

**UNITED STATES COAST GUARD AUXILIARY
ELEVENTH DISTRICT SOUTHERN REGION
DISTRICT 11(SR) LEGAL DEPARTMENT**

***AUXILIARY LEGAL ISSUES WORKSHOP
2013 District Conference***

Presented by COMO Michael Johnson, DSO-LP

AVOIDING WAVES IN THE LEGAL OCEAN

***An Overview of Legal Issues Affecting Auxiliary Members, Including
Legal Responsibilities and Protections, Assignment to Duty, Auxiliary
Contracts, Solicitation of Donations, and Unit Standing Rules and
Administrative Discipline***

- **ASSIGNMENT TO DUTY**
- **AUXILIARY CONTRACTS AND SIGNATURE AUTHORITY**
- **CONTRACT REVIEW/APPROVAL BY ADSO-LP**
- **ELECTED LEADER RESPONSIBILITIES**
- **DONATIONS AND SOLICITATIONS**
- **UNIT STANDING RULES**
- **ADMINISTRATIVE DISCIPLINE**

2013 D11SR LEGAL DEPARTMENT ASSIGNMENTS:

DSO-LP: Michael Johnson (District Legal Officer)
ADSO-LP: Arthur C. Wynn (Divisions 1, 9, 10)
ADSO-LP: Eugene D. Tavis (Divisions 4, 11)
ADSO-LP: Robert G. van Schoonenberg (Divisions 5, 6)
ADSO-LP: Samuel J. Milligan (Division 7 and 12)

ASSIGNMENT TO DUTY

- Preventative legal protection.
- No “coverage” guarantee: In the event of an “Incident” during an Auxiliary mission, the coverage issue in each case is decided on its own facts and circumstances, as determined by investigation by the Coast Guard (on property loss claims), the Department of Labor (on injury or death claims) and the Department of Justice (on third party claims against the CG Auxiliary).
- Auxiliary Coverage Benefits: In the event of an “**Incident**,” a member who is (1) **qualified for duty** (current in all certification/training requirements for that

particular activity) and (2) properly **assigned to duty** should have coverage during the mission as well as en route to and from the place of the mission (excluding to and from flotilla meetings and social events), provided the mission is an authorized Auxiliary mission.

- Government Benefits and Protection: May include medical coverage, reimbursement for personal property loss, survivors' benefits, and insulation from personal liability for injury or damage to a third party and/or property.
- Assignment to Duty: The critical, essential requirement for an Auxiliary member's eligibility for Federal statutory benefits and protection while performing any AUTHORIZED Auxiliary mission. This is different from qualification for duty (i.e., currency maintenance, etc.). To be eligible for full "coverage," the member must be **both qualified for duty and assigned to duty**.
- The Auxiliarist's assignment to duty is a requirement before any statutory protections are available. If the Auxiliarist is not assigned to duty, then he or she cannot be characterized as a Federal employee and therefore cannot be acting within the scope of employment. You must be acting within the scope of your federal employment to be legally protected and be eligible for benefits.
- Orders for patrol operations (water, air, or vehicle) can only be issued by the Coast Guard. The CG order is the assignment to duty.
- Flotilla Level: The FC, VFC and the appropriate staff officer for a particular mission/activity (e.g., the FSO-VE for a VE mission) each has assignment to duty authority. That authority cannot be delegated to another member. The assignment to duty at the flotilla level should always be scheduled in writing.
- If an incident leading to possible legal consequences occurs, the strongest evidence that the Auxiliarist was acting within the scope of employment is something that demonstrates that his or her assignment to duty was made prior to the incident in question. Examples: Coast Guard orders; verbal authorizations documented via a telephone log or memo.
- Division Commander (DCDR) and Vice Division Commander (VCDR) Limited Assignment Authority: The DCDR has assignment to duty authority as to the VCDR, the Division Staff Officers (SOs), and FCs within that Division (for Division matters). As Division Chief of Staff, a VCDR has assignment to duty authority with respect to each Division SO for specific Division matters only. This overlaps with the assignment to duty that automatically come with staff officer appointment in any event – i.e., the Division SOs are also covered for assignment to duty purposes by virtue of their appointment as SOs, as to matters within the scope of their particular area of activity.

- Division and District staff officers: DSOs, ADSOs and SOs are by their appointment assigned to duty as to matters within their appointed area of responsibility. No DSO, ADSO, or SO has any assignment to duty authority **with one exception**: A DSO has assignment to duty authority for the ADSOs of that particular DSO within the scope of that DSO's particular area of activity.
- Bottom Line: No assignment to duty – no coverage.

