

# THE AMERICAN LEGION DEPARTMENT OF TEXAS



## Uniform Code of Procedure for Disciplinary Actions

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## **Prologue**

The National By-Laws in Article IV, Section 2 states:

“Section 2. Members may be suspended or expelled from the Legion only upon a proper showing of cause. Charges shall be based upon disloyalty, neglect of duty, dishonesty and 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 his membership until given a fair trial by the Post or Department in such manner and form as the Department By-Laws and Department Executive Committee shall prescribe.”

The National By-Laws in Article IV, Section 3 states:

“Section 3. Any member who has been suspended or expelled has the right of appeal to his Department Executive Committee, or to the Department Convention, according to the provisions in the By-Laws of such Department. The decision of the Department shall be final.”

The Uniform Code of Procedure for the Revocation, Cancellation or Suspension of Post Charters, adopted by the National Executive Committee in 1941 prescribes the process for bringing disciplinary charges against a post, the trial and any appeal.

### **I. Expelling, Suspending or Reprimanding Members of the American Legion**

#### **A. Overview of the Process**

- Step 1. Accuser files Affidavit of Charges with the Post Adjutant.
- Step 2. Adjutant prepares a Citation and presents to Sergeant-at-Arms for service.
- Step 3. Sergeant-at-Arms serves the Accused.
- Step 4. Accused defaults by not appearing or answering charges in writing.
- Step 5. Post Executive Committee sets trial date; Pre-Trial Matters.
- Step 6. Sergeant-at-Arms summons prospective jurors for trial.
- Step 7. The jury is selected.
- Step 8. Post Judge Advocate presides over the trial.
- Step 9. Jury deliberates and renders verdict.
- Step 10. Post-Verdict Procedure.
- Step 11. Appeal.

## **B. The Steps in the Process**

### **1. Step 1 Accuser Files Affidavit of Charges with the Post Adjutant**

**a. Accuser Files Affidavit of Charges.** To start a disciplinary proceeding, the Accuser must file a sworn Affidavit of Charges (Form 1) in triplicate with the Post Adjutant that recites in great detail the facts asserting the offense committed by the Accused.

**b. Members of Same Post.** The Accuser or Accusers must be members of the same post as the Accused.

**c. Specific Charges.** In the Affidavit of Charges, the Accuser or Accusers shall set forth the charges of disloyalty, neglect of duty, dishonesty or conduct unbecoming a member of The American Legion, fully and simply describing the facts of the offense sufficiently so that the Accused may properly prepare a defense.

**d. Statute of Limitations.** The Affidavit of Charges must be filed within one year of the incident or it will be barred by limitations.

**e. Not Members of the Same Post.** An Accuser who is not a member of the post of the Accused may cause charges to be filed by the District, Division or Department Commander through the Post Commander of the Accused.

### **2. Step 2 - Adjutant Prepares a Citation and Presents to Sergeant-at-Arms for Service**

**a. Citation.** The Post Adjutant shall prepare a Citation (Form 2) that requires the Accused to appear at the next regular post meeting, provided that the Accused will have 15 days between the date the Accused is served and the date of the regular meeting. If the Accused will not have at least 15 days notice, not counting the day of service or the day of the meeting, then the Adjutant should include the date of the future regular meeting that will provide the Accused at least 15 days notice.

**b. Addressee.** The Citation should be addressed to the Sergeant-at-Arms and signed by the Adjutant.

**c. Method of Service.** The Citation should direct the Sergeant-at-Arms to personally serve the Accused by personal delivery or to serve the Accused by Certified Mail, Return Receipt Requested (CMRRR). If served by CMRRR, the date of service will be the date the Accused signed the green card. If someone other than the Accused signed the green card, Service has not been accomplished.

**d. Alternate Server of Citation.** If the Sergeant-at-Arms is not available to serve the Accused, or if the Sergeant-at-Arms has an actual or appearance of a conflict of interest, any member of the Post in good standing can be directed to effect service.

**e. Affidavit of Charges Attached to Citation.** The Citation should be attached to the Affidavit of Charges to be served on the Accused.

**f. Return of Service.** The Adjutant shall also prepare a Return of Service (Form 3) to be completed by the Sergeant-at-Arms, or other member in good standing, when service is effected by personal delivery, or by the person who mails the Citation and Affidavit of Charges CMRRR.

**g. Adjutant's Record of Documents.** The Post Adjutant shall be responsible for maintaining a complete file regarding the disciplinary proceeding (Adjutant's Record of Documents). It will contain a copy of the Affidavit of Charges noting the date and time the Accuser filed the Affidavit of Charges and a copy of the Citation prepared by the Adjutant and the date it was given to the Sergeant-at-Arms for service.

### **3. Step 3 - Sergeant-at-Arms Serves the Accused**

**a. Definition of Service.** Service means that the Accused has been given a copy of the Affidavit of Charges and a Citation informing him that if he does not appear, he will forfeit his right to defend himself.

**b. Serving the Citation.** After the Sergeant-at-Arms, or other member in good standing, receives the Citation, the Accused should be personally served at his home, place of work, or wherever he can be found. If the Accused cannot be personally served, the Accused should be served by Certified Mail, Return Receipt Requested (CMRRR). The date of service by CMRRR is the date the Accused signs the green card. If someone other than the Accused signs the green card, service must be done again.

**c. Complete Return of Service Form.** After the Citation and the Affidavit of Charges have been served on the Accused, the Sergeant-at-Arms, or the Legion member in good standing who accomplished the service, will complete and sign the Return of Service (Form 3) and return to the Post Adjutant, who will file the Form 3 in the Adjutant's Record of Documents.

**d. Confirm Sufficient Notice.** The Post Adjutant must confirm that the Accused has been given at least 15 days between the date of service on the Return of Service and the date of the regular meeting on the Citation.

**e. Affidavit in Support of Citation by Publication.** If the Sergeant-at-Arms is unable to serve the Accused personally or by CMRRR, or if the Accused cannot be found and after due diligence the Accused's place of residence cannot be ascertained, the Accuser must prepare an Affidavit in Support of Citation by Publication (Form 4). The Affidavit must state the last known address of the Accused and the specific efforts to locate the Accused.



**f. Serving by Publication in Newspaper.** The Post Adjutant shall prepare a Citation by Publication (Form 5) and a Publisher's Affidavit (Form 6) and shall send a letter (Form 7) to a newspaper in the county where the post is located asking that the Citation by Publication be published one time per week for 3 consecutive weeks. The Adjutant will also mail a copy of the Citation by Publication to the Accused at the last known address of the Accused and file a memorandum in the Adjutant's Record of Documents recording the date of the mailing by first class mail. After the Publisher's Affidavit is returned, the adjutant must ascertain that the date of the 3d publication is at least 15 days prior to the regular meeting date contained in the Citation by Publication. If not, the Citation by Publication must be recommenced. After Citation by Publication has been successfully accomplished, the Adjutant will file the Citation by Publication, the Affidavit in Support of Citation by Publication, a copy of the letter to the newspaper and the Publisher's Affidavit in the Adjutant's Record of Documents.

#### **4. Step 4 - Accused Defaults by Not Appearing or Answering Charges in Writing**

If the Accused is served personally, by CMRRR, or by publication in the newspaper and does not appear at the regular meeting personally or file a written answer denying the charges, a Default Order (Form 8) can be signed by the Commander, and forwarded to the Department Adjutant and the Accused, notifying the Accused that his appeal must be in the hands of the Department Adjutant within 30 days of the date of the Default Order.

#### **5. Step 5 - Post Executive Committee Sets Trial Date; Pretrial Matters**

**a. Set Trial Date; Summons Jurors.** If the Accused appears at the meeting or files a written answer (Form 9) denying the charges, the Post Executive Committee shall set the date of the trial.

**b. Motion for Continuance.** Either party may file a written Motion for Continuance (Form 10) supported by affidavit, with the Post Judge Advocate. The motion will only be granted if good and substantial cause is set forth in the affidavit. The Judge Advocate, or his designee, must sign an order granting the Continuance and setting a new trial date or sign an order denying the Continuance (Form 11).

**c. Motion to Dismiss.** The Accused can file a Motion to Dismiss (Form 12) for the following reasons:

- (1) The charges filed by the Accuser are frivolous.
- (2) The charges filed by the Accuser are filed for harassment.

(3) The charges do not state specific facts that, if proven to be true, show that the accused is guilty of:

- (a) disloyalty
- (b) neglect of duty
- (c) dishonesty or
- (d) conduct unbecoming a member of The American Legion

(4) The charge is barred by limitations because the Affidavit of Charges was filed with the Adjutant more than one year after the date of the alleged disloyalty, neglect of duty, dishonesty, or conduct unbecoming a member of The American Legion.

(5) Any other reason in the interest of justice.

The Post Judge Advocate must promptly conduct an evidentiary hearing on the Motion to Dismiss and enter an Order (Form 13) granting or denying the Motion to Dismiss.

