The American Legion

Department of California

ADMINISTRATIVE HEARING MANUAL

(Revised June 26, 2015)

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ADMINISTRATIVE HEARING MANUAL
The American Legion
Department of California

(Revised August 10, 2018)

FORWARD

This Manual is intended to be the guide for conducting disciplinary hearings for the reprimand, suspension or expulsion of members of the American Legion, Department of California. The Manual describes the procedure at each level within the Department to receive charges, prepare and present accusations, conduct pre-hearing conferences, evidentiary hearings and process appeals.

This manual is incorporated into the Department By-Laws by reference in ARTICLE XVI Section 2 of the Department of California By-Laws and therefore has the same weight and effect as all other bylaws.

The procedures for suspending, cancelling or revoking Post Charters is found in the National By-Laws as The Uniform Code of Procedure for the Revocation, Cancellation or Suspension of Post Charters.

Hearing procedures for the American Legion Auxiliary, are found within the manuals of that organization and are controlled by that respective organization.

ADMINISTRATIVE HEARING MANUAL
The American Legion
Department of California
(Revised August 10, 2018)

TITLE I
PRELIMINARY PROVISIONS

SECTION 1: GENERAL PROVISIONS:

(a) DISCIPLINARY AUTHORITY VESTED IN THE POST: Except as provided herein, each post of The American Legion, Department of California shall have the power to reprimand, suspend, or expel its own members, subject to the restrictions of the Constitution and By-laws of The American Legion and The American Legion, Department of California.

(b) DISCIPLINARY AUTHORITY VESTED IN THE DEPARTMENT: Except as provided herein, the Department Executive Committee of the American Legion, Department of California shall have the power to reprimand, suspend, or expel all members of the Department of California. Such power shall be exercised by the Department's Board of Review, subject to the restrictions of the Constitution and By-laws of The American Legion and The American Legion, Department of California. The Board of Review shall have original jurisdiction in regard to Accusations brought against elected and appointed Department Officers and Department Executive Committee members. The Department Executive Committee shall hear appeals from verdicts rendered after an Evidentiary Hearing at the post level, or the Department Board of Review.

(c) GROUNDS FOR DISCIPLINE: Members may be suspended or expelled from the Legion only upon a proper showing of cause, as described in Title II, Section 1(c). No member in good standing shall lose his or her membership until given a fair hearing, as described herein.

(d) MATTERS NOT COVERED: Discipline of members of The American Legion Auxiliary. For information regarding disciplinary procedures of those groups, refer to their respective websites or contact those organizations directly.

(e) RIGHT TO COUNSEL: At all hearings provided for herein the accused may be represented by anyone he or she chooses. At the request of the accused, and at the discretion of the Post Commander or Hearing Officer, a member of the post may be appointed to represent the accused. All references to the "accused" herein includes reference to the accused's representative.

SECTION 2: HEARING OFFICIALS AND DUTIES:

(a) The Administrative Hearing Board shall be the sole judge of facts at the Evidentiary Hearing and they alone shall make findings as to whether an accusation is substantiated or not substantiated. The hearing board also sets the penalty. The findings and penalty are subject to appeal as set forth herein. This provision applies to the Board of Review at the Department level.

(b) Except as provided herein, the Post Commander or his or her designee shall preside as the Hearing Officer at all hearings before a post. The Department Commander's designee shall preside as the Hearing Officer at all hearings before the Department including hearings before the Board of Review. The Post, or Department Commander, as applicable, shall appoint a Hearing Officer before the Initial Hearing if one has not already been appointed. At the appropriate level commander's discretion, he or she may appoint one individual to serve as a Hearing Officer for all disciplinary hearings that may be heard during that commander's tenure.

(c) Except as provided herein, the Post Judge Advocate or his or her designee shall serve as the Prosecutor in all hearings before a post. The Post Judge Advocate may, but is not required to, designate a disinterested member of the post to prosecute the Accusation. The Department Judge Advocate, or his designee, shall serve as the prosecutor at Department Level hearings.

(d) Except as provided herein, the Post Adjutant or his or her designee shall act as a Clerk to the Hearing Officer, which will require him or her to keep the official record of hearings. The Department Adjutant, or his designee, shall serve as a Clerk to the Hearing Officer at the Department level.

(e) Except as provided herein, the Sergeant-at-Arms or his or her designee shall act as Bailiff for all hearings before a post. The Department Sergeant-at-Arms, or his designee, shall serve as a Bailiff for the Hearing Officer at the Department level.

TITLE II
COMMENCEMENT OF PROCEEDINGS: ACCUSATIONS; INITIAL HEARINGS

SECTION 1: ACCUSATIONS:

(a) Any member of The American Legion, Department of California who is in good standing may file an accusation against another member of The American Legion, Department of California provided the accused and the accuser are members of the same Post.

(b) Accusations must be made in writing, under oath, and signed by the accuser.

(c) Accusations against a member shall be based only upon disloyalty, neglect of duty, dishonesty, or other conduct unbecoming of a legionnaire.

(d) For the purposes of this manual, conduct unbecoming of a legionnaire means “conduct that is unsuitable or inappropriate and compromises the character of a legionnaire, or which brings shame or dishonor upon The American Legion."

(e) The accusation itself may be in the form of the Accusation form in the Appendix (hereinafter "Accusation") attached hereto. The Accusation shall describe specifically the offense or offenses alleged. The Accusation shall describe the time, place and necessary details relating to the allegations therein so that the accused may have knowledge of all that he or she may be called upon to explain.

(f) One original and two copies of the Accusation shall be filed with the Post Commander of the accused member's post.

SECTION 2: EXAMINATION OF ACCUSATION FOR SUFFICIENCY:

(a) Upon receiving an Accusation, the Post Commander (or in his/her absence, disability or disqualification, one of the Vice-Commanders), shall within 10 days call a meeting of the Commander, the Post Judge Advocate and one disinterested member of the Post Executive Committee of the Commander's choosing to examine the Accusation for sufficiency.

(b) The Accusation shall be determined insufficient if:

1. The Accusation fails to set forth sufficient factual allegations as to inform the accused of all charges he may asked to admit, deny, or defend.

2. The act or acts of which the member is accused clearly do not constitute an offense of either disloyalty, neglect of duty, nor conduct unbecoming of a member of The American Legion.

3. The act or acts with which the member is accused are outside the jurisdiction of The American Legion, Department of California.

(c) If the Accusation is insufficient, the Post Judge Advocate may refuse to prosecute the Accusation and shall provide a written memorandum to the accuser and the accused advising them of the insufficiency of the Accusation.

(d) If the Accusation is found to be sufficient, Notice shall be given to the accused as provided below.

(e) If the Accusation is determined to be of a serious nature which may involve the safety and/or security of American Legion members, American Legion assets and/or the public at large, the Post Commander or his/her designee shall immediately contact the Department Judge Advocate and forward a copy of the Accusation to him/her for review.

(f) If the Department Judge Advocate determines exigent and extraordinary circumstances exist, the Accusation shall be presented to the Department Commander to determine if an immediate temporary suspension is appropriate.

(g) For the purposes of this manual, exigent circumstances means "a situation calling for immediate action."

(h) Should the Department Commander and Department Judge Advocate conclude the Accusation warrants an immediate temporary suspension, the accused will be notified by first-class or registered mail that an immediate temporary suspension has been imposed. Although the accused has been temporarily suspended, he or she shall retain all of his or her rights to a hearing as set forth herein. The findings, verdict and penalty determined by Post Administrative Hearing Board and Board of Review, as applicable, shall supersede the immediate temporary suspension.

