

The American Legion Department of Florida



Post Judge Advocate Manual

Revised 2024

THE POST JUDGE ADVOCATE

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

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

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

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

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

A Judge Advocate should never answer questions or render a decision based on personal opinion.

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

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

If changes or updates are required, please follow the procedures that are in place.

If the post membership votes that no updates or changes are required, please send a letter signed by two post officers to the Department Adjutant, stating so and the date the membership voted.

CONSTITUTION AND BY-LAWS

Each Post within the Department of Florida must maintain its own Post Constitution and By-Laws, ensuring they do not conflict with the National Constitution and By-Laws of The American Legion, as well as the Constitution and By-Laws of the Department of Florida.

Article X, Section 10 of the Department of Florida's Constitution, states "The Post Constitution and By-Laws, together with any subsequent Amendments, shall be approved by the Department Judge Advocate or Department Assistant Judge Advocate, such approval confirmed by the Department Commander, and a copy filed with the Department Adjutant's office, with Certification of Approval issued to the Post before becoming effective.."

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

Follow the Post Constitution and By-Laws Submission Procedures, which can be found on the Department of Florida's website under Resources: Forms & Documents. Here is the citation for the website: <https://www.floridalegion.org/resources/legion-post-documents/posts/>

The 2024 Post Officer's Guide and Manual of Ceremonies contains templates for Post Constitution (pages 85-87) and Post By-Laws (pages 87-91). These templates are available for new Posts to establish their governing documents. However, ensure that no sections conflict with the Department of Florida's Constitution and By-Laws.

For example, Section 4 of the template states: "Any member of this Post may be expelled for cause by a two-thirds vote of the Executive Committee...". This statement conflicts with Article X, Section 13 of the Department of Florida's Constitution.

Therefore, when using these templates, carefully review and modify any sections that might conflict with the Department's Constitution and By-Laws to ensure compliance.

PARLIAMENTARY PROCEDURE

The following information is found in The American Legion Officers Guide and Manual of Ceremonies 61st. Edition, Revised March 2024 - Page 98:

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

THE CONSTITUTION AND BY-LAWS of an organization contain specific rules for the conduct of its business. General rules and customs for orderly procedure, in addition to these specific rules, are commonly known as parliamentary law. These rules are needed to guide the deliberations of an organization in order to do the right thing in the right way at the right time, and to secure the best results with the least expenditure of time and effort. The underlying principles of parliamentary law are justice and courtesy to all, one thing at a time, the rule of the majority, and the right of the minority. –

PARLIAMENTARY AUTHORITY – It is important for every organization to adopt some authority on parliamentary law, and for the members to be familiar with both the specific and the general rules of the organization. A copy of the by-laws should always be on the commander's desk. Excellent books and small leaflets on parliamentary procedure have been written in simplified form and are available, but "Roberts' Rules of Order Newly Revised" is the accepted authority for The American Legion. –

No Post or District Constitution and Bylaws shall be approved by the Department of Florida Judge Advocate without the inclusion of this Article in their Bylaws.

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

MOTIONS

The following information is found in The American Legion Officers Guide and Manual of Ceremonies 61st Edition, Revised March 2024 - Page 100:

Business is introduced by a motion, or by a resolution. The steps in making a motion and voting on it are as follows:

1. **OBTAIN THE FLOOR** – The member rises and addresses the presiding officer as Mr. or Madame Commander, as the case may be, and gives own name unless known by the commander. If the member is entitled to the floor, the chair repeats the name of the member. This recognition gives the member the right to speak. It is out of order for another member to stand before the member speaking has finished, or to remain standing after another has been given the floor.
2. **MAKE THE MOTION** – The member then states the motion or offers a resolution; for example, “I move that we take action to secure a playground for this community.” In order to state a motion properly, members of the organization should become accustomed to using the words “I move that” when introducing a motion.
3. **SECOND THE MOTION** – If anyone wishes the matter discussed and voted upon, a member says, “I second the motion,” without rising or addressing the Chair. If no member seconds it, immediately the chair, except in small assemblies, repeats the motion and asks, “Is the motion seconded?” In small assemblies, where every member has evidently heard the motion, instead of repeating the motion, the chair may say, “You have heard the motion; is it seconded?” If the motion is not then seconded, the chair may say, “There being no second, the motion is not before the assembly.” Note: Consult your parliamentary authority for the motions that do not require a second.
4. **STATE THE MOTION** – After the motion is seconded, the Chair then states the motion; for example, “It has been moved and seconded that we take action to secure a playground for this community.” As this motion is debatable and amendable, the Chair should then immediately ask, “Are you ready for the question?” or “Is there any discussion?” If the motion is not debatable or amendable (consult your parliamentary authority on this point if in doubt), the Chair should then immediately put the question to vote.
5. **DISCUSSION** – After a motion has been stated by the chair, it is before the assembly for consideration and discussion. Speakers to the motion must (1) be entitled to the floor, (2) address their remarks to the presiding officer, (3) be courteous in their

language and department, and avoid all personalities. Speakers must observe the rules of the organization as to the number of minutes and number of times they may speak on a question. The maker of a motion may vote against, but not speak against, the motion. Discussion must relate to the immediately pending question. Note: Consult your parliamentary authority for the few exceptions by which a speaker may be interrupted after having been assigned the floor, and also for the rules to guide the Chair when more than one person arises at the same time.

6. **PUT THE QUESTION** – After sufficient opportunity has been given the debate, the Chair repeats the motion and says, “Are you ready for the question?” After waiting a moment, if no one claims the floor, the Chair then says, “All those in favor of the motion as stated, say aye. All opposed, say no.”

7. **ANNOUNCE THE VOTE** – The chair says, “The ayes have it, and the motion is adopted,” or “The noes have it, and the motion is lost,” as the case may be. In the event of a tie, the motion is lost unless the Chair votes in the affirmative in order to carry the motion. A tie loses because every question must be carried by at least a majority. If in doubt as to the result, the Chair calls for a rising vote, first for, and then against, the motion, asks the adjutant to count the votes, and then announces the results.

MOTIONS THAT REQUIRE AN AUDIT

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

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

INVESTIGATIONS

Conflicts within a Post often arise due to personality clashes or differing opinions on management styles, typically concerning the Post lounge, financial issues, or other operational matters. These issues should be resolved by the Post leadership whenever possible.

If the concern involves the upper echelon of Post leadership or is not adequately addressed at the Post level, the District Commander should be contacted for assistance.

The District Commander will work directly with the Post to provide advice, recommendations, and act as a mediator when necessary.

If the District Commander cannot easily resolve the matter and further investigation is recommended, a member of the Post must submit a letter to the Department Headquarters. The letter should include:

1. A detailed outline of the concern.
2. Violations of National, Department, and/or Post Constitution and By-Laws.
3. Actions already taken (contacted Post leadership and/or District Commander).
4. Evidence, if possible.

The letter must be signed by a current paid member of the Post. Once received, the Department Commander will review the request and determine if an investigation is warranted.

Article VI of the Department of Florida By-Laws details the next steps of the investigation if warranted, which reads as follows:

The Department Commander may initiate actions to ensure that improper management, dishonesty, conflicts of personalities, malfeasance, misfeasance, nonfeasance, or any other factors do not jeopardize the continued existence of any Post in the Department of Florida. These actions may include but are not limited to, the following:

(a) Directing the District Commander in which a Post is located to conduct a preliminary investigation into the affairs of the Post and to act, if possible, as a mediator if they determine that the problem is primarily one of a conflict in personalities. Should the Department Commander decide that there may be some cogent reason to use some other individual to conduct the initial investigation/mediation, they shall, in consultation with the Area Commander in which the Post is located, detail some other member of the Department to conduct the initial investigation/mediation. A report of such investigation, including recommendations for further actions by officials of the Department, shall be rendered to the Department Commander.