**d. Designation of Representative.** Prior to the trial, the Accuser or Accusers must designate one representative to serve as the prosecutor during the trial. The Accused may represent himself or designate an attorney or any other individual to represent him/her. A Designation of Representative form is at Form 14.

## **6. Step 6 - Sergeant-at-Arms Summons Prospective Jurors for Trial**

**a. Summon Jurors.** Using whatever means is/are most likely to give notice to the members of the Post, the Post Sergeant-at-Arms will summons all members of the Post, excluding officers and executive committeemen, to report for jury duty at the time, date, and place for the trial as set by the Post Executive Committee, or the Post Judge Advocate as applicable (Form 15).

**b. Less than 18 Jurors Present.** On the day of trial, Post officers and Executive Committeemen are not allowed to serve as jurors. If less than 18 prospective jurors, not including officers or executive committeemen, are present for jury duty, the Judge Advocate will set a new trial date within a reasonable time and shall request the Post Sergeant-at-Arms to summon five (5) members in good standing from each of the four (4) closest Posts within the District to appear at the new trial date along with the jurors from the post who appeared for the original trial date.

## **7. Step 7 - The Jury is Selected**

**a. At Least 18 Jurors Present.** If 18 or more prospective jurors are present, not including Officers or Executive Committeemen of the Post, Voir Dire/Jury selection can begin.

**b. Draw First 18.** All prospective jurors will put their name on a 3x5 card. The Post Adjutant will initial next to each name certifying that the prospective juror is a member in good standing from his Post or if the prospective juror is a member of another post in the District, that he/she is a member in good standing of that post. The cards will be placed on a table face down so the names are not visible and shuffled; then 18 cards will be drawn. The names will be written on a list numbered 1-18.

**c. Set Up Courtroom for Voir Dire.** The Courtroom will be set up as shown in Exhibit 1. Jurors 1-6 will be seated in the first row; jurors 7-12 in the second row; and jurors 13-18 in the third row.

**d. Distribution of Juror List.** The Sergeant-at-Arms will provide a copy of the list of 18 jurors to the following:

- (1) Post Judge Advocate
- (2) Accuser/Prosecutor
- (3) Accused or his/her representative
- (4) Sergeant-at-Arms
- (5) Adjutant's Record of Documents

**e. Swear in Panel.** The jury panel will be sworn in by the Post Judge Advocate 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?”

**f. Voir Dire by Judge Advocate.** 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?”

**g. Voir Dire by Prosecutor.** The prosecutor will have ten minutes to ask questions of the jury panel.

**h. Voir Dire by Accused.** The Accused or his/her representative will have ten minutes to ask questions of the jury panel.

**i. Challenge for Cause.** 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.

**j. Peremptory Challenges.** The Post Judge Advocate will ask each party to submit in writing 2 peremptory challenges, if they wish. (Form 16)

**k. Jurors and Alternates.** The first 6 jurors on the jury list not removed for cause or peremptorily challenged shall be the jurors. The next 2 jurors will be alternates.

**I. Swear in Jury.** 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?”

**8. Step 8 - Post Judge Advocate Presides Over the Trial**

**a. Courtroom Set Up For Trial.** The Courtroom should be set up similar to Exhibit 2.

**b. Open Hearing.** The trial will be open to all members of the Post.

**c. Make a Record.** If the Accused is found guilty and appeals and there is no record of the proceedings to substantiate due process and a fair trial, the Accused is likely to prevail in an appeal. Therefore, it is highly recommended to engage a Court Reporter to take down the proceedings, or, in the alternative, make an audio recording for later transcription by a court reporter if there is an appeal. If the Post does not have sufficient funds to have a Certified Court Reporter, the proceedings **must** be recorded for later transcription if there is an Appeal.

**d. Cost of Transcript.** If there is an appeal, the cost of preparing the transcript of the proceeding shall be borne by the Accused; however, upon the sworn application by the Accused to the Presiding Judge of the Court of Appeals setting forth the technical defects in the proceedings that make it highly likely that the Accused will prevail in the appeal, the Presiding Judge can order the Post to pay the cost of the transcript. Failure of the Post to timely pay for the transcript will result in granting the appeal and overturning the disciplinary action.

**e. Suggested Script.** Suggested script for 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, if any, 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)

[Accused 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 (Form 17) for each charge 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.

## 9. Step 9 - Jury Deliberates and Renders Judgment

**a. Jury Verdict Form.** The Post Adjutant, in concert with the Post Judge Advocate shall prepare a Jury Verdict Form (Form 17) for each charge for the jury to take with them to the jury room when they begin their deliberations.

**b. Guilty Beyond a Reasonable Doubt; 2/3 Majority.** At least 4 jurors must find the Accused guilty beyond a reasonable doubt of a charge and the same 4 jurors must agree on the punishment for that charge. One Jury Verdict Form will be used for each charge.

**c. Punishment.** If the Accused is found guilty, the jurors can agree to punish the Accused by expelling him/her from membership in The American Legion, suspending his/her membership for a period up to one year, or issuing a Letter of Reprimand.

**d. Verdict Form for Each Charge.** After the Jury deliberates and completes a Jury Verdict Form for each charge, the Jury Foreman will notify the Sergeant-at-Arms who will notify the Judge Advocate and the proceedings will resume.

**e. Suggested Script.** Suggested script for the conclusion of the trial.

[After the jury reaches its 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(s) and hands it (them) 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 delivery, 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 for Disciplinary Actions of the American Legion, Department of Texas.

This trial is adjourned.

#### **10. Step 10 - Post-Verdict Procedure**

**a. Not Guilty.** After a jury verdict finding the Accused “Not Guilty,” no further action is required by the Post.

**b. Disciplinary Order for Guilty Verdict.** If the Accused is found “Guilty,” the Post Executive Committee must meet and implement the Jury’s verdict by completing a Disciplinary Order (Form 18) to be signed by the Commander and the members of the Executive Committee who are present.

**c. Distribution of Disciplinary Order.** A copy of the Disciplinary Order will be mailed by the Post Adjutant to the Accused CMRRR and the original will be mailed by the Post Adjutant to the Department Adjutant, who shall notify all Posts in the Department of Texas and the National Headquarters in writing of all members expelled by Posts in the Department who have not filed a timely appeal.

#### **11. Step 11 - Appeal**

##### **a. Court of Appeals**

**(1) Composition.** There is hereby provided a Court of Appeals for The American Legion, Department of Texas. It shall consist of two Past Department Commanders and one member licensed to practice law in the State of Texas, qualified in American Legion Constitutional Procedure, appointed by the Department Commander and confirmed by the Executive Committee. They shall



serve for three (3) years, subject to reappointment. The lawyer shall serve as Presiding Judge. They shall meet when and wherever necessary.

**(2) Duties of Court.** The Court of Appeals shall promulgate and publish specific procedures; its deliberations shall be limited to a Transcript of the proceedings, the Adjutant's Record of Documents and briefs submitted to them. They may require the services of the Department Judge Advocate, and they may hear oral arguments from Counsel at their discretion. In arriving at their decision, the Court shall apply the Substantial Evidence Rule, and their decision shall be final and bind the Department of Texas. All final decisions shall be in writing and copies thereof furnished interested parties.

**(a) Transcript.** The Transcript is all trial exhibits admitted into evidence and a verbatim transcript of the trial by a certified Court Reporter from a tape recording of the trial including all words spoken in the Court room from the announcement by the Sergeant-at-Arms that the Court is in session until the trial is adjourned by the Post Judge Advocate. The Transcript does not include the jury deliberations.

**(b) Adjutant's Record of Documents.** The Adjutant's Record of the Documents contains the Affidavit of Charges and all other documents filed in the case including citations, return of service, motions, orders or other documents related to the case.

#### **b. Procedure For Perfection of Appeal**

**(1) File Letter of Appeal.** Within thirty (30) days after the Default Order or Disciplinary Order is signed by the Post Commander after the Post trial, the Accused may file an appeal by written letter, attached to a copy of the Order, with the Department Adjutant by certified mail, return receipt requested, or by personal delivery, with a copy to the Post Adjutant, certified mail, return receipt requested or by personal delivery. The date of actual receipt of the written appeal by the Department Adjutant shall control in computing the thirty (30) day period within which to file the appeal.

**(a) 30-day Time Limit.** Failure to file said written appeal with the Department Adjutant within the thirty (30) day time frame, shall result in the Default Order or Disciplinary Order becoming final without any further appeal, subject only to (b) below.

**(b) Extension of Deadline to File.** In the event the certified copy of the Default Order or Disciplinary Order is not delivered to the Accused, except for Accused's failure to pick up the certified mail, return receipt requested copy of the order, the Accused may file a written, verified Motion under oath requesting an extension of the thirty (30) day period of time to appeal to run after such actual receipt by the Accused of the Order, with the Post Judge

Advocate, with copy of said Motion to the Department Adjutant, setting out that the thirty (30) day time frame for appeal had run before the Accused received a certified copy of the Order setting out the date of the Order thereon and setting out the date of actual receipt by the Accused of the certified copy of the Order, and that such delay was not the result of the Accused's negligence.

