

*Southern California Aquatics Federation - Swimming*

**Hearings, Appeals and Board of Review**



**December 13, 2009**



# ARTICLE I - HEARINGS AND APPEALS

## SECTION 1 - GENERAL

As hereinafter set forth, SCAF-Swimming (SCAF-SW) may censure, place on probation, suspend for a definite or indefinite period of time with or without terms of probation, fine, or expel any member of SCAF-SW, member of any committee, or any person participating in any capacity whatsoever in the affairs of SCAF-SW, who has violated any of its rules or regulations, or who aids, abets, and encourages another to violate any of its rules or regulations, or who has acted in a manner which brings disrepute upon SCAF-SW or the sport of swimming/diving. SCAF-SW may also conduct hearings on any matter affecting SCAF-SW.

## SECTION 2 - BOARD OF REVIEW

The Chairman of the SCAF-SW Board of Review, hereinafter known as the Board of Review, shall be appointed by the SCAF-SW President. A committee, consisting of the SCAF-SW President, the SCAF-SW President Elect and the Chairman of the Board of Review shall appoint other members of the Board of Review. The term of the Chairman shall be two years with no limit on the number of terms the Chairman may serve. Each case submitted to the Board of Review shall be assigned by the Chairman of the Board of Review to a panel of no less than three members to hear and decide the case. The appointment of the members of each Board of Review panel hearing a case shall be confirmed by the SCAF-SW Board of Directors.

## SECTION 3 - JURISDICTION

- 1 JURISDICTION OF THE AREA - In matters involving a member or members of only one Area and any complaint alleging violations of points 1 through 3 in the SCAF-SW Code of Ethics and Affirmations involving one or more members or prospective members of one Area, and not brought by SCAF-SW, shall be filed directly with the Area. The procedures and rules to be followed for hearing shall be as set forth under the provisions of Article II, Area Board of Review. Any appeal of the Area Board of Review's decision shall be made to the Board of Review pursuant to Article II hereof.
- 2 JURISDICTION OF SCAF-SW
  - 1 Original and Exclusive Jurisdiction - The Board of Review has original and exclusive jurisdiction to hear:
    - A Any complaint where members of SCAF-SW from more than one Area are involved; or
    - B Any complaint under points 4 and 5 of the SCAF-SW Code of Ethics and Affirmations against any member of SCAF-SW, including any athlete, coach, manager, official, member of any committee, or any person participating in any capacity whatsoever in the affairs of SCAF-SW; or
    - C Any complaint initiated by SCAF-SW, which shall be prosecuted by and may be appealed by the President.
    - D Complaints against the SCAF-SW President.
  - 2 Discretionary Jurisdiction
    - A Upon a majority vote of the SCAF-SW Board of Directors, the Board of Review may be assigned exclusive and immediate jurisdiction at any stage of any matter within the purview of this Article I when the best interests of SCAF-SW will be served thereby, or when compliance with regular SCAF-SW or Area procedures would not be likely to produce a sufficiently early decision to do justice to the affected parties.
    - B If discretionary jurisdiction is so assigned, the Board of Review shall comply in every instance with all requirements of procedural due process as set forth in this Constitution and the associated Policies and Procedures. The Board of Review may set such procedural time limitations as it may deem necessary in order to reach a decision, which will do justice to the affected parties under particular circumstances.
    - C In all cases, where SCAF-SW is not a party, the Board of Review may assess fees and costs against any party.

## SECTION 4 - AUTHORITY OF THE BOARDS OF REVIEW

- 1 The Area Board of Review shall have the authority set forth in Article 8 and Article 9 of the Constitution of SCAF-SW.
- 2 The SCAF-SW Board of Review shall have the authority to:
  - 1 Impose and enforce penalties for any violation of the rules and regulations, administrative or technical, of SCAF-SW;
  - 2 Vacate, modify, sustain, reverse or stay any decision or order properly submitted on appeal, or remand the matter for further action;

- 3 Investigate any election impropriety or cause for removal of an Area or SCAF-SW officer or SCAF-SW committee member and take corrective action;
- 4 Interpret any provision of the NFHS, CIF, CCCAA, NCAA rules and regulations to the extent not preempted by these organizations, the SCAF-SW Code of Ethics and Affirmations, if any, the SCAF-SW Constitution, other policies, rules, regulations and procedures of SCAF-SW, and other applicable laws, rules and regulations and adjudicate alleged inconsistencies and claims of supremacy and invalidity;
- 5 Review any revocation, suspension, reinstatement of membership or challenge the granting or denial of membership;
- 6 Issue such interim orders, prohibitory or mandatory in nature, as may be necessary pending a final decision of the Board of Review.

#### **SECTION 5 - PROCEDURES FOR FILING AND INVESTIGATION OF COMPLAINTS**

- 1 **FILING COMPLAINTS** - All complaints under Article I.3.2.1 A through C above shall set forth the allegations and be filed with the President of SCAF-SW, who shall promptly initiate an investigation of the matter as set forth below. Complaints against the President of SCAF-SW (Article I.3.2.1D) shall be filed with the SCAF-SW President Elect.
- 2 **INVESTIGATION OF COMPLAINTS** - In all matters (except Article I.3.2.1D) the President of SCAF-SW or his/her designee shall make the investigation and report. For complaints against the President of SCAF-SW, the President Elect of SCAF-SW shall make the investigation and report.
- 3 **DISPOSITION OF INVESTIGATION** - After the initial investigation is completed, the President of SCAF-SW (President Elect for Article I.3.2.1D) may decide to either (i) cause further investigation into the alleged violations to be conducted; (ii) seek to mediate the complaint; (iii) take interim action as set forth below. Either the President (President Elect for Article I.3.2.1D) or Chairman of the Board of Review may then decide to assign the matter to the Board of Review for hearing or jointly decide to dismiss the complaint.
- 4 **EMERGENCY HEARING** - After the initial investigation, depending on the severity of the alleged misconduct, the President may order an emergency hearing before the Board of Review to determine if the member should be suspended pending the outcome of a full hearing before the Board of Review. If an emergency hearing is ordered, the Board of Review shall conduct the hearing and publish its results within seven (7) days. Until such time as the Board of Review makes a decision, all proceedings shall be confidential and not subject to disclosure to anyone other than the parties to the review and witnesses.

