

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

**Adopted July 15, 2015 by the
Department Executive Committee
and replacing those adopted February 19, 1963**

The following practice and procedure is Described by the Executive Committee, American Legion, Department of New York, pursuant to the provisions of Article XI, Sections 1 and 2, of the Department By-Laws and Article IV, Section 2, of the National By-Laws.

Section 1

Who May Prefer Charges

A member of the same Post of which the Accused is a member may prefer charges against him or her, or charges may be preferred by the Department Commander or the Department Executive Committee, in the case of an offense committed while in office as a Department Officer or Department Executive Committee member.

Section 2

Process.

The first process against a member of the American Legion shall be the filing with the Adjutant of the Post of which the accused is a member if the charges are made by a member of the Post, or with the Department Adjutant if the charges are made by the Department Commander or the Department Executive Committee, written charges duly verified under oath by the accuser or accusers, to which shall be appended the accuser's address, to which all notices shall be delivered, a copy thereof shall be sent to the Adjutant of the Post of which the accused is a member.

Section 3

**Writ--- When Returnable When Written
Charges Are Filed.**

When charges have been preferred against a member, the Adjutant of the Post or Department shall serve or cause to be served upon the accused member, personally, by registered mail, or by e-mail addressed to the accused at his last place of residence or e-mail address as shown on the records of the Post, County or Department, a written notice, summons, or writ notifying the accused of the nature of the charges

which have been preferred against him or her and directing him or her to appear, not less than fifteen days thereafter, at a regular or special meeting of the Executive Committee of the Post or a sub-Committee of the Department Executive Committee consisting of not less than three (3) nor more than five (5) members, one of whom shall be a Department Vice Commander, at a designated place and time, to show cause why he or she should not be suspended or expelled.

Section 4

Notice to Accusers.

Not less than five days prior to the date set for the hearing of said charges, notice of the time and place thereof shall be served personally, by e-mail, or by mail upon the accusers, addressed to the address specified by said accusers pursuant to Section 2 hereof.

Section 5

Proof of Service.

Before any charges against an accused shall be considered, the Adjutant or someone on his or her behalf, shall furnish proof by affidavit of due service of said notice upon the accused and service of notice of hearing upon the accuser or accusers.

Section 6

Failure to Effect Service.

If the Adjutant is unable to effect personal service upon the accused member, after due diligence, and if the said notice mailed by registered mail, addressed as above specified, is returned to the Adjutant undelivered, and if service by e-mail is impossible, the charges against the accused member shall be considered as though he or she had been personally served.

Section 7

Charges.

All accusations against a member shall be based upon one or more of the following charges:

- (1) Disloyalty.
- (2) Dishonesty.
- (3) Neglect of duty.
- (4) Conduct unbecoming a member of The American Legion.

The details of any such charges shall be set forth clearly and simply in order that the accused may be definitely apprised of the nature of the accusations made against him or her.

Section 8

Answer.

On or before the date set for the appearance of the accused he or she may file, by e-mail, with the Adjutant of the Post, if the charges are brought on by the Post, or the Department Adjutant, if the charges are brought by the Department Commander or Executive Committee, an answer to said charges.

Section 9

Failure to Appear or Answer.

If the accused fails either to appear or to answer the charges preferred against him or her, said charges shall, for the purposes of the proceeding, be considered to have been denied by the accused, and the hearing of said charges shall proceed on such basis. All affirmative defenses and objections to jurisdiction are waived if not asserted in an answer.

Section 10

Continuance.

Upon the date specified in the notice served upon the accused, he or she may appear before the Executive Committee of the Post or Sub-Committee of the Department Executive Committee, and request an adjournment of the Hearing to a later date. Upon good cause shown, the presiding officer of the Committee or Sub-Committee may grant such request and adjourn the hearing to a designated later time and place.

Section 11

Trial Body.

For the purpose of hearing and passing upon the charges preferred against an accused member, the Executive Committee of the Post or Sub-Committee of the Department Executive Committee shall act as the trial body, the presiding officer of which shall be the Post Commander, or in case of his or her unwillingness or inability to act, the Post Judge Advocate, or if the trial is by Sub-Committee of the Department Executive Committee, the presiding officer shall be a Department Vice-Commander. If the Post has no Judge Advocate, the Executive Committee may, for the purposes of the hearing, by a majority vote, appoint from the membership of the Post, a special Judge Advocate to preside during the course of the trial.

