

**PRACTICE AND PROCEDURE IN THE EXPULSION OR SUSPENSION OF A MEMBER OF THE AMERICAN
LEGION DEPARTMENT OF TENNESSEE**

I. Process

The first process in all actions of expulsion or suspension against a member of The American Legion in good standing shall be by filing with the adjutant of the post written charges in triplicate, properly verified by affidavit of the accuser or accusers.

II. Writ — When Returnable When Written Charges Are Filed

The adjutant shall issue a writ dated upon the day it shall be issued and sign it, directed to the sergeant-at-arms (or some other member of the post in good standing), commanding that person to summon the accused to appear at the post meeting place at the next regular meeting (providing 15 days have intervened), to show cause why he should not be suspended or expelled (as the case may be).

III. Service — Return

it shall be the duty of the sergeant-at-arms, or the member appointed, to serve the writ so issued, by reading it to the accused and at the same time delivering to the member a verified copy of the charges filed. The person serving the writ shall endorse upon said writ the time and manner of serving it and immediately thereafter file the same with the Post adjutant.

IV. Alias Writ

Whenever it shall appear by the return that the accused is not found fifteen (15) days, or more, previous to the regular post meeting, the adjutant, at the request of the accuser, shall issue another writ and so on until service is had.

V. Failure to Make Return

if the sergeant-at-arms, or the member to who a summons is delivered, shall neglect or refuse to make return of same within the time required in Paragraph 4, another summons shall be issued, directed to some other member in good standing for service as herein above set forth.

VI. Service by Publication

Whenever the accuser shall file with the adjutant of the post in which the charges are pending, an affidavit showing the accused has gone out of the state or on due inquiry cannot be found or is concealed within the state so that process cannot be served upon the intended, and stating the place of residence of such accused, if known, or that upon diligent inquiry the place of residence cannot be ascertained, the adjutant of the post shall cause publication to be made in the county where the post is located and if there be no newspapers published in said county, then in the nearest newspaper published in the state containing notice of the pendency of such charges before said post, the names of the accused and the accuser, and the time and place of the hearing of said charges. Within two days of the first publication of such notice, the adjutant of said post shall send a copy thereof by mail addressed to the accused if the place of residence is stated in said affidavit; said notice shall be published at least once each week for three successive weeks.

VII. Charges

The accuser or accusers must be members of the same post as the accused and shall set forth the charges of disloyalty, neglect of duty, dishonesty and conduct unbecoming a member of The American Legion in terms of simplicity and understanding in order the accused may properly prepare a defense.

VIII. Accused to Enter His/Her Appearance in Writing

Before the accused defends in his/her own proper person, or through counsel, he/she shall enter an appearance by filing an answer to said charges on or before the date of the regular meeting to which the accused has been summoned to appear.

IX. Failure to Answer

if the accused fails to answer the charges, in manner and form as herein last set forth, the charges and matters and things therein stated shall be taken as confessed and the prayer for expulsion or suspension granted.

X. Date of Trial

Whenever the accused enters an appearance by filing an answer to the charges preferred, the entire proceedings shall automatically be continued until the next regular post meeting, at which time the trial shall be had.

XI. Continuance

Either party may apply for a continuance before the day set for trial, however, it shall be accompanied by a written motion, supported by affidavit of the party so applying. Good and substantial cause must exist before said motion is granted. The presiding judge advocate shall pass on said motion.

XII. Trial — Post Judge Advocate to Preside

The post judge advocate shall preside at the trial and shall have the power and authority to pass upon the materiality and relevancy of all the evidence presented, and shall have general power to prescribe the necessary and reasonable rules and regulations for the orderly procedure of said trial.

XIII. Post Judge Advocate Vacancy

in case of death, removal, vacancy, resignation or disability of the post judge advocate, it shall be the duty of the department commander, when duly notified by the post adjutant, to appoint a special judge advocate in the department to fill the vacancy. Such special judge advocate so appointed shall have the authority, right and powers of a duly elected post judge advocate. The post shall bear the expenses of any special judge advocate.

XIV. Post Officers and Executive Committee to Act as Jurors

The post officers and the post executive committee are hereby selected as jurors to ascertain under the guidance of the judge advocate the truth of the charges preferred. Their province is strictly limited to questions of fact, and within that province they are still further restricted to the exclusive consideration of the matters that have been proven by evidence of the interested parties in the course of the trial. Their decision shall be reduced to writing and filed with the post adjutant, who, in turn, shall enter the same in the post records.