#### **SECTION 6 - HEARING PROCEDURE**

- 1 **BOARD OF REVIEW**
  - 1 Matters under original jurisdiction of the Board of Review shall be instituted by a written complaint served upon the President (President Elect for Article I.3.2.1D) of SCAF-SW. An investigation of the matter will be conducted in accordance with Article I 8.5.2. If the results of the investigation warrant referring the case to a Board of Review, the President (President Elect for Article I.3.2.1D) shall send a copy of the written complaint together with the results of the investigation to the Chairman of the Board of Review.
  - 2 The Chairman will set a hearing date, which shall be not less than ten (10) nor more than twenty (20) calendar days from the date of mailing the Notice of Hearing. The Notice of Hearing will include:
    - A The name of the Respondent(s);
    - B A written statement of charges, which will be set forth in sufficient detail to give the Respondent(s) sufficient notice of the charges and facts supporting the charges;
    - C The name(s) of the Petitioner(s);
    - D The date the Response is due;
    - E The date, time and place of the hearing;
    - F The names of the members of the Board of Review;
    - G The possible penalties;
    - H The right of appeal and the time limit to file for an appeal;
    - I Any other general information; including the right to be represented by counsel, to have witnesses testify, and to submit any and all evidence which is relevant to the issues.
  - 3 The Chairman will mail the Notice of Hearing, together with a copy of the written Complaint received by the President to the parties. The Respondent(s) shall have five (5) calendar days from the date of mailing to submit a written Response to the charges. The Response shall be mailed to the Chairman and the Petitioner(s).

- 4 The Petitioner(s) shall have seven (7) calendar days from the date of mailing of the Response to submit a written Reply. The Reply shall be mailed to the Chairman and the Respondent(s).
- 5 Upon showing good cause, the Chairman may decrease or increase the time limits for any of the foregoing.
- 6 **Hearing**
  - A For hearings conducted other than through the receipt of written statements, the Board of Review shall cause a recording or transcription to be made of the proceedings.
  - B The hearing may proceed in the absence of any party who fails to be available at the appointed time and judgment shall not be reached merely because of the person=s absence. If the Board of Review determines that the hearing cannot proceed without the absent party, the Board of Review may adjourn the hearing and reschedule it for such time as the absent party can be present.
  - C The hearing shall be opened by the recording of the place, time and date of the hearing, and the presence of the Board of Review, parties, counsel, if any, and any other witnesses or observers.
  - D Each party may then present an opening statement setting forth generally the party=s view of the issues in dispute, the relief sought and what they hope to prove by the presentation of evidence.
  - E Petitioner may then present his/her claims, proofs, and witnesses, who shall be subject to cross-examination by the other party. Respondent may then present his/her claims, proofs, and witnesses, who shall also be subject to cross-examination by the other party.
  - F Petitioner may then be allowed an opportunity to rebut any testimony or evidence presented by the Respondent after the Respondent=s presentation.
  - G The Board of Review may question any person at any time. The Board of Review has the discretion to vary these procedures, but shall afford all parties a full and equal opportunity to present any material or relevant proofs.
  - H Upon request of either party or the determination of the Board of Review, the hearing may be closed.
- 7 A decision may be rendered by the Board of Review at the time of the hearing and reduced to writing within three (3) business days in which event a written decision will be mailed to the parties within five (5) business days after the hearing. Otherwise, the Board of Review shall reach a decision as soon as administratively practicable (not more than 15 business days after the conclusion of the hearing) and shall mail the written decision within five (5) business days thereafter. The written decision shall set forth the right of appeal.
- 8 The Board of Review shall have the authority to stay the enforcement of its decision during the time allowed for appeal, with the decision going into effect automatically if no appeal is perfected during the allowable period.
- 9 All mailing shall be by United States certified mail, postage prepaid, return receipt requested or overnight express delivery and also electronic transmission.

## **SECTION 7 - APPEAL AREA BOARD OF REVIEW TO BOARD OF REVIEW**

### **1 PROCEDURES**

- 1 Every appeal to the Board of Review shall be instituted by a petition served upon the President and shall be accompanied by a \$200 non-refundable filing fee payable to SCAF-SW. The Petition on appeal shall set forth the grounds for appeal, citing factual and legal issues in as much detail as possible.
- 2 The President shall send a copy of the Petition on appeal to the Respondent and Chairman of the Board of Review immediately upon receipt. The Respondent shall within thirty (30) calendar days following receipt of the Petition file a written Response with the President, the Petitioner and the Chairman. The Petitioner may within ten (10) calendar days following receipt of a copy of the Response file a written Reply. The written Response and written Reply shall be filed with the President, the opposing party(s) and the Chairman. The Chairman may decrease or increase the time limits for any of the foregoing upon request of either party and if circumstances should warrant it.
- 3 A final and binding decision shall be rendered as soon as administratively practicable (not more than 15 business days) after the final hearing by a majority of

the acting panel based on the record submitted on appeal and on evidence submitted at such hearing as may be required by the panel. A written decision shall be sent to all parties. The Board of Review may, in cases where SCAF-SW is not a party, assess costs against any party.

4 Petitions once reviewed and decided shall not be reopened for consideration by the Board of Review, except by direction of the Board of Directors of SCAF-SW, or upon showing of sufficient cause to the Chairman of the Board of Review.

5 The President and the Chairman of the Board of Review shall each have the power and authority, acting alone, to deny or reject an appeal when, in their respective judgment, the appeal is without merit or was not filed by a real party in interest.

6 The appeal to the Board of Review shall be on the basis of the record and written briefs filed with it, unless the Board of Review shall at its discretion order a de novo hearing. In the event the Board of Review orders a de novo hearing, the hearing procedure shall be as set forth in Article II .6.

