

CAP Pamphlet 10-3

Legal Resources for Command

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Outline of Contents

Outline of Contents	2
Introduction	3
Legal Officer Duties	3
Recruiting and Appointing a Legal Officer	4
Recruiting Approaches	4
Appointment of a Legal Officer	4
Jurisdictional Issues	5
Client Relationship and Confidentiality	6
Command Relationship Best Practices	6
The Functional Chain of Command	7
Contract Review and Coordination of Signatures	8
Adverse Membership Actions and Appeals	8
Fundraising	9
Promotional Items (T-shirts, Coins, etc.)	9
Preventing Harassment and Abuse	10
Mandatory Reporting Requirements	11
Investigations	11
Professional Development	12
National Legal Officers College	12

Introduction

Legal officers are an important part of the staff structure of Civil Air Patrol, and the legal officer can be a critical resource for commanders. This pamphlet is intended to help commanders and legal officers speak each other's language and understand each other's priorities. Commanders should review the range of areas and manners in which legal officers can offer guidance so that when those situations arise, they will be alert to the need to consult and prepared to effectively leverage the incredible value that legal officers offer to the Civil Air Patrol.

There are a few times that CAP regulations mandate that a CAP legal officer *must* be involved in an action or review, but they can be a valuable resource beyond those limited times. Using their professional training, legal officers can review contracts, help negotiate agreements, and navigate personnel actions. But lawyers are also trained in the ways that complex organizations and systems work, so legal officers can provide command counsel on a wide variety of matters.

Legal Officer Duties

CAPR 35-5, *CAP Officer and NCO Appointments and Promotions*, ¶ 5.1.4, defines a CAP legal officer as “a licensed attorney authorized to practice law before the highest court of a state, the Commonwealth of Puerto Rico or the District of Columbia appointed in accordance with CAPR 111-1, *Qualifications and Duties of Legal Officers*.”

Legal officers are, first and foremost, counselors to the Civil Air Patrol. In this capacity, most legal officers are assigned to provide advisory counsel to a commander at the wing level or above. That command counsel may be sought and offered in any area of operations, but legal officers are most frequently involved in the following situations:

- Command Counsel
 - Mediation/Negotiation
 - Proactive and Preemptive
 - Risk Management
 - Fundraising and Licensing issues
- Contract and Real Estate Review
- Investigations and Investigation Review
- Membership Termination and Appeals
 - Investigations
 - Legal reviews of adverse personnel actions (especially notification)
 - CAP Representative in appeal hearings

Recruiting and Appointing a Legal Officer

Commanders are encouraged to do their best to recruit legal officers.¹ A wing is fully staffed with one legal officer, but it is frequently helpful to have more than one. There are many situations when one legal officer can counsel the commander through a personnel issue or commander-directed investigation, and then the other legal officer is available to assist in the event of an appeal or other later action.

Any recruited legal officer must be a licensed attorney.² CAP has frequently benefitted from legal officers in non-traditional legal roles such as government or academic positions, so commanders should look beyond private practice attorneys in their geographic areas.

Former military attorneys are often interested in serving in CAP, but military experience should not be seen as a prerequisite for CAP legal officer service. From a legal perspective, Civil Air Patrol typically functions like a corporation, so a broad range of legal experiences are helpful and valuable to CAP.

Recruiting Approaches

As part of their oath of admission to practice law and the professional commitments that come with practicing law, attorneys are often willing to accept meaningful opportunities for public service. There are, however, many organizations that compete for their time and *pro bono* involvement, and so it is important to explain the distinctive benefits of involvement in Civil Air Patrol.

- **Practice law and have it mean something.** Civil Air Patrol has the advantage of being able to draw direct lines between the legal work done in the organization and the missions that our members perform for the people of the United States.
- **Connect your professional skills with the work your (cadet) children are doing.** Commanders may occasionally find lawyers among the members or parents already involved in Civil Air Patrol.
- **Serve your country in a way that leverages your skills and experience.** Civil Air Patrol can be an attractive outlet for service by lawyers because there are opportunities for lawyers to do legal work that connects to their training and particular skills.

