



# Leader-Led Ethics Training

**WAARNG Office of The Staff Judge Advocate**  
**Rainier JAG Legal Office**  
**LTC Straub**

\* Required by the Under Secretary of the Army (Original deadline 1 SEP 2020 but extended to 1 DEC 2020)

# Authorities & Guidance

- DoDD 5500.07, Standards of Conduct
- DoDD 1344.10, Political Activities by Member of the Armed Forces
- DoDI 1325.07, Handling Dissident and Protest Activities Among Members of the Armed Forces
- AR 600-20, Army Command Policy, para. 5-15, Political Activities and Appendix B, Political Activities

## WAARNG Resources

- Washington National Guard Legal Assistance Home Page: <https://mil.wa.gov/jag-legal-assistance>
- The Office of the Staff Judge Advocate, (253) 512-8262
- Your Brigade/Command Judge Advocate


# Emphasis on Ethics: Standards of Ethical Conduct

## Standards of Ethical Conduct:

“Employees shall endeavor to avoid any actions creating the appearance that they are violating the law or ethical standards.”

5 C.F.R. 2635.101

**Secretary Esper:**  
**“I expect leaders to continue to lead scenario-based ethics training for their organizations.”**



SECRETARY OF DEFENSE  
1000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-1000

2/5/2020

MEMORANDUM FOR ALL MILITARY PERSONNEL AND DOD EMPLOYEES

SUBJECT: Ethical Conduct and Political Activities

Ethical conduct is fundamental to our Department's ethos and to the success of our National Defense Strategy. Each of us must be unwavering in our personal commitment to exemplary ethics and living by core values grounded in duty and honor. The guidance and direction I issued last year, "Reaffirming Our Commitment to Ethical Conduct" (attached), is enduring.


All Department of Defense personnel must be steadfast in our commitment to defend the Constitution and our Nation's democratic principles. As citizens, we exercise our right to vote and participate in government. However, as public servants who have taken an oath to defend these principles, we uphold DoD's longstanding tradition of remaining apolitical as we carry out our official responsibilities. Maintaining the hard-earned trust and confidence of the American people requires us to avoid any action that could imply endorsement of a political party, political candidate or campaign by any element of the Department. *Leaders will review the rules governing participation by DoD personnel in political activities and direct widest dissemination of the guidance in this memorandum to their teams.*

To ensure we are ready to do what is right when ethical dilemmas arise, we must continuously train and prepare. I am pleased with the reports I received about leader involvement in annual ethics training last year, and I expect leaders to continue to lead scenario-based ethics training for their organizations. DoD personnel who are required by regulation to complete annual ethics training must do so by November 30th of each calendar year. Additionally, military and civilian leaders should regularly discuss ethics and values with their teams in the normal course of leading and decision-making.

Lead by your example. I am proud to serve with each of you who uphold the values and high standards of our Nation and the Department of Defense. Together, we will remain the most ready and capable military force that our Nation expects and deserves.

*Matt. Esper*

Attachment:  
As stated



OSD001208-20/CMD001433-20

**Leaders must be personally involved in training their organizations**

# Emphasis on Ethics: Commitment to Ethical Conduct

## Tri-Signed Ethics Letter:

“To further our unwavering commitment to ethical conduct, Army leaders are directed to personally lead scenario-based ethics training for their organizations. In addition to your annual ethics training, we expect leaders to encourage regular discussions to reinforce values based decision making.”



### The Army's Commitment to Ethical Conduct

We are all privileged to serve our Nation, and with that privilege, we are entrusted by the American people to be ethical, honorable, and vigilant in everything we do, every day, everywhere, in every situation, without hesitation. We all swore a solemn oath to support and defend the Constitution of the United States, and with that oath, we committed to live by our core values, grounded in duty and honor. The decisions we make each day reaffirm our personal commitment to follow the highest standards of ethical conduct. Our relentless commitment to exemplary ethics, servant leadership, and self-discipline is what sets us apart and inspires our teammates and our allies and partners around the globe.

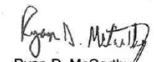
Our steadfast commitment to ethical conduct includes upholding the Department's longstanding tradition of apolitical execution of our official responsibilities. As we defend our Nation's democratic principles, we must understand all restrictions on how we may appropriately participate in political activities. As our Nation approaches the election cycle, we must avoid any conduct and communications that could imply the Army's endorsement or opposition of a political party, political candidate, or political campaign.

To further our unwavering commitment to ethical conduct, Army leaders are directed to personally lead scenario-based ethics training for their organizations. In addition to your annual ethics training, we expect leaders to encourage regular discussions to reinforce values-based decision making.