## **SECTION 8 - APPEAL BOARD OF REVIEW TO BOARD OF DIRECTORS**

### **1 PROCEDURE**

1 Any real party in interest, including any officer of SCAF-SW or the President, may appeal any decision of the Board of Review as follows:

a Matters heard by the Board of Review pursuant to its original jurisdiction, heard de novo or heard pursuant to its discretionary jurisdiction, may be appealed to the Board of Directors within thirty (30) calendar days of the mailing of its written decision.

b Matters heard by the Board of Review on appeal from an Area Board of Review, other than any matter included in Article I.1.1a, shall be heard only upon the granting of a petition from a real party in interest. Unless a majority of the President, President Elect and the Chairman (or their respective designees) shall determine, based on the record below, that an appeal will have sufficient merit and be of such general application as to justify an appeal to the Board of Directors, the petition shall be denied and the matter shall be final, with no further appeal allowed.

2 The Petition on appeal is to be served upon the President and shall be accompanied by a \$300 non-refundable filing fee payable to SCAF-SW.

3 The Petition shall set forth the grounds for appeal, citing factual and legal issues in as much detail as possible.

4 Unless the Board of Directors by majority vote decides otherwise, the review by the Board of Directors shall be on the basis of the record and written briefs and shall not be a de novo hearing. The Board of Directors, or its authorized representative, may establish a hearing panel consisting of at least five members to hear any appeal, including appeals conducted as de novo hearings. The decision of the hearing panel shall be final with the same force and effect as if the full Board of Directors heard the matter.

5 SCAF-SW Board of Directors may, in cases where SCAF-SW is not a party, assess fees and costs against the losing party.

## **SECTION 9 - FULL FAITH AND CREDIT**

1 Final decisions rendered by any Area shall, when applicable, be recognized and fully enforced in all other Areas and SCAF-SW.

## **SECTION 10 - STANDARDS OF CONDUCT FOR MEMBERS OF BOARDS OF REVIEW AND APPELLATE BODIES**

1 Standards of Conduct - Members of the Board of Review panels and Board of Directors appeals panels (collectively. AReview Members@) shall:

1 Uphold the integrity and independence of the Board of Review or Appellate Body;

2 Avoid any impropriety or the appearance of impropriety in connection with service as a Review Member and swimming/diving-related activities generally; and

3 Perform the duties of a Review member impartially and diligently.

2 Grounds for Disqualification - Review Members shall disqualify themselves from participating in any matter pending before the Board of Review or Board of Directors:

1 In which their impartiality might reasonably be questioned;

2 Where they have a personal bias or prejudice concerning a party in the matter pending or have personal knowledge of disputed evidentiary facts concerning the pending matter (other than knowledge obtained as a Review Member or known generally to a substantial portion of the membership of SCAF-SW);

- 3 Where they or a member of their household are a party or are likely to be a material witness in the pending matter;
  - 4 Where they or a member of their household have an interest that could be substantially affected by the outcome of the proceeding; or
  - 5 Where they or a member of their household have served or are serving as counsel in the pending matter or are members of a law firm that served or is serving as counsel in the pending matter.
- 3 Disqualification by Member - Review Members shall disqualify themselves as soon as they become aware of facts that give rise to the duty to do so by giving notice to the Chairman, or in the case of the Chairman, the President.
  - 4 Disqualification/Disqualification Requested by Party - By written notice to the Presiding Officer of the review board panel or the Board of Review Chairman, or, in the case in which the Chairman is the subject of the notice, the President, any party may request that a Review Member disqualify himself or be disqualified from serving on the pending matter stating the reasons for disqualification or disqualification with specificity. Such notice shall be given at least ten (10) business days prior to the scheduled date of the hearing on such matter or if the party sustains the burden of proving good cause for the lateness of the notice, as soon as reasonably possible after discovery of the reason for the need for disqualification. The named Review Member shall reach a decision on the matter and notify the Board of Review Chairman of that decision within five (5) business days of receipt of the party's notice. If the member's decision is not in favor of disqualification, then the Chairman may, but is not required to, disqualify the member from participating in the pending matter. If there is no disqualification, the hearing shall be conducted and the party giving the notice may appeal the disqualification decision, together with the hearing decision, pursuant to Section I.8.1.

## **ARTICLE II - AREA BOARD OF REVIEW, HEARINGS AND RIGHT OF APPEAL**

### **SECTION 1 - DEFINITIONS FOR ARTICLE II**

When used in this Article II, the following terms shall have the meanings indicated in this Section and the definitions of such terms are equally applicable to both the singular and plural forms. Where a cross reference to another Article of the Constitution appears within the definition, the definition is qualified by the more complete definition found in that Section.

- A "Answer" shall mean the written response to a Protest and Notice filed in accordance with Section 9.5 and served in the manner prescribed in Section 2.9.
- B "Chairman" when standing by itself shall mean the Chairman of the Board of Review.
- C "Notice" shall mean the writing addressed to the Respondent advising that the Respondent has been named a respondent in a Protest and served in accordance with Section 2.9. The Notice sets the hearing date and procedures and establishes the schedule to be followed leading to the hearing, among other things.
- D "Presiding Officer" shall mean the Chairman or another member of the Board of Review designated by the Chairman to preside at a particular hearing or hearings. Where applicable, the term shall include an attorney so designated pursuant to Section 2.2.K.
- E "Protest" shall mean a written complaint filed in accordance with Section 2.5 by an Individual SCAF-SW (SCAF-Swimming) Member or applicant for such status or, with regard to conduct occurring in the Area, a member of another Area, against a member of SCAF-SW or a constituent element, officer or agent of SCAF-SW. The Protest may relate to an applicant's having been denied membership in SCAF-SW or a member's alleged infraction against its responsibilities under Article IV and/or Code of Ethics or about a decision or action by someone acting under the authority of SCAF-SW or, with regard to conduct in the Area or another Area.
- F "Protestor" shall mean the individual SCAF-SW Member that has filed a Protest with the Board of Review.
- G "Rebuttal" shall mean the written response to an Answer by a Protestor filed in accordance with Section 2.5 and served in the manner prescribed in Section 2.9.
- H "Respondent" shall mean the person against whom a Protest has been filed with the Board of Review or who may be affected by a decision of the Board of Review regarding the Protest.
- I Board of Review refers to Area Board of Review.