Appointment of a Legal Officer

The appointment of a legal officer is unique among CAP duty positions in that it requires approval from a level above the appointing commander. Also, legal officers may only be appointed by wing commanders and above. Below the wing level, there is not much legal work to be performed, and so legal officers are often left feeling unengaged. This means an important resource for CAP may be underutilized. Although a legal officer may be assigned to a unit, if

¹ CAPR 111-1, ¶ 1(b).

² CAPR 111-1, ¶ 3(a).

legal advice is needed below the wing level, the unit commander should consult up the chain of command and the wing commander (or wing legal officer) can appoint someone to respond on behalf of the wing's legal team rather than authorizing a "permanent" legal officer appointment at the squadron or group level.

When appointing an assistant wing legal officer, the wing commander should consult with the legal officer in the review of credentials. When appointing a primary legal officer, the wing commander should consult with the region legal officer for assistance in reviewing credentials (and later in onboarding the legal officer).

Once the wing commander has consulted regarding the new legal officer's credentials and become satisfied that the legal officer is properly qualified, the wing commander must consult with the region legal officer for approval.³

The appointing commander should coordinate with the primary legal officer or the region legal officer to be sure the new legal officer will have productive mentoring and functional command relationships: this is critical to the long-term success of the legal officer's service to CAP.

The wing commander should announce the new appointment to wing staff, emphasizing the role of the legal officer as an advisor to the commander (not a direct resource for wing personnel). The legal officer is able to be most productive when issues come through the wing command staff (rather than directly to the legal officer from people around the wing who may have not consulted appropriately in their own chain of command before asking the legal officer about potential projects).

Jurisdictional Issues

In the United States, attorneys are licensed by a state for legal practice within that state. This is usually referred to as "being admitted to the bar." Attorneys in private practice must be admitted to the bar of the state in which they practice. In CAP, we frequently get questions about whether attorneys need to be admitted to the state in which they are serving as a legal officer.

Obviously the best case is when a legal officer is licensed in the state in which they are serving, but because we often benefit from the service of military, corporate, or academic attorneys who are admitted to the bar in a state but not necessarily the state where they are currently working, it is worth diving deeper.

The legal officer does not need to be admitted in the state or jurisdiction in which the legal officer currently resides or is assigned duties as a legal officer. However, if a serving legal officer is not admitted in the state or jurisdiction in which the legal officer is serving, that legal officer must comply with the jurisdiction's rules regarding the unauthorized practice of law.

³ CAPR 111-1, ¶ 2(a).

Legal officers are not permitted to render opinions on laws of jurisdictions in which they are not admitted to practice. This means that they will need to develop partnerships with local attorneys or other CAP legal officers to coordinate other advice about state law issues.

Legal officers who are not admitted in the jurisdiction in which they are serving can be particularly effective with regard to CAP personnel and regulatory issues, which are not (typically) matters of state law concern.

Client Relationship and Confidentiality

Thanks to television and movies, most people know the term “attorney-client privilege” and believe that it means something like “anything I say to an attorney is private.” That’s not quite what the privilege means in real life, but confidentiality is particularly complex in the context of a large organization like the Civil Air Patrol.

The key point is that a legal officer’s client is the Civil Air Patrol, not any particular individual or unit.⁴ In order to support commanders and the organization’s mission, CAP asks its legal officers to engage in advisory relationships with specific commanders (the ones to whom they are assigned as legal officers in eServices), but regardless of such assignments, the legal officer’s fiduciary and legal duties are to the Civil Air Patrol. A legal officer may not protect the confidentiality or personal interests of a commander in a way that negatively affects the Civil Air Patrol.

Individual members will sometimes jokingly say they want to hire the legal officer privately so that they will have confidentiality protection. Legal officers will help people understand, even if they were half-joking to begin with, that this doesn’t work either. Legal officers cannot enter into relationships that would create a conflict with their fiduciary duty to the Civil Air Patrol.

Command Relationship Best Practices

An effective legal officer can be one of a commander’s most important resources. The following features can be found in many of the most productive commander/legal officer relationships around Civil Air Patrol.