We are proud to serve alongside you. Lead by example. Never waiver when faced with the ethical right over the moral wrong. Relentlessly pursue the ethical high ground. Winning Matters, and we win by doing the right thing, the right way when we commit to honorable, ethical conduct in everything we do. This is what we do in my squad. This is what our Nation expects and deserves.

  
Michael A. Grinston  
Sergeant Major of the Army

  
James C. McConville  
General, United States Army  
Chief of Staff

  
Ryan D. McCarthy  
Secretary of the Army

**Army leaders are directed to personally lead scenario-based ethics training for their organizations**



# Training Scenarios

- Scenario 1 – Support to NFEs
- Scenario 2 – Political Activities
- Scenario 3 – Gifts from Outside Sources
- Scenario 4 – Contractor Recognition
- Scenario 5 – Travel under 31 USC 1353
- Scenario 6 – Gifts between Employees
- Scenario 7 – Political Activities
- Scenario 8 – Post-Government Employment
- Scenario 9 – Political Activities





# Training Scenario 1 - Support to NFEs

- A General Officer mentions accepting an invitation to be the keynote speaker at the upcoming Association of Community Members Supporting the Army (ACMSA) Memorial Day Dinner & Silent Auction. You find a hyperlink to the ACMSA membership web page and the email address of the local ACMSA membership / fundraising coordinator. When the unit Executive Officer clicked on the link to the ACMSA membership page, he noticed that the GO was listed by rank, name, and current DoD position (under the GO's name was his /her official mail address), as the ACMSA State membership drive co-chairman.
  - Is it appropriate for the GO to give an official speech at the ACMSA fundraising event?
  - Should the GO mention ACMSA fundraising / membership goals in his official speech?
  - Was the use of the GO's name, rank and duty title and official email on the ACMSA webpage acceptable?





# Training Scenario 1 - Answer

- Is it appropriate for the GO to give an official speech at the ACMSA fundraising event?
  - **Yes, but with limitations. The JER (DoD 5500.07-R, para 3-211) allows DoD employees to speak at events sponsored by non-Federal entities when, among other factors, “the speech expresses an official DoD position in a public forum in accordance with public affairs guidance.” The GO should obtain a written ethics opinion before proceeding.**







# Training Scenario 1 - Answer

- Should the GO mention ACMSA fundraising / membership goals in his official speech?
  - **No. Active and visible participation in fundraising for a private organization is prohibited by the ethics rules. The GO may deliver an official speech only as discussed above. (5 CFR 2635.808)**







# Training Scenario 1 - Answer

- Was the use of the GO's name, rank and duty title and official email on the ACMSA webpage acceptable?
  - **No. The use of the GO's current duty title implies governmental sanction or endorsement (5 CFR 2635.702(b) and (c) and 807(b)). The GO should NOT be using his / her official email address for NFE Membership / fundraising activities. The use of the GO's name and rank is probably not an issue, but it may be appropriate to include a disclaimer.**





# Training Scenario 2 – Political Activities

- One of your civilian employees (GS-15 and below) wants to volunteer for the reelection campaign of the President.
  - Is he permitted to volunteer?
  - Can he post campaign posters in her office?
  - Can he tweet political messages from the office after working hours?





# Training Scenario 2 - Answer

- Is he permitted to volunteer?
  - Yes. GS-15s and below are less restricted employees under the Hatch Act. While off-duty, in a personal capacity, and outside of a Federal building (in their personal capacity), this employee may volunteer with the President's re-election campaign. Examples of permitted volunteer activities include: organizing political rallies and meetings, making phone calls on behalf of a candidate, serving as a delegate to a party convention, and working for a political party to get out the vote. However, the employee may not engage in any of these activities, or other permissible partisan political activities, while on duty, in a government office or building, wearing an official uniform, using a government vehicle, or using official resources (such as equipment, supplies, position and title). In addition, this employee may not knowingly solicit, accept, or receive political contributions. For example the employee may allow his name to be used in campaign literature that does not solicit campaign contributions, but he may not use his DoD title, or reference his official position on such literature.





# Training Scenario 2 - Answer

- Can he post campaign posters in his office?
  - **No. As discussed above, he may not engage in any partisan political activity in a government office or building.**
- Can he tweet political messages from the office after working hours?
  - **No. As discussed above, he may not engage in any partisan political activity in a government office or building, even during non-duty hours or using a personal device.**





# Training Scenario 3 - Gifts

- A former Army co-worker is now working for a DoD contractor and has invited you to meet her for a drink after work. You oversee a project being performed by that DoD contractor.
  - Can you meet her and allow her to pay for your drink?
  - Does it matter whether your former co-worker's employer will reimburse her?
  - Does it matter if your former co-worker is currently working on a project pending under your oversight?
  - Is the answer different if the invitation is from your former college roommate who is employed by a DoD contractor?





