

Supplement 1
to
Uniform Code of Procedure of
The American Legion Department of Texas
(Revised 7/24/08)

This supplement provides a step by step procedure on how to bring charges against a Legionnaire. It is not mandatory but one way to ensure that the Accused is given proper notice and a fair trial. It describes the key duties of the post officers regarding the trial and the preparation for trial.

GENERAL RULES

1. The “Accused” and the “Accuser” must be members of the same post.
2. Statute of Limitations is one year.
3. Any Legionnaire desiring to bring charges against a Legionnaire of another post occurring at any Legion activity may cause charges to be filed by the District, Division, or Department Commander through the Post Commander of the accused.
4. The Accused is entitled to 15 days notice of the charges prior to being summoned to a regular meeting to admit or deny the charges.
5. If the Accused does not answer the charges, the Executive Committee may consider the charges confessed and enter an order of reprimand, suspension or expulsion.
6. Written Motions for Continuance must be filed before the trial date supported by an affidavit detailing good and substantial cause for postponing the trial date.
7. The trial shall be conducted as detailed in Appendix D.
8. Two-thirds of the jurors must find the Accused guilty of the charges as contained in the affidavit of charges beyond a reasonable doubt.

DUTIES OF THE PARTIES

- A. The Accuser
- B. The Adjutant
- C. The Sergeant-at-Arms
- D. The Post Judge Advocate
- E. The Accused

A. ACCUSER

1. Prepare an affidavit sworn to by the Accuser detailing the charges (Sample 1) of disloyalty, neglect of duty, dishonesty, or conduct unbecoming a member of the American Legion.
2. File affidavit of charges in triplicate with the Post Adjutant.
3. If the Accused cannot be served with the Citation, prepare an Affidavit in Support of Citation by Publication. (See Appendix A)

B. ADJUTANT

1. Receive Affidavit of Charges in triplicate from the Accuser.
2. Prepare a Citation in duplicate (Sample 2) and attach an Affidavit of Charges to one copy of the Affidavit of Charges.
3. Prepare a Return of Service.(Sample 3)
4. Give the following documents to the Sergeant-at-Arms or a member of the post in good standing to deliver to the Accused by certified mail, return receipt requested or by personal delivery to the Accused.
 - Citation
 - Affidavit of Charges
 - Return of Service
5. If the Accused is not served at least 15 days prior to the regular meeting referred to in the Citation, prepare another Citation for the subsequent meeting and repeat steps 2 thru 4.
6. If the Accused does not answer, add to the agenda of the next meeting of the Executive Committee. After the Executive Committee acts, forward a copy of the Order to the Accused and the Department Adjutant. (Sample 4)
7. Shall serve as the Clerk of the Court during the trial and shall arrange for a Court Stenographer to make a transcript of the proceedings.

C. SERGEANT-AT-ARMS

1. Serve the Citation and copy of the Affidavit of Charges by either certified mail, return receipt requested, or by personal delivery on the Accused at the address listed on the Citation.
2. If service is by personal delivery, complete the Return of Service (Sample 3) and return to the Adjutant.
3. If service is by certified mail, return receipt requested, complete the Return of Service and attach the green card and return to the Adjutant.
4. If service is not successful, note the attempts on the Return of Service and return to the Adjutant.
5. When the trial date and time has been determined, summon the members, excluding officers and members of the Executive Committee to serve as jurors by publishing a notice in the local newspaper at least one week prior to the trial.
6. If a full panel cannot be summoned from the post, follow the procedures in Appendix C for summoning jurors from the District.
7. Shall serve as Bailiff of the Court during the trial.
8. Shall set up the Courtroom in accordance with Appendix E.

D. POST JUDGE ADVOCATE

1. If the Accused files a written or oral answer at the regular meeting, the Post Judge Advocate automatically continues the trial to a date and time determined by the post officers and Executive Committee.
2. Preside over pre-trial matters in accordance with Appendices B and C.
3. Preside over the trial in accordance with Appendix D.

E. ACCUSED

1. Must answer the charges before or at the regular meeting identified in the Citation either by filing a written answer or by providing an oral answer. The answer, either written or oral, shall be included in the minutes of the meeting.
2. May file a motion to dismiss if the charges filed by the Accuser are: 1) frivolous; 2) filed for harassment; or 3) do not state a specific charge of disloyalty, neglect of duty, dishonesty, or conduct unbecoming a member of the American Legion.