**(2) Compile Transcript and Adjutant's Record of Documents.** Within thirty (30) days of the receipt by the Post Adjutant of the Accused's written notice of Appeal, the Post Adjutant shall compile a Transcript and Adjutant's Record of Documents. Both must be certified as to authenticity and correctness by the Post Judge Advocate.

**(a) Accused Must Pay for Transcript.** The Accused must pay for the Transcript of the recording of the proceeding by a Certified Court Reporter. Failure of the Accused to pay for the transcript within a reasonable time will result in dismissal of the appeal.

**(b) Post Judge Advocate to Certify.** Also, within the thirty (30) day time frame set out above, the presiding Post Judge Advocate, or other appointed Trial Post Judge Advocate, shall examine the Transcript and Adjutant's Record of Documents, and certify in writing as to their correctness, and then mail said Transcript, Adjutant's Record of Documents and Certifications of the Post Judge Advocate, certified mail, return receipt requested or by personal delivery to the Department Adjutant.

**(3) Department Adjutant Dockets Appeal.** The Department Adjutant, upon receipt of the Accused's Notice of Appeal, shall immediately note the date of receipt thereon and set up a file and docket number for said appeal. Upon receipt of the Transcript, Adjutant's Record of Documents and Certifications of the Post Judge Advocate, the Department Adjutant shall present the entire appellate package to the Presiding Judge of the Court of Appeals with a request for a formal hearing date to be set.

**(4) Hearing on Appeal Set.** The Presiding Judge shall set a formal hearing on the appeal to be heard within forty-five (45) days from the Presiding Judge's receipt of the Appellate Package, and notify the Department Adjutant of such time, date and location of the hearing, who then shall cause written notice of the time, date and location of the hearing, to be sent certified mail, return receipt requested to the Post and to the Accused. Notwithstanding the foregoing, the Accused shall be entitled to at least fifteen (15) days notice before a formal hearing is held. In this regard, said fifteen (15) day notice shall be computed from the mailing postmark when deposited in the US Mail.

### c. Pre-Hearing Procedure

**(1) Appellate File May Be Reviewed.** At any time after written notice of the hearing time, date and location is given, and prior to the hearing, the Accused, or his/her representative, may request the Department Adjutant to make available to the accused or his/her representative, for inspection and copying at Department Headquarters, Austin, Texas, the Transcript, Adjutant's Record of Documents, and Certifications of the Post Judge Advocate, previously filed with the Department Adjutant. Copies of any items in the appellate package shall be at the expense of the party requesting same, payable at the time of receipt of same.

**(2) Pre-Hearing Motions.** At any time before the hearing time and date, either the Post or Accused may file Motions concerning procedural defects occurring before, at or after the Post Trial, and as concerns the perfection of the appeal. Motions for continuance may also be filed for good cause. The Accused and the Post must file the names and addresses of any representative who will attend the hearing to argue motions or briefs, prior to the hearing.

**(3) May File Briefs.** Both the Accused and the Post may file briefs to be considered by the Appellate Court in arriving at a decision with the Department Adjutant prior to or at the hearing. In this connection, the party filing any Motions under (2) above, or briefs under this subsection, shall provide the other party with copies of the Motions and/or briefs, at the time of filing said Motions and/or briefs with the Department Adjutant.

**(4) Judges and Judge Advocate to Receive File.** Each of the Appellate Judges and the Department Judge Advocate shall be supplied with a copy of the Transcript, Adjutant's Record of Documents and Certifications of the Post Judge Advocate, at least three (3) days prior to the hearing.

### d. Hearing Procedure

**(1) Record of Proceedings.** In the event either the Post or the Accused requests a stenographic hearing, the cost will be paid by the party requesting same, at the time of hearing. Either party may record the proceedings.

**(2) Call To Order.** The Presiding Judge shall call the hearing to order. The Department Judge Advocate shall formally read the Notice of Appeal, and then ascertain who is present and representing the Accused and the Post.

**(3) Motions Heard.** At this time, all motions complaining about procedural defects, perfection of appeal, motions for continuance, and any other motions not heretofore disposed of, will be considered by the Appellate Court.

**(4) Decided Based on Procedural Defects.** In the event no motions complaining about procedural defects or defects in perfecting the appeal were presented by either party, the Appellate Court may take judicial notice of any such procedural defects at the trial below or in perfecting the appeal, and dismiss or grant the appeal without further consideration of the Transcript and Adjutant's Record of Documents, and setting out the specific reason for its ruling.

**(5) Appellate Hearing.** In the event there are no procedural defects or defects in the perfection of appeal, the Appellate Court will proceed to consider the Transcript and Adjutant's Record of Documents and any other pertinent matters, and applying the "Substantial Evidence Rule", i.e., the question being "whether or not there is substantial evidence to support the expulsion, suspension or reprimand of the Accused". No new or other evidence that could have been presented at the Post trial will be considered. The Department Judge Advocate may give his/her opinion and reasons therefore as to a ruling, which opinion shall only be taken under advisement by the Appellate Judges. At this time, if requested by either the Post representative or the Accused or his/her representatives, oral arguments reaching to the substantiality of the evidence presented in the Post Trial may be heard by the Appellate Court. Such oral arguments shall not exceed fifteen (15) minutes in length.

**(6) Appellate Judgment.** The Appellate Court will then retire and render their decision, either (1) affirming the Expulsion, Suspension, or Reprimand (2) reversing the Expulsion, Suspension, or Reprimand or (3) affirming or reversing the Post and remanding the matter back to the Post Trial Court for further proceedings. The Presiding Judge shall issue a written Judgment setting out the Findings of Facts and of Law and the decision. Said Judgment shall not become final, until thirty (30) days after the date the Judgment is signed. Once it becomes final, it shall bind the Department and the parties to the Post Trial without any appeal. The Department Adjutant, after the judgment has become final, either with or without a Motion for Re-Hearing, shall send copies of the Judgment to all of the parties involved in the trial hearing and appeal.

#### **e. Re-Hearing**

**(1) Motion for Re-Hearing.** After the Appellate Court has issued and rendered its written Judgment and decision, either the Accuser or the Accused may file a "Motion for Re-Hearing" requesting the Appellate Court to reconsider its decision. Said "Motion for Re-Hearing" shall set out specifically the alleged error or abuse of the Appellate Court's discretion, and must be filed with the Department Adjutant prior to the expiration of the thirty (30) day period of time immediately following the Appellate court's issuance of and rendition of its Judgment and decision, and before said Judgment and decision becomes final. The timely filing of the Motion for Re-Hearing shall toll the running of the thirty (30) days necessary for the Judgment and decision to become final.

**(2) Response; Render Decision.** After the Accuser or Accused files his/her "Motion for Re-Hearing", the other party shall have fifteen (15) days within which to file a Response to said "Motion for Re-Hearing" with the Department Adjutant. The Appellate Court then shall consider the "Motion for Re-Hearing" and render a decision within forty-five (45) days of the filing of the last timely pleading. Said decision and Judgment, once issued and rendered in writing, shall be final, without further lapse of time and shall bind the Department and the parties to the Post Trial.

**f. Declaratory Judgment on Interpretation of Post Constitution and By-Laws**

Any question that arises concerning a Constitution and By-Laws which has been approved by the Department Executive Committee, may be presented in writing to the Department Judge Advocate, who shall issue an opinion thereon, subject to the final ruling of the Department Commander. The person or entity raising the question shall have thirty (30) days from the date of ruling of the Department Commander, to file an appeal directly to the Court of Appeals; however, the procedures of sections b, c and d above shall not apply, but section e shall apply as concerns a motion for rehearing. The decision of the Court of Appeals shall be final and binding on the Department of Texas.

## II. REVOCATION, CANCELLATION OR SUSPENSION OF POST CHARTERS

### A. Charges

**1. Initiation of Charge.** A Charge that any Post should, for any good and sufficient cause, have its charter cancelled, suspended or revoked may be initiated by the District or the Division in which the Post is located or by any three Posts of the Department of Texas. A charge may be withdrawn only with the consent of the Department Commander.

**2. File With Department Commander.** The original charge and three copies shall be filed with the Department Commander at Department Headquarters.

**3. Signed Under Oath.** Such charge shall be in writing and signed by the Commanders and Adjutants of the District (Form 19), Division (Form 20), or Posts (Form 21), as the case may be, and sworn to before a notary public.

**4. Contents of Charge.** The charge shall include the following:

- a. The full name and address of the Post against which the charge is made and the addresses of the Commander and Adjutant of such Post.
- b. A clear, concise and detailed statement of the facts upon which the charge is based.
- c. A copy of the resolution authorizing the Commander and Adjutant of the Division, District or Post to file the charge.
- d. The section or sections of the National or Department Constitution and By-Laws that have been violated by the Post.
- e. Sworn affidavits of witnesses or documents substantiating the charge may be attached.