SECTION 3: NOTICE:

(a) In all cases in which an accusation is found to be sufficient as provided above, the Post Commander shall:

1. Schedule an Initial Hearing on the date of the next regular post meeting; and

2. Instruct the Post Adjutant to prepare an official Summons.

(b) The Summons shall provide notice of the following:

1. The date, time, and place of the Initial Hearing; and

2. That a finding that the Accusation has been substantiated may result in reprimand, suspension or expulsion from The American Legion.

(c) A summons may be in the form of the Summons form in the Appendix attached hereto.

(d) The Post Adjutant shall deliver a copy of the Summons and the Accusation to the Sergeant-at-Arms and command him/her to deliver copies of the Summons and Accusation to the accused, Post Judge Advocate, and the accuser.

(e) The Post Adjutant shall provide the accused with at least 15-days' notice of the Initial Hearing.

(f) Any notice required under this section may be given by any method reasonably calculated to provide actual notice. If notice is sent by mail it must be sent by first-class or registered mail, to the last known address of the member in the post records.

(g) Upon completion of service by the Sergeant–at–Arms, he or she shall sign a copy of the Summons with the date, time, and method of service and return the copy of the Summons to the Post Adjutant to be included in the record of the hearing.

(h) In the event the accused is found and served less than 15 days before the date of the Initial Hearing, at the request of the accused, the Hearing Officer shall postpone the Initial Hearing to the next regularly scheduled post meeting after the meeting at which the Initial Hearing is scheduled, or to a post meeting scheduled within a time period that is reasonably prompt thereafter. In the event the accused is not found and served before the date of the initial hearing, the Sergeant-at-Arms shall continue to attempt service, substituting the date to appear with the date of the next regularly scheduled post meeting after the date of successful service.

SECTION 4: INITIAL HEARING:

(a) Once notice has been provided to the accused in accordance with Section 3 of this Title, the accused and/or his or her representative may appear on the date set for the Initial Hearing to admit or deny the accusations.

(b) In the alternative, on or before the Initial Hearing, the accused or his or her representative may file a written response with the Post Adjutant admitting or denying the Accusation, which will be recorded into the minutes. If the accused responds in writing, the Initial Hearing will proceed for the purpose of setting the dates for the Pre-Hearing Conference and Evidentiary Hearing.

(c) If, after being properly notified, the accused fails to appear either personally or in writing, at the time set for the Initial Hearing, the Accusation shall be taken as admitted and the Hearing Officer may enter a default judgment. The penalty, if any, shall be fixed in the same manner as if the accused were present.

(d) The Post Judge Advocate or the accused may request in writing a reasonable continuance of the Initial Hearing based on good cause. Such requests must be filed with Post Commander or his or her designated Hearing Officer on or before the date of the Initial Hearing.

(e) A continuance of the Initial hearing, if granted by the Post Commander or his designated Hearing Officer, may not exceed 60 days.

(f) Except as otherwise provided below, the Initial Hearing shall be held at the post to which the accused belongs.

(g) If the accused denies any or all of the allegations in the Accusation, the Hearing Officer shall set a date and time for the Pre-Hearing Conference and the Evidentiary Hearing after conferring with the Post Judge Advocate or his or her designee, the accuser and the accused. The Evidentiary Hearing shall be set no earlier than 30 days nor later than 90 days after the Initial Hearing. However, on a showing of good cause by one or more of the parties, the Hearing Officer may set the Evidentiary Hearing for a date earlier than 30 or later than 90 days from the Initial Hearing. The Pre-Hearing Conference shall be set at least two weeks before the Evidentiary Hearing unless a shorter time period between the Pre-Hearing Conference and Evidentiary Hearing is agreeable to the parties or there is good cause therefore.

(h) If the accused denies any or all of the allegations in the Accusation, and it appears that a fair hearing cannot be held at the accused member's post, then a motion to transfer may be made, as provided below.

TITLE III
PRE-ADMINISTRATIVE HEARING PROCEDURES: SELECTION OF HEARING BOARD; PRE-HEARING CONFERENCE; MOTIONS TO TRANSFER; DISCOVERY; MEDIATION

SECTION 1: SELECTION OF HEARING BOARD:

(a) Prior to the Pre-Hearing Conference, the Post Commander shall select three members of the post to serve as members of the Post Administrative Hearing Board, plus two alternates. The accused and the Post Judge Advocate, or his designated Prosecutor, shall be notified of the Post Commander's appointments no later than at the Pre-Hearing Conference.

(b) In the event any member or alternate of the Post Administrative Hearing Board is disqualified, as provided for below, the Post Commander shall promptly appoint a replacement member or alternate as necessary.

(c) At the Department level, the Department Board of Review respectively shall serve as the administrative hearing board at the Evidentiary Hearing.

SECTION 2: PRE-HEARING CONFERENCE:

(a) The Pre-Hearing Conference shall be open to members of the Post, District and Department. The Prosecutor is required to attend the Pre-Hearing Conference. The accused and accuser may but are not required to attend the conference. The members of Post Administrative Hearing Board, at the discretion of the Hearing Officer, may be excluded from all or portions of the Pre-Hearing Conference.

(b) At the Pre-Hearing Conference the Hearing Officer shall rule on pre-Evidentiary Hearing motions including without limitation: motions to transfer the disciplinary proceeding; motions to disqualify the Prosecutor, members and alternates to the Post Administrative Hearing Board or Department Board of Review; motions to disqualify any other officers (e.g., Adjutant, Sergeant-at-Arms) serving during the disciplinary proceeding; evidentiary or discovery motions; or any other matter that will promote fairness and efficiency at the Evidentiary Hearing.

(c) At the Pre-Hearing Conference the Prosecutor and accused shall affirmatively indicate whether he or she requests a stenographic reporter for the purpose of making a stenographic record of the Evidentiary Hearing. The parties shall be advised by the Hearing Officer that, unless the Post or Department Commander, or Acting Commander, independently decides to engage a reporter at the post or Department's expense, the party requesting the reporter will have to pay the reporter's fees and for a copy of the transcript for the permanent record of the Evidentiary Hearing.

SECTION 3: MOTIONS TO DISQUALIFY HEARING BOARD MEMBERS:

(a) At the Pre-Hearing Conference the Prosecutor or accused may bring motions to disqualify members of the Post Administrative Hearing Board or Department Board of Review for cause as provided herein. A motion may be made in writing or orally at the Pre-Hearing Conference.

(b) The Hearing Officer shall have the authority to rule on all such motions. Denial of the motion is only subject to review on the final appeal after the Evidentiary Hearing.

(c) All American Legion members in good standing and who are members of the Accused Post are qualified to serve on a Post Administrative Hearing Board except the following:

1. The Post Commander, Post Judge Advocate, Post Adjutant and Post Sergeant–at–Arms of the accused's home post or their designee's.

2. Any person who may be called as a witness in the hearing.

3. The accused or the accuser.

4. Any person who is related to the accused or accuser.

5. Any person who cannot render a fair and impartial finding based on the evidence presented at the hearing to disqualify the hearing board member.

6. In the case of a re-trial of the same accusation against the same individual accused in a prior hearing, any committee member who sat on the hearing committee in the prior hearing.

SECTION 4: MOTIONS TO DISQUALIFY HEARING OFFICIALS:

(a) At the Pre-Hearing Conference, the Prosecutor or the accused may bring a motion to disqualify a Hearing Officer, Prosecutor, Clerk, or Bailiff for cause as provided in this section. The motion may be made in writing or orally at the time of the Pre-Hearing Conference.