XV. Causes of Challenge

if any post officer or any member of the executive committee, or any other member selected as a juror, shall state he/she cannot fairly and impartially render a verdict therein in accordance with the evidence, and the presiding judge advocate shall be satisfied of the truth of such statement, said member or members shall be challenged for cause.

XVI. Peremptory Challenge

Each party shall be entitled to challenge of two jurors without showing cause for such challenge.

XVII. When a Post Has No Executive Committee

When a post has no executive committee, the presiding judge advocate shall direct the sergeant-at-arms to summon five members of the post to sit as jurors in their place.

XVIII. Duty of Sergeant-at-Arms

if any member is challenged peremptorily or for cause, or if any post officer or member of the executive committee shall be absent from said trial, the presiding judge advocate shall direct the sergeant-at-arms to summon a sufficient number of members of the post to sit as jurors in their place.

XIX. If Sergeant-at-Arms Not Present

if the sergeant-at-arms is not present at said trial or upon objection of either party to the cause to the sergeant-at-arms summoning a sufficient number to fill the vacancies, the presiding judge advocate shall appoint a special sergeant-at-arms to summon the necessary persons to act as jurors.

XX. Members Insufficient to Fill Panel

When the membership of the post, through cause or otherwise, is insufficient in number to make a full panel for jury service, the trial shall be continued until the next regular post meeting. The post adjutant, within five (5) days thereafter, shall transmit such information to the department commander, who shall, before the next regular meeting of the post, cause the sergeant-at-arms of said post to summon a sufficient number of members of The American Legion from the body of the county in which the post is located to fill the vacancies.

XXI. Amendments

At any time before a final decision is made by the jury upon the trial of a member upon expulsion or suspension, amendments may be allowed by the presiding judge advocate upon such terms as are just and reasonable.

XXII. Number Necessary to Expel or Suspend

To expel or suspend a member of The American Legion in good standing, two-thirds of the members selected to sit as jurors shall vote in the affirmative. ***Article IV, Section 3 of the By-Laws of The American Legion is as follows: "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."***

I. Time for Appeal

Within forty (40) days after judgment of expulsion or suspension is made and recorded, the accused ONLY may take an appeal in manner and form as set forth in Article IV, Section 3 of the By-Laws last mentioned.

II. Stenographic Report

Either party demanding a stenographic report of the trial shall pay for the same, and when said report is completed, it shall be the duty of the presiding judge advocate, on appeal, to examine the same and if correct, officially certify to the correctness of such report, and the same shall be immediately filed with the department adjutant, who, in turn, shall present the same to the department executive committee or the department convention officials, according to the by-laws of such department. All matters and things contained in such stenographic report shall become a part of the record and shall be considered in the final decision by the department. In addition to the stenographic report, all interested parties shall have the further right of appearing in person, or by counsel, and present further evidence and arguments upon such final hearing.

III. Notice by Department Adjutant Upon Request

When an appeal is taken by accused, in compliance with Article IV, Section 3 of the By-Laws of The American Legion, it shall be the duty of the accused to obtain from the department adjutant the date of the executive committee meeting or department convention and the exact time and place of such hearing on appeal. ***This notice should be given if possible at least ten (10) days before the meeting or convention.***

IV. Appeal — Department Judge Advocate to Preside

Upon appeal the department judge advocate shall preside at the trial, and shall have the power and authority to grant a continuance to either party if deemed for the best interest of the Legion; to pass upon the materiality and relevancy of all the evidence presented and shall have general power to prescribe the necessary and reasonable rules and regulations for the orderly procedure of said trial.

V. No Further Appeal

The decision reached by the department executive committee or department convention shall be final.

VI. Effect of Decision

Where an appeal is taken by the accused and the department executive committee or department convention sustains the appeal, the expelled member automatically becomes a member in good standing of said post, and it is mandatory the adjutant reinstate said member upon the post membership roll. Any post failing to comply with this provision is subject to having its charter suspended or revoked. Article IV, Section 4 of the National Constitution of The American Legion is as follows: "No person who has been expelled by a Post shall be admitted to membership in another Post without the consent of the expelling Post, except that where such consent has been asked for and denied by such Post, he may then appeal to the Executive Committee of the Department of the expelling Post for permission to be admitted to membership in another Post, and shall be ineligible for membership until such permission is granted."