**5. Serve Post With Charge.** Within 3 days of receiving the charge, the Department Commander shall have the Department Adjutant serve the charge on the defendant Post by serving the Post Adjutant and the Post Commander by Certified Mail, Return Receipt Requested.

**6. Commence Investigation.** After a charge has been filed, the Department Commander shall forthwith cause a full investigation of the facts to be made. After such investigation, the Department Commander shall file a report and recommendation with the Department Executive Committee for its action thereon at its next meeting.

**7. Charge May Be Filed By Department.** Proceedings relating to the cancellation, suspension or revocation of a Post charter may also originate with either the Department Commander or the Department Executive Committee. If originated by the Department Commander or the Department Executive Committee (DEC) the Commander or the DEC will determine the need for further investigation before submission to the DEC.

**8. Rejection of Charge Cannot Be Appealed.** After consideration of the investigation of the charge, the action of the Department Executive Committee in rejecting any charge or charges against a Post shall be final.

## **B. Resolution of Department Executive Committee**

**1. Contents of Resolution.** Should the Department Executive Committee determine by a majority vote that the Post should surrender its charter, said Department Executive Committee shall direct the defendant Post to surrender its charter for cancellation, and shall pass a resolution that unless the charter is so surrendered, prior to the date therein specified, a hearing and trial be held to determine whether the Post charter should be cancelled, suspended or revoked, and said resolution shall include the following:

- a. A Statement that the Department Executive Committee has determined that the hearing and trial is warranted.
- b. Authorization and direction to the Department Commander and Department Adjutant to sign a formal complaint.
- c. The names and addresses of the members of the subcommittee before which the hearing and the trial is to be held.
- d. The name and address of the Department Judge Advocate or special acting Department Judge Advocate who is to assist the committee.
- e. Authorization to the subcommittee to hire such stenographic or other help as may be necessary and to incur such expense as may be necessary. Said expense, including the cost of stenographic report of the trial when ordered to be transcribed by the subcommittee or the Department Executive Committee, shall be taxed as costs against the Department, complainants or defendant Post in such manner and amount as the Department Executive Committee shall prescribe.
- f. That the subcommittee shall report its written findings of fact and recommendation to the Department Executive Committee at its next meeting, provided, however, that if the hearing or trial is not completed, a partial report shall be made.

## **C. Complaint**

**1. Contents of Complaint.** In all cases, a formal complaint, in triplicate shall be drawn by the Department Judge Advocate and signed by The American Legion, through its Department Commander and Department Adjutant, setting forth the following:

- a. A clear and concise statement of the facts upon which the charges are predicated.
- b. The origin of the charges.

- c. A copy of the resolution of the Department Executive Committee appointing the subcommittee and its assistants.
- d. A copy of the Uniform Code of Procedure for the Revocation, Cancellation or Suspension of Post Charters.
- e. The time within which an appearance or answer shall be filed by the Post, which shall be not less than twenty (20) or more than sixty (60) days from the date of the service of a copy of the complaint.
- f. The time and place for the hearing and trial, which shall not be more than thirty (30) days after the date of the expiration of the time for the filing of the answer.

**2. Amendment of Complaint.** Any such complaint may be amended by the subcommittee of the Department Executive Committee in its discretion at any time upon such terms as may be deemed just in the opinion of the said subcommittee.

#### **D. Service**

**1. Serve on Post.** The subcommittee shall cause a true copy of the complaint to be served on the defendant Post.

**2. Method of Service.** All complaints, orders and other process and papers of the subcommittee or the Department organization of The American Legion may be served personally, or by registered mail, or by leaving a copy thereof at the principal office or Headquarters of the intermediate body or Post, or place of residence of the person or officer to be served. The verified return by the individual serving the same showing service thereof in the manner herein provided, or the registry return receipt shall be proof of service.

**3. Service on Department.** All notices, orders, papers or other process which are to be served on the Department Headquarters of The American Legion, or the subcommittee appointed to conduct the trial, shall be deemed served if they are served on the Department Adjutant at Department Headquarters, said service to be made as herein above provided.

**4. Summons of Witnesses.** Witnesses may be summoned by a notice signed by either the special acting Department Judge Advocate, the Department Judge Advocate, or by a member of the subcommittee.

#### **E. Answer**

**1. Post Required to Answer Complaint.** The defendant Post shall file an answer to said complaint with the Department Judge Advocate at Department Headquarters within the time specified in the complaint. The answer shall contain a clear and concise statement of the facts which constitute its defense. Any charge or specification in the complaint which is not expressly denied or explained in the answer shall be deemed to be admitted.



**2. Amended Answer.** In the event that the complaint is amended during the course of the hearing or trial, the defendant shall be furnished with a copy of such amendment, and may file an amended answer to the said amended complaint within five (5) days thereafter.

#### **F. Subcommittee**

**1. Composition.** The subcommittee to hear and try and make written findings of fact and recommendations with reference to the matter of the cancellation, suspension or revocation of the Post charter shall be appointed by the Department Executive Committee and shall consist of not less than three (3) members of the Department Executive Committee. No member of the Post under investigation shall be a member of such subcommittee.

**2. Legal Advice.** Should no member of the subcommittee be a lawyer, opinions on questions of law may be obtained from the Department Judge Advocate.

**3. Quorum.** A majority of the members of the subcommittee shall constitute a quorum. If for any reason there is less than a quorum, the hearing shall be adjourned until a quorum is present.

**4. Duties of Judge Advocate.** The duties of the Department Judge Advocate or special acting Department Judge Advocate shall be to see that the trial is prompt, complete and thorough, make all arrangements for the hearings, the summoning of all witnesses and the production of all papers. He shall see that all the orders of the subcommittee shall be carried out. He shall examine and cross-examine all witnesses.

#### **G. Hearing and Trial**

**1. Rules of Evidence.** The rules of evidence prevailing in courts of law and equity shall not be controlling. The subcommittee shall decide all questions arising as to relevancy of the evidence and the regularity of the proceedings.

**2. Closed or Open Sessions; Witnesses Sworn.** The subcommittee may hold its hearings in closed sessions or may open them to the public. The subcommittee shall hear witnesses on oath or affirmation.

**3. Right to Confront Witnesses.** Any party to the proceeding shall have the right to appear at such hearing in person, by counsel or otherwise, subject to such reasonable restrictions as may be placed on the right by the subcommittee, and to examine and cross-examine witnesses and to introduce documentary or other evidence.

**4. Stipulations.** Stipulations of fact may be introduced in evidence with respect to any issues.

**5. Objections.** Objection to the conduct of the hearing shall be stated orally together with a short statement of the grounds of such objection and included in the stenographic report of the hearing.

**6. Oral Argument.** Any party to the proceedings shall be entitled to a reasonable period at the close of the hearing for oral argument, which shall not be included in the stenographic report of the hearing. Briefs may be filed by the parties within the time fixed by the subcommittee.

**7. Continuation of Hearing.** In the discretion of the subcommittee, the hearings may be continued from day to day, or adjourned to a later date, or to a different place by announcement thereof at the hearing by the chairman or vice-chairman of the subcommittee or by other appropriate notices.

**8. Record of Hearing.** A stenographic report of the trial shall be made.

## **H. Report of Subcommittee to Department Executive Committee**

**1. File Report With Adjutant.** The subcommittee, after it has completed its hearings, shall file the complete report of the proceedings had upon the trial, together with its written findings of fact and recommendations with reference thereto with the Department Adjutant not less than five (5) days before the next meeting of the Department Executive Committee, all of which shall be open to the inspection of all members of the Department Executive Committee, as well as a representative or representatives of the defendant Post.

**2. Report To Be Continued.** The Department Executive Committee shall consider said report and act thereon.

**3. Post Representative May Appear.** At the Department Executive Committee meeting at which the report of the said subcommittee is to be considered, one representative of the defendant Post may, within the discretion of the Department Executive Committee, be given the privilege of the floor for not more than one (1) hour.

**4. Partial Report.** Should the subcommittee's report be a partial report, the Department Executive Committee may continue the committee and authorize it to hold further hearings and present its final report at the next meeting of the Department Executive Committee.

## **I. Appeal**

**1. Refusal to Take Action.** Should the Department Executive Committee refuse to cancel, suspend or revoke the charter of the Post, such decision shall be final and no appeal can be taken therefrom.

**2. Notice of Appeal.** Should the Department Executive Committee, upon a report of its subcommittee, cancel, suspend or revoke the charter of the defendant Post, the defendant Post and the National Adjutant shall be notified by the Department Adjutant of the Decision of the Department Executive Committee, which notice shall be mailed within five (5) days after such decision has been rendered. Should the defendant Post desire to appeal from the decision of the Department Executive Committee, it shall serve its notice

of appeal, signed by the Post Commander and Post Adjutant, on the Department Adjutant at Department Headquarters within thirty (30) days from the date of said suspension, cancellation or revocation.

