

# CIVIL AIR PATROL COMMANDER'S QUICK REFERENCE GUIDE

## APPEAL BOARDS FOR MEMBERSHIP TERMINATION

Reference: CAP Regulation 35-3, *Membership Termination*, 27 Dec 2012, Change 1, 4 Sep 2013.

OPR: CAP/DP

**RIGHT TO APPEAL CAP MEMBERSHIP TERMINATION:** § C, Para 6(b). When a Civil Air Patrol membership is terminated, the right to appeal the termination is not automatic, and whether the right exist depends on the termination basis stated by the Initiating Commander. There are two broad classifications of basis for terminating a CAP membership, which are "Automatic" basis and "For Cause" basis.

**NO RIGHT TO APPEAL** Senior Members terminated for any basis of "*Automatic Loss of Membership*" under Para 4(a) or Cadets for any basis under Para 3(a)-(c):

The Initiating Commander prepares a CAP Form 2B, original sent to CAP/DP; copy mailed to the member's last known address & copy and proof of mailing is retained in the unit's file. Termination is final and there is no right to appeal.

**RIGHT TO APPEAL** For any "*Termination for Cause*" for Senior Members under Para 4(b) or Cadets under Para 3(d) for misconduct or 3(e) conviction of a criminal offense/arrests:

The Initiating Commander signs "Letter of Notification" with personal service and/or U.S. Mail, normally within 10 days of termination decision, sends a copy to the Approving Authority and to CAP/DP. Approving Authority appoints the Board.

**CADET TERMINATIONS BASIS:** § A, Para 3(a)(1)-(8). **Automatic:** Marriage after age 18; Enlistment (Except Natl. Guard/ Reserve/ROTC/Svc Acdy); Failure to Pay a CAP Debt; Bad School Grades; Loss of Immigration Status; or Resignation. Para 3(b) Failure to progress satisfactorily in CAP Cadet Program; Para 3(c) Missing 3 meetings in a row. **Misconduct:** Para 3(d)(1)-(6) Conduct unbecoming CAP cadet; Making false statement about CAP; Serious/Willful violations of CAP policy/regs; Insubordination, **For Cause:** Para 3(e) Criminal conviction/Pattern of arrests.

**SENIOR TERMINATIONS BASIS:** § B, Para 4. **Automatic:** Nonrenewal, Resignation, Failure to meet initial membership qualifications, Failure to Pay a CAP Debt, Not Replying to an info request from NHQ. **For Cause:** Para 4(b)(1)-(11) Moral turpitude; Conduct unbecoming CAP Officer; Financial irresponsibility, Drunkenness, Making a false statement about CAP; Substandard duty performance over a period of time; Failure to obey rules, regulations, or orders; Insubordination, or any other conduct, action or incident which violates CAP Membership policy, etc.

**CAP MEMBERSHIP TERMINATION APPEAL BOARDS** Consist of 3 or more officer members who are impartial & senior in grade to the Appellant. Approving Authority appoints a Chair who presides at the board hearing. The Chair can appoint a CAP Representative. The Appellant can have an Assistant. Neither the Chair nor the Appellant's Assistant have to be a lawyer. The Chair can also appoint a Bailiff to assist the Board with such things as securing the hearing area and maintaining order at the hearing. All appointments must be in writing.

**DUTY OF THE APPEAL BOARD:** Is limited to consideration of relevant facts presented during the hearing and it makes a written factual determination of whether the termination reasons stated by the Initiating Commander in the Letter of Notification are sustained by the evidence. Boards have no legal powers; is not a court-martial; they can't issue subpoenas or give orders to people, nor grant any specific relief. The only exception is the if the Board finds insufficient basis for termination, that finding is binding on CAP and will result in the member being retained.

**DURING THE BOARD'S HEARING:** This is an informal hearing with military customs & courtesies. The burden of proof is on CAP to establish the termination basis beyond a preponderance of the evidence. There is no burden on the Appellant, and he/she can appear or choose not to appear or appeal in writing. Both sides may call witnesses in person or via phone or video messenger, and witnesses are sworn in and are subject to cross questioning. Both sides can submit matters in writing. The Chair rules when asked by either party, on all questions of relevancy, materiality, and admissibility of witnesses' testimony & documents. Hearings are closed and are not open to the public or other CAP members.

**PRO TIPS:** (1) Consider Use of the Board Script. (Provided by CAP/GC). (2) Select a safe & suitable meeting location. (3) Boards should have access to refreshments, Wi-Fi and a printer. (4) Pick a hearing location close to where the parties live. (5) Be aware of the costs. (6) Arrange the Board room chairs so the space is functional. (7) Chairperson will set the uniform of the day but remind the Appellant to wear suitable civilian attire.

**TYPICAL ORDER OF BOARD HEARINGS:** (a) Each side makes an opening statement; (b) CAP presents written evidence and calls witnesses, followed by cross examination, (c) Appellant presents written evidence and calls witnesses, Appellant has no burden to do so, (d) CAP presents brief rebuttal, (e) Closing arguments by each side, (f) Board meets in private session and votes on findings. Boards sometimes report their findings in a session with the parties present after the findings are reached. (g) After the hearing is over, the Board Chair writes a written report.

**ACTION BY THE APPROVING AUTHORITY:** If the Board recommends termination, the Approving Authority can either approve the original termination, and or can decide to override the Board and retain the Appellant. If the Board recommends retention, that's binding on the Approving Authority, and no termination. The Approving Authority will notify the Appellant via appropriate letter of their decision, normally within 10 days.

If the Approving Authority **RETAINS** the Appellant, the suspension is lifted, and the member can resume CAP activities. CAP cannot appeal.

If the Approving Authority **SUSTAINS** the termination, the Initiating Commander will prepare a CAP Form 2B and send to CAP/DP. The Appellant may seek review to the Membership Action Review Panel within 60 days. *This process is fully described in CAPR 35-8.*