### **SECTION 2 - BOARD OF REVIEW ORGANIZATION**

- A Establishment. The Board of Review of the Area shall be independent and impartial.
- B Members. The Board of Review shall have at least three (3) members. The Area Board of Directors may increase the number of members by resolution up to a maximum of five (5) members.
- C Election; Term of Office; Eligibility.
  - 1 Election and Appointment. The Area shall annually elect five (5) members of the Board of Review. The Area President shall appoint additional members as needed.
  - 2 Term of Office. The term of office shall be one year. Each member shall assume office upon election or appointment, and shall serve until a successor is chosen, provided, however, that a member shall not leave office until a decision has been made by the Board of Review in all cases in which the member is a participant. A member shall not be a participant in any cases commenced after the expiration of his/her term.
  - 3 Eligibility. Each member of the Board of Review shall be an individual Member of SCAF-SW. In no case shall elected members of the Board of Directors constitute a majority of the Board of Review.
- D Chairman and Secretary Elected By Board of Review. The Chairman shall be elected annually by a majority vote of the members of the Board of Review. The Board of Review shall elect a Secretary of the Board of Review.
- E Meetings. The Board of Review shall meet at least once annually to conduct business as may be necessary to achieve the purposes of the Board of Review and efficiently exercise its duties and powers. Other meetings may be called by the Chairman or any two members.
- F Participation through Communications Equipment. Members of the Board of Review may participate in a meeting or hearing of the Board of Review, and any hearing may be conducted, in whole or in part, through conference telephone or similar equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by these means shall constitute presence in person at such a meeting or hearing.



- G** Quorum. A quorum for any meeting of the Board of Review shall be more than fifty percent (50%) of its members.
- H** Resignations. Any member of the Board of Review may resign by orally advising the Chairman or by submitting a written resignation to the Chairman or the Area President specifying an effective date of the resignation. In the absence of a specified effective date, any such resignation shall take effect upon the appointment or election of a successor.
- I** Incapacities And Vacancies.
- 1** Office of Chairman. In the event of a vacancy in the office of the Chairman, or of the Chairman's temporary or permanent incapacity, the Secretary shall become the Acting Chairman until an additional member is appointed by the Area President and an election can be held at a meeting of the Board of Review to fill the remaining term, if any, of the former Chairman, or until the Chairman ceases to suffer from any temporary incapacity. If the Chairman is going to be absent from the Territory, the Chairman may, but is not obligated to, designate the Secretary as Acting Chairman for the duration of the absence.
  - 2** Presiding Officer. In the event of the death, resignation or permanent incapacity of a Presiding Officer, the Chairman shall appoint another member, an alternate member or an attorney to serve until the completion of the hearings assigned to that Presiding Officer. Generally, that appointment should have no impact on those pending hearings or re-hearings other than delay for the benefit of the new Presiding Officer. The Chairman or the new Presiding Officer may make such other orders as are in the interests of fairness, justice and the sport of swimming/diving. In the case of a temporary incapacity of a Presiding Officer, the Chairman shall have discretion regarding appointment of a new Presiding Officer, a delay of the hearing or rehearing or such other order as may serve the interests of fairness and justice of the proceeding.
  - 3** Other Members. In the event of a death, resignation or permanent incapacity of a member of the Board of Review, the replacement member shall be appointed by the Area President.
  - 4** Determination of Vacancy or Incapacity. The determination of when a membership on the Board of Review becomes vacant or a member becomes incapacitated shall be within the discretion of the Board of Review, subject to any subsequent action by the Area Board of Directors. The determination as to when the Chairman is temporarily incapacitated shall be made, where the circumstances permit, by the Chairman and otherwise shall be within the discretion of the Board of Review, subject to any subsequent action by the Area Board of Directors.
  - 5** Replacement of Members. In the event there are any vacancies on the Board of Review created by resignation or otherwise, the Area President shall appoint a replacement to complete the term of the former member.
- J** Extensions of Time. The time by which any act is required to be taken pursuant to this Article II may be extended or foreshortened by the Chairman, or the Presiding Officer for a particular hearing, for good cause. A party's request for an extension of time prior to the time established without regard to the requested extension will be accorded greater deference than a request made later. The time, date and location of any hearing may be changed by the Chairman or the Presiding Officer for a particular hearing on his or her own initiative, as required by the interests of the Board of Review or in the interests of justice.
- K** Advice; Attorney as Presiding Officer.
- 1** Legal and Other Advice. Where appropriate or helpful, the Chairman, Presiding Officer or Board of Review may consult an attorney (who need not be a member of SCAF-SW or the Board of Review) on a pro bono basis regarding any issue raised by a proceeding. The Board of Review may not retain an attorney without the consent of the SCAF-SW Board of Directors.
  - 2** Attorney as Presiding Officer. The Board of Review or the Chairman may retain an attorney on a pro bono basis (who need not be a member of SCAF-SW or the Board of Review) to act as Presiding Officer at any hearing where it is appropriate or helpful. A Presiding Officer who is not a Board of Review member shall not participate in the deliberations of the Board of Review or the designated panel, shall not be counted in determining the existence of a quorum and shall not have a vote.
  - 3** Attorney's Fees and Expenses. Prior to retaining an attorney on any basis requiring the payment of fees to the attorney (the payment of expenses to an attorney providing services at no charge shall not be considered as a payment of fees for this purpose), the Chairman or the Presiding Officer shall obtain the authorization of the SCAF-SW Board of Directors.
- L** Code Of Conduct For Members Of Board Of Review; Disqualification.