**3. National Commander Appoints Subcommittee.** Upon Receipt of said notice of appeal, the Department Commander shall immediately notify the National Commander of such appeal and shall cause the Department Judge Advocate, or acting Department Judge Advocate, and the subcommittee to submit all the papers and the complete record of the hearings to the National Commander. Upon receipt of the notice of appeal, the National Commander shall appoint a subcommittee of not more than five (5) nor less than three (3) members of the National Executive Committee for the purpose of hearing the appeal from the action of the Department Executive Committee.

**4. Texas National Executive Committeemen Excluded From Subcommittee.** The National Executive Committeeman, or alternate, from the Department of which the defendant Post is a part, shall not be eligible to serve on this committee.

**5. Meeting of Subcommittee.** This subcommittee of the National Executive Committee shall meet at least one (1) day prior to the meeting of the National Executive Committee and to this committee the National Commander shall refer the complete record, in writing, of said proceedings with such exceptions thereto as are made by the defendant Post.

**6. Deliberation of Subcommittee.** This subcommittee may make its recommendations merely from the records, or it may permit representatives of the Department or the defendant Post to appear and argue the matter before the committee, and it may, at such hearing of such appeal, take further evidence relating thereto under such rules and conditions as it may from time to time adopt.

**7. Subcommittee Recommendation.** This subcommittee shall review the cause and recommend to the National Executive Committee the action to be taken thereon.

**8. No Further Appeal.** The decision of the National Executive Committee, based upon the report of this subcommittee, shall be final and there shall be no appeal therefrom.

**9. Taxing of Costs.** The cost of the proceeding may be retaxed as the National Executive Committee shall deem just and equitable.

## Glossary of Terms

**Accused.** The American Legion member who is accused in an Affidavit of Charges alleging that within the last year the member committed an act of disloyalty, neglect of duty, dishonesty or conduct unbecoming a member of the American Legion.

**Accuser.** The American Legion member who files an Affidavit of Charges alleging that another member within the last year committed an act of disloyalty, neglect of duty, dishonesty or conduct unbecoming a member of the American Legion.

**Adjutant, Department.** The full-time executive director of the American Legion Department of Texas.

**Adjutant, Post.** The member of the Post elected by the members or appointed by the Post Commander to perform the duties commonly performed by the Secretary of a not-for-profit organization. Regarding disciplinary proceedings against a post member, the Adjutant maintains the Adjutant's Record of Documents. In such a proceeding, the Adjutant's principal duties include:

1. Receive the Affidavit of Charges from the Accuser and note on its first page the date and time it was received; prepare the file for the Adjutant's Record of Documents and maintain a copy of all documents related to the case.
2. Prepare the Citation and Return of Service Form and forward to the Sergeant-at-Arms for service on the Accused; prepare the necessary paperwork for citation by publication, if necessary.
3. Serve as the Clerk of the Court during the trial and be responsible for making a record of the proceeding by a court reporter or an audio recording.
4. Forward a copy of the Default Order or Disciplinary Order to the Accused and to the Department Adjutant in cases where the Accused was expelled or suspended.
5. Within 30 days after the Accused has filed an Appeal letter with the Department Adjutant, forward to the Department Adjutant a Transcript, Adjutant's Record of Documents, and certifications by the Post Judge Advocate that the Transcript and Adjutant's Record of Documents are complete and correct.

**Adjutant's Record of Documents.** A complete file containing all of the documents related to the disciplinary proceeding including:

- Affidavit of Charges
- Citation
- Return of Service
- Forms related to citation by publication, if applicable (Affidavit in Support of Citation by Publication, Citation by Publication, letter to newspaper, and Publisher's Affidavit)
- Jury Summons, along with a description of the methods of notification

- Jury List
- Peremptory Challenge Forms
- Motions and Orders
- Jury Verdict Form(s)
- Copies of all correspondence
- Green cards and other forms related to postal service

**Affidavit.** A written statement of fact voluntarily made under an oath or affirmation administered by a person authorized to do so.

**Affidavit In Support of Citation by Publication.** An affidavit affirming that the Accuser has exercised due diligence to locate the residence of the Accused and has been unable to do so. Citation by Publication in a newspaper of general circulation in the county in which the post is located is used when the Accused cannot or will not be found, and, therefore, cannot be served by personal service or by certified mail, return receipt requested. Prior to serving citation by publication, the Accuser should attempt to find the Accused by:

- check with the post office for a forwarding address
- ask the Accused's friends, relatives and former employers
- check the telephone books
- contact the Department of Criminal Justice at 512-406-5202 to see if the Accused is in prison
- check Internet sites:  
[www.addresses.com](http://www.addresses.com)  
[www.anywho.com](http://www.anywho.com)  
[www accurini.com](http://www accurini.com)  
[www infobel.com](http://www infobel.com)

**Alternate Jurors.** A person selected in the same manner all other jurors are selected who sits in the courtroom and listens to the proceedings but does not participate in the deliberations unless one of the jurors becomes sick, injured, legally compromised, incapacitated, or has a family emergency.

**Answer.** A written response by the Accused to an Affidavit of Charges denying the facts contained in the Affidavit of Charges.

**Appeal.** An appeal involves the review of a court decision by a higher court.

**Appellate Package.** The Transcript, Adjutant's Record of Documents and a Certification by the Post Judge Advocate who presided at the trial that the Transcript contains the full trial and all the Exhibits admitted into evidence and that the Adjutant's Record of Documents contains all of the documents regarding the case.

**Beyond a Reasonable Doubt.** The Accuser must prove the allegations made in the Affidavit of Charges to the extent that there could be no reasonable doubt in the mind of a reasonable person that the Accused is guilty. Proof beyond a reasonable doubt is not proof beyond any doubt and does not involve proof to an absolute certainty.

**Brief.** A written legal document presented to a court arguing why one party to a particular motion or case should prevail.

**Burden of Proof.** The duty of the Accuser to produce the evidence that will prove the claims made against the Accused.

**Challenge for Cause.** An assertion by either the Accuser or the Accused that a prospective juror does not appear capable of rendering a fair and impartial verdict. There are no limitation on the number of Challenges for Cause.

**Charge.** A sworn allegation signed by the Commander and Adjutant from a Division, District, or 3 Posts asserting that a post has violated the National or Department Constitution and By-Laws and that its charter should be revoked, cancelled or suspended.

**Citation.** A writ signed by the Post Adjutant directing the Sergeant-at-Arms to serve the Citation and Affidavit of Charges on the Accused and directing the Accused to file a written answer by a date specified in the Citation or appear at a regular meeting of the post on that date, and that failure to file a written answer or appear by that date will result in a Default Judgment.

**Closing Argument.** An opportunity at the end of the trial for the Accuser and the Accused to summarize the evidence and explain to the jury how the evidence should influence the jury to decide the case in its favor. The Accuser must prove its case beyond a reasonable doubt so the Accuser will present its argument first and may reserve part of its time to make an additional argument after the Accused has concluded its argument.

**Complaint.** A complaint can be issued after a Charge is filed and investigated and the investigation is considered by the Department Executive Committee (DEC) and the DEC resolves that unless the Post surrenders its charter for cancellation, there should be a hearing and trial to determine whether the Post charter should be cancelled, suspended or revoked. The complaint sets forth a clear and concise statement of the facts upon which the charges are predicated; the origin of the charges; a copy of the DEC resolution appointing a subcommittee and its assistants; a copy of the Uniform Code of Procedure for the Revocation, Cancellation or Suspension of Post Charters; the due date of the answer; and the time and place of the hearing.

**Conduct Unbecoming a Member of the American Legion.** A somewhat vague offense derived from the UCMJ language for conduct unbecoming an officer and a gentleman. As a gentleman, one is considered to have a duty to avoid dishonesty, indecency, indecorum, lawlessness, injustice or cruelty. Some examples include: knowingly making a false official statement, cheating on a test, being drunk and disorderly in public, public association with known prostitutes, and using insulting or defamatory language to an officer.

**Court of Appeals.** The Court of Appeals is authorized by the Uniform Code of Procedure for Disciplinary Actions and consists of 2 Past Department Commanders and a member licensed by the State Bar of Texas appointed by the Department Commander to staggered 3-year terms, confirmed by the Department Executive Committee. It shall be the duty of the Court of Appeals to render a binding written opinion regarding any appeal from a Post trial.

**Cross Examination.** The questioning of a witness after the direct examination by the party that called the witness. If a party calls the opposing party or a witness friendly to the opposing party (and hostile to the party of the questioner) that initial questioning of the hostile witness is also referred to as cross examination.

**Declaratory Judgment.** The legal determination of a court that resolves the legal uncertainty for the litigants. It is a form of legally binding preventive adjudication by which a party involved in an actual or possible legal matter can ask a court to conclusively rule on and affirm the rights, duties, or obligations of one or more parties in a civil dispute.

