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**BC=** The following is the format that I will follow in conducting this Membership Termination Appeal Board. First, the CAP Representative may make an opening statement to summarize what facts and issues [he][she] intends to present. Next, the appellant may similarly [through their Assistant] make an opening statement. In the alternative, either side may waive their opening statements. Thereafter, the CAP Representative will be given an opportunity to present evidence, call witnesses, or submit written documents. If a witness is called to submit live testimony, they will be placed under oath, and once they testify, the cross examination of that witness will be permitted by the opposing party. Once the CAP Representative has concluded the presentation of evidence and has rested the CAP's case, the Appellant may also then [through his Appellant's Assistant] present evidence, call witnesses, or submit written documents. The Appellant [himself][herself] may testify in person or may elect to not testify at all. If the Appellant elects to testify, [he][she] will be placed under oath and will also be subject to cross-examination by the CAP

Representative. The Appellant can also submit a written statement. Once the Appellant has concluded [his][her] case, I will entertain brief and limited rebuttal evidence, after which each party may make a summation argument before the Board.

**BC=** Before offering testimony, each witness will be administered an oath. As the Appellate Board Chairman, I will administer all oaths in these proceedings. This Board does not have the ability to subpoena evidence or witnesses. All witness offering testimony to this Board must appear here in person [or telephonically] [or via video conference], voluntarily, and at their own expense.

**BC=** Since all matters presented in these proceedings are for the consideration of the Board, the individual members of the Board are permitted and are generally encouraged to ask questions of any witness or party. To keep this process orderly, I do ask that any Board member who has a question to please raise their hand or to otherwise indicate to me that they have a question.

**BC=** As I have already stated, I will permit both the Appellant and the Civil Air Patrol Representative to present relevant evidence. There are no rules of evidence in these proceedings and the requirements of the Federal and State Rules of Evidence do not apply here. Evidence may be submitted in a written form or it may be given orally in the form of sworn testimony. There is no requirement that evidence be of any particular kind or submitted in any particular form; however, evidence presented no matter what form it may take, must be relevant and material.



**BC=** Relevant evidence is evidence presented by a party while this Board is in session that has any tendency to make a fact important to the issues now before this Board more probable or less probable than it would be without the evidence. Evidence is material if it is significant, influential, or informative, especially to the extent of determining a cause or affecting a judgment. Admissibility is whether or not the evidence can be or should be considered by the Board Members at all.

**BC=** Some evidence can be relevant and material, but it may ultimately be unsuitable for admission to the Board because it is not authentic or it is unverified, questionable, or has been forged, faked, or is unreliable. Also, sometimes admissibility of a piece of evidence may be denied because it is unfair to one of the parties to allow its consideration.

**BC=** As the Presiding Officer, I alone will be the final authority on what constitutes relevant, material, and admissible evidence before this Appeal Board. If a party feels that the other party's proposed evidence is not admissible or relevant to an issue before this Board, he or she shall fully and in a timely fashion, state their objection when the evidence is offered. I will consider the basis for the objection and will use my common sense and logical judgment to decide whether that piece of evidence is admissible or not. Only that evidence which I deem to be admissible will be considered by the Board.

**BC=** The Board members are free to give whatever weight to the admissible evidence that they deem warranted in their individual judgments. For example, a particular piece of evidence may be relevant, and thus it is admissible, and the Board will consider it. However, that same piece of evidence although relevant and admissible may not be believable or could possibly be subject to questions about its reliability. In this manner, it will be for the Board members to decide how persuaded or convinced they are when they begin their deliberations after the Board has closed.

**BC=** As I have already announced, both parties may call and question witnesses, and likewise, both parties may cross examine each-other's witnesses. You are advised that cross-examination must be limited to asking questions about issues or facts which were raised during the initial questioning of the witness. Exceeding the scope of cross-examination will not be permitted, and I will hear and rule on any objections made in that regard.

**BC=** Do either the CAP Representative or the Appellant [or Appellant's Assistant] have any questions? Does any member of the Appeal Board have any questions?

**BC=** At this time, we will take our [morning][afternoon] recess. We will reconvene at (time) \_\_\_\_\_ hours. We are at recess.

*(After the Recess...)*

**PART II: Presentation of Evidence & Argument**

BC= The Board will come to order.

BC= *(To the CAP Representative)*, [Rank and Name], \_\_\_\_you may make your opening statement on behalf of the Civil Air Patrol.

*(CAP Representative makes opening statement.)*

BC= *(To the Appellant or the Appellant's Assistant/Counsel)*, [Rank or Title and Name], \_\_\_\_\_you may make your opening statement on behalf of yourself [the Appellant].

BC= *(To the CAP Representative)*, [Rank and Name], \_\_\_\_\_, you may proceed with your case.

*(NOTE: At this point, the CAP Representative may call witnesses or present written documentation to support the CAP's case. The calling of witnesses may be carried out as follows)*

CR= *(To the Chairperson)* [Mister][Madam] Chairperson, the CAP calls as it's witness, [Rank or title and Name]\_\_\_\_\_.