(b) The Hearing Officer shall have the authority to rule on all such motions. If the motion is to disqualify the Hearing Officer, the Commander of the post in which the disciplinary matter is pending, or Department Commander if the matter is pending before the Department Board of Review, shall have the authority to rule on the motion to disqualify the Hearing Officer. If the Post Commander is the challenged Hearing Officer, the Post Executive Committee shall rule on the motion. Denial of the motion is only subject to review on the final appeal following the Evidentiary Hearing.

(c) A Hearing Officer, Prosecutor, Clerk or Bailiff may be disqualified for the following reasons:

1. He or she is likely to be called as a witness in the hearing;

2. He or she is either the accused or the accuser;

3. He or she is related by blood or marriage to the accused or accuser;

4. He or she cannot perform the duties of his or her role in a fair and impartial way and in accordance with the policies of The American Legion, Department of California.

(d) In the event that one or more of the above referenced officers is disqualified or unable to fulfill their assigned duties during the hearing, the Commander shall promptly appoint a member in good standing to fill the position vacated. If the Commander is the Hearing Officer, the Post Executive Committee shall appoint a member in good standing to serve as the Hearing Officer. A pending motion to disqualify the Hearing Officer or a vacancy in the position of Hearing Officer shall be grounds to postpone any further proceedings at the Pre-Hearing Conference and the Evidentiary Hearing.

SECTION 5: DISCOVERY:

(a) To ensure a fair hearing, the Hearing Officer shall order that any information not deemed relevant to the proceedings or of an overriding private nature not be disclosed.

(b) At the Pre-Hearing Conference, the Prosecutor and the accused shall furnish the Adjutant with a list of the witnesses which each desires to summon for the Evidentiary Hearing. The Adjutant shall issue summons as requested.

(c) It shall be the responsibility of the party who intends to call the witness to have the summons served on the witness.

(d) Summons may be served personally or by registered or first class mail. Such service shall be made no less than five (5) days before the date of hearing.

(e) It shall be the duty of all members of The American Legion, when summoned as a witness for an Evidentiary Hearing, to testify.

(f) Any person attending the Evidentiary Hearing without summons may also be called on to testify.

SECTION 6: MEDIATION:

(a) At the Pre-Hearing Conference, the Prosecutor or accused may request to engage in mediation in lieu of proceeding to an Evidentiary Hearing.

(b) Mediation is voluntary. All parties must agree to engage in mediation or the Accusation will proceed to an Evidentiary Hearing.

(c) If mediation is selected, the date for the Evidentiary Hearing is indefinitely postponed. The Prosecutor and the accused shall first attempt to jointly select a Mediator. The Mediator may be a member of the Department of California, American Legion, or a third party. If the Mediator is a member of the Legion, he or she may or may not be from the post in which the disciplinary proceeding is pending. If the parties are unable to jointly select a Mediator, the Prosecutor and the accused, shall each propose two Mediators. From the resulting list of four proposed mediators, the accused may first strike one name and then the Prosecutor may strike one name. The accused may then strike the name of one of the two remaining proposed Mediators. The Mediator whose name remains, shall be the Mediator. The Mediator selected serves voluntarily. If the Mediator selected declines to serve, the parties shall repeat the process provided above until a member willing to serve is selected as Mediator. The Prosecutor and accused may agree to share the cost of a mediator if he or she charges a fee for his or her services.

(d) After conferring with the Prosecutor, the accused and the accuser, the Mediator will notify the Post Judge Advocate, the accused and the accuser of the

mediation date, time, and location. The accuser may participate in the mediation. However, the Prosecutor has the authority to settle the matter, subject to ratification set forth below, with the accused over the accuser's objection.

(e) At the mediation, the Mediator, at his or her discretion, may meet with the Prosecutor, the accused and/or the accuser assembled together or separately in an attempt to reach a mutually agreeable resolution of the matter.

(f) If the Prosecutor and accused reach a mutually agreeable resolution, they may jointly or through the Mediator present the resolution at the next regularly scheduled post meeting for the general membership. The parties may be heard individually and collectively at the post meeting considering the mediated resolution. If the membership votes to approve of the resolution, it shall be entered into the minutes by the Post Adjutant. If the membership does not vote to approve of the resolution, the matter shall be returned to the Hearing Officer for the purpose of setting a subsequent Pre-Hearing Conference and Evidentiary Hearing. If the disciplinary matter was handled at the Department level, the mediated settlement shall be presented for approval or rejection at the next regularly scheduled meeting of the the Department Executive Committee. The procedure for acceptance or rejection of the mediated settlement at the Department level shall, otherwise, be consistent with the procedure at the post level.

(g) The resolution as approved by the membership or the respective executive committee shall be enforceable upon the parties in the same manner as a verdict of an Administrative Hearing Board or Department Board of Review. There shall be no appeal from a mediated resolution reached by parties which is thereafter approved by the post membership or the Department Executive Committee. If the mediated resolution is not approved by the post membership or the Department Executive Committee, the Accusation shall proceed to an Evidentiary Hearing as provided for below following another Pre-Hearing Conference.

TITLE IV
EVIDENTIARY HEARING

SECTION 1: ROLES OF THE ACCUSED AND THE ACCUSER:

(a) At all the Evidentiary Hearings the Prosecutor shall prove each charge in the Accusation by a preponderance of evidence.

(b) For the purposes of this manual preponderance of evidence means: “It is more likely than not that the accusations are true.”

(c) The accuser, when acting on his or her own behalf rather than as the duly appointed Prosecutor, may offer evidence at the Evidentiary Hearing relevant to the issues raised in the Accusation. Such evidence may be excluded if the Hearing Officer rules that the value of the evidence is outweighed by the danger that it will waste time, cause undue delay, unfairly prejudice the accused, or confuse or mislead the Post Administrative Hearing Board or the Department Board of Review.

SECTION 2: EVIDENTIARY HEARING PROCEDURE:

(a) In general, the Evidentiary Hearing shall follow the model provided in **Appendix F** at the end of this document.

(b) The Hearing Officer shall have general authority to prescribe any necessary and reasonable rules or modifications for the orderly and fair procedure of the Evidentiary Hearing.

(c) All Evidentiary Hearings shall be open to public observation; except no witness may be present in the hearing room while he or she is not testifying.

(d) The Hearing Officer may, for good cause, close a hearing, order the removal of disruptive persons, or make other necessary protective orders to ensure a fair Evidentiary Hearing.

(e) If the Hearing Officer decides to close an Evidentiary Hearing, he or she must list all the reasons why the hearing was closed in the official hearing record.

(f) All witnesses who testify at any Evidentiary Hearing under this manual must first be given the following oath: “Do you swear or affirm that the testimony you are about to give is the truth.”

SECTION 3: EVIDENCE:

(a) The rules of evidence prevailing in courts of law and equity shall not be controlling in hearings outlined in this manual.

(b) The Hearing Officer shall decide all questions as to the relevancy, materiality and reliability of the offered evidence. Only relevant, material and reliable evidence is admissible at the Evidentiary Hearing.

(c) Relevant evidence is any evidence that bears upon or relates to the subject matter of the Accusation. This includes evidence that bears on the credibility of any witness.

(d) Material evidence is any evidence that makes a contested, relevant issue more or less likely to be true.

(e) Reliable evidence is any evidence, which a reasonably prudent person would rely upon to decide a serious matter.

SECTION 4: THE RECORD OF THE DISCIPLINARY PROCEEDING INCLUDING THE RECORD OF THE EVIDENTIARY HEARING:

(a) An official record of the disciplinary proceeding shall be made by the Post Adjutant and retained in the post records. At a minimum this includes a copy of the Accusation and any amendments to the Accusation, copies of all written motions and written oppositions to those motions, minutes and notes of the Initial Hearing and Pre-Hearing Conference, and records of the Evidentiary Hearing as set forth below.