- **Work in a variety of contexts.** The commander and legal officer should not only talk with each other when there’s a brewing legal issue: frequent conversation helps them grow to understand and trust each other for the times when critical legal issues do arise.
- **Legal officer has broad operational knowledge.** Legal officers should be encouraged to be involved beyond legal research and staff meetings. Legal officers who have flown missions as aircrew members or dealt with leadership challenges as a deputy commander can bring much richer counsel to a commander. Even just getting a legal

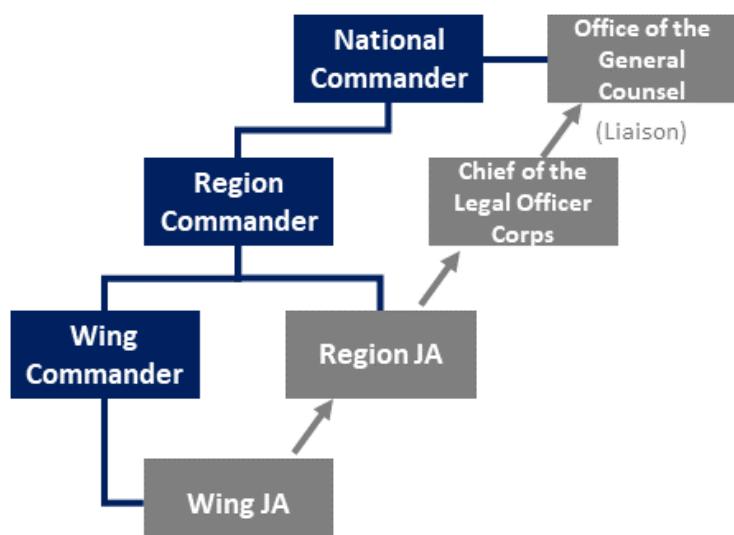
⁴ CAPR 111-1, ¶ 4(a).

officer in the plane for an informal orientation flight or helping them to visit some of the wing's squadrons can make a big difference in their effectiveness.

- **Legal officer leverages expertise and research.** Legal officers (like any lawyer) will often need time to research specific questions about regulations or laws. Consult them with enough time so that they can perform this research rather than just offering a gut reaction. A well-trained lawyer's gut reaction is valuable, but the work they are able to do with a bit of time to research and consult colleagues is much more valuable.
- **Legal officer has productive relationships and connections.** When the legal officer has connections across the wing, he/she is able to get to the core of legal issues more quickly and can more easily evaluate the reliability of information received. Of course, this can also result in staff treating the legal officer as a personal attorney, which can be awkward for the legal officer and the chain of command.

The Functional Chain of Command

All staff officers in Civil Air Patrol have a functional chain of command, but this is particularly important for legal officers because of their fiduciary duties to the organization. Legal officers express their fiduciary duty to the organization through a dual reporting structure: for general CAP activities they report to the assigned commander at their level, but as lawyers they report to a corporate officer or a commander with delegated corporate authority.⁵



Do what you can to help your legal officer create productive relationships in their functional chain of command. In addition to protecting the Civil Air Patrol's organizational interests, this provides resources to the legal officer for best practices and professional development, meaning that they are able to bring good options to the table for their commanders with more speed and reliability.

A legal officer's first resource for legal questions is the next command echelon's legal officer. The Legal Officer Corps also maintains a private listserv (sometimes called the "Redirector") that legal officers can use to consult across the organization. Your legal officer may talk to you

⁵ CAPR 111-1, ¶ 5(a).

about the use of this resource *after* they have consulted with the legal officer at the next echelon or with the General Counsel.

Contract Review and Coordination of Signatures

It is good organizational risk management practice that only designated corporate officers may “bind the Corporation” by signing contracts or other agreements. In the Civil Air Patrol, the designated corporate officers are at National Headquarters (NHQ). CAP has decided that neither the legal risk nor the burden of reviewing and understanding contracts should be placed on a wing commander. This means that only designated personnel at National Headquarters may execute contracts and agreements for Civil Air Patrol.

Note that just because a document does not say “Contract” at the top of the page does not mean that it isn’t creating legal liability.

Simply put, no member (other than a designated corporate officer at NHQ) may sign their name as a representative of Civil Air Patrol. This includes not only leases and contracts, but also cable/internet account agreements, catering agreements, and facility usage agreements for dining out or conferences.

The wing legal officer should be the liaison to NHQ for securing signatures. The legal officer will review the document and then communicate with NHQ. In most parts of the organization, there is an understanding that for these purposes, the legal officer can communicate directly with NHQ through the paralegal/office manager in the general counsel’s office. Note that if the agreement being signed corresponds with an expenditure, the expenditure must be approved by the appropriate finance committee(s) before the contract signature is requested.