**Default.** Failure of the Accused to respond to a Citation in the time allowed by filing a written answer or appearing at the regular meeting of the Post set forth in the Citation.

**Department Judge Advocate.** An elected official of the Department of Texas who is required by the By-Laws to be licensed by the State Bar of Texas and who serves as General Counsel.

**Direct Examination.** The initial questioning of the witness by the party that called the witness. If a party calls the opposing party or a witness friendly to the opposing party (and hostile to the party of the questioner) that initial questioning of the hostile witness is referred to as cross examination and the subsequent questioning by the other party is referred to as direct examination.

**Disciplinary Order.** The order entered by the Post after the jury finds the Accused Guilty.

**Disciplinary Proceeding.** Proceedings conducted in accordance with the Uniform Code of Procedure for Disciplinary Actions. It does not include offenses related to violations of the club room or bar rules unless the offense rises to the level of conduct unbecoming a member of the American Legion.

**Dishonesty.** Bad faith, cheating, chicanery, corruption, corruptness, cozenage, deceit, deception, deviation from probity, dishonor, disposition to deceive, disposition to defraud, disposition to lie, duplicity, faithlessness, false swearing, false heartedness, falsehood, falseness, falsity, fraudulence, fraudulency, frans, furtiveness, improbity, infidelity, insincerity, inveracity, lack of conscience, lack of honesty, lack of integrity, lack of principle, lack of probity, lying, mendacity, perfidiousness, perfidy, perjury, surreptitiousness, thievishness, treacherousness, trickiness, truthlessness, underhandedness, unreliability, unscrupulousness, untrustworthiness, untruth, want of integrity, williness.

**Disloyalty.** The violation of allegiance or duty, as to a government. Lack of loyalty. The quality of not being loyal to a person, country, or organization.

**Due Process.** The principle that an individual cannot be deprived of life, liberty, or property without appropriate legal procedures and safeguards. The idea that laws and legal proceedings must be fair.

**Evidence.** Every type of proof legally presented at trial (allowed by the judge) which is intended to convince the judge and/or jury of alleged facts material to the case.

**Evidentiary Hearing.** Any court proceeding that involves witnesses giving testimony under oath.

**Expel.** To force to leave an organization such as The American Legion. To take away the rights or privileges of membership.

**Fair Trial.** A fair trial is the best means of separating the guilty from the innocent and protecting against injustice. It requires a fair and public hearing within a reasonable time by a competent, independent and impartial tribunal established by law.

**Finding of Facts and of Law.** Findings of facts are the conclusions of a judge, jury or other administrative tribunal regarding the underlying facts of the case under consideration. Finding of Facts and of Law set forth the facts the tribunal found to be true and the conclusions of law reached regarding those facts. This allows a losing party to know how and why the tribunal reached its decision and whether an appeal is warranted.

**Foreman of Jury.** A jury member who is elected by the jury to serve as its chairman and spokesman.

**Good and Substantial Cause.** A reason that will be convincing that the reason for asking for granting a continuance is not to delay the proceedings but so that justice can be done. For example, the unavailability of an important witness; illness or hospitalization of a party or key witness.

**Judgment.** An order of a court or tribunal.

**Juror.** A person who is sworn to be a member of a body of people selected to decide the facts of a case in a court of law and provide an impartial verdict.

**Jury List.** A list numbered 1-18 that contains the name of the 1st juror drawn at random from the cards of all of the prospective jurors and the name of each of the other jurors in the order in which they were drawn.

**Last Known Address.** The address on the membership records of the Post or the American Legion office that is most current.

**Letter of Reprimand.** A letter to the Accused signed by the Post Commander that states the offense of disloyalty, neglect of duty, dishonesty, or conduct unbecoming a member of The American Legion and the specific facts of the offense and an admonishment that the Accused is being reprimanded.

**Member in Good Standing.** An American Legion member whose dues are classified as current or delinquent. Members delinquent in payment of dues after February 1 are not members in good standing. Members who have been suspended are not members in good standing.

**Motion.** A procedural device, usually made in written form, to bring a limited, contested issue before a court for a decision.

**Motion to Dismiss.** An application by the Accused asking the judge to rule that the Accuser has not and cannot prove its case.



**Neglect of Duty.** The omission to perform a duty. Neglect of duty has reference to the neglect or failure on the part of an officer to do or perform some duty or duties prescribed in the Post Constitution and By-Laws.

**Notice of Appeal.** A formal notice served by the Accused on the court and the parties informing them of the Accused's intention to request a review of the court's order. It is the initial step in the appeals process.

**Objections.** A formal protest raised in court during a trial to disallow all or a portion of the witness's testimony or other evidence which would be in violation of the rules of evidence or other procedural law.

**Opening Statement.** A brief overview of the evidence that the party expects the jury to hear during the trial.

**Oral Argument.** Oral arguments are spoken to a judge or appellate court by the party or the party's representative explaining the legal reasons why they should prevail.

**Order.** A court order is an official proclamation by a judge or other tribunal that defines the legal relationship between the parties to a hearing, a trial, an appeal or other court proceedings.

**Peremptory Challenge.** A peremptory challenge results in the exclusion of a prospective juror without the need for any reason or explanation.

**Perfection of Appeal.** This is the term that is applied when a person has completed all of the things needed to appeal a case.

**Personal Delivery.** The actual granting of legal possession, custody or control of something to the individual or office to whom it is directed or to someone who is authorized to receive it on his or her behalf.

**Post Judge Advocate.** The Post Judge Advocate is the officer elected by the Post members or appointed by the Post Commander in accordance with the Post Constitution and By-Laws. The Post Judge Advocate serves as the trial judge during disciplinary proceedings and rules on motions and presides over the trial. If there is an appeal, it is the duty of the Post Judge Advocate to certify that the Transcript and Adjutant's Record of Documents are complete and accurate.

**Procedural Defect.** Sometimes referred to as a technicality, a failure to fully comply with the rules. Common procedural defects that cause disciplinary proceedings against members to be overturned on appeal include:

- failure to state specific facts in the Affidavit of Charges so that the Accused can prepare his defense;
- failure to provide 15 days notice to the Accused between the date of service of the Citation and the Affidavit of Charges and the date of the regular meeting of the Post;
- proceeding with the trial when less than 18 prospective jurors are present for jury selection;

- conducting a trial when Post officers or executive committeemen are in the jury panel of 18 or are on the jury; or
- failure to ensure the Notice of Appeal is at Department Headquarters within 30 days of the Trial date or Disciplinary Order, as applicable.

**Publisher's Affidavit.** Proof that the Citation by Publication was printed in a newspaper of general circulation in the county in which the Post is located and proof of the dates of publication and that the 3<sup>rd</sup> date of publication is more than 15 days prior to the regular meeting of the Post in the Citation by Publication.

**Rebuttal.** Evidence or argument introduced to counter, disprove or contradict the opposing party's evidence or argument.

**Recess.** A break in a trial or other court proceeding until a defined date and time in the future. Recess is distinguished from an adjournment, which winds up the proceedings.

**Record of the Proceedings.** A written memorial of all the acts and proceedings in an action in court.

**Re-cross Examination.** The next round of questioning by the party that did the cross examination.

**Re-direct Examination.** The next round of questions by the party that did the direct examination.

**Representative.** A person who is authorized to act on behalf of another.

**Return of Service.** A written acknowledgment stating that there was service of legal documents to the Accused or other person to who the documents are addressed.

**Sergeant-at-Arms.** The Post officer elected by the members of the Post or appointed by the Post Commander to perform the duties specified in the Post By-Laws. In a disciplinary proceeding, the Sergeant-at-Arms is responsible for serving the Accused and completing the Return of Service Form, summoning the jury, and performing the duties in the courtroom normally performed by a bailiff.

**Service.** The formal delivery of legal notice or a document. The refusal of the party being served to take possession of the documents being served does not negate the service. The server may simply drop them at the feet of the person being served.

**Special Acting Department Judge Advocate.** The American Legion member who is licensed by the State Bar of Texas who is appointed by the Department Commander, and confirmed by the Department Executive Committee, to serve in the place of the Department Judge Advocate in a disciplinary proceeding when the Department Judge Advocate has a conflict of interest or is otherwise not able to perform his duties.

**Statute of Limitations.** The maximum time that a party has to initiate legal proceedings from the date of the alleged offense.

**Stipulation.** A formal legal acknowledgment and agreement made between opposing parties before a pending hearing or trial. For example, both parties might stipulate to certain facts and not argue them in court.

**Substantial Evidence Rule.** A principle that a reviewing court or Court of Appeals should uphold the ruling of the trial court or lower court jury if the ruling is supported by evidence on which it could reasonably base its decision.

**Summons.** A form of legal process or a paper that commands the person to appear before the court on a specific day and time.

**Suspend.** To discontinue temporarily with an expectation of resumption. While membership is suspended, the member has no rights of membership.