(b) If the initial investigation/mediation does not result in a solution to the problem, the Department Commander, after consultation with the Chairperson of the Internal Affairs Commission, shall appoint a member of that Commission not from the same District as the Post involved, to conduct a further investigation into the affairs of the Post and to act, if possible, as a mediator if they should feel that mediation could be successful. A report of such investigation, including

recommendations for further actions by the Department, shall be rendered to the Department Commander as soon as practicable.

(c) Based on this report, the Department Commander may detail accountants or auditors to investigate financial problems further. Should such further investigations reveal conditions that could jeopardize the continued existence of the Post, the Department Commander, with the advice of the Department Executive Committee or the Finance Committee when the Department Executive Committee is not in session, shall advise the Post officers to take actions to ensure these conditions are alleviated, and if the Post officers are unable or refuse to comply with these directions, shall detail a Past Department Commander, in conjunction with the District Commander in which the Post is located, to take these actions providing specific detailed guidance for management of all of the affairs of the Post if required. In this event, every effort shall be made by the Past Department Commander and the District Commander to return complete control to the regular officers of the Post at the earliest opportunity if it is determined that such return of control is in the best interest of the Post and Department.

(d) The Post involved shall be responsible for the cost of the investigations detailed above, including travel expenses, lodging, and other expenses for the investigator(s), auditor(s), accountant(s) or other personnel.

By following these procedures, the Department ensures that conflicts and issues within a Post are addressed promptly and effectively, maintaining the integrity and stability of the Post and the Department.

POST TRIALS

Part of the duties of the Post Judge Advocate is to preside at the trial. Following Article X, Section 13 of the Department of Florida's Constitution and the Rules Governing Trials is important.

Visit the Department of Florida's website under Resources: Forms & Documents to access the necessary documents for conducting trials and other official procedures within the Department of Florida. Here is the citation for the website:

<https://www.floridalegion.org/resources/legion-post-documents/posts/>

The following are some of the resources available on the Department of Florida's website:

- Charging Document Template
- Summons Template
- Trial Procedure Guide
- Notice of Appeal Form

These resources provide essential guidance and templates for conducting trials within the Post, ensuring adherence to established procedures and maintaining fairness in the process.

RULES GOVERNING TRIALS

These rules shall govern any and all trials held by The American Legion Department of Florida or any Post within The American Legion Department of Florida.

1. Any disciplinary action where the potential punishment is suspension or expulsion from The American Legion, or in the case of an Officer, the removal from office, against any Member or Officer shall be upon sworn or verified written charges by the accuser(s).

2. Said sworn or verified written charges shall be filed with the Adjutant of the Convening Authority.

3. A copy of the sworn or verified written charges shall be served upon the accused, either in person or by certified mail with proof thereof by a return receipt.

4. The Adjutant of the Convening Authority shall cause to be served upon the accused, in the same manner as above mentioned, a Summons for the accused to appear on a specified date, time, and location for a trial. The trial shall be held at the next regularly scheduled Post Meeting after fifteen (15) days have lapsed from the time of service of the charges upon the accused.

5. The accuser(s) must be a member(s) of the same Post as the accused and shall set forth the charges of disloyalty, neglect of duty, dishonesty, and/or conduct unbecoming a Member of The American Legion in terms whereby the accused shall be able to determine what conduct is being complained of, which shall at a minimum, include the date, time, place, and the details of the offensive conduct, in order that the accused may properly prepare a defense.

6. The accused may appear at the trial in person, through written answer, or with counsel. Counsel may be a member of The American Legion or a licensed attorney.

7. Either the Convening Authority or the accused may apply for a continuance before the day of the trial. However, such a request must be in writing, show just cause for said request, and be sworn to by the moving party. The presiding Judge Advocate shall rule on any such motion filed.