(b) The official Evidentiary Hearing record shall include all minutes of the hearing, written motions made at the hearing, list of witnesses, witness summaries, stenographic recordings, audio or video recordings, and any other items admitted as evidence at hearings.

(c) The Prosecutor or the accused may request that a stenographic report of the proceedings be made. The party or parties making the request will pay all costs related to the use of the stenographer. The Adjutant shall arrange to have a stenographic reporter present for the Evidentiary Hearing at the parties' or requesting party's expense.

(d) Independent of the parties, the Post or Department Commander or Acting Commander, at his or her discretion, may authorize the employment of a stenographic reporter for the purpose of taking a stenographic report of the proceedings at the hearing. The Adjutant shall arrange to have a stenographic reporter present for the Evidentiary Hearing at the expense of the post, or Department.

(e) The Prosecutor, the accuser, the accused or the Post Adjutant may make an audio recording of the hearing.

(f) A copy of any audio recording made by any party shall be provided to the Post Adjutant within five business days of the conclusion of the hearing to be retained as part of the official record of the hearing.

SECTION 5: DELIBERATIONS, VERDICT, AND PENALTY:

(a) After all evidence and argument has been received, the Administrative Hearing Board or Department Board of Review shall retire to deliberate on its verdict (and punishment, if any).

(b) The Sergeant-at-Arms or his or her designee shall ensure that during deliberations the Administrative Hearing Board, or Department Board of Review is not disturbed and no one else is present in the room during deliberations.

(c) If, during the deliberations, any member of the Administrative Hearing Board or Department Board of Review has a question regarding procedure or policy, the question will be written and delivered to the Sergeant-at-Arms.

1. If during deliberations the Sergeant-at-Arms receives any written question he or she shall immediately deliver the written question to the Hearing Officer.

2. Upon receiving any written question from the Administrative Hearing Board, District Trial Board or Department Board of Review while in deliberations, the Hearing Officer shall inform both the Prosecutor and the accused of the question.

3. The Hearing Officer shall provide a written response to the question, which the Sergeant-at-Arms shall deliver to the Administrative Hearing Board or Department Board of Review .

(d) A majority vote of the Administrative Hearing Board or Department Board of Review on an Accusation is required to find an Accusation to be “substantiated” or “not substantiated” in part or in whole. If the board finds part of the Accusation "substantiated" and part "not substantiated," the board shall indicate in the verdict which allegations were "substantiated" and which were "not substantiated."

(e) If the members of the Administrative Hearing Board or Department Board of Review make a finding and render a verdict that the Accusation in its entirety or in part has been “substantiated,” they shall also decide on a penalty.

(f) The only penalties that may be rendered and imposed upon a finding and verdict of substantiated are reprimand, suspension, or expulsion.

(g) The verdict and penalty, if any, shall be in writing and returned to the Hearing Officer to be reported by him or her to the Prosecutor, the accused and other members, if any, present at the time the verdict and penalty are issued. The written verdict (and penalty, if any) shall be given to the Adjutant and recorded in the minutes of the post or the Department, as applicable.

SECTION 6: ENTRY OF VERDICT AND PENALTY:

(a) The result of the Evidentiary Hearing and the penalty, if any, shall be recorded in the minutes of the post, where the Evidentiary Hearing was held, as applicable, by the Adjutant and published at the next regular general meeting of the post, or the Department, as applicable.

(b) The verdict (and penalty, if any) rendered by the post Administrative Hearing Board or Department Board of Review shall be recorded in the official record of the post to which the member belongs or belonged by the Post Adjutant. The Post Adjutant shall simultaneously notify the Prosecutor, the accuser and the accused when the verdict and penalty, if any, is recorded in the post's official record.

(c) If a penalty of reprimand, suspension, or expulsion is imposed, a copy of the verdict and penalty shall be submitted to the Department Adjutant by the Adjutant of the post or district where the Evidentiary Hearing was held. Regardless of the level at which the Evidentiary Hearing was held, the Department Adjutant shall enter the verdict and penalty in the Department minutes. A verdict of unsubstantiated shall also be submitted to the Department Adjutant by the Adjutant of the post or district where the Evidentiary Hearing was held.

SECTION 7: APPEAL OF VERDICT OR PENALTY:

(a) Any member of The American Legion tried before a post who has been reprimanded, suspended or expelled shall have the right to appeal to the Department Board of Review. Any member of The American Legion tried before the Board of Review of this Department who has been reprimanded, suspended or expelled shall have the right to appeal to the Department Executive Committee. The Prosecutor and the accuser have no right of appeal although this does not restrict any argument the Prosecutor may make in defending against the member's appeal.

(b) The notice of appeal shall be filed with the Department Adjutant and the Adjutant of the post in which the Evidentiary Hearing was conducted. (See Title VI regarding appeal procedures.)

(c) No appeal shall be considered unless the member's notice of appeal is filed within forty (40) days after the Prosecutor and the member have been notified that the verdict and penalty were recorded in the official record of the post to which the member belongs or belonged.

(d) Wherever in this Administrative Hearing Manual reference is made to the exercise of appellate jurisdiction by the Department Executive Committee, such committee may by majority vote name the Department Board of Review to hear any and all appeals or otherwise exercise all such appellate jurisdiction with the sole exception of verdicts and penalties rendered by the Department Board of Review.

ADMINISTRATIVE HEARING MANUAL
The American Legion
Department of California
(Revised June 26, 2015)

TITLE V
DEPARTMENT BOARD OF REVIEW

SECTION 1: DEPARTMENT BOARD OF REVIEW:

(a) The Department Board of Review shall consist of three regular members and three alternate members.

(b) Subject to the approval of the Department Executive Committee, the Department Commander shall appoint the members and alternates to the Department Board of Review. Members and alternates to the Board of Review shall be members in good standing of posts located in the Department of California, the American Legion.

(c) Each member and alternate of the Board of Review shall serve a term of three years, until a successor is appointed and affirmed. The members and alternates to the Board of Review shall serve staggered terms, so that each year the term of one member of and one alternative to the Board of Review shall expire. A current member of or alternate to the Board of Review may be appointed to a successive term. If a current member or alternate resigns or otherwise vacates his or her position, the Department Commander shall appoint and the Department Executive Committee shall approve a replacement to serve out the unexpired part of the vacating member or alternate's term.

(d) At both hearings and appeals, the three duly appointed members of the Board of Review shall sit as a single body. In the event any member of the Board of Review cannot sit on a matter, or if a member is disqualified for cause as provided for in Title III, Section 4, an alternate of the Board of Review shall serve in his or her place. The alternate appointed to the term expiring at the same time as the term of the member unable to serve, shall first be selected to serve in the member's place. If that alternate is unable to serve or subject to disqualification for cause, either of the other alternates may serve in place of the member unable to serve.

SECTION 2: DISCIPLINARY JURISDICTION:

(a) The Department and Department Board of Review have exclusive jurisdiction to conduct disciplinary proceedings and hearings arising from Accusations filed against members holding one of the following positions:

1. Department Officers

2. Department Executive Committee Members

SECTION 3: FILING ACCUSATIONS:

(a) Any member in good standing with the Department of California Executive Committee may file an accusation against a member described in Section 2 above.

(b) Accusations filed under this Title must satisfy the requirements set forth in Title II, Section 1(b)-(e).

(c) One original and two copies of the Accusation shall be filed with the Department Adjutant.