- 1 Code of Conduct. Members of the Board of Review shall:
  - a Uphold the integrity and independence of the Board of Review;
  - b Avoid any impropriety or the appearance of impropriety in connection with service as a Board of Review member and swimming/diving-related activities generally; and
  - c Perform the duties of Board of Review membership impartially and diligently.
- 2 Grounds for Disqualification. Members of the Board of Review shall disqualify themselves from participating in any matter pending before the Board of Review:
  - a In which their impartiality might reasonably be questioned;
  - b where they have a personal bias or prejudice concerning a party in the matter pending before the Board of Review or have personal knowledge of disputed evidentiary facts concerning the pending matter (other than knowledge obtained as a Board of Review member);
  - c Where they or a member of their household are a party or are likely to be a material witness in the pending matter;
  - d Where they or a member of their household have an interest that could be substantially affected by the outcome of the proceeding; or
  - e Where they or a member of their household have served or are serving as counsel in the pending matter or are members of a law firm that served or is serving as counsel in the pending matter.
- 3 Disqualification by Member. Board of Review members shall disqualify themselves as soon as they become aware of facts that give rise to the duty to do so by giving notice to the Chairman, or in the case of the Chairman, the Secretary.
- 4 Disqualification/Disqualification Requested by Party. By written notice to the Presiding Officer or the Chairman, or, in the case in which the Chairman is the subject of the notice, the Secretary, any party may request that the members disqualify themselves or be disqualified from serving on the pending matter stating the reasons for disqualification or disqualification. Such notice shall be given at least ten (10) business days prior to the scheduled date of the hearing on such matter or later if the party sustains the burden of proving good cause for the lateness of the notice. The named member shall reach a decision on the matter and notify the Chairman or the Vice-chairman of that decision within five (5) business days of receipt of the party's notice. If the member's decision is not in favor of disqualification, then the Chairman or the Vice-chairman may, but is not required to, disqualify the member from participating in the pending matter. If there is no disqualification, the hearing shall be conducted and the party giving the notice may appeal the disqualification decision, together with the hearing decision, pursuant to Section 2.8.

### **SECTION 3 - GENERAL JURISDICTION**

- A Administrative Powers. The Board of Review shall have the powers and the duty to:
  - 1 Administer and conduct the affairs and achieve the purposes of the Board of Review,
  - 2 establish policies, procedures and guidelines,
  - 3 Elect or provide for the appointment of other officers, agents, committees or coordinators to hold office for terms, and to have the powers and duties, specified,
  - 4 call regular or special meetings of the Board of Review,
  - 5 subject to the approval of the SCAF-SW Board of Directors, retain attorneys, agents and independent contractors and employ those persons which the Board of Review may determine are appropriate, necessary or helpful in the administration and conduct of its affairs, and
  - 6 As may otherwise be appropriate, necessary or helpful in the administration and conduct of its affairs, the achievement of its purposes and the efficient exercise of its duties and powers.
- B Investigative And Judicial Powers. The Board of Review may investigate and conduct hearings, make and publish decisions and orders with regard to any matter affecting Area, its status or conduct as an Area or the administration of the sport of swimming/diving in the territory which involves:
  - 1 Area and (i) a member or members of Area or (ii) a member or members of another Area solely with respect to conduct or events occurring within the Territory or a combination of persons described in clauses (i) and (ii), or
  - 2 only a member or members of Area.

- 3 The jurisdiction of the Board of Review is limited in the case of matters described in section 1.3.2.1 of the SCAF-SW Constitution (with regard to the original and exclusive jurisdiction of the SCAF-SW Board of Review) and may be further limited to the extent provided in an order issued pursuant to section 1.3.2.2 of the SCAF-SW Constitution (pertaining to certain discretionary jurisdiction of the SCAF-SW Board of Review).
- C **Exercise Of Powers And Decisions.** Except for authority and power granted to the Chairman or the Presiding Officer, the exercise of the authority and powers of the Board of Review and the decision of matters which are the subject of a hearing shall be decided by a majority vote of the membership of the Board of Review who participated in the matter. The views of any dissenters shall be included in the record of the proceeding if requested by the dissenters. The exercise of the Board of Review's authority and power shall be solely in its discretion and the interests of justice and the sport of swimming/diving. However, the Board of Review shall exercise its power in response to a timely Protest filed with it, subject, in appropriate circumstances, to the power and discretion of the Chairman or Presiding Officer to dismiss a Protest with permission to refile for a stated period. In connection with any preliminary investigation, the Chairman or Presiding Officer may offer the services of a Board of Review member to act as a mediator or similar positions under other alternative dispute resolution mechanisms. Any member who acts as a mediator or in a similar position shall not otherwise participate in the matter.
- D **Timeliness Of Protest.** The Board of Review need not exercise its jurisdiction with respect to a Protest the subject matter of which occurred, or concerns or is founded on events which occurred, more than thirty (30) days prior to the date the Protest is received (as determined under Section 8.9), or in the case of subject matter that relates to a conviction, or actions which could be the basis of a conviction, for a crime (including felony, misdemeanor and lesser crimes) involving sexual misconduct, child abuse, violation of a law specifically designed to protect minors or similar offenses, more than five (5) years prior to that date. A determination not to exercise its jurisdiction as a result of the untimeliness of a Protest may be the subject of a request for rehearing and, thereafter, appeal to the, SCAF-SW Board of Review and the SCAF-SW Board of Directors pursuant to Section 1.8.
- E **Filing Fees.** The SCAF-SW Board of Directors may impose a schedule of generally applicable fees to be collected at the time a Protest, Request for a Rehearing or Request for Formal Hearing following an Emergency Hearing is filed with the Board of Review. If, on its own initiative or upon written request, the Board of Review determines it to be in the interest of justice and the sport of swimming/diving, the filing fee may be waived on a case-by-case basis.
- F **Power Of Board To Devise Remedies And Impose Penalties.**
- 1 **Remedies and Penalties.** The Board of Review, after conducting such hearings as it may determine to be necessary or helpful, may, among other remedies:
- a dismiss the Protest with or without permission to refile;
  - b censure or fine;
  - c establish a period of probation;
  - d prohibit or mandate future actions, inaction or conduct;
  - e determine the results of, or require a rerun of, any election held by Area or any constituent element thereof;
  - f vacate, modify, sustain, reverse, remand or stay any decision or order of a smaller panel of the Board of Review, the Area Board of Directors, any officer, division or committee or official of Area;
  - g interpret any provision of the NFHS, CIF and NCAA rules and regulations to the extent not pre-empted by these organizations, the SCAF-SW Code of Ethics, if any, the SCAF-SW Constitution, other policies, rules, regulations and procedures of SCAF-SW, and other applicable laws, rules and regulations and adjudicate alleged inconsistencies and claims of supremacy and invalidity;
  - h except where a remedy has been imposed by the SCAF-SW Board of Directors or the SCAF-SW Board of Review, deny, grant, suspend, terminate or restore membership in Area and SCAF-SW for a definite or indefinite period of time, with or without terms of probation, or expel any Individual Member of SCAF-SW, including any administrator, coach, trainer, manager, meet director, official, officer, Board Member, chairman or member of any committee or sub-committee;
  - i prohibit for a definite or indefinite period of time the participation by any individual member or non-member volunteer or other person in any capacity whatsoever in the affairs of SCAF-SW;

