



NATIONAL HEADQUARTERS CIVIL AIR PATROL

CAP REGULATION 112-10

10 SEPTEMBER 2008

Claims

INDEMNIFICATION

This regulation establishes policies and procedures for the submission and processing of requests for indemnification pursuant to CAP Bylaws. **Note: Shaded areas identify new or revised material.**

SUMMARY OF CHANGES. Includes indemnity for the EOO investigator, investigators handling "command directed inquiries" and GCA. Clarifies existing policy that individual are to be working at the direction of a corporate officer in order to be entitled indemnity. The word "individual" replaces "members" and "employees" throughout wherever the word "member" refers to CAP membership or employment.

1. Definitions. The following definitions apply herein:

a. "Board of Review" means the National Commander, National Vice Commander, National Chief of Staff, National Legal Officer, and General Counsel.

b. "CAP" means Civil Air Patrol, Incorporated.

c. "Employee" means a person who is a paid employee of Civil Air Patrol.

d. "Member" means a member of Civil Air Patrol.

e. "Indemnity" means protection, such as by insurance, from liabilities incurred by way of one's actions. Here, it includes expenses from civil litigation and any settlement or civil judgment. (See CAP Constitution and Bylaws, Bylaw 11.1 which is incorporated herein by reference.)

f. "Individual" means such members or employees of CAP, past or present, or their heirs, estates or personal representatives of such members or employees as are referenced in paragraph 2a of this regulation.

g. "NEC" means the CAP National Executive Committee.

h. "Request for Indemnification" means a request in writing for indemnification pursuant to CAP Bylaws. Such request shall contain sufficient detail to enable the National Commander to determine the nature of the pending or threatened litigation and set out sufficient facts regarding the circumstances surrounding such claim and allegation of liability to enable a determination to be made as to the eligibility for indemnification of the individual requesting indemnification.

2. Conditions and Limitations:

a. Indemnification shall be limited to claims arising from events, acts or failure to act that occurred during such time as the requesting individual, either in the individual's capacity as a corporate officer or at the direction of a corporate officer, was:

- (1) serving as a member of the National Board;
- (2) serving as a legal officer while acting in that capacity as set out in CAPR 111-1, *Qualifications and Duties of Legal Officers*;
- (3) serving as an inspector general or investigative officer while acting in that capacity as set out in CAPR 123-2, *Complaints*;
- (4) serving as the Equal Opportunity Officer or an investigative officer while acting in that capacity as set out in CAPR 36-2, *Complaints Under the Civil Air Patrol Nondiscrimination Policy*;
- (5) serving as an investigating officer for a commander directed investigation that has been directed/authorized in writing by a wing, region or national commander (or the legal officer thereof, including general counsel acting under the auspices of such a commander) to investigate "a possible violation of a CAP directive, violation of law or serious misconduct" (CAPR 123-2 para. 2g.); or
- (6) employed as corporate Executive Director, Assistant Executive Director, Director, General Counsel or Assistant General Counsel.

b. Indemnification shall be made only if a timely request for indemnification has been given to CAP in the form and manner required by the provisions of this regulation.

c. Indemnification shall be made only if the individual (1) is not found to have been guilty of gross negligence or willful misconduct, or (2) has not intentionally or knowingly violated CAP regulations, manuals, directives or policies, or if found to have violated such regulations, manuals, directives or policies has been found by the Board of Review to have been in substantial compliance with such CAP regulations, manuals, directives or policies.

d. Indemnification shall not be provided to the extent that the individual is covered by liability insurance with regard to the events being alleged as the factual basis for the claim of liability against the individual.

3. Request for Indemnification. To be eligible for indemnification, an individual desiring to be indemnified pursuant to CAP Bylaws must:

a. Cause a written request for indemnification to be delivered to the CAP National Headquarters, addressed to the CAP National Commander, to the attention of the CAP Executive Director, Maxwell AFB AL 36112-6332.

b. Such written request for indemnification must be delivered to CAP National Headquarters in sufficient time to permit CAP to have an opportunity to appear and participate in the litigation or settlement of any claim against the individual for which the individual is requesting indemnification.

4. Processing. Subject to the provisions of paragraph 5:

a. Upon receipt of a request for indemnification, the CAP Executive Director, or the Executive Director's designee shall notify the Board of Review of the receipt of the request for indemnification and furnish them with copies of the request for indemnification.

b. The National Commander shall, in consultation with the Board of Review, proceed to make or to cause to be made a determination as to whether or not there is cause to believe that the individual requesting indemnification is or is not entitled to such indemnification under the provisions of paragraph 2 of this regulation.

c. If the determination is that for any reasons set out in paragraph 2 of this regulation, the individual is not entitled to indemnification, the individual shall be notified in writing of such determination and the reasons therefore.

d. If the determination is that the individual appears to be entitled to indemnification, the individual shall be notified in writing of that determination and that CAP will undertake the defense of the individual, through counsel approved by the General Counsel, which counsel shall be selected and retained by General Counsel or CAP's insurer, if any, to act in behalf of CAP after consultation with the National Commander and the National Legal Officer.

e. If at any time it becomes apparent that the determination of the eligibility or ineligibility of the individual to indemnification was in error, such determination may be changed as the circumstances require by order of the National Commander.

f. In the event the right to indemnification is not withdrawn and a settlement or money judgment is entered or proposed involving an individual entitled to indemnification, such settlement or judgment may be paid from the CAP general fund only upon a majority vote of the NEC.

5. Conflict. Except as set out in subparagraph d. hereof:

a. Submission of a request for indemnification by a member of the Board of Review shall disqualify such person from participation in any judgmental process authorized or required of the Board of Review.

b. Vacancies on the Board of Review due to disqualification shall be filled by the remaining members of the Board of Review from the members of the NEC, so long as at least three members of the Board of Review are not disqualified.

c. If three or more of the members of the Board of Review are disqualified with regard to any single or related civil action, vacancies shall be filled by the NEC from the remaining members of the NEC not be deemed to be disqualified by subparagraph a. of this paragraph.

d. In the event all or a majority of the NEC or the Board of Review are named as parties' defendant in a civil action or related actions, then such actions shall be deemed to be actions against CAP as a corporate entity and the Board of Review shall not be deemed to have been disqualified.