*(NOTE: If a bailiff is appointed, he or she shall locate the witness and invite them to come into the place where the hearing is being conducted.)*

BC = *(To the Witness)* [Sir][Ma'am], please raise your right hand. Do you [swear][affirm] that in the matter now in hearing, you shall tell the truth, the whole truth, and nothing but the truth?

Witness= Yes, I do.

CR= Please state your name, rank, and unit of assignment for the record.

*(NOTE: If live witnesses are called by the CAP Representative, the Appellant or his or her Assistant/Counsel shall be permitted to cross-examine the witness. Cross-examination cannot exceed the scope of the matters or issues inquired upon during the initial examination. Members of the Board may ask questions as they deem appropriate but should remain neutral and avoid advocating for one side or the other.)(NOTE: At the conclusion of the CAP's case, the CAP Representative will announce to the Board that his/her case is rested as follows:)*

CR= *(To the Chairperson)* [Mister][Madam] Chairperson, at this time, the CAP rests it's case.

BC= (*To the Appellant or the Assistant for the Appellant*) [Rank or Title and Name], \_\_\_\_\_ you may now proceed with your case.

AP= (*To the Chairperson*) [Mister][Madam] Chairperson, the Appellant calls as it's witness, [rank or title and name]\_\_\_\_\_.

*(NOTE: At this point, the Chairperson will administer the oath to the witness as follows:)*

BC= (*To the Witness*) [Sir][Ma'am], please raise your right hand. Do you [swear][affirm] that in the matter now in hearing, you shall tell the truth, the whole truth, and nothing but the truth?

Witness= Yes, I do.

BC= Please state your name, rank, and unit of assignment for the record. (*Witness replies*). (*To the Appellant*) Your witness.

*(NOTE: The Chair administers oaths and preliminary questions each successive witness, including the Appellant, if the Appellant testifies.)*

*(NOTE: At the conclusion of the Appellant's case, the Appellant or Appellant's Assistant will announce to the Board that his or her case is rested as follows:)*

AP= (*To the Chairperson*) [Mister][Madam] Chairperson, at this time, the Appellant rests [our][my] case.

BC= (*To the CAP Representative*) [Rank and Name]\_\_\_\_\_, do you have any rebuttal matters that you wish to present?

CR= [Yes][No]

*(NOTE: Rebuttal in the Appeals Board should be limited to addressing only the issues raised by the opposing side. The parties cannot use rebuttal to present additional evidence which should have been presented in their primary case. The Chairperson is advised to inquire of each side and determine if what the party seeking a rebuttal opportunity truly qualifies as rebuttal.)*

BC= (*If the matter sought meets the requirements for prima facie rebuttal, then the Chairperson will say:*) You may proceed.

*(The Civil Air Patrol Representative then offers brief rebuttal to address the issue raised by the Appellant's case.)*

BC= *(If the issues are not within the scope of rebuttal, then the Chairperson should say:)* The issues you seek to present are not within the scope of rebuttal. I will therefore not permit any rebuttal.

BC= We have now come to the part of the Appeals Board process where each side will be permitted to address the Board and offer its summation of evidence in this case.

BC= *(If time limits are imposed:)* [I will permit each side no more than\_\_minutes per side in making their own summation.] Since the Civil Air Patrol, through its appointed representative, has the burden of establishing that the reasons for termination are sustained by the evidence, the Civil Air Patrol Representative will be allowed to make [his][her] presentation first. After this summation has concluded, the Appellant will be permitted to make [his][her] closing presentation [through the Appellant's Assistant]. The Civil Air Patrol Representative will then be permitted to make one final rebuttal summation. After these summations are concluded, the Board will then close for deliberations.

*(NOTE: A party may waive their closing argument, however, this is rarely done.)*

BC= *(To the CAP Representative)* [Rank and Name] \_\_\_\_\_, does the Civil Air Patrol wish to present any summation arguments at this time?

CR=[Yes] [No]

BC= *(To the Appellant or Appellant's Assistant)* [Rank or Title and Name], \_\_\_\_\_, does the Appellant wish to present any summation arguments at this time?

AP=[Yes] [No]

### **Part III: Closing of the Board and Deliberations.**

BC= This Appellate Board has now received all of the admissible evidence presented by both sides and will shortly enter closed session deliberations to discuss the evidence and make our final determinations. In accordance with CAP Regulation 35-5, Section D, paragraph 9(e), the Appeals Board will make findings and recommendations to the [Name of the State or Region] Commander. These findings will address whether or not the termination of the appellants' membership in the Civil Air Patrol should be affirmed or reversed.

**BC=** If a majority of the Board members vote for reversal, the appellant will be retained as a member of the Civil Air Patrol. However, if a majority of the Board vote to affirm the termination, the Board will then forward that recommendation to the next higher echelon of the initiating Commander who will then make his/her decision to either retain or terminate the Appellant's CAP Membership.

**BC=** This concludes the Appeal hearing in the matter of the termination of [Rank and Name of the Appellant] \_\_\_\_\_. The parties and those who have appeared as witnesses are commended for their efforts and participation in these proceedings. All personnel are excused [dismissed].

**BC=** The Board is now closed for deliberations.

# Attachment 3:

## Sample Appeal Board Evidence Log Sheet

TERMINATION APPEAL EVIDENCE LOG				
Exhibit #	Description	Offered By	Admitted	Excluded