SECTION 4: HEARING LOCATION:

The Department Commander shall determine the location of any disciplinary hearing before the Department Board of Review.

SECTION 5: APPEAL OF VERDICT OR PENALTY:

(a) Any member of The American Legion tried before a Department Board of Review who has been reprimanded, suspended or expelled, from the Department Executive Committee, shall have the right to appeal to the Department Executive Committee.

(b) The notice of appeal shall be filed with the Department Adjutant and the adjutant of the post and district as outlined in Title IV, Section 7, and Title VI - APPEALS.

(c) No appeal shall be considered unless the member's notice of appeal is filed within forty (40) days after the Prosecutor and the member have been notified that the verdict and penalty were recorded in the official record of the post to which the member belongs or belonged.

ADMINISTRATIVE HEARING MANUAL
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(Revised June 26, 2015)

TITLE VI
APPEALS

SECTION 1: JURISDICTION:

(a) Any member who has been reprimanded, suspended or expelled has the right of appeal to the Department Executive Committee, or its designee.

(b) The Department Board of Review is hereby designated to hear appeals from decisions of Post Administrative Hearing Boards and District Trial Boards.

(c) The Department Executive Committee shall hear appeals from decisions of the Board of Review.

SECTION 2: TIME FOR APPEAL/NOTICE:

(a) Within forty (40) days after the Prosecutor and the disciplined member have been notified that the verdict and penalty were recorded in the official record of the post to which the member belongs or belonged, the member accused may file an appeal in writing signed by the accused stating the grounds for appeal.

(b) The notice of appeal and copy of the post or Department Board of Review verdict of reprimand, suspension or expulsion shall be served by registered mail with return receipt or by personally serving the Post Adjutant and the Department Adjutant.

(c) The date of actual receipt by the Department Adjutant shall control in the computation of the 40 day time period to file the appeal.

(d) Failure to file notice of appeal within the 40-day time frame shall result in the verdict of reprimand, suspension or expulsion becoming final without any further appeal, unless it can be shown that failure to meet the required 40-day time limit was due to circumstances outside the control of the disciplined member.

SECTION 3: RECORD ON APPEAL:

(a) Within 60 days of receiving the notice of appeal, the Hearing Officer who presided over the Evidentiary Hearing, with the assistance of the Hearing Officer's Clerk, shall prepare copies of the following items: the Accusation, all

written motions and oppositions thereto, all documents submitted into evidence, any transcripts or recordings of the proceeding, and the verdict. Within the same 60 day time period, the Hearing Officer's Clerk shall certify in writing that the copies are a true and correct record of the proceedings. The Clerk to the Hearing Officer shall have the record of the proceedings delivered to the Department Adjutant by personal delivery or overnight carrier, with confirmation of the record's receipt, within 15 days of their certification.

(b) Within 30 days of receipt of a certified copy of the record of proceedings, the Department Adjutant shall have sufficient copies made for delivery to the Department Board of Review if the appeal is from post or district level proceedings, or delivery to the Department Executive Committee if the appeal is from Department Board of Review proceedings. Copies shall also be made for the Prosecutor and the accused. The accuser may obtain a copy of the proceedings upon request. All the copies shall be delivered within the 30 day time period.

SECTION 4: SCHEDULING AND NOTICING THE HEARING: BRIEFING

(a) At the same time the copies of the record of the proceedings are delivered to the Board of Review or Department Executive Committee, the Department Adjutant shall a request that the board or committee set a hearing date and location.

(b) The Board of Review or Department Executive Committee shall set a hearing date for the appeal in no less than 70 days of receipt of the appellate package and the request for hearing date. The accused and Prosecutor are entitled to not less than 60 days' notice before the hearing on the appeal is held. Notice of the hearing date shall be sent by the Department Adjutant by registered mail return receipt requested to the accused and to the Prosecutor.

(c) The accused shall file his or her opening brief stating his or her grounds for appeal at least 40 days before the hearing. The opening brief may not be any longer than 20 pages, double-spaced using 12 pt. font. Failure to file an opening brief may be construed as an admission that the disciplined member's appeal is frivolous. The Prosecutor may file an opposing brief limited to 20 pages, double-spaced, using 12 pt. font at least 20 days before the hearing. Ten days (10) before the hearing the accused may file a reply to the Prosecutor's opposing brief. The reply brief shall be limited to no more than five pages double-spaced. Unless the accuser served as the Prosecutor in the underlying Evidentiary Hearing, he or she shall not file a brief on appeal.

(d) Simultaneous with the presentation of each party's initial brief, the accused and the Prosecutor may request in writing that the record on appeal be augmented. Any such request must identify the documents proposed to be added to the record on appeal and explain why the documents were not included in the original record.

(e) All briefs and requests to augment the record shall be served on the opposing party or parties.

(f) The location of the hearing shall be at the discretion of the Board of Review or the Department Executive Committee.

SECTION 5: APPELLATE HEARING PROCEDURE:

(a) If either the Prosecutor or the accused request that a stenographic reporter report the hearing, the requesting party shall pay the cost of having the reporter. At the Department Commander's discretion, the Department may arrange and pay for a stenographic reporter. If no stenographic reporter is requested or provided, the Department Adjutant or other designee of the Department Commander shall take notes of the proceedings.

(b) The presiding board or committee member shall call the hearing to order. The Department Adjutant shall formally read the notice of appeal, and ascertain who is present and representing the accused and the Prosecutor.

(c) All motions for continuance or procedural defects and any other motions will be considered by the Board of Review or Committee.

(d) The issues on appeal shall be limited to whether there was a substantive or procedural error that entitles the accused to reversal of the verdict or a reduction in penalty; or whether the verdict and penalty are not supported by substantial evidence.

(e) If requested by either the accused or the Prosecutor oral argument on the appeal shall be allowed. Each side shall be afforded 15 minutes for argument. The accused shall argue first, and may reserve up to five minutes of his or her time for rebuttal of the Prosecutor's argument.

(f) At the conclusion of the hearing the Board of Review or Department Executive Committee shall retire for deliberation in private. Only members of the board or the committee, as applicable, may be present for deliberations. The board or committee shall issue a decision within 21 calendar days of the conclusion of the hearing.

(g) The decision shall be in writing. The Board of Review or Department Executive Committee shall affirm, modify or reverse the reprimand, suspension or expulsion; or order a new hearing before the body that held underlying Evidentiary Hearing. In addition, any reasons for the decision shall cite the applicable record on appeal and articles of the Constitution or Bylaws of the National, Department and Post, which may be applicable.

(h) If a new Evidentiary hearing or other proceedings are ordered before the post or district, or the Department Board of Review, they shall be conducted in accordance with this Manual.

(i) The Department Adjutant will send copies of the Board of Review or the Department Executive Committee's decision to all parties involved in the hearing and appeal. The decision shall be entered into the minutes of the accused's current or former post and district, and the Department.

(j) The decision affirming, modifying or reversing the verdict and penalties (if any) will become final 20 days after the date the judgment is signed.

(k) The decision on appeal by the Board of Review or the Department Executive Committee is final.

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APPENDIX TO ADMINISTRATIVE HEARING MANUAL

Note: This appendix is provided for the convenience of Legionnaires, the parties to the disciplinary proceedings described herein, and the hearing officials. The appendix is not intended to, does not, and may not be relied upon to create any substantive or procedural legal rights. The Appendix is not intended to be, nor is it, part of the by-laws of the Department. The language of preceding provisions of the Administrative Hearing Manual control over this appendix.