**Testimony.** Statements made by competent witnesses who have been sworn in at a trial or deposition or in an affidavit.

**Transcript.** An official direct and verbatim written record of what was said in court and all trial exhibits submitted into evidence.

**Verdict.** The conclusion of a jury, or of a judge in a non-jury case, of what the facts are or were. It is the formal finding of fact made by a jury on matters submitted to the jury by a judge.

**Voir Dire.** French for “to speak the truth.” The process of jury selection through which potential jurors are questioned by the judge or the lawyers / parties / prosecutors / representatives to determine their suitability for jury service.

**Witness.** A person who gives testimony under oath and penalty of perjury in a court of law.

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**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

**CAUTION: There must be enough specific facts alleged to allow the accused to prepare a defense or the charges may be dismissed.**

Form 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 \_\_\_\_\_ AM/PM  
(time)  
on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ at \_\_\_\_\_,  
(City) \_\_\_\_\_, Texas (Street Address)

to admit or deny the charges contained in the attached Affidavit of Charges. If you fail to file a written answer denying the charges by the above date and time or appear at the meeting to deny the charges, a default judgment may be entered resulting in your expulsion from The American Legion, suspension of your membership for a period up to one year, or a Letter of Reprimand.

This writ is executed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Adjutant, Post \_\_\_\_\_

**RETURN OF SERVICE**

TO: Post \_\_\_\_\_ Adjutant

The attached Citation and Affidavit of Charges were served upon the Accused at \_\_\_\_AM/PM  
(time)  
on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, in the following manner:

- personal delivery on the Accused at \_\_\_\_\_.  
(address)
- mailing by certified mail, return receipt requested as verified by the Accused on the attached green card.
- 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



**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

**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 at \_\_\_\_\_ AM/PM  
(time)

on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ at Post \_\_\_\_\_ located at

\_\_\_\_\_, \_\_\_\_\_, Texas. Failure to appear or present  
(street address) (city)

a written 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 \_\_\_\_\_

**PUBLISHER'S AFFIDAVIT**

“I solemnly swear that the above notice was published three times in the  
“ \_\_\_\_\_ ” newspaper, as requested for the  
Service of Citation by 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 \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

Form 7

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

Incl: Publisher's Affidavit

<b>Accuser</b>		<b>Executive Committee</b>		
		§		
		§		
v.		§	<b>of</b>	
		§		
<b>Accused</b>		§	<b>Post</b>	
		§		

**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 at \_\_\_\_\_ AM/PM on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ as contained in the Citation and that at least 15 days notice was provided between the date of service and the date of the Post meeting 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

Form 9

Answer

I, \_\_\_\_\_, the Accused, file this answer and deny the charges contained in the Affidavit of Charges served on me and demand a trial to prove these charges beyond a reasonable doubt.

---

Signature  
Name  
Street Address  
City, State, Zip Code  
Telephone Number

**NOTE: This answer must be provided to the Post Adjutant at or before the date of the Post meeting contained in the Citation.**

Form 10

Motion for Continuance

TO THE HONORABLE JUDGE ADVOCATE

I, \_\_\_\_\_, (The Accused / The Accuser) bring this motion to continue this case which is currently set for a jury trial on \_\_\_\_\_ for the following reason:

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This motion is not sought for delay but only so that justice can be done.

---

Signature  
Name  
Street Address  
City, State, Zip Code  
Telephone Number

**Note: This motion must be accompanied by a sworn affidavit setting forth the reason for the continuance.**

Affidavit in Support of Motion for Continuance

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, \_\_\_\_\_  
appeared in person before me today and stated under oath:

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

“The reason a continuance is needed is because: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.”

\_\_\_\_\_  
Signature

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

\_\_\_\_\_  
Notary Public, State of Texas



Form 11

Order on Motion for Continuance

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, came on to be heard the Motion for Continuance filed by \_\_\_\_\_. After hearing the evidence and arguments it is ORDERED that the Motion for Continuance is hereby

\_\_\_\_\_ GRANTED and reset at \_\_\_\_\_ AM/PM on the \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.  
\_\_\_\_\_ DENIED

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
Post Judge Advocate

Form 12

Motion to Dismiss

TO THE HONORABLE JUDGE ADVOCATE

I, \_\_\_\_\_, the Accused, bring this Motion to Dismiss this case for the following reasons:

- \_\_\_\_\_ barred by limitation
- \_\_\_\_\_ charge is frivolous
- \_\_\_\_\_ charge brought solely for harassment
- \_\_\_\_\_ charge is not specific
- \_\_\_\_\_ charge is not disloyalty, dishonesty, neglect of duty, or conduct unbecoming a member of the American Legion
- \_\_\_\_\_ other reason: \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_
- \_\_\_\_\_

\_\_\_\_\_  
Signature  
Name  
Street Address  
City, State, Zip Code  
Telephone Number

Form 13

Order on Motion to Dismiss

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, came on to be heard the Accused's Motion to Dismiss. After hearing the evidence and argument, the Motion to Dismiss is hereby:

\_\_\_\_\_ GRANTED  
\_\_\_\_\_ DENIED

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Post Judge Advocate

Form 14

Designation of Representative

I / We the undersigned Accuser(s) / Accused designate \_\_\_\_\_ to be my/our representative in this matter. The address and telephone number of the representative is:

\_\_\_\_\_  
(Street Address)

\_\_\_\_\_  
(City, State, Zip Code)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(E-mail Address)

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Form 15

Jury Summons

You are hereby summoned to appear for jury duty at \_\_\_\_\_ AM/PM on the \_\_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_ at \_\_\_\_\_  
(street address)  
\_\_\_\_\_, Texas.  
(City)

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Sergeant-at-Arms

Form 16

Peremptory Challenges

The Accuser / Accused exercises its peremptory challenges on the following two prospective jurors:

Juror Number

Name

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Signature of Representative

Form 17

Jury Verdict Form for Each Charge

- 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 was advised of his/her right to appeal. (date)

\_\_\_\_\_  
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



\_\_\_\_\_  
**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  
(date)  
in the attached jury verdict.

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.

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Form 19

Charge Against a Post for Revocation, Cancellation or Suspension of Post Charter Initiated by District

Initiated by \_\_\_\_\_ District

Name of: District Commander \_\_\_\_\_ District Adjutant \_\_\_\_\_

Name of Post Charged \_\_\_\_\_

Address of Post Charged \_\_\_\_\_

Commander of Post Charged \_\_\_\_\_

Address of Commander \_\_\_\_\_

Adjutant of Post Charged \_\_\_\_\_

Address of Adjutant \_\_\_\_\_

Section or Sections of the National or Department Constitution and By-Laws violated by the charged Post:

Attached is the resolution of the District authorizing the Commander and Adjutant to file the charge. (Form 22)

Attached is a clear, concise and detailed statement of the facts upon which the charge is based along with the sworn affidavit of witnesses and documents substantiating the charge.

Signed,

\_\_\_\_\_

District Commander

\_\_\_\_\_

District Adjutant

SIGNED under oath before me by \_\_\_\_\_, \_\_\_\_\_ District Commander on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

SIGNED under oath before me by \_\_\_\_\_, \_\_\_\_\_ District Adjutant on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

Form 20

Charge Against a Post for Revocation, Cancellation or Suspension of  
Initiated by Division

Initiated by \_\_\_\_\_ Division

Name of: Division Commander \_\_\_\_\_ Division Adjutant \_\_\_\_\_

Name of Post Charged \_\_\_\_\_

Address of Post Charged \_\_\_\_\_

Commander of Post Charged \_\_\_\_\_

Address of Commander \_\_\_\_\_

Adjutant of Post Charged \_\_\_\_\_

Address of Adjutant \_\_\_\_\_

Section or Sections of the National or Department Constitution and By-Laws violated by the charged Post:

Attached is the resolution of the Division authorizing the Commander and Adjutant to file the charge.  
(Form 22)

Attached is a clear, concise and detailed statement of the facts upon which the charge is based along with  
the sworn affidavit of witnesses and documents substantiating the charge.

Signed,

\_\_\_\_\_

Division Commander

Division Adjutant

SIGNED under oath before me by \_\_\_\_\_, \_\_\_\_\_ Division  
Commander on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

SIGNED under oath before me by \_\_\_\_\_, \_\_\_\_\_ Division  
Adjutant on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

Form 21

Charge Against a Post for Revocation, Cancellation or Suspension of  
Poster Charter by Three Posts in Department

Initiated by 3 Posts in Department of Texas

Post \_\_\_\_\_  
Post \_\_\_\_\_  
Post \_\_\_\_\_

Names of:

Post \_\_\_\_\_ Commander \_\_\_\_\_ Post \_\_\_\_\_ Adjutant \_\_\_\_\_  
Post \_\_\_\_\_ Commander \_\_\_\_\_ Post \_\_\_\_\_ Adjutant \_\_\_\_\_  
Post \_\_\_\_\_ Commander \_\_\_\_\_ Post \_\_\_\_\_ Adjutant \_\_\_\_\_

Name of Post Charged \_\_\_\_\_  
Address of Post Charged \_\_\_\_\_  
Commander of Post Charged \_\_\_\_\_  
Address of Commander \_\_\_\_\_  
Adjutant of Post Charged \_\_\_\_\_  
Address of Adjutant \_\_\_\_\_

Section or Sections of the National or Department Constitution and By-Laws violated by the charged Post:

Attached are the resolutions of three (3) Posts authorizing the Commanders and Post Adjutants to file the charge. (Form 22)

Attached is a clear, concise and detailed statement of the facts upon which the charge is based along with the sworn affidavit of witnesses and documents substantiating the charge.