- j assess costs, including any filing fee and attorneys fees and expenses, to the prevailing party or refund any filing fee paid by the prevailing party; and
  - k any combination of any of the foregoing or any other remedies deemed appropriate in the circumstances.
- 2 Preliminary Hearing and Temporary Orders. In appropriate cases, the Board of Review, after an initial investigation and/or a preliminary hearing, may make in its discretion temporary orders for the good of the sport of swimming/diving. The temporary order may encompass any remedy or order permissible in a final decision and may include, by way of example, suspending membership, granting the right to participate or coach in a competition, or offering or ordering the parties to attempt to resolve their differences pursuant to mediation or other alternative dispute resolution mechanisms prior to any hearing before the Board of Review. These orders may be made effective pending full hearings by the Board of Review or the conclusion of administrative or judicial proceedings of other bodies addressing the same or similar issues or on other terms as determined by the Board of Review. Instances in which such temporary orders might be made include cases in which a member has been indicted or otherwise formally charged with or accused of committing a crime (including felony, misdemeanor and lesser crimes) involving sexual misconduct, child abuse, a violation of a law specifically designed to protect minors or similar offenses. Temporary orders may not be separately appealed prior to the decision being issued in the proceeding unless the Chairman or the Chairman of the SCAF-SW Board of Review in their discretion grant permission to an aggrieved party to appeal the temporary orders prior to the final Board of Review decision in the matter.
  - 3 Grounds for Imposition. The Board of Review may fashion remedies and orders and impose penalties with respect to any Individual Member or non-member volunteer of SCAF-SW (i) who has violated any of the regulations, rules, policies or procedures of SCAF-SW, NFHS, CIF or NCAA, including any of the responsibilities of membership set forth in Article IV, (ii) who aids, abets, instigates or encourages another to violate any of such regulations, rules or policies, (iii) who is responsible for any such violation by another under Article IV, (iv) who has been convicted of a crime (including felony, misdemeanor and lesser crimes) involving sexual misconduct, child abuse, violation of a law specifically designed to protect minors or similar offenses, or who is found by the Board of Review to have committed actions which would be the basis for a conviction, or (v) who has acted in a manner which has brought, or may bring, into disrepute Area, SCAF-SW or the sport of swimming/diving.
  - 4 Power to Impose Conditional Remedies and Penalties. The Board of Review may stay its decision, in whole or in part, subject to specified conditions, with the decision taking effect automatically if such conditions occur.

#### SECTION 4 HEARINGS GENERALLY

##### A OPEN HEARINGS

- 1 Hearings Conducted by Chairman or Presiding Officer. Hearings of the Board of Review shall be conducted by the Chairman or a Presiding Officer designated by the Chairman.
- 2 Quorum of Board of Review. At least a majority of the Board of Review must be present at all hearings and, in the event of multiple hearings in a case, a majority comprised of the same Board members must be present at each such hearing.
- 3 Permissible Hearing Formats. A hearing before the Board of Review may be conducted through the receipt of the procedural documents and other written statements, or a hearing at which the parties may appear in person or by means of communications equipment and testimony may be taken and other forms of pertinent information presented in addition to oral argument by the parties or their counsel, as determined by the Chairman or Presiding Officer. In the discretion of the Chairman or the Presiding Officer, the hearing may be conducted in part through written means and in part by testimony and oral argument.
- 4 Right to Counsel. The Protestor, the Respondent and any other person participating in a hearing conducted by the Board of Review shall be entitled to be represented by counsel of their choice at their own expense.
- 5 Rules of Evidence. Judicial rules regarding admissibility of evidence shall not apply to the Board of Review.

B Closed Hearings. Any hearing, or a part thereof, shall be closed to everyone except members of the Board of Review, the Presiding Officer, an attorney advising the Presiding Officer, the

Protestor, the Respondent, any other party and their counsel at the request of any of the parties and may be closed at the discretion of the Chairman or the Presiding Officer as being in the best interests of justice and the sport of swimming/diving. If a hearing is closed, the Board of Review may in its discretion direct the participants to keep the proceedings and the decision confidential and all or parts of the record of the hearing to be kept confidential by Area and SCAF-SW.

- C Accelerated Hearing Schedule. With the agreement of all parties to a hearing, the Chairman, or the Presiding Officer for the hearing, may order an accelerated hearing schedule in the interest of justice and the sport of swimming.

## SECTION 5 - HEARING PROCEDURES

The procedures to be followed in connection with all hearings shall be as follows:

- A. Formal Hearing.
- 1 Protest. The Protestor shall submit to the Chairman of the Board of Review a written statement setting forth a description of the action, inaction or conduct that is believed to have been improper or incorrect, and the name of the person or group believed to have acted improperly or the circumstances believed to require answers, explanation or clarification. This written statement becomes the Protest under Section 2.1. The Protest shall be accompanied by any filing fee due under Section 2.3 or by an application for waiver of the fee.
  - 2 Notice. Each Respondent shall be given a written notice of the Protest. The Notice shall be sent to each Respondent's last known address (determined in accordance with the provisions of Section 2.9) by certified or express mail, return receipt requested, by Federal Express, signature required, or by personal service and electronic transmission. If the Respondent is Area or an officer, Board Member, committee or subcommittee chair, the Notice shall be also given to the President. The Notice shall be given as soon as practical following the conclusion of any preliminary investigation made by or on behalf of the Board of Review, but in no event later than five (5) business days after the receipt of the Protest by the Chairman. The form of Notice shall include:
    - a a statement in reasonable detail of the charges against each Respondent, or of the circumstances that are believed to require answers, explanation or clarification. A copy of the Protest received by the Board of Review, if any, shall be attached to the Notice;
    - b a statement that the Respondent has the right to have counsel of his own choice to represent him, at his own expense, at any hearing;
    - c a description of the type of hearing to be held. In the case of an in-person hearing, the Notice shall request each Respondent to appear before the Board of Review with counsel and witnesses, if any;
    - d a date, time and location at which the hearing will be held. The date of the hearing shall be not less than ten (10) days nor more than twenty (20) days after the date of transmission of the Notice;
    - e a request that each Respondent answer in writing all of the charges set forth in the Notice. The Notice shall state that this answer is to be delivered at least five (5) business days prior to the date of the hearing, to the Chairman designated in the Notice, at the specified address, with a copy to the Protestor and the Protestor's counsel, if any, and anyone else specified in the Notice at the addresses designated in the Notice with delivery in accordance with Section 2.9; and
    - f a statement of the right of appellate review in the event the decision is rendered against the Respondent.
  - 3 Answer by Respondent. Each Respondent's response to the Notice and Protest shall be in writing and delivered to the Chairman, at least five (5) business days prior to the date of the hearing, with a copy to the Protestor and his counsel and anyone else specified in the Notice at the addresses designated in the Notice. This written statement becomes the Answer under Section 2.1.
  - 4 Rebuttal by Protestor. The Protestor may, but is not required to, offer a rebuttal to the Respondent's Answer. Any rebuttal shall be in writing and delivered to the Presiding Officer designated in the Notice, at least five (5) business days prior to the date of the hearing, with copies to each Respondent and his counsel at the addresses specified in the Answer and to anyone else specified in the Notice at the addresses designated in the Notice. This written statement becomes the Rebuttal under Section 2.1. The Rebuttal shall be delivered in accordance with Section 2.9.
  - 5 Conduct of Hearing.

