers, directors, trustees, etc., of the subsidiary organization must be named by the sponsoring post or department. They may be nominated by the subsidiary organization, but must be appointed by the Post or Department Commander and such appointments ratified by the Post or Department Executive Committee. All vacancies in these offices must be filled by the same procedure.
2. The subsidiary organization must report to the Department or Post no less frequently than monthly. These reports must include financial reports.
3. The Post or Department finance officer or treasurer must be a signatory on all accounts held by the subsidiary organization.
4. Constitutions, By-Laws, Articles of Incorporation, Regulations, and similar operational rules of the subsidiary organization and amendments thereto must be approved by the Department or Post Executive Committee.

All American Legion related organizations must receive approval from the National American Legion Adjutants office before contracting for the use, purchase, manufacture of any item or merchandise containing the trademarked emblems of the American Legion family, including the name of the American Legion. Procedures for obtaining this permission is included in the Officer's Guide. See also the "American Legion Name and Emblem Use and Protection Guide."

Judge Advocates should ensure that your Post, County or District Officers are fully informed of the above requirements and monitor compliance with them.

### **NON-PARTISANSHIP**

Political Parties or candidates may invite or encourage American Legion organizations or members to appear at rallies or other meetings or to provide color guards wearing their American Legion Caps or other insignia. This is strictly prohibited and doing so could jeopardize the 501(c)(19) status of our organization, which allows us to receive tax exempt contributions. Legion members may participate in political events as individuals, but should never give the appearance of partisanship of the American Legion.

**DEPARTMENT OF OHIO UNIFORM CODE OF PROCEDURE FOR DISCIPLINARY ACTIONS**

***This Code should be inserted in the manual at this point as an appendix, so that if it is amended, the entire manual will not have to be reprinted.***

**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. The Post or Department Executive Board is the Convening Authority for such trials.

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. A copy of the sworn or verified written charges shall be served upon the Accused, either in person or by certified mail with proof thereof by a return receipt.
4. 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. In the event that 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.
5. 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.
6. 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.
7. 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.
8. 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.*
9. 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

jurisdiction of The American Legion Department of Ohio, to preside over the trial. The Post shall bear the expense of any Judge Advocate so appointed.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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

18. 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.

19. 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.

20. 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.

#### 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.

3. 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.

4. The Department Adjutant shall schedule the appeal at the next regularly scheduled meeting of the Department Executive Committee.

5. 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.

6. Any member of the Department Executive Committee may question either party.

7. 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.

8. 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.

9. 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.