Section 12

Province of Executive Committee or Sub-Committee of Department Executive Committee and of Presiding Officer.

Subd. (1) The Committee or Sub-Committee shall ascertain under the guidance of the presiding officer the truth of the charges preferred. Their province is strictly limited to questions of fact and to the exclusive consideration of the matters that have been proven by evidence introduced in the course of the hearing.

Subd. (2) The presiding officer shall have authority to pass upon the materiality and relevancy of all evidence presented, and shall have general power to prescribe the necessary and reasonable rules and regulations for the orderly procedure of said trial.

Section 13

Decision of Post Executive Committee or Sub-Committee of Department Executive Committee.

The decision of the Committee or Sub-Committee rendered after said hearing, upon the charges preferred against the accused, shall be reduced to writing and shall be filed with the Post Adjutant or Department Adjutant, who, in turn, shall enter the same in the Post records or direct the entry thereof, a copy of which shall be forwarded to the accused in the manner provided in section 3 thereof.

Section 14

Counsel.

The accused and the accusers may be represented upon the hearing by counsel of their respective choice, if they so desire, who must be members in good standing of The American Legion, but need not be attorneys.

Section 15

Stenographic Record.

Any party to the proceeding desiring a stenographic record report of said proceeding and of the evidence introduced thereon, may, at his or their own expense, employ a stenographer to report and transcribe the same.

Section 16

Number Necessary to Expel or Suspend.

To expel or suspend a member of The American Legion, two-thirds of the Executive Committee of the Post or the Department Sub-Committee shall vote in the affirmative.

Section 17

Time for Appeal.

Within 30 days after a decision of expulsion or suspension is made and recorded as provided by the preceding section hereof, the accused only, may appeal from such decision to the Department Executive Committee.

Section 18

Notice of Appeal.

Notice of appeal shall be by e-mail to the Department Adjutant, Department Judge Advocate, and Post Adjutant.

Section 19

Stenographic Record on Appeal.

Subd. (1) The stenographic report of the trial, if one was taken, if not, such record as was made on the hearing below, together with the charges, process, proof of service, answer, and documentary evidence shall be compiled as a single page numbered document in electronic form (Word or PDF) filed in such electronic form by the Post or Sub-Committee of the Department Executive Committee from which the appeal is taken, with the Department Adjutant and Department Judge Advocate within ten days after the filing with the Post or Department Adjutant of a copy of the Notice of Appeal, or on such other date as the Department Judge Advocate may order.

Subd. (2) Before such record on appeal is filed with the Department Adjutant, it shall be examined by the presiding officer at the trial, who shall make any necessary corrections therein and shall then officially certify as to the correctness of said stenographic record. The Department Judge Advocate may order the filing by e-mail of briefs or informal briefs and set the briefing schedule.

Section 20

Notice of Hearing on Appeal.

When an appeal is taken by the accused, it shall be his or her duty to obtain from the Department Adjutant the date of the Department Executive Committee Meeting at which such appeal shall be heard. It shall thereupon be the duty of the Department Adjutant to furnish to the accused the exact time and place of such hearing on appeal. This notice should, if possible, be given at least ten (10) days before said meeting.

Section 21

Hearing on Appeal.

Subd. (1) All matters and things contained in the stenographic record on appeal shall be considered in the final decision to be rendered by the Department Executive Committee.

Subd. (2) If no stenographic record has been made of the proceedings upon the trial, such records as have been made shall be submitted to the Department Adjutant, after certification as to corrections by the presiding officer at the trial, and shall be considered by the Department Executive Committee.

Subd. (3) In addition to the record of the trial, all interested parties shall have the further right of appearing in person or by counsel, as permitted in the trial below, before the Department Executive Committee and may present further evidence and arguments upon the hearing of said appeal.

Section 22

Appeal --- Department Judge Advocate to Preside.