APPENDIX A

SUMMARY OF HEARING / APPEAL JURISDICTION

Posts have jurisdiction over:

Members of the post

Department Board of Review has jurisdiction over:
Department Officers
Department Executive Committee Members
Appeals from Post and District verdicts and penalties

Department Executive Committee has jurisdiction over:

Appeals fromf Board of Review verdicts and penalties

APPENDIX B

PRE-HEARING CHECKLIST

ACCUSATION, NOTIFICATIONS AND INITIAL HEARING

- ☐ Accusation filed
- ☐ Accusation examined for sufficiency
- ☐ Accused served with Accusation and Summons
- ☐ Initial Hearing held
- ☐ Date/Time/Location of Pre-Hearing Conference & Evidentiary Hearing set
- ☐ Evidentiary Hearing location determined and reserved
- ☐ Date/Time/Location of Hearing announced as required
- ☐ Members of Post Hearing Board selected

PRE-HEARING CONFERENCE & PREPARATION

- ☐ Stenographer services arranged (if requested)
- ☐ Department Commander, Department Adjutant, Department Judge Advocate notified (if required)
- ☐ Accused Witness List received
- ☐ Notification of Hearing participants:
  - Accused Hearing Officer
  - Accuser
  - Sergeant-at-Arms
  - Judge Advocate
  - Adjutant
- ☐ Proof of Service list completed for all parties and witnesses
- ☐ Motions heard at Pre-Hearing Conference (for transfer or disqualification)
- ☐ Discovery issues ruled upon (if necessary)
- ☐ Parties may elect mediation

HEARING ROOM PREPARATION

- ☐ Hearing Officer: table/chairs/paper/pen or pencil
- ☐ Hearing Committee: table/chairs/paper/pen or pencil
- ☐ Adjutant: table/chairs/paper/pen or pencil
- ☐ Stenographer: table/chair/electrical
- ☐ Sergeant-at-Arms station

- ☐ Accused: table/chairs/paper/pen or pencil
- ☐ Prosecutor: table/chairs/paper/pen or pencil

- ☐ Witness Station
- ☐ Audience chairs properly arranged

- ☐ Reference copies of accusations, Legion Officer's Guide, Trial Manual, Constitution, Bylaws available for all parties

APPENDIX C

CONDUCT OF ADMINISTRATIVE HEARING CHECKLIST

OPENING THE HEARING

- ☐ Sergeant-at-Arms (acting as Bailiff) calls the hearing to order.
- ☐ Hearing Officer opens the hearing and confirms the prosecutor and accuser are present and ready for the hearing.
- ☐ Adjutant reads the Accusation by the accuser and the answer by the accused, confirming that Accusation, including all charges therein, must be proven by presentation of evidence and deliberation by the board.

CONDUCTING THE HEARING

- ☐ Hearing Officer reminds the Hearing Board that the accusation and answer are not evidence. The only evidence to be considered is the sworn testimony of witnesses and other documents admitted into evidence during the hearing.
- ☐ Hearing Officer permits prosecutor (or designee) 5 minutes to give an opening statement.
- ☐ Hearing officer permits accused (or representative) 5 minutes to give an opening statement.
- ☐ Hearing Officer permits prosecutor to call witnesses, who will each be given the oath:

  "Do you swear or affirm you will tell the truth, the whole truth, and nothing but the truth?"

- ☐ Each witness is questioned by the prosecutor (direct - exam).
- ☐ Each witness is questioned by the accused (cross - exam).
- ☐ Each witness may be re-questioned by the prosecutor to clarify their testimony (redirect).
- ☐ Each witness may be re-questioned by the accused to clarify testimony (re-cross).
- ☐ At the end of prosecutor's witnesses' testimony, the prosecutor will rest his or her case.
- ☐ Hearing Officer permits accused to call witnesses, who will each be given the oath:

  "Do you swear or affirm you will tell the truth, the whole truth, and nothing but the truth?"

- ☐ Each witness is questioned by the accused (direct).
- ☐ Each witness is questioned by the prosecutor (cross - exam).
- ☐ Each witness may be re-questioned by the accused to clarify their testimony (redirect).
- ☐ Each witness may be re-questioned by the prosecutor to clarify testimony (re-cross).
- ☐ At the end of accused's witnesses' testimony, the accused will rest their case.

- ☐ Hearing Officer queries prosecutor about any rebuttal witnesses. Testimony only allowed if it is in rebuttal.
- ☐ Hearing Officer queries accused about any rebuttal witnesses. Testimony only allowed if it is in rebuttal.
- ☐ Hearing Officer announces a 10-minute break, followed by closing arguments, and cautions against talking to the board members.
- ☐ Hearing Officer reconvenes the hearing.
- ☐ Hearing Officer permits accuser 10 minutes for closing argument, noting a 2-minute warning will be given by the bailiff.
- ☐ Hearing Officer permits accused 10 minutes for closing argument, noting a 2-minute warning will be given by the bailiff
- ☐ Hearing Officer reads instructions to the hearing board:

> *"After I read these instructions, the board members, not the alternates, will retire to the board room to deliberate. Your first task is to select a foreman, then begin deliberations. The burden of proof is on the accuser to prove the accusations by preponderance of evidence. A majority of you must agree on your verdict. The bailiff will give you a verdict form. You must each sign the verdict form indicating if each accusation is substantiated or not substantiated. If you find any accusation substantiated, then a majority of you voting true must also agree on a penalty and sign the form again regarding the penalty. The punishment may be a letter of reprimand, suspension of membership for a period of up to one year, or expulsion from The American Legion."*

- ☐ Bailiff escorts the board to the deliberation room and Hearing Officer declares the proceedings to be "in recess".

AFTER THE VERDICT IS REACHED

- ☐ Hearing Officer declares the hearing is back in session.
- ☐ Bailiff escorts board members back to their seats.
- ☐ Hearing Officer asks foreman to stand and affirm that a verdict has been reached.
- ☐ Foreman hands the verdict form to the bailiff, who hands it to the Hearing Officer.
- ☐ Hearing Officer requests the accused to stand, then reads each accusation and the board's finding of true or not true and the recommended penalty on each accusation.
- ☐ If any accusations are considered true, the Hearing Officer then informs the accused:

  > "You have the right to appeal the verdict. There are strict deadlines. You have forty (40) days from the date the verdict and penalty, if any, is recorded at your home post to serve your written notice of appeal. The Adjutant of your home post will notify you of when the verdict and penalty is recorded at the post. Your notice of appeal is served when it is received by the Department Adjutant, and the Adjutant for the Post [or District] in which the Evidentiary Hearing was held, by certified mail, return receipt requested or by personally delivering your letter to the Adjutants. If it has not already been done, a copy of the notice must also be sent to the Adjutant for the post to which you belong by certified mail, return receipt requested or by personal delivery. You must also comply with the other provisions of appeal as listed in the Department Administrative Hearing Manual."

- ☐ Hearing Officer then declares the hearing closed.

APPENDIX D

EXAMPLE OF HEARING

Sergeant-at-Arms: Court is Now in Session. The Honorable Hearing Officer _____, presiding.

Hearing Officer: In the Matter of ___(name of accuser)___versus ___(name of accused)___ the record reflects that an Accusation 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 board has been selected and sworn.

Is the prosecutor ready?

Is the accused ready?

Adjutant please read the Accusation and the written answer of the accused. I will instruct the board that the affidavit and answer are not evidence, the opening statements of 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 Accusation)

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

Hearing Officer: The prosecutor has five minutes to give an opening statement to tell the board what the evidence will show, not for an argument.

Prosecutor: (Opening Statement)

Hearing Officer: Now the accused will have five minutes for an opening statement.