List of Samples

1. Affidavit of Charges
2. Citation
3. Return of Service
4. Default Order
5. Disciplinary Order

Sample 1

AFFIDAVIT OF CHARGES

_____ appeared in person before me today and stated under oath:
(Accuser)

“My name is _____. I am above the age of eighteen years, and I am fully
(Accuser)
competent to make this affidavit. The facts stated in this affidavit are within my personal knowledge
and are true and correct.

“I am the Accuser in this case.

“[The Accuser must state the specific facts that show that the Accused is guilty of either
disloyalty, neglect of duty, dishonesty, or conduct unbecoming a member of the American Legion”]

Accuser

SIGNED under oath before me on this _____ day of _____, 20_____.

Notary Public, State of Texas

Sample 2

CITATION

TO: Post _____ Sergeant-at-Arms

_____, a member in good standing of Post _____.
(Name of Member)

You are directed to deliver this Citation and the attached Affidavit of Charges to the following Accused:

at the following address:

Comrade: _____:
(Accused)

You are hereby summoned to appear at the regular meeting of the post at _____
_____ (time)
on _____ at _____ to admit or deny the charges contained in the
(date) (Address of Post)

attached Affidavit of Charges.

This writ is executed on this _____ day of _____, 20_____.

Adjutant, Post _____

Sample 3

RETURN OF SERVICE

TO: Post _____ Adjutant

The attached Citation and Affidavit of Charges were served upon the Accused at _____
(time)
on _____ in the following manner:
(date)

personal delivery on the Accused at _____ (address) _____.

mailing by certified mail, return receipt requested as verified by the Accused.

Service was attempted on the Accused at the following dates and times in the manner specified but was not successful:

1. _____

2. _____

Respectfully submitted on the _____ day of _____, 20 _____.

Signature

Sample 4

		Executive Committee
Accuser	§	
	§	
v.	§	of
	§	
	§	Post _____
Accused	§	

DEFAULT ORDER

On _____, the Executive Committee of Post _____ met to consider the charges brought by _____ against _____.

(Accuser) (Accused)

The Executive Committee finds that the Accused failed to timely file a written or oral answer to the charges at or before the regular meeting on _____ as contained in the Citation.

Accordingly the charges are deemed admitted and the Executive Committee finds that the Accused should be:

- reprimanded, letter of reprimand is attached.
- suspended for _____.
- expelled.

Signed this _____ day of _____, 20_____.

Commander

Accuser

v.

Accused

§
§
§
§
§
§

Executive Committee

of

Post _____

DISCIPLINARY ORDER

On _____, the Executive Committee of Post _____ met to officially implement the verdict rendered by the jury on _____ in the matter of _____ v. _____.
 (Accuser) (Accused)

The Executive Committee finds that the jury by a vote of two thirds or more found the Accused guilty of the charges in the Affidavit of Charges on _____ as set forth in the attached jury verdict.
 (date)

Accordingly, the Executive Committee ORDERS that the Accused should be:

- reprimanded, letter of reprimand is attached.
- suspended for _____.
- expelled.

Signed this _____ day of _____, 20 _____.

 Commander

Attested to by the following members of the Executive Committee which constitutes a quorum.

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

APPENDIX A

CITATION BY PUBLICATION

1. Accuser prepares an Affidavit in Support of Citation by Publication (Sample A-1) if the Accused has gone out of state or cannot be found upon due inquiry or is concealed within the state so that the Citation cannot be served upon the Accused. The affidavit must state:
 - a. the last known residence of the Accused.
 - b. the specific efforts to locate the Accused.
2. The Adjutant shall prepare a Citation by Publication. (Sample A-2)
3. The Adjutant shall prepare a Publisher's Affidavit. (Sample A-3)
4. The Adjutant shall send a letter to a newspaper in the county where the post is located asking that the Citation be published one time per week for 3 consecutive weeks. (Sample A-4)
5. The Adjutant shall mail a copy of the Citation by Publication to the Accused at the address in paragraph 1a above.