8. The Judge Advocate of the Convening Authority shall preside at the trial and shall have the power and authority to pass upon the materiality and relevancy of any evidence presented, and shall have general power to prescribe the necessary and reasonable rules and regulations for the orderly procedure of said trial.

9. In the event that the Judge Advocate of the Convening Authority is unable to preside at the trial, the Department Commander shall be noticed of said inability, and the Department Commander will then appoint a Judge Advocate from within the physical

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

10. At any time before the trial commences, the charges may be amended. However, if the charges are amended the accused must be served with the amended charges and allowed fourteen (14) days before the trial can commence at a regularly scheduled Post Meeting.

11. The entire trial including all votes taken, will be conducted by the Post Judge Advocate or a Judge Advocate appointed by the Department Commander.

12. At the regularly scheduled Post Meeting, where a quorum is present, the trial is the first order of business. Prior to the start of the trial, the membership will need to determine if the votes to determine guilty/not guilty and any other punishment be taken viva voce (by voice) or by ballot.

13. Only the Post members in good standing sitting in attendance at the regularly scheduled Post Meeting will be the jury to hear the trial.

14. The start of the trial shall be the reading of the charges in front of the membership.

15. All testimony of witnesses must be taken under oath. The accused shall have the right to confront and cross examine any witnesses against him or her. No written statements, whether sworn or not, shall be admitted into evidence if the person who wrote the statement is not present to confront and be cross examined by the accused or counsel. The accused shall be allowed to speak in his/her own defense, if he/she so desires.

16. Either the Convening Authority or the accused shall have the right to have the trial and associated proceedings recorded by tape, video, or court reporter. The Post which arranges for the recording/reporting of the trial shall be responsible for any cost associated therewith.

17. Once the witnesses have been heard and the accused has been heard (if desired), the accused shall retire from the meeting room and the Post members present shall proceed at once, and without debate, to vote on the guilt or innocence of the accused, taking a separate vote on each charge.

18. If the accused is found guilty by a majority vote of the members present and voting, a second vote will be taken to determine if the accused will be permanently expelled from The American Legion, suspended from The American Legion or a lesser punishment as determined by a majority vote. In no case shall a member be permitted to vote who was not present at the commencement and during the entire progress of the trial. Expulsion means no longer eligible to be a member of The American Legion (requires a 67% affirmative vote from members present). Suspension means suspended from The American Legion for a maximum of the remainder of the current membership year and one additional membership year. A not guilty verdict dictates no punishment.

19. Such decision at the general membership meeting of the Post shall be binding upon the accused and the Post unless the accused, within forty-five (45) days from such decision, appeals to The American Legion, Department of Florida. Any appeal, including

filing deadlines, shall be governed by those rules enacted by the Department Executive Committee entitled “Rules Governing Appeals.”

20. In the event of a conflict between these Rules and either the Constitution or By-Laws of The American Legion, Department of Florida, the Constitution and/or By-Laws shall be controlling.

RULES GOVERNING APPEALS

Any appeal taken from a trial held within the jurisdiction of The American Legion, Department of Florida shall be governed by these rules.

1. A Notice of Appeal, in accordance with the attached form entitled “Notice of Appeal” must be received within forty-five (45) days of the final action of the Convening Authority or any appeal is waived.

2. The Notice of Appeal shall contain the following:

a. The date, location, participants (accused, Judge Advocate, witness(es), counsel(s), accuser(s), and jurors) and verdict.

b. A concise and specific statement of why the accused believes he or she did not receive a fair trial.

c. A brief summary of the testimony of each and every witness.

d. A concise statement of the final disciplinary action taken by the Convening Authority.

e. Attached to the Notice of Appeal shall be a copy of the charge(s) against the accused and any evidentiary material such as papers or photographs used during the trial. If no such documents were used, then this shall be so stated.

f. A copy of the Notice of Appeal must be delivered to the Commander of the Convening Authority contemporaneous with delivery to The American Legion, Department of Florida.