Accused: (Opening Statement)

Hearing Officer: The prosecutor will now call the first witness.

Prosecutor: I call ___(name)

Hearing Officer: (To witness)

"Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth."

[Use with each new witness]

Prosecutor: (Direct Examination)

Accused: (Cross Examination)

Prosecutor: (Re-Direct, if any additional questions)

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

[Prosecutor continues until his or her last witness is called]

Prosecutor: The prosecutor rests

Hearing Officer: (To the Accused) You may call your first witness.

Accused: (Direct Examination)

Prosecutor: (Cross Examination)

Accused: (Re-Direct)

Prosecutor: (Re-Cross)

[Accused continues until his or her last witness is called]

Accused: The accused rests.

Hearing Officer: (To the prosecutor and then the accused) Do you have any rebuttal witnesses?

[Rebuttal witnesses by the prosecutor. Then the accused.]

Hearing Officer: 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 board for closing arguments.]

Hearing Officer: The Court is now in session.

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

Prosecutor: (Closing Argument)

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

Accused: (Closing Argument)

Hearing Officer: (To the prosecutor) You have _____minutes and _____seconds remaining.

Prosecutor: (Remainder of closing argument)

Hearing Officer: Members of the Hearing body:

After I read these instructions, the jurors, not the alternates, will retire to the board room to deliberate. Your first task is to select a foreman. Then you will deliberate. The burden of proof is on the Prosecutor to prove the charges by the preponderance of the evidence. A majority of you must agree on your verdict. The Sergeant-at-Arms will give you a verdict form when you begin your deliberations. When you reach your verdict, you must each sign the verdict form indicating if the accusation is “Substantiated” or “Not Substantiated”. If you find the any accusation substantiated, then a majority of you must also agree on the penalty and sign the form again regarding penalty. The punishment may be a letter of reprimand, suspension of membership, or expulsion from The American Legion.

Sergeant-at-Arms, please take the Hearing Body to the room to deliberate.

We are in recess.

[After the hearing body reaches their verdict]

Hearing Officer: The hearing is back in session.

Sergeant-at-Arms, bring in the board.

[After the board is seated]

Hearing Officer: Would the foreman please stand.

Have you reached a verdict?

Foreman: Yes.

Hearing Officer: Please hand the verdict to the Sergeant-at-Arms.

[Sergeant-at-Arms gets the verdict form and hands it to the Hearing Officer]

Will the Accused please stand.

Regarding the Charge of _____ the board finds the _____ substantiated or not

[If True}

Penalty recommendation is _____

[Repeat for each charge]

(To the Accused, if any charge in the Accusation is substantiated.) You have the right to appeal the verdict. There are strict deadlines. You have forty (40) days from the date the verdict and penalty, if any, is recorded at your home post to serve your written notice of appeal. The Adjutant of your home post will notify you of when the verdict and penalty is recorded at the post. Your notice of appeal is served when it is received by the Department Adjutant, and the Adjutant for the Post [or District] in which the Evidentiary Hearing was held, by certified mail, return receipt requested or by personally delivering your letter to the Adjutants. If it has not already been done, a copy of the notice must also be sent to the Adjutant for the post to which you belong by certified mail, return receipt requested or by personal delivery. You must also comply with the other provisions of appeal as listed in the Department Administrative Hearing Manual.

This hearing is adjourned

APPENDIX E

Pre-Appeal Hearing Checklist

APPLICATION

- Member Appeal of Judgment / Penalties / Sanctions Application submitted
  Member Appeal submitted within time limits
- Grounds for Appeal clearly stated
- Member Appeal complete and properly signed / dated

PREPARATION OF RECORD ON APPEAL

- The record is to be prepared by the Hearing Officer with the Adjutant's assistance. It should include the original or copies of the following:
  - The Accusation
  - All written motions and oppositions thereto
  - Complete set of documentary or tangible evidence
  - Stenographic Report of the Evidentiary Hearing, if any
  - Complete copy of the verdict including penalty

HEARING PREPARATION

Date / Time / Location of Appeal Hearing set for _____

Appeal Board Selected and notified:

Name: _____
Name: _____
Name: _____

☐ Stenographer services arranged (if requested)

Notification Service and Answer of other Hearing Participants:

☐ Appellant
☐ Original Hearing Officer
☐ Prosecutor
☐ Accuser

HEARING ROOM PREPARATION

☐ Hearing Board: table/chairs
☐ Judge Advocate: table/chairs
☐ Stenographer table/chair/electrical
☐ Sergeant-at-Arms station
☐ Accuser: table/chairs

- ☐ Accused: table/chairs
- ☐ Audio, water, tablets, pencils/pens
- ☐ Reference copies of Legion Officer's Guide, Hearing Manual, Constitution, Bylaws available for all parties

APPENDIX F

ACCUSER DUTIES

1. Prepare an Accusation sworn to by the accuser detailing the charges (See sample form 1) of disloyalty, neglect of duty, dishonesty, or conduct unbecoming a member of the American Legion.

2. File Accusation in triplicate with the Post Adjutant

3. Voluntarily attend mediation, if applicable

4. Voluntarily attend Initial Hearing and/or Pre-Hearing Conference

5. Attend Evidentiary Hearing either voluntarily or in response to summons

APPENDIX G

PROSECUTOR'S DUTIES

1. Judge Advocate to decide whether he or she will prosecute the accusation. The Judge Advocate may designate another member to serve as the prosecutor. The Judge Advocate may, but is not required to, designate the accuser to serve as prosecutor.

2. Attend and participate in the Initial Hearing.

3. Attend and participate in the Pre-Hearing Conference. Make motions as she or he thinks is appropriate. Provide and request discovery, as appropriate. Designate and have summons served on witnesses for the prosecution. Decide whether to agree to mediation.

4. Appear and prosecute the Accusation at the Evidentiary Hearing.

5. Defend against an appeal, if any.

APPENDIX H

ADJUTANT DUTIES

1. Receive Affidavit of Charges in triplicate from the accuser.

2. Prepare a Summons in duplicate and attach an Affidavit of Charges to one copy of the summons.

3. Prepare a Return of Service.

4. Give the following documents to the Sergeant-at-Arms or a member of the post in good standing to deliver to the accused by certified mail, return receipt requested or by personal delivery.

   Summons

   Affidavit of Charges

   Return Service

5. Record response of the accused in the minutes of the post and hearing record.

6. If the accused, after proper service, does not answer, record default judgment in the minutes of the post.

7. Shall serve as the Clerk to the Hearing Officer at the Initial Hearing, Pre-Hearing Conference and Evidentiary Hearing.

8. Record verdict after hearing and penalty, if any, in the minutes of the post.

9. Forward a copy of the Order to the accused and the Department Adjutant.

10. Receive notice of Appeal.

11. Assist Hearing Officer in preparation of and sending record of hearing to Department Adjutant.

APPENDIX I

SERGEANT-AT-ARMS DUTIES

1. Serve the summons and copy of the Affidavit of Charges by either certified mail, return receipt requested, or by personal delivery on the accused at the address listed on the Summons.

2. If service is by personal delivery, complete the Return of Service and return to the Adjutant.

3. If service is by certified mail, return receipt requested, complete the Return of Service and attach the green card and return to the Adjutant.

4. If service is not successful, note the attempts on the Return of Service and return to the Adjutant.

5. Serve as Bailiff of the Court during the Evidentiary Hearing.

6. Ensure that no one disturbs the Hearing Committee during deliberations.

7. Take all written communication from the Hearing Committee and delivery directly to the Hearing Officer or Judge Advocate.