Sample A-1

AFFIDAVIT IN SUPPORT OF CITATION BY PUBLICATION

_____ appeared in person before me today and stated under oath:
(Accuser)

“My name is _____. I am above the age of eighteen years, and I am fully
(Accuser)
competent to make this affidavit. The facts stated in this affidavit are within my personal
knowledge and are true and correct.

“I am the Accuser in this case.

“The last known residence of the _____ is _____.
(Accused)
The current residence of _____ is unknown to me. I have exercised due diligence and
(Accused)
have made due inquiry to locate the whereabouts of the Accused and have been unable to do so.

“I have attempted to locate the Accused by doing the following: _____

Accuser

SIGNED under oath before me on this _____ day of _____, 20 ____.

Notary Public, State of Texas

Sample A-2

CITATION BY PUBLICATION

To: Comrade _____
(Accused)

Charges have been filed against you alleging disloyalty, neglect of duty, dishonesty, or conduct unbecoming a member of the American Legion. The Affidavit of Charges of _____ (Accuser) was filed with the Adjutant of American Legion Post _____ on _____. You must (date) file an answer to the charges at the regularly scheduled general membership meeting on _____ at _____ at Post _____ located at _____, _____, (time) _____ (street address) _____ (city) Texas. Failure to present an answer by that time could result in a default judgment including a letter of reprimand, suspension, or expulsion from membership in the American Legion.

Issued on this _____ day of _____, 20_____.

Adjutant
American Legion Post _____

Sample A-3

PUBLISHER'S AFFIDAVIT

“I solemnly swear that the above notice was published three times in the
“ _____ ” newspaper, as requested for the service of citation or notice of Publication,
and the dates borne by the issue of the newspaper in which said notice was published were
_____, _____, and _____.”

Publisher

SWORN TO AND SUBSCRIBED BEFORE ME by _____ on this
the _____ day of _____.

Notary Public, State of Texas

Sample A-4

Letter to Newspaper

Date

(Address of Newspaper)

Re: Citation by Publication
Accused: _____

Dear _____:

Please publish the attached Citation by Publication as soon as possible and weekly thereafter for a total of 3 consecutive weekly publications. If payment in advance is required, please contact

_____ at _____ and we will remit advance payment.
(name) (phone number)

Kindly complete the attached publisher's affidavit and return to our post with the invoice.

Sincerely yours,

Adjutant

APPENDIX B

Pre-Trial Matters

1. Setting the Trial Date.

If the Accused files an oral or written answer identifying the charges at the regular post meeting to which the Accused is summoned in the citation, the Post Judge Advocate shall set the trial at the date and time of the next regular meeting.

2. Pre-Trial Motions. The Post Judge Advocate shall rule promptly on all pre-trial motions.

a. Motion to Dismiss. If the Accused believes that the affidavit of charges does not state specific facts that, if proven to be true, show that the Accused is guilty of:

- (1) disloyalty
- (2) neglect of duty
- (3) dishonesty
- (4) conduct unbecoming a member of the American Legion, then the Accused may file a written Motion to Dismiss with the Post Adjutant and provide a copy to the Accuser.

b. Designation of Representative. Prior to the trial, the Accuser or Accusers must designate in writing one representative to serve as the prosecutor during the trial. If the Accused is going to be represented by an attorney or other representative, the Accused must designate the representative in writing.

c. Motion for Continuance. Either the Accused or Accuser may file a Motion for Continuance with the Post Adjutant prior to the trial. The motion must be supported with an affidavit stating the good and substantial cause for the continuance and a statement that the continuance is not sought solely for delay but so that justice can be done.

3. Summon the Jury Panel. The Sergeant-at-Arms shall publish a notice in the local newspaper that all members are summoned to serve as jurors at the date and time of the next regular meeting of the post.

4. Qualify the Jury Panel

a. Each summoned juror shall print his/her name on a 3x5 card provided by the Sergeant-at-Arms.

