Insurance Information for Chapters

CAVEAT: The following discussion does not constitute legal advice. CGJA does not give legal advice, and this should not be deemed as such.

CGJA does not carry insurance that would provide indemnity or defense for any litigation against a chapter or any individual related to a chapter’s activities. Chapters and chapter members need to be clear that their own conduct (other than within very narrow parameters including acting within the scope of one’s limited authority) is more likely than not unprotected. Each chapter should determine if its activities are such that the chapter should purchase General Liability or Directors’ and Officers’ Liability coverage.

Under the California Penal Code, a seated grand jury is extended a certain level of immunity from liability as it pursues its responsibilities. The protections afforded the sitting grand jury do not extend to former jurors, CGJA, its chapters, or chapter members. Consequently, in pursuing activities such as “Implementation Review” (IR), CGJA chapters and their members should be very circumspect in their conduct.

Even if a chapter carries either Directors’ and Officers’ Liability insurance or General Liability insurance, the question of whether that insurance will provide indemnity or defense or both to the chapter or its members in the conduct of IR or other activities is unanswerable until an aggrieved third party files or presents a claim and the insurance carrier then assesses whether any of the allegations fall within the coverage limits under the policy. Similarly, if a chapter member acting as a private individual participates in IR and ends up the target of a lawsuit by anyone they have has spoken with or about or written about during IR efforts, the chapter member may seek protection through their own homeowners’ insurance carrier or personal umbrella insurance carrier. Applicability of coverage under any of such insurance policies will depend, as stated above, on whether the third party’s allegations fall within the scope of coverage provided by the carrier.

A chapter may be formed as an unincorporated nonprofit organization or as a nonprofit corporation. If a chapter is incorporated, state law limits the liability of its officers and directors. Under California Corporations Code section 5239(a), there is no personal liability to third parties on the part of a volunteer director or executive officer of a nonprofit corporation if the alleged negligent act or omission is covered by a liability policy or directors’ and officers’ liability policy or if the corporation made all reasonable good faith efforts to obtain available coverage.

Corporations Code section 5239(h) provides that with regard to nonprofit public benefit corporations with an annual budget of less than $25,000 and that are exempt from federal income taxation under IRC section 501(c)(3) the condition of making "all reasonable efforts in good faith to obtain available liability insurance" shall be satisfied by the corporation if it makes at least one inquiry per year to purchase a general liability insurance policy and that insurance was not available at a cost of less than five percent of the previous year's annual budget of the corporation. If the corporation is in its first year of operation, this subdivision applies for as long as the budget of the corporation does not exceed $25,000 in its first year of operation.

If a chapter is not incorporated, protections for its members who conduct IR and other grand jury support activities appear to be available under a federal law, the Volunteer Protection Act of 1997 (42 USC 14501-14505) (the VPA). The VPA appears to protect “direct service” volunteers from liability for simple negligence so long as the nonprofit organization they serve is exempt from federal taxes under IRC 501(c)(3) and the nonprofit organization makes an annual good faith effort under California law to purchase insurance. However, as there is no case law or regulatory interpretation as to the VPA’s applicability to California nonprofit organizations, there is no guarantee that there is any protection under this law. This means that unincorporated chapters should be very cautious when carrying out IR activities. Further, neither the California nor the federal statute extends any volunteer liability protection to the chapter organization itself.

Members should understand that CGJA will not defend or indemnify chapters or individual chapter members from any claims, suits, or causes of action arising from IR activities or from any other activities they might undertake.

APPENDIX C. Liability CGJA Chapter Formation Guide

Potential liability for a chapter’s Implementation Review (IR) activities could arise from defamation, invasion of privacy, harassment, interference with prospective business advantage, or acting outside the scope of permitted activities - among other causes of action. Potential liability might even result from apparently appropriate conduct pursued by a chapter or chapter member because a third party may misinterpret or misperceive the actions and/or words of the chapter or individual. Liability could also result from the use of unsafe premises.

The following is a brief description of potential claims that a third party might pursue against a chapter or chapter member. They are listed in no particular order of likelihood or size of potential exposure.

**Action outside of the scope of permitted activities**: A claim that a chapter acted in a manner that violates the chapter’s charter or bylaws or other governing document or law. This could include a claim that the chapter is conducting IR in a manner that overreaches into the province of the seated grand jury and constitutes the chapter inappropriately acting as a shadow grand jury. It could also include a claim that a chapter misrepresented (either intentionally or negligently) its authority to the third party in the conduct of IR and induced the third party to rely on that authority in providing information that they would not otherwise have revealed. This could also give rise to a claim of fraud.

**Defamation**: A claim that a chapter or chapter member made a false communication, either written (libel) or spoken (slander), that harmed the third party’s reputation, decreased the respect, regard, or confidence in which the third party is held, or induced disparaging, hostile, or disagreeable opinions or feelings against the third party. Although writing and speaking the truth is a defense to this claim, chapters’ and chapter members’ comments should remain strictly within the boundaries of the truth, as litigation is disruptive and the costs of defending such a lawsuit can be prohibitive.

**Invasion of privacy**: A claim that a chapter or member intruded into the personal life of a third party without just cause, which can give that third party a right to bring a lawsuit for damages. It encompasses workplace monitoring, Internet privacy, data collection, and other means of disseminating private information.

**Harassment**: A claim that a chapter’s or member’s conduct annoyed, threatened, intimidated, alarmed, or put a third party in fear of their safety. Harassing behavior may include, but is not limited to, epithets, derogatory comments or slurs, lewd propositions, assault, offensive touching or any physical interference with normal work or movement, and visual insults, such as derogatory posters or cartoons. A comment that a chapter member may intend as a harmless joke or tease could potentially lead to a claim of harassment.

**Interference with prospective economic advantage**: A claim that a chapter or chapter member knew of an economic relationship between a third party and another committed acts designed to disrupt that relationship to the detriment of the third party.

**Breach of confidentiality**: A claim that a former grand juror breached their lifetime oath of confidentiality about grand jury matters not otherwise made public in a published grand jury report. A claim of intentional breach by a chapter member can result in a misdemeanor charge, and a claim of negligent breach can result in a charge of contempt of court.

**Assault and battery**: A claim that a chapter or chapter member created apprehension in a third party of an imminent, harmful, or offensive contact, or acted to threaten harm with an apparent, present ability to carry out the threat to the third party (assault); or committed a harmful or offensive touching of a third party (battery). These potential claims may not seem likely in the context of conducting IR or other chapter activities but are included to illustrate that even seemingly harmless contact with a third party can be experienced or misconstrued as offensive, frightening, or invasive and therefore actionable.

**Personal injuries**: A claim that a chapter or chapter member controlled an environment or invited a third party into an environment in which unsafe conditions existed and the third party was injured as a result of the unsafe conditions.