Upon the hearing of the appeal by the Department Executive Committee, the Department Judge Advocate shall preside. He or she shall have power to grant a continuance to either party, to pass upon the materiality and relevancy of all the evidence presented, and to prescribe the necessary and reasonable rules and regulations for the orderly procedure of said trial, and set time limits for oral argument. The appeal is not a trial *de novo* and only considers errors alleged by the appellant.

Section 23

No Further Appeal.

The decision registered by a majority of the Department Executive Committee upon an appeal shall be final. No member of the Sub-Committee of the Department Executive Committee who was a member of the trial body shall be entitled to vote.

Section 24

Effect of Decision of Department Executive Committee.

Where an appeal taken by the accused is sustained by the Department Executive Committee, the expelled or suspended member automatically becomes a member in good standing of his or her Post and it is mandatory that the Post Adjutant forthwith reinstate said member upon the Post Membership Roll. Any Post failing to comply with this provision is subject to have its Charter suspended or revoked.

Section 25

Incidental Rules and Regulations.

Any Post or Sub-Committee of the Department Executive Committee or Department Judge Advocate may adopt such further incidental rules and regulations with reference to the procedure and practice upon the hearing of charges against a member as are not inconsistent with the general practice and procedure prescribed by the Department Executive Committee.

During the hearing of an appeal the Department Executive Committee may, by resolution, adopt rules for the conduct of the hearing.

Section 26

Any accuser, accused, counsel, member of the trial or appeal body, or witness before either of such bodies, who gives information to the public press as to the existence of charges or any part of the procedure or result, that has taken place in regard to such charges without permission of the Department Commander or Department Executive Committee thereto, shall be liable to have charges preferred in the Post to which the member belongs as having been guilty of conduct unbecoming a member of The American Legion.

Section 27

The attached forms are unofficial and not required but are recommended.

Forms for Discipline of Members

Discipline of Post Members must be carried out in compliance with United States and New York Law, the Constitutions and By-Laws of the National Organization and the Department of New York, and the procedures adopted by the Department Executive Committee. Copies of these procedures are available from Department Headquarters.

The following forms are not official forms, but they have been drafted to help posts comply with the required procedures.

Form 1

State of New York)

} ss.:

Charges

County of Blackacre)

I, John Doe, a member of Martin Van Buren Post 111, being duly sworn, charge Richard Roe, a member of the same post, with [*insert one or more of the following*: dishonesty, neglect of duty, disloyalty, conduct unbecoming a member of The American Legion].

Set forth dates and details of the conduct, for example:

Specification 1: Between July 1999 and November 1999, Richard Roe dishonestly and with the intent to steal from the post, failed to deposit in the appropriate bank account hundreds of dollars of post money and kept it for him or herself.

Specification 2: Between July 1999 and November 1999, Richard Roe dishonestly and with the intent to steal from the post, wrote unauthorized checks, amounting to thousands of dollars, on the post checking account payable to "cash" and cashed these checks and kept the proceeds for him or herself. Copies of these checks are annexed.

Specification 1: On July 4, 2002, Richard Roe volunteered to lock up the post rifles in the arms room following the parade and without any excuse went home leaving the rifles on tables in a public area of the post.

Specification 2: On January 15, 2002, Richard Roe while serving as bar chairman, left several hundred dollars of the post money on the bar and went home without any excuse, leaving the money to be found by other post members in the morning.

Specification 3: On November 15, 2002, Richard Roe failed to appear at the post without any excuse for the start of a bus trip for which he was chairman and for which he had the only record of who had paid for the trip

Specification: Richard Roe joined the Communist Party, USA on March 3, 2000, and stated at a post meeting that he knew the Communist Party, USA was opposed to our form of government but he did not care.

Specification: On March 10, 2002, Richard Roe engaged in combat as a member of the Taliban.

Specification: The highest rank achieved by Richard Roe in the Armed Forces was Private First Class. On July 4, 2000, he showed up for the parade in the uniform of a staff sergeant with a post cap.

Specification 1: Richard Roe stated at a post meeting, on May 11, 2000, that he did not want women veterans in the post and that all women veterans were promiscuous.

Specification 2: On May 11, 2000, Richard Roe spat on a woman member of the post.

Specification 3: On various dates between May 11, 2000 and December 31, 2000, Richard Roe vandalized the property of a woman member of the post.