- b. The Post Adjutant shall verify that the juror is a member in good standing by initialing each juror's card.
- c. Post Officers and Executive Committee Members shall be excluded from the jury panel.
- d. The Post Sergeant-at-Arms shall randomly select 18 juror cards.
- e. The 18 cards shall be numbered 1 through 18 and the jurors shall be seated in chairs numbered 1 through 18 in 3 rows of 6 chairs each.
- f. The Adjutant shall prepare a list of the 18 jurors numbered 1 through 18 and furnish copies to:
 - (1) the Post Judge Advocate
 - (2) the Accuser/Prosecutor
 - (3) the Accused or his/her representative
 - (4) the Sergeant-at-Arms
 - (5) the Adjutant

5. Voir Dire

- a. The jury panel shall be sworn to tell the truth using the following oath:

“Do each of you solemnly swear or affirm that you will tell the truth, the whole truth, and nothing but the truth, so help you God?”
- b. The Post Judge Advocate will ask the jury panel the following question:

“Can you fairly and impartially render a verdict in accordance with the evidence to be introduced?”
- c. The prosecutor will have ten minutes to ask questions of the jury panel.
- d. The Accused or his/her representative will have ten minutes to ask questions of the jury panel.
- e. The Post Judge Advocate will ask if either party wishes to challenge a member of the panel for cause and will rule on the challenges.
- f. The Post Judge Advocate will ask each party to submit in writing 2 peremptory challenges, if they wish.
- g. The first 6 jurors not removed for cause or peremptorily challenged shall be the jurors. The next 2 jurors will be alternates.
- h. The 6 jurors and 2 alternate jurors shall be sworn in by the Post Judge Advocate using the following oath:

“Do each of you solemnly swear or affirm that you will lay aside any personal bias or experiences, and consider only the evidence presented to you and then render a fair and impartial verdict?”

APPENDIX C

Procedure to Follow If There are Fewer Than 18 Jurors

If there are less than 18 but 10 or more jurors that answer the summons, voir dire may proceed if the Accused and Accuser agree in writing. If there are fewer than 10 jurors or no written agreement on a panel smaller than 18 jurors, the Sergeant-at-Arms will summon additional jurors from other American Legion Posts in the District.

1. The Post Judge Advocate will continue the trial until the next regularly scheduled meeting and direct the jurors to return at that time.
2. The Post Sergeant-at-Arms will request that the District Sergeant-at-Arms summons 5 members each from the four closest posts in the District to serve in the panel at the next regularly scheduled meeting of the post.

APPENDIX D

THE TRIAL

Sergeant-at-Arms: Court is Now in Session. The Honorable Post Judge Advocate _____, presiding.

Judge Advocate: In the Matter of (name of Accuser) versus (name of Accused) the record reflects that an Affidavit of Charges was filed by the Accuser with the Adjutant on (date) . The Sergeant-at-Arms served the Accused on (date) , which was more than 15 days prior to the regularly scheduled meeting of the post on (date of meeting) , to which the Accused was summoned. The Accused denied the charges and the trial was set for this date. The jury has been selected and sworn.

Is the Accuser ready?

Is the Accused ready?

Adjutant, please read the Affidavit of Charges by the Accuser and the written answer of the Accused. I will instruct the jury that the affidavit and answer are not evidence, the opening statements of the Accuser and the Accused are not evidence, and the closing arguments are not evidence. The evidence will be the sworn testimony of the witnesses and the documents or other items admitted into evidence.

Adjutant: (Read Affidavit of Charges)

Adjutant: (Read written answer of Accused, if any)

Judge Advocate: The Accuser has five minutes to give an opening statement to tell the jury what the evidence will show, not for an argument.

Accuser: (Opening Statement)

Judge Advocate: Now the Accused will have five minutes for an opening statement.

Accused: (Opening Statement)

Judge Advocate: The Accuser will now call the first witness.

Accuser: I call (name)

Judge Advocate: (Swears in the witness using the following oath:

“Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?”

[Use with each new witness])

Accuser: (Direct Examination)

Accused: (Cross Examination)

Accuser: (Re-direct, if any additional questions)

Accused: (Re-Cross, if any additional questions)

[Accuser continues until the last witness is called.]

Accuser: The Accuser rests

Judge Advocate: (to the Accused) You may call your first witness.

Accused: (Direct Examination)

Accuser: (Cross Examination)

Accused: (Re-direct)

Accuser: (Re-Cross)

[Accuser continues until the last witness is called]

Accused: The Accused rests.

Judge Advocate: (to the Accuser) Do you have any rebuttal witnesses?

[Rebuttal witnesses by the Accuser. Then the Accused.]

Judge Advocate: We will be in recess for 10 minutes. Then each party will have 10 minutes for closing arguments. The Accuser will go first and can reserve some of his/her time to use after the Accused has made his/her closing argument.