Signed,

\_\_\_\_\_  
Post \_\_\_\_\_ Commander Post \_\_\_\_\_ Adjutant  
  
\_\_\_\_\_  
Post \_\_\_\_\_ Commander Post \_\_\_\_\_ Adjutant  
  
\_\_\_\_\_  
Post \_\_\_\_\_ Commander Post \_\_\_\_\_ Adjutant

SIGNED under oath before me by \_\_\_\_\_, \_\_\_\_\_ Post  
Commander on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

SIGNED under oath before me by \_\_\_\_\_, \_\_\_\_\_ Post  
Adjutant on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

SIGNED under oath before me by \_\_\_\_\_, \_\_\_\_\_ Post  
Commander on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

SIGNED under oath before me by \_\_\_\_\_, \_\_\_\_\_ Post  
Adjutant on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

SIGNED under oath before me by \_\_\_\_\_, \_\_\_\_\_ Post  
Commander on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

SIGNED under oath before me by \_\_\_\_\_, \_\_\_\_\_ Post  
Adjutant on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public, State of Texas

Form 22  
Resolution Authorizing Filing of Charge

“WHEREAS, good and sufficient cause exists for the cancellation, revocation, or suspension of the Post Charter of \_\_\_\_\_ Post \_\_\_\_\_ in \_\_\_\_\_, Texas; now, therefore be it

“RESOLVED in a meeting of the (\_\_\_\_\_ Division or \_\_\_\_\_ District a \_\_\_\_\_ Post \_\_\_\_\_, \_\_\_\_\_, Texas) on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, that the Commander and Adjutant are authorized to file a charge against \_\_\_\_\_ Post \_\_\_\_\_ that its charter be cancelled, revoked or suspended.

\_\_\_\_\_  
Adjutant

\_\_\_\_\_  
Commander

DEC Resolution Ordering Charged Post to Surrender its Charter

“WHEREAS, The Department Executive Committee (DEC) has considered the charges against \_\_\_\_\_ Post \_\_\_\_\_, \_\_\_\_\_, Texas initiated by \_\_\_\_\_; and

“WHEREAS, The DEC has determined by a majority vote that the defendant Post should surrender its charter, now, therefore, be it

“RESOLVED by the DEC on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, at its regular meeting in \_\_\_\_\_, Texas, that:

1. A hearing and trial is warranted to determine whether the Post charter of \_\_\_\_\_, Post \_\_\_\_\_ should be cancelled, suspended, or revoked unless the Post surrenders its charter for cancellation prior to \_\_\_\_\_.
2. The Department Commander and Department Adjutant are authorized to sign a formal complaint.
3. The following three members of the DEC shall comprise the subcommittee of the DEC before which the hearing and trial is to be held.

Name	Address	Title
_____	_____	Subcommittee Chair
_____	_____	Subcommittee Vice Chair
_____	_____	Subcommittee Member

4. The Judge Advocate (or special acting Judge Advocate) is \_\_\_\_\_ and his/her address is \_\_\_\_\_.

5. That the Subcommittee is authorized to hire such stenographic or other help as may be necessary and to incur such expense as may be necessary.

6. That the Subcommittee shall report its written finding of fact and recommendation to the DEC at its next meeting, provided, however, that if the hearing or trial is not completed, a partial report shall be made.”



Form 24

Complaint

1. Charges have been initiated by: \_\_\_\_\_
2. Charges have been filed against \_\_\_\_\_ Post \_\_\_\_\_, \_\_\_\_\_, Texas.
3. Attached is a clear and concise statement of the facts upon which the charges are predicated.
4. Attached is a copy of the resolution of the Department Executive Committee appointing the subcommittee to conduct the hearing and trial.
5. Attached is a copy of the National Uniform Code of Procedure for the Revocation, Cancellation or Suspension of Post Charters.
6. Attached is a copy of the Uniform Code of Procedure for Disciplinary Actions of the American Legion Department of Texas.
7. The Defendant Post shall file a written Answer to the Department Judge Advocate at the Department Headquarters not sooner than 20 days or more than 60 days after receipt of the complaint.
8. Unless otherwise agreed, the trial will begin at the Department Headquarters in Austin, Texas at 9:00 a.m. on the Saturday next 80 days after service of the complaint on the Post.

\_\_\_\_\_  
Department Commander

Attest: \_\_\_\_\_  
Department Adjutant

Form 25

Due Process Checklist

A. Affidavit of Charges

1. \_\_\_\_\_ Affidavit of Charges contains specific facts.
2. \_\_\_\_\_ Alleged facts in Affidavit of Charges, if true, prove that the Accused is guilty of one of the four charges allowable: disloyalty, neglect of duty, dishonesty, or conduct unbecoming a member of the American Legion.
3. \_\_\_\_\_ Charge is not barred by the Statute of Limitations.

B. Service

4. \_\_\_\_\_ Accused has been served with the Citation and Affidavit of Charges using one of the following methods:  
  
\_\_\_\_\_ personally  
\_\_\_\_\_ by CMRRR  
\_\_\_\_\_ by Citation by Publication in the newspaper on 3 consecutive weeks
5. \_\_\_\_\_ The Citation served on the Accused has a trial date that is more than 15 days after the date of service. (Note: Get out a calendar; circle the date of service; circle the trial date on the Citation; count the days between the 2 circled dates; if it is less than 15 days, service is defective.)
6. \_\_\_\_\_ If service is by CMRRR, did the Accused sign the green card? If not, service is defective.
7. \_\_\_\_\_ Did the Accused file a written answer by the due date on the Citation or appear at the regular Post meeting on the Citation? If not, a trial is not needed and the Post Commander can sign a Default Order.

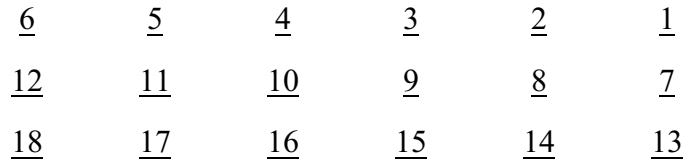
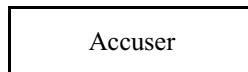
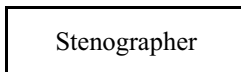
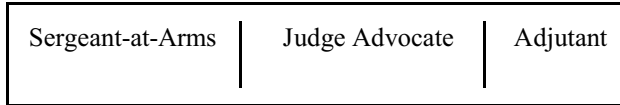
C. Jury Selection

8. \_\_\_\_\_ Did at least 18 jurors, not counting Post officers and executive committeemen, show up for jury duty?
9. \_\_\_\_\_ Were the prospective jurors sworn in prior to jury selection / voir dire?

10. \_\_\_\_\_ Did the Accuser and the Accused have an opportunity to question prospective jurors to determine if any jurors could be challenged for cause?
11. \_\_\_\_\_ Did the Accuser and the Accused have an opportunity to exercise peremptory challenges?
12. \_\_\_\_\_ Was a jury list prepared?
13. \_\_\_\_\_ Did the Adjutant confirm that all jurors in the jury list were members in good standing?
14. \_\_\_\_\_ After the 6 jurors and 2 alternates were selected, was the jury sworn?

EXHIBIT 1

Physical Layout of the Courtroom  
for Jury Selection

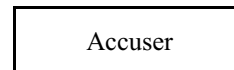
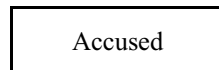
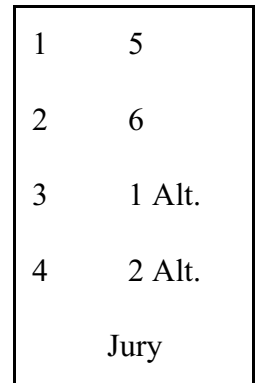
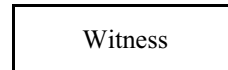
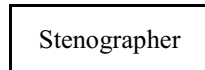
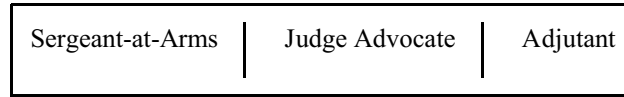


Prospective Juror Chairs

Audience

EXHIBIT 2

Physical Layout of the Courtroom for Trial



Audience

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