# Training Scenario 3 - Answer

- Can you meet her and allow her to pay for your drink?
  - Provided you do not accept more than \$20 worth of drinks / refreshments from the contractor, or more than \$50 worth of gifts from the contractor (meaning the contractor company as well as its employees) during the calendar year, you can accept the free drink from the contractor. But just because you can does not mean you should. It is never inappropriate to refuse a gift from a prohibited source (e.g., a DoD contractor). Here, since you oversee a project performed by the DoD contractor in question, it is likely prudent and appropriate for you to decline the offer of free drinks since it could create the perception that you are or will be biased in favor of the DoD contractor whose project you oversee.





# Training Scenario 3 - Answer

- Does it matter whether your former co-worker's employer will reimburse her?
  - Only if you would try to claim that the offer of free drinks is based on your personal friendship with the DoD contractor employee. If the contractor's employer is paying for the drinks, you cannot credibly claim the drinks are being offered based on your personal relationship with the contractor employee. Otherwise, a gift from a contractor employee is imputed to the contractor's employer. In this case, the source of the payment for the drinks is not very important, as the drinks are treated as coming from the contractor employer either way.







# Training Scenario 3 - Answer

- Does it matter if your former co-worker is currently working on a project pending under your oversight?
  - While the same \$20 rule applies, the appearance of impropriety is higher when it is a contract under your supervision or oversight. Recommend you do not accept.





# Training Scenario 3 - Answer

- Is the answer different if the invitation is from your former college roommate who is employed by a DoD contractor?
  - A close personal relationship is an exception to the gift rules. Here, it is prudent to accept no gifts from an individual who works for a contractor performing a project under your supervision.





# Training Scenario 4 – Contractor Recognition

- A staff principal is very pleased with the performance of a contract employee working within her section. She would like the Division Commander to provide the contract employee with a thank you star note and/or a coin.
  - **May the organization recognize the contract employee with a star note or coin?**





# Training Scenario 4 - Answer

- May the organization recognize the contract employee with a certificate or achievement or a coin?
  - Recognition of contractors is prohibited by a DOD Instruction. Specifically, DOD Instruction 1400.25 (4 Nov 2013), Vol. 451, Encl. 3, para. 11b(2) states as follows: "To avoid issues in connection with contractual relationships and obligations, actual or perceived conflicts of interest, and actual or perceived acts of favoritism, persons, organizations, or companies having a commercial or profit-making relationship with the DoD or with a DoD Component will not be granted recognition."
  - What is allowed: providing information to the contracting officer by email, letter, or other means concerning the contractor employees' performance.





# Training Scenario 5 – 1353

## Travel

- AFCEA (the Armed Forces Communications and Electronics Association) invites the G-6 to speak at its two-day symposium in Phoenix, Arizona on Army cybersecurity initiatives. The symposium is open to anyone. The association offers to pay the costs of travel, meals, and lodging. DoD personnel may register to attend at a reduced rate.
  - **May the G-6 speak at the symposium?**
  - **May the G-6 accept the gift of travel and lodging?**





# Training Scenario 5 - Answer

- **May the G-6 speak at the symposium?**
  - **First, the G-6 can authorize himself to speak at the AFCEA symposium under JER 3-211a. If the G-6 formally speaks at the symposium in an official capacity, he can accept free attendance at the symposium on the day he speaks, to include waiver of any registration fee, and food and refreshments offered to the other attendees at the symposium on the day the G-6 is speaking. Any offer to waive the registration fee and/or food and refreshments offered on days when the G-6 is not speaking, along with any gifts of travel and lodging, would be considered for acceptance under a different authority (see next question).**





# Training Scenario 5 - Answer

- *May the G-6 accept the gift of travel and lodging?*
  - Assuming the G-6 will travel to the symposium on official travel orders, the G-6's travel approval authority may authorize (must be in writing) the G-6 to accept AFCEA's offer of travel benefits (e.g., plane fare, lodging, food, etc.) under 31 USC 1353. This same authority may be used to accept the waived registration fee and/or food and refreshments for days that the G-6 is not speaking.
  - Under 31 USC 1353, Federal agencies may accept a gift of travel or travel-related expenses, including airfare, lodging, transportation, meals, and conference registration fee, from a non-Federal source. The implementing Federal Travel Regulation, 41 CFR 304-5.1 states a Federal agency may accept payment from a non-Federal source for travel to a meeting or authorize an employee to accept payment on its behalf when the employee is issued a travel authorization before the travel begins; when the travel is in the interest of the Government; the travel relates to the employee's official duties; and the non-Federal source is not disqualified due to a conflict of interest under §304-5.