Allow time for the legal officer to coordinate signature, but NHQ frequently turns around signature requests within two days.

Vendors or partners will sometimes ask CAP to provide a Certificate of Insurance (COI) or “proof of liability coverage,” which the legal officer can also coordinate with NHQ.

Adverse Membership Actions and Appeals

One of the most difficult things a commander does is take disciplinary action against a member. Because we try to preserve the opportunities of each member in the organization, we take adverse action—especially termination—very seriously and provide options for affected members to appeal these decisions.

That means that early involvement from a legal officer is critical. The regulations list specific requirements, including the language on forms, the method of delivery, and other procedural items that are second nature to most lawyers. The chances of an appeal, and particularly a successful appeal, go down significantly if a legal officer has a chance to counsel the appropriate commanders through the process.

One of the most common causes for appeal is that commanders made decisions that they believed to be right and within their discretion as commanders, but without adequately connecting those reasons to the applicable regulations. Legal officers can anticipate these problems if they are involved *before* a notice of termination is sent to the member.

Termination should take place at the lowest command level possible, meaning that if a member being terminated is assigned to a squadron, the termination should occur at that level.⁶ This means that appeals of termination decisions will go to the group or the wing, not the region or national levels where hearing panels are often challenging to assemble for logistical reasons.

It may be a good idea to designate responsibility for investigations and terminations to one legal officer in a wing while keeping another legal officer “walled off” from these cases so that that second legal officer can consult the wing commander and/or assist in an appeal hearing if necessary at a later date.

The Legal Officer Corps and the General Counsel’s Office are currently putting together guidance for legal officers on how to be effective advocates and partners during termination actions and appeals. You and your legal officer can inquire about the progress on this project in order to use the best practices available at each stage.

Fundraising

One of the few areas where commanders are specifically instructed to consult with a legal officer is the review of proposed fundraising programs.⁷ Legal officers are an important resource for reviewing projects to be sure they conform to CAP regulatory requirements, but they also need to review proposed projects for compliance with state laws about fundraising.⁸ For example, many states require that organizations raising money in public must be registered with the secretary of state’s office.⁹ Many states also have rules about projects that are popular with groups like CAP, including bingo or raffles.

It is a good idea to ask new legal officers to get to know the state’s fundraising regulations as soon as possible after appointment so that they can be helpful in a proactive way.

Promotional Items (T-shirts, Coins, etc.)

Every CAP member knows that Vanguard (<http://vanguardmil.com/>) is the official supplier for CAP uniform items. In order to get the level of service that Vanguard offers, Civil Air Patrol has

⁶ CAPR 35-3, ¶ 1(c).

⁷ CAPR 173-4, ¶ 3(c).

⁸ *Id.*

⁹ CAP has secured registration in many jurisdictions already; ask your legal officer to inquire with CAP/GCP.

granted Vanguard an exclusive right to manufacture products with CAP insignia, badges, words, and phrases.

This means that when ordering t-shirts, coins, hats, and patches, Vanguard is the preferred provider. This is true regardless of the source of funds or whether Vanguard is the “low bid”: involve the legal officer and do not let units do “armchair lawyering” about this requirement.

In order to protect the organization’s interests, commanders should use a process similar to the fundraising project approval process for orders of any materials that will feature CAP insignia, badges, words, or phrases (including insignia of squadrons and special activities):

- Unit commander or project officer designs the item (t-shirt, patch, coin) desired and forwards the design specifications to the appropriate legal officer (wing or above).
- The legal officer determines if the item/order falls under the Vanguard licensing agreement, consulting with CAP/GCP as necessary.

The legal officer can get more details about the agreement and the recommended process from the functional chain of command or CAP/GCP.

Preventing Harassment and Abuse

Few of CAP’s regulations receive as much attention as CAPR 60-2, *Cadet Protection Program*. This regulation and the associated material offer a significant number of proactive steps for creating safe and effective cadet programs, in keeping with the program’s preventive philosophy.¹⁰ Legal officers can help implement programs with an eye toward effective risk management. In other words, don’t wait until there is an allegation to include your legal officer in cadet programs.