- a Generally. Hearings shall be conducted in an orderly fashion, but without regard for the formalities of traditional court room procedures. The hearing shall be conducted in a manner conducive to the establishment of the truth and the interests of fairness, justice and the sport of swimming/diving. For hearings conducted other than entirely through the receipt of written statements, the Board of Review shall cause a recording or transcription to be made of the hearing. No record of the deliberations of the Board of Review need be kept and, if kept, shall not be available to anyone other than the members of the Board of Review.
  - b Absence of a Party. The hearing may proceed in the absence of any party who fails to be available at the appointed time and judgment shall not be deferred merely because of that person's absence.
  - c Sequence. The hearing shall be opened by the recording of the place, time and date of the hearing and the presence of the members of the Board of Review, the parties, counsel, if any, and any other witnesses or observers. Each party (Protestor first, Respondent second) may then present a brief opening statement setting forth the party's view of the issues in dispute, the relief sought and what they hope to prove by the presentation of evidence. The Protestor's claims, evidence and witnesses shall be presented. The Respondent's defenses, claims, evidence and witnesses shall then be presented. In the discretion of the Presiding Officer, the Protestor may then be allowed to rebut any testimony or evidence presented by the Respondent after the Respondent's initial presentation. In the discretion of the Presiding Officer, the Respondent may be permitted to rebut any testimony or evidence presented by the Protestor during the Protestor's rebuttal presentation. Finally, each party may, at the discretion of the Presiding Officer, make a brief summation of that party's case.
  - d Procedures. The Presiding Officer shall have wide discretion to follow procedures which promote the interests of justice, the sport of swimming/diving and efficiency, but in doing so shall afford all parties a full and substantially equal opportunity to present any material or relevant evidence.
- 6 Decision of Board of Review. The decision of the Board of Review may be rendered at the time of the hearing and, if not so rendered, as soon as possible thereafter and in no event more than ten (10) business days after the conclusion of the hearing. The decision shall include findings of facts and a statement of remedies ordered or penalties imposed, if any, and a statement setting forth the rights of the parties to appeal the decision. The decision shall be in writing, or in case of a decision rendered at the hearing, reduced to writing promptly, and delivered to the Protestor, each Respondent, their respective counsel, any other party to the proceeding, the SCAF-SW President, the Area President, and the Chairman of the SCAF-SW Board of Review in accordance with Section 2.9.

**B Emergency Hearing.**

- 1 Reasons for Emergency Hearing. When compliance with the formal hearing procedures would be likely not to produce a sufficiently early decision to provide justice to the affected parties or to be in the best interest of the sport of swimming/diving, the Board of Review is authorized to summarily hear and decide any matter relating to a scheduled competition or other matter of similar urgency.
- 2 Notice of Emergency Hearing. Each Respondent shall be given such notice of the hearing as time and circumstances may reasonably dictate. The notice may be oral or in writing, and shall substantially comply with the notice requirements set forth in Section 2.5.A.2 insofar as the emergent nature of the issue permits.
- 3 Conduct of Emergency Hearing. The hearing may be conducted at any location likely to contribute to expeditious resolution of the Protest, including the site of a swimming competition, but in any event under such circumstances so as to fairly protect the right of procedural due process of the Respondent. All or some of the participants in the hearing may participate by telephone conference equipment. If at least three regular members of the Board of Review are not available due to time constraints, the Chairman or the Area President is authorized to appoint one or more Individual Members to serve as the Board of Review solely for the purpose of conducting this emergency hearing. The hearing shall substantially comply as much as reasonably possible with the hearing procedures set forth in Section 2.5.
- 4 Decision of Board of Review. The decision of the Board of Review shall be rendered at the time of the hearing or as soon as possible thereafter in keeping with the

emergency circumstances. The decision shall include findings of facts and a statement of remedies ordered, if any, and a statement of the right to request a subsequent formal hearing. The decision shall be in writing, or in case of a decision rendered orally at the hearing, reduced to writing within ten (10) business days thereafter and delivered to the Protestor, the Respondent, their counsel, any other parties to the proceeding, the Chairman, the Area President and the SCAF-SW President, the Chairman of the SCAF-SW Board of in accordance with Section 2.9.

- 5 Right to a Subsequent Formal Hearing. If either the Protestor or the Respondent shall deliver to the Chairman a written request for a further hearing within ten (10) business days of the date of receipt of the written decision resulting from the emergency hearing, a formal hearing shall be held as a new proceeding in accordance with Section 2.5, as though the emergency hearing had not taken place. Failure to make this request in a timely manner shall preclude the aggrieved party from making an appeal as provided in Section 2.8.
- C Stay Of Decision Pending Appeal. The Board of Review shall have the authority and discretion, but not the duty, to stay its decision, in whole or in part, subject to specified conditions, during the time allowed to demand a further hearing after an emergency hearing, a rehearing or to appeal as provided in Section 2.9, with the decision going into effect automatically if those conditions occur or if no demand or appeal is filed during the allowable period or at such time as a perfected appeal is terminated without the decision being modified by the appellate authority.
- D Extensions Of Time. The time within which the Notice required by this Article 9 must be transmitted may not be extended without the consent of the Protestor.