8. Set up the hearing room.

APPENDIX J

HEARING OFFICER'S DUTIES

1. Preside over pre-evidentiary hearing matters in accordance with Administrative Hearing Manual, including, but not limited to the Initial Hearing, the Pre-Hearing Conference, and the Evidentiary Hearing; and, prepare the hearing record for appeal, if any.

3. Preside over the Evidentiary Hearing in accordance with the Administrative Hearing Manual.

4. Answer questions posed by the Hearing Committee during deliberations.

5. Receive and review hearing verdict to ensure it is complete and accurate.

6. In cases where the verdict rendered is adverse to the accused, advise the accused of his or her right to appeal.

7. With the assistance of the Adjutant, prepare the hearing record for appeal, if necessary.

APPENDIX K

ACCUSED DUTIES

1. Answer the charges in the Accusation before or at the Initial Hearing.

2. Select a representative for the proceeding if desired. Request the appointment of a representative if the accused wants representation and has not been able to arrange for representation on his or her own.

3. Participate in the Initial Hearing, Pre-Trial Conference and Evidentiary Hearing.

4. Consider mediation to resolve the matter where appropriate.

5. As the accused deems appropriate, present a defense at the Evidentiary Hearing including the presentation of documentary and tangible evidence, and witness testimony. Summon witnesses for the hearing if necessary.

6. If the Accusation is found to be substantiated in whole or in part, if desired, file a notice of appeal within forty days of the recording of the adverse verdict in the member's post. Brief the appeal and appear at the appellate hearing as the accused deems appropriate.

LIST OF FORMS

1. Accusation Form
2. Summons
3. Return of Service
4. Request for Witnesses to Appear
5. Hearing Committee Verdict and Recommendation of Penalty
6. Member Appeal of Judgment and Penalties

ACCUSATION FORM

(Form 1)

I, _____ a member in good standing of The American Legion Post

_____ with Legion Member No. _____wish to file charges against

_____ a member in good standing of The American Legion Post

_____.

The charge(s) I allege is / are that _____ did willfully:

☐ Display one or more acts of DISLOYALTY

☐ Display one or more times a NEGLECT OF DUTY

☐ Did one or more times engage in DISHONEST behavior

☐ Did one of more times engage in CONDUCT UNBECOMING A MEMBER OF THE AMERICAN LEGION

The accused holds the following position with The American Legion within the Department of California:

☐ Post elected officer ☐ Post appointed officer _____

☐ District elected officer ☐ District elected officer _____

☐ Elected County Council Officer ☐ Appointed County Council Officer

☐ Department Officer ☐ Department Executive Committee Member

Details of each alleged offense, together with the time and place of the acts, evidence of the acts, corroborating statements of witnesses, and other information are attached and / or included with this form.

I hereby attest that the above statements and charges, together with the attached evidence and other items are true and correct.

_____ _____

Printed Name Signature

Date: _____ Phone: _____

Home Address: _____ City: _____

Zip Code: _____ email address: _____

SUMMONS

(Form 2)

TO:
Post _____ Sergeant-at-Arms

You are directed to deliver this Citation and the attached Accusation to the following Accused:

_____
(Name of Member)

at the following address:

_____

_____

Comrade:_____, a member in good standing of Post

_____ You are hereby summoned to appear at the regular meeting of the post at

_____hours on (date) _____at (Location)_____

to admit or deny the charges contained in the attached Accusation.

This Summons shall serve as formal notice that a finding made by a hearing board with jurisdiction over this Accusation that the allegations contained therein are substantiated may result in reprimand, suspension or expulsion from the American Legion.

Executed on this _____ day of _____, 20_____.

_____
Adjutant, Post _____

RETURN OF SERVICE

(Accused)
(Form 3)

TO: Post _____Adjutant

The attached summons and Accusations were served upon the Accused at_____ hours on _____in the following manner:

☐ Personal delivery on the Accused at:
(address)_____

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

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

1. _____

2. _____

3. _____

Respectfully submitted on the _____day of _____, 20_____.

_____
Signature

REQUEST FOR WITNESS TO APPEAR

(Form 4)

_____ is a member of The American Legion. Charges have been made in a written Accusation against our member that require a hearing to determine their validity.

As a result of the filing of the Accusation, The American Legion has scheduled an Evidentiary Hearing to consider the charges on their merits.

You have been requested to appear as a witness on behalf of:

_____ the Accused

_____ the Prosecutor

_____ the Hearing Officer

The hearing shall be conducted under the jurisdiction of:

☐ American Legion Post ☐ American Legion District/County

☐ American Legion Department of California Board of Review

The hearing is scheduled for _____ at the hour of _____.

The location of the hearing is _____.

While your attendance at this hearing is not legally mandatory, it shall be the duty of all members of The American Legion, when summoned as a witness in a hearing to testify. Your testimony is extremely important to the outcome. Your cooperation is appreciated.

Please contact us within five (5) days of receipt of this notice at the following phone number / email address to confirm your attendance as requested.

(Proof of Service: Leave one copy for the witness and a signed copy is returned to the Adjutant.)

Phone Number(s): _____

Email Address: _____

Name: _____ Date: _____

Signature: _____

HEARING COMMITTEE VERDICT

(Form 5)

Charge:

☐ Disloyalty

☐ Neglect of Duty

☐ Dishonesty

☐ Conduct unbecoming a member of the American Legion

Specific Charge:

_____
_____
_____
_____

Each Committee Members Signature	Write “Substantiated" or “Not Substantiated”
_____(Foreman)	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Recommended Penalty:

☐ Letter of Reprimand

☐ Suspension for _____months (cannot be more than 12 months)

☐ Expulsion from membership in the American Legion

I certify that the hearing committee rendered the above verdict on_____ and that the Accused was advised of his/her right to appeal.

_____
Hearing Officer

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 _____.

_____
Post Adjutant

MEMBER APPEAL OF JUDGMENT AND/OR PENALTIES

(Form 6)

A Department of California Legion member who has been subject to suspension or expulsion after any administrative hearing may file an appeal of the judgment. The appeal must be filed within 40 days of recording of the verdict and/or penalty, if any, with the member's post. Within 60 days of the filing of the appeal, the Hearing Officer and Adjutant who served at the Evidentiary Hearing will submit the record on appeal to including the Accusation, all written motions and oppositions, all documentary and tangible evidence, the transcript of the hearing (if any) and the verdicts and penalties, if any. After the record is prepared and submitted to the Department Board of Review or the Department Executive Committee (as applicable), the parties will be notified of the date, time and place for the hearing on the appeal and the deadlines for filing written argument in favor or in opposition to the appeal.

Member Name: _____ Legion Member No. _____

Home Address: _____ City _____State _____

Zip Code _____ Phone _____Secondary Phone _____

Email Address _____

Member of Post: _____

Location of Trial (Post Name & Number / Department Board of Review)
_____

Date of the Verdict _____

Date the Verdict and/or Penalties Recorded in the Member's Home Post: _____

Charges in the Accusation found to be substantiated:

☐ Disloyalty

☐ Neglect of Duty

☐ Dishonesty

☐ Conduct Unbecoming a Legion Member

The penalty imposed was:

☐ Written reprimand (copy attached).

☐ Suspension for: _____

☐ Expulsion from The American Legion

My grounds for appeal are:

1. _____

_____

_____

2. _____

_____

_____

3. _____

_____

_____

(If necessary, attach a separate list briefly stating additional grounds for appeal. Please be brief keeping each ground to a sentence or two. Please keep in mind you will be given the opportunity to submit written arguments in favor of your appeal and to argue the case orally at an appellate hearing.)

Member Name: _____

Member Signature _____ Date: _____