If there is documentary evidence of guilt annex it and identify it.

John Doe

[Address]

Sworn to before me this

day of February, 2005

Notary Public

**Form 2
Post Stationary
Summons and Writ**

To: Richard Roe

[Address]

You are directed to appear before the Executive Committee of The Martin Van Buren Post 111, The American Legion, Department of New York, at the post headquarters at 174 Legion Street in Blackacre, at *[time and date – at least fifteen days after this notice is personally given to the accused or twenty days after it is sent by registered mail]* to answer charges of *[insert one or more: dishonesty, neglect of duty, disloyalty, conduct unbecoming a member of The American Legion]* and to show cause why you should not be expelled or suspended from The American Legion. A copy of the charges is annexed. The Executive Committee has the power to expel or suspend you from The American Legion. If you fail to appear the trial may take place in your absence.

[Insert date]

Adjutant

Form 3

Post Stationary

To: John Doe

The trial of Richard Roe is set for [*date and time*].

Adjutant

Copy received at least five days before trial:

John Doe

Form 4

Affidavit

State of New York)

} ss.:

County of Blackacre)

[Name], being duly sworn, deposes and says that I am the Adjutant *[or other officer]* of the Martin Van Buren Post 111, The America Legion, Department of New York, and I mailed *[or I personally delivered]* true copies of the charges and summons and writ in this matter to Richard Roe, by certified United States Post Office Mail, on *[date]*.

Print name under signature

Sworn to before me this

day of February, 2004

Notary Public

[or presiding officer at the trial after he has taken oath of office (Form 5)]

Form 5

State of New York)

} ss.:

County of Blackacre)

I, *[name]* Post Commander [*or* Post Judge Advocate] of Martin Van Buren Post 111, The American Legion, Department of New York, swear to preside over the trial of Richard Roe faithfully and fairly.

[Print name]

**Form 6
Post Stationary
Decision**

Richard Roe is expelled from The American Legion for [*describe charges and conduct, for example* dishonesty, neglect of duty, and conduct unbecoming a member of The American Legion. It was proven to the satisfaction of the executive committee of this post by documentary evidence, beyond a reasonable doubt, that the accused between July and November 1999, wrote thousands of dollars of unauthorized checks to “cash” and deliberately stole the proceeds of them from the post. It was also proven beyond a reasonable doubt by credible competent testimony that he also stole cash receipts of the post during the same period.] More than two thirds of the executive committee concur. The executive committee authorizes the commander and the adjutant to sign this decision on behalf of the whole committee.

[Date]

Commander

Adjutant

An appeal from this decision must be taken within thirty days of the date thereof

Form 7

On January 20, 2003, the trial of Richard Roe was held before the Post Executive Committee. The Post Commander presided. [*Describe trial, for example* Mary Doe testified that she had seen the accused steal bar receipts. The Post Treasurer testified that the accused had written unauthorized checks to cash and cashed them. Copies of the checks were received in evidence. The Post's independent auditor offered a written report that the Post had lost \$6,510 through embezzlement by Richard Roe. There was no objection to any testimony or evidence. There was no further evidence. The committee voted unanimously to convict and to authorize the Commander and the Adjutant to sign the decision.]

Commander

Adjutant

Form 8

Extract from Post Minutes

A motion was made, seconded, and adopted to approve the expulsion of Richard Roe.

Form 9

Affidavit

State of New York)

} ss.:

County of Blackacre)

[Name], being duly sworn, deposes and says that I am the Adjutant *[or other officer]* of the of the Martin Van Buren Post 111, The America Legion, Department of New York, and I mailed *[or I personally delivered]* a true copy of the decision in this matter to Richard Roe, by certified United States Post Office Mail, on *[date]*.

Print name under signature

Sworn to before me this

day of February, 2006

Notary Public

Form 10

[On Post Letterhead Stationery]

[Date]

Mr. James Casey
Department Adjutant
The American Legion
Department of New York
Suite 1300
112 State Street
Albany, New York 12207

Dear Mr. Casey:

Richard Roe, membership number _____, has been expelled. The complete record of the proceedings is enclosed.

Very truly yours,