When there is an allegation of harassment or abuse, commanders should contact their legal officer immediately (after first ensuring that the cadets involved are safe and cared for).¹¹

Members may report up the chain of command without certainty about whether or not an incident amounts to a cadet protection violation. The regulation establishes reporting requirements when there is a “reasonable, good faith suspicion or belief that a cadet has been sexually abused, exploited, physically abused, neglected, or emotionally abused.”¹² Many of the words in that sentence are legal “terms of art,” meaning that they have specific legal meanings that may be different from everyday understanding and usage. Determining the reasonableness of a suspicion or belief and helping to gather key details to facilitate the report to CAP/GC are important roles for the legal officer.

¹⁰ CAPR 60-2, ¶ 1.6.

¹¹ CAPR 60-2, ¶ 4.1.

¹² CAPR 60-3, ¶ 4.2.

Mandatory Reporting Requirements

In addition to CAP's reporting requirements, many jurisdictions require certain individuals to report to a state or county government office when they have a reasonable suspicion of abuse of a minor. In most cases, these requirements create responsibilities in the adults with suspicion of abuse, not the organization's official leadership. Legal officers should become familiar with the requirements in their jurisdiction(s) and, to the extent they are willing, help members understand what individual obligations they may have.

Investigations

Civil Air Patrol has two categories of investigations: inspector general investigations and commander-directed investigations ("CDIs").

Legal officers have limited involvement in inspector general investigations, although they will be asked to review complaint analyses for legal sufficiency.¹³ It is a good idea for these reviews to be conducted by a legal officer who has not already been counseling the commander or the IG in the matter.¹⁴

Legal officers are frequently asked to assist in commander-directed investigations. Commanders "possess inherent authority to investigate matters or incidents under their jurisdiction,"¹⁵ and commanders will frequently consult with legal officers about such investigations and/or ask legal officers to serve as investigating officers ("IOs").

A guide for conducting CDIs is currently being developed at the direction of the General Counsel and the Chief of the Legal Officer Corps. Until that guide is completed, legal officers and commanders are encouraged to consult with legal officers who have conducted investigations previously or with the next echelon's legal officer for guidance.

Where staffing levels make it possible, if a legal officer is tasked as investigating officer in a CDI, it is best practice to keep another legal officer at that echelon "walled off" for counsel to the commander and/or representation of the matter after the investigation is completed. If staffing levels do not permit, consider appointing an IO who is not a legal officer or work with the next echelon's legal officer for support.

¹³ CAPR 20-2, ¶ 12.3.

¹⁴ Cf. CAPR 20-2, ¶ 12.10.2.

¹⁵ CAPR 20-2, ¶ 15.

Professional Development

After the opportunity for initial appointment at the grade of captain¹⁶, legal officers follow the same promotion and professional development standards as other members.¹⁷ Commanders should encourage legal officers—like all other senior members—to take professional development and rank progression seriously. Among other reasons, legal officers often make for excellent instructors in professional development programs, and so it is good to have them active in that sequence.

Legal officers should be enrolled in the legal officer specialty track and encouraged to progress in that track. Higher echelon legal officers can advise about the completion of the prescribed tasks in the pamphlet (CAPP 219).

National Legal Officers College

The National Legal Officers College (“NLOC”) is an in-residence course for legal officers that is equivalent (for professional development “levels”) to Region Staff College.¹⁸ This conference is held at varying locations around the country. It is a good opportunity for legal officers—both seasoned and brand-new—to meet colleagues with whom they work on a regular basis and to get CAP-specific training on their role as interpreters and counselors in the organization. NLOC requires a significant investment to attend—travel, registration, and lodging—and commanders are encouraged to budget for assistance to their legal officer(s) to attend. The networking and development they gain from NLOC will pay dividends for your wing in the long run.

¹⁶ CAPR 35-5, ¶ 5.3.5.

¹⁷ There is one minor exception in which legal officers have slightly different promotion standards: legal officers must complete NLOC in order to be promoted to lieutenant colonel even if they have achieved Level 5 using other education components. CAPR 35-5, ¶ 5.4.1.5.

¹⁸ CAPR 50-17, *CAP Senior Member Professional Development Program*, ¶ 6-5.