3. The entity that brought the charge(s) shall have a right to respond to any allegations or statements in the accused’s Notice of Appeal. Said response shall be in writing and filed with the Department Adjutant within sixty (60) days from the Convening Authority’s decision.

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

5. At the hearing on the appeal before the Department Executive Committee, both the accused, either in person or through counsel, and the Convening Authority, through a representative designated by the Convening Authority’s Commander or counsel, shall have five (5) minutes to argue their points on appeal. The points on appeal are limited to whether the accused received a fair trial.

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

7. The Department Judge Advocate will preside over any such appeal.

8. Upon the Department Executive Committee rendering a decision on the appeal, the Department Judge Advocate shall reduce said decision to writing and direct said opinion to be distributed to each member of the Department Executive Committee, the accused, and the Convening Authority.

AUDITS

Audits (Internal/External)

Most Florida Posts operate many different programs and businesses. One question that usually pops up several times a month and is directed for answer to Department HQs is about Audits. An attempt to answer all the many different questions with specificity is hard without detailed knowledge of Post operations.

Must the Post have an annual External (Independent) Audit?

This question really has 3 parts. First, if your Post receives no Federal grant money (none of our Posts do at this time that we are aware of), then there is no Federal mandated Independent Audit. Second, In Florida, A charitable organization must file an audited financial statement prepared by an independent CPA if the gross income from charitable contributions is at least \$500,000. Given that only some Posts have total gross receipts above \$500,000 per year, the chances of a Post having charitable contributions (donations from non-members) above this level is also near non-existent.

So why does a Post have to have one is the remaining question! Usually it is the third area that mandates a Post have an Independent Audit, and that is the Post Constitution and Bylaws (CBL). In many cases the Post in their CBL mandates an annual External Audit be conducted. If the Post feels an audit isn't necessary, then they must change their CBL to reflect the opinion of their Post membership.

Is an Independent Audit a good idea (It costs too much)?

There is no way to answer that question for a Post's membership. If it is mandated in the CBL, then the Post feels it is necessary and it must be conducted. Many argue that the costs are too high for an audit, and audits can be expensive. But, when considered relative to the fact that the average loss from a single person fraud case in small nonprofits is **\$80,000**, the cost of the audit doesn't seem so outrageous. Does the Post get a financial review instead of an audit? How does the Post safeguard against fraud? All questions no one can answer except a Post's membership. But fraud and mismanagement of financial matters destroy Posts and deprive the organization of money to help the community. Everyone must be constantly vigilant about these issues.

Is an Internal Audit good enough?

Again, being able to answer this question is impossible.

Audits are not the most effective way to uncover fraud (but that doesn't mean they are unnecessary). First, most cases of fraud are uncovered by tips from employees and members of the Posts. They see something and know it is not right, and then point it out to someone.

What is the bottom line in all this?

If a Post has a Constitution and Bylaws that mandates an Independent audit annually, they must have an independent audit annually. The CBL may be changed by the Post to eliminate this requirement, but the removal of safeguards to fraud and theft are not recommended without careful consideration of the overall plan for combatting these threats.

If the Post Officers believe that an issue exists do not ignore and hope it resolves itself, take steps to insure good governance/checks and balances are in place, and that the financial statements reflect the true position of the Post. If there are continuing questions, then even without a CBL mandate, the Post should engage an auditor. The Post Members at a regular Post Meeting must vote and approve the audit and expense.

POST OPERATIONS

Post are reminded that the Department of Florida has had a long standing policy that Posts must conduct all operation and programs shall conform to and abide by all local, state and federal laws, statutes, codes and ordinances and shall be in compliance with all articles of the Constitutions and By-Laws of THE AMERICAN LEGION and of The American Legion, Department of Florida. Posts violating this may face disciplinary proceedings by the Department of Florida.