#### **SECTION 6 - FINALITY OF BOARD OF REVIEW DECISIONS**

Except as otherwise provided in this Article 2 with regard to appeals and emergency hearings, the decision of the Board of Review shall be final in all cases.

#### **SECTION 7 - FULL FAITH AND CREDIT TO BOARD OF REVIEW DECISIONS**

Final decisions of the Board of Review of another Area or the SCAF-SW Board of Review shall, where relevant and necessary, be recognized and fully enforced by Area. Those final decisions may not be attacked or reopened in any proceeding before the Area Board of Review other than one seeking enforcement of those decisions.

#### **SECTION 8 - APPEAL FROM BOARD OF REVIEW DECISIONS**

Any person, including the Protestor and the Respondent, having an actual, direct interest in any matter decided by the Board of Review under this Article may appeal the decision first to the SCAF-SW Board of Review, and then to the SCAF-SW Board of Directors. An appeal must be taken within thirty (30) business days from the date of the written notice of the decision of the Board of Review. The appeal to the SCAF-SW Board of Directors and then to the SCAF-SW Board of Directors must be in writing, timely filed, and accompanied by the appellate filing fee established by SCAF-SW Board of Directors as the case may be. An appeal to the SCAF-SW Board of Review or SCAF-SW Board of Directors shall be in writing to the SCAF-SW President. The SCAF-SW Board of Review shall then conduct a hearing de novo in a manner consistent with Section 2.5. An appeal from a decision of the SCAF-SW Board of Review to the SCAF-SW Board of Directors must be taken within thirty (30) days of the written notice of decision. Upon timely request to the President of SCAF-SW and upon a showing of good cause, the time for appeal from the decision of the Board of Review may be extended.

#### **SECTION 9 NOTICE TO HEARING PARTICIPANTS, TRANSMISSION OF DOCUMENTS AND DETERMINATIONS OF TIMELINESS**

- A. Notice To Hearing Participants Who Are Members Of SCAF-SW.
  - 1 SCAF-SW Members Generally. Except for the written notice of Protest, all notices or other hearing-related documents shall be mailed by first class mail to a member of SCAF-SW at the member's last known address as shown in the SCAF-SW registration records or to such other address as directed by the member in writing. The written notice of Protest shall be sent to the Respondent in the method provided in Section 2.5.A(2).
  - 2 Minors. In the case of notices, other than the written notice of Protest, directed to persons less than eighteen (18) years of age on the date of the notice, a second copy shall be sent by first class mail to the child's parent or guardian at the same address or such other address as can reasonably be ascertained. Emancipated minors shall be given notice as provided in Section 2.9.A(1). The written notice of Protest shall be sent to the child's parent or guardian at the same address as the

child or such other address as can reasonably be ascertained in the method provided in Section 2.5.A(2).

- B**     **Methods Of Transmission Of Hearing Related Documents.** With the exception of the written notice of Protest, all documents transmitted pursuant to this Article 9 shall be mailed by first class mail to each of the parties, their respective counsel, if any, the Presiding Officer and anyone else specified in the Notice, to the address shown in the SCAF-SW records, if any, or to the address specified by the recipient in writing.
- C.**     **Notice Deemed Received.** Notice will be deemed received by the recipient when there is actual receipt or five (5) business days after notice is sent as provided in Section 2.9A.

(Amended 1/21/07 as Article 8 & 9 to the Constitution)

(Amended 12/13/09 as Articles I & II in own book)



# CODE OF ETHICS AND AFFIRMATIONS FOR SCAF - SWIMMING OFFICIALS

## Declaration of policy:

Schools have entrusted us to assist them in the educational development of their youth through athletics. The proper operation of such a process requires that officials be independent, impartial and responsible with the people they interact. These instructions are with both the public and fellow officials. The purpose of the Code of Ethics is to establish guidelines for ethical standards of conduct for all officials. The Code of Ethics does not exhaust the moral and ethical considerations of professional behavior and attitude. Compliance with this Code of Ethics depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion, then finally, upon enforcement through disciplinary proceedings.

## Affirmations:

1. I devote time, thought and study to maintain the highest standards of our sport. I strive to perform in as professional a manner as possible.
  - a. By acting within the governing rules and mechanics of competition;
  - b. By acting in a spirit of good sportsmanship;
  - c. By having a protective rather than punitive attitude toward enforcement of the rules;
  - d. By being impartial;
  - e. By maintaining my focus on observation, not expectation, nor anticipation, nor preference;
  - f. By insuring the conditions of a competition are fair and equitable for all participants.
2. I strive to work with fellow officials in a spirit of harmony and cooperation. I am respectful and courteous of others, cognizant that differences of opinion and interpretation may occur. I critically evaluate my performance after each competitive session as a step toward improvement and growth.
3. I resist every temptation and outside pressure to use my position as an official to benefit myself. Under all circumstances, I avoid promoting the special interests of any person or group of people other than the athletes we serve. I recognize that it is important to honor contracts regardless of possible inconvenience or financial loss.
4. I do not use illegal or recreational drugs or alcohol immediately before, during or immediately after any competition session where I am working or in attendance as an observer.
5. I have not engaged nor will I ever engage in any behavior that utilizes the influence of my position to encourage inappropriate sexual intimacy with any minor, athlete, coaching staff or any facility staff.

I agree to abide by the SCAF - SWIMMING Policies and as an official that I am an independent contractor and therefore not covered by the Workers Compensation Statues. I agree that it is my responsibility to comply with the appropriate statues. I also agree to abide by the Code of Ethics. Failure to follow this policy may result in my termination with SCAF - SWIMMING. Further, I acknowledge that any training received does not guarantee employment from SCAF - SWIMMING as I am an independent contractor.

Signed: \_\_\_\_\_ Date: \_\_\_\_\_