It is now (time) . We will resume at (time plus 10 minutes) ..

[Sergeant-at-Arms places podium in front of jury for closing arguments.]

Judge Advocate: The Court is now in session.

(To the Accuser) You may proceed with your closing argument. I will warn you when you have 2 minutes remaining.

Accuser: (Closing Argument)

Judge Advocate: (To the Accused) You may proceed with your closing argument. I will warn you when you have 2 minutes remaining.

Accused: (Closing Argument)

Judge Advocate: (To the Accuser) You have _____ minutes and _____ seconds remaining.

Accuser: (Remainder of closing argument)

Judge Advocate: Members of the Jury:

After I read these instructions, the jurors, not the alternates, will retire to the jury room to deliberate. Your first task is to select a foreman. Then you will deliberate. The burden of proof is on the Accuser to prove the charges beyond a reasonable doubt. Two thirds of you (i.e. four) must agree on your verdict. The Sergeant-at-Arms will give you a verdict form when you begin your deliberations. When you reach your verdict, you must each sign the verdict form indicating guilty or not guilty. If you find the Accused guilty, at least 4 of those voting guilty must also agree on the punishment and sign the jury form again regarding punishment. The punishment may be a letter of reprimand, suspension of membership, or expulsion from the American Legion. The same four jurors must agree on the length of suspension.

Sergeant-at-Arms, please take the jurors to the jury room to deliberate.

We are in recess.

[After the jury reaches their verdict]

Judge Advocate: The Court is back in session.

Sergeant-at-Arms, bring in the jury.

[After the jury is seated]

Judge Advocate: Would the Foreman please stand.

Have you reached a verdict?

Foreman: Yes.

Judge Advocate: Please hand the verdict to the Sergeant-at-Arms.

[Sergeant-at-Arms gets the verdict form and hands it to the Judge Advocate]

Will the Accused please stand.

Regarding the Charge of _____ the jury finds the Accused guilty or not guilty.

[If guilty}

Punishment is _____

[Repeat for each charge]

(To the Accused, if guilty). You have the right to appeal the verdict. There are strict deadlines. You have thirty days from today for your written letter of appeal to be received by the Department Adjutant by certified mail, return receipt requested or by personal service, with a copy to the Post Adjutant by certified mail, return receipt requested or by personal delivery. You must comply with the Uniform Code of Procedure of the American Legion, Department of Texas.

This trial is adjourned.

Form D-1

Jury Verdict

- Charge:
- Disloyalty
 - Neglect of Duty
 - Dishonesty
 - Conduct unbecoming a member of the American Legion

Specific Charge: _____

Each Juror's Signature

Write Guilty or Not Guilty

_____ (Foreman)

- Punishment:
- Letter of Reprimand
 - Suspension for _____
 - Expulsion from membership in the American Legion.

Jurors voting Guilty who agree with punishment:

I certify that the jury rendered the above verdict on _____ and that the Accused
(date)
was advised of his/her right to appeal.

Post Judge Advocate

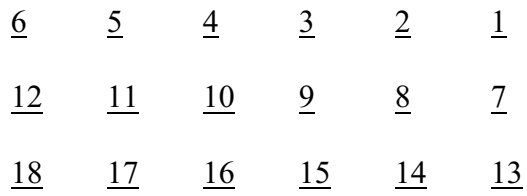
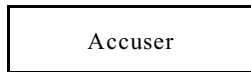
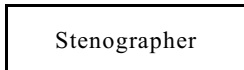
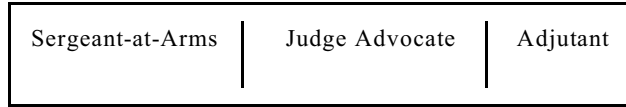
I certify that a copy of this verdict was provided to the Accused and to the Department
Adjutant by certified mail, return receipt requested on _____.
(date)

Post Adjutant

APPENDIX E

Physical Layout of the Courtroom

1. Voir Dire



Prospective Juror Chairs

Audience

2. Trial

Sergeant-at-Arms	Judge Advocate	Adjutant
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Stenographer

Witness

1	5
2	6
3	1 Alt.
4	2 Alt.
Jury	

Accused

Accuser

Audience