AUXILIARY CONTRACTS AND SIGNATURE AUTHORITY

- Any written agreement for an Auxiliary unit's use of non-Auxiliary premises is an official, authorized Auxiliary Agreement ONLY if there is compliance with two fundamental requirements:
 - (1) The Agreement/Contract must be signed by the Unit senior elected officer (FC, DCDR, DCO); and
 - (2) The Agreement/Contract must be reviewed and approved by a District legal officer (DSO-LP or ADSO-LP) before the Agreement is delivered to the Premises Owner.
- Only Exceptions: (i) In the absence of the FC and in "emergency" circumstances, at the specific request of the VFC, the DCDR or DCO may sign an Auxiliary Agreement for the benefit of the Flotilla; or (ii) In the absence of the DCDR and in "emergency" circumstances, at the specific request of the VCDR, the DCO may sign an Auxiliary Agreement for the benefit of the Division. [Emergency = where time is of the essence].
- Importance of Compliance: Failure to comply with those procedures can result in no "authorized" Auxiliary Agreement, which may lead to personal liability of the Auxiliary signer of the agreement to a third party (e.g., the Premises Owner).
- Unauthorized Signer: There is no authority for a DCO, DCDR or FC to delegate signature authority. If any member other than the senior elected leader signs an agreement for a unit, that person will assume personal liability in case of a lawsuit over the Agreement or the Premises, with NO federal government protection.
- District Legal Contract Review Lead Time: Fifteen (15) days. The legal officer needs to receive the Agreement at least fifteen (15) days prior to its deadline date (i.e., the date of the subject event) to allow sufficient time to review and, if necessary, negotiate, resolve differences and revise the Agreement with the Premises Owner.
- Preference as to Type of Agreement: (1) Verbal agreement is best; (2) Standard Auxiliary fill-in-the-blanks agreement (copies available from legal); (3) Lastly, the Premises Owner's form agreement.

- Indemnification Clause: Any indemnification clause placed in a contract by a Premises Owner or other third party must be replaced by our standard Federal Tort Claims Act provision (“Attachment A”). The assigned legal officer will handle that.

CONTRACT REVIEW/APPROVAL BY ADSO-LP

- Each Division is assigned a specific ADSO-LP.
- All proposed Flotilla and Division contracts and/or legal inquiries are to be sent to the assigned ADSO-LP for review and/or opinion. Do not send contracts to the DSO-LP unless it is a District agreement to be signed by the DCO.

ELECTED LEADER RESPONSIBILITIES

- Must be familiar with and adhere to Coast Guard Auxiliary rules and procedures.
- Know contract requirements, standing rules requirements, assignment to duty requirements, etc.
- Pass new information down the chain of command efficiently, effectively and in a timely manner (use e-mail).
- If failure to pass on information causes a member to lose Coast Guard benefits, the elected leader may be personally liable.

DONATIONS AND SOLICITATIONS

- Rule Number One: Check with your ADSO-LP on requirements for accepting a specific donation or making a specific solicitation.
- Solicitation/Acceptance of Money or Materials: All flotilla, division and district units are now authorized to solicit and accept money or equipment/materials from community charitable organizations, commercial firms and businesses, provided such donors are strictly local in nature.
- Free Use of Physical Space, Free Advertising and Other Free Services: Contracts and contract renewals for free space, advertising and other services, all within the accepting unit’s area of responsibility, for authorized Auxiliary activities, are not considered solicitations and therefore fall outside of the gift solicitation and/or acceptance rules.
- All Auxiliary Units may solicit and accept offers of free use of physical space, free advertising, and other services from local donors. When solicited from other than public entities or governmental organizations, a prohibited source determination and prior DCO and DIRAUX approval is required before acceptance of the donation. Check with legal officer.
- Prohibited Source Determination: To verify that the donor has no financial interest (i.e., doing business or seeking business with) the Coast Guard or Coast

Guard Auxiliary; is not conducting activities that are regulated by the Coast Guard or Coast Guard Auxiliary, etc).

- Dollar Cap/Solicited Donations: The market value of each solicited and accepted gift cannot exceed \$2,500 per transaction, and the aggregate market value of all gifts solicited from any particular source cannot exceed \$5,000 in total cumulative value in any calendar year.
- Unsolicited Donations: If the donation does not exceed \$5,000, the DCO may approve acceptance on behalf of a particular unit (Flotilla, Division, or District) after review and favorable prohibited source determination. An unsolicited donation of more than \$5,000 and up to \$50,000 is subject to the Director's approval, and an unsolicited donation of more than \$50,000 is subject to the NACO's approval.
- Use of Donations: Can be used only to promote official C.G. Auxiliary missions or in connection with official C.G. Auxiliary missions.
- Written Acknowledgment: If a donation exceeds \$250 in value, must provide donor with a written acknowledgment (with thanks) of the donation. However, even if less than \$250, a written acknowledgment (with thanks) should be sent to the donor.
- Acceptance of Offers of Free Space: Must provide donor with written acknowledgement (with thanks).

UNIT STANDING RULES

- Standardized Standing Rules templates have been drafted by the National Legal Department. All Auxiliary units must adopt the standardized format for their standing rules. The standardized templates are contained in the Chief Counsel section of the National website.
- Any questions in this regard should be addressed to the Legal Department.
- Flotilla and Division Standing Rules must be approved by the DSO-LP once drafted or revised.