# Training Scenario 5 - Answer

- **May the G-6 accept the gift of travel and lodging?  
(continued)**
  - **The approving official may not authorize acceptance of the payment if they determine that acceptance of the payment under the circumstances would cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations. [41 CFR 304-5.3]**
  - **Additionally, under JER § 4-100c, "Any official travel benefits from non-Federal sources accepted by the travel approving authority must be ... Approved in writing by the travel-approving authority with the advice of the DoD employee's Ethics Counselor ...."**
  - **Finally, if an employee accepts travel benefits with a value of more than \$250, the employee must list the travel benefits received on a SF 326 and send the form to the servicing legal office. [41 CFR 304-6.4] All Executive Branch agencies are required to send their SF 326s to the U.S. Office of Government Ethics, which posts them on its public website.**





# Training Scenario 6 – Gifts Between Employees

- A Division Chief of Staff invites the staff to make a voluntary contribution to buy a birthday gift for the Division Commander.
  - **Are there any problems here?**





# Training Scenario 6 - Answer

- Are there any problems here?
  - There are problems involving gifts between employees. Absent an exception, an employee may not give to or solicit donations for a gift to an official superior. Nor may a superior accept a gift from a subordinate or a group of subordinates who receive less pay .
  - Here, a subordinate or group of subordinates could give a gift to the Division Commander for his birthday with a value not to exceed \$10. But the Chief of Staff is not allowed to solicit donations for such a gift. Note that a birthday is not a "special infrequent occasion" that would allow a group of employees to give a gift with a value greater than \$10, but less than \$300, to an official superior, and which the official superior could accept. Such occasions include the superiors retirement or transfer to another job, marriage, illness, or birth of a child. Birthdays are not considered to be "special infrequent occasions" under the ethics rules. So in this scenario, the Chief of Staff must not solicit donations from other subordinates, and any gift given by a subordinate or group of subordinates cannot exceed \$10 in value.





# Training Scenario 7 – Political Activities

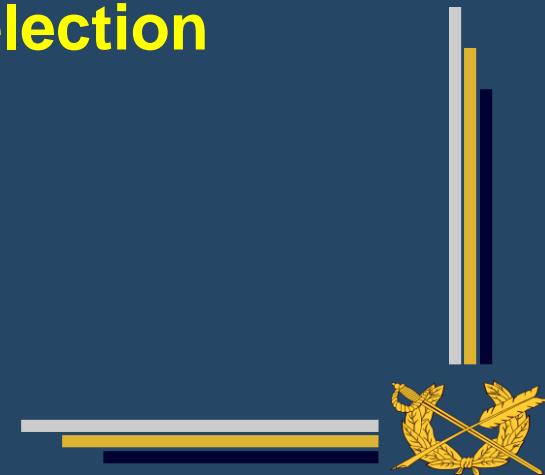
- A member of the House Armed Services Committee's office reaches out to Public Affairs and requests to visit an Army installation in his district. The Congressman has announced his candidacy for reelection and has been endorsed by the installation employment unions. During the visit, the Congressman would like to have a town hall with employees. As luck would have it, the Chief of Staff of the Army plans to be at the installation on the same day, and the Congressman would like to meet with CSA to talk about the Army's programs.
  - **May the CSA meet with the Congressman?**
  - **Should the Army allow the Congressman hold a town hall meeting on the post?**





# Training Scenario 7 - Answer

- **May the CSA meet with the Congressman?**
  - **The CSA may meet with the Congressman, in the Member's official capacity as an elected official, to discuss the Army's programs as this is connected to the Member's official government duties. However, the CSA may not meet with the Member at the installation in connection with the Member's re-election campaign activities.**





# Training Scenario 7 - Answer

- **Should the Army allow the Congressman hold a town hall meeting on the installation?**
  - **The Army may not permit the use of military facilities by any candidate for political campaign or election events, including public assemblies or town hall meetings, speeches, fundraisers, press conferences, post-election celebrations and concession addresses. Any activity that may be reasonably viewed as directly or indirectly associating DoD, or any component or personnel of DoD, with a partisan political activity must be avoided.**





# Training Scenario 8 – Post-Government Employment

- Your Chief of Staff (COS) is a colonel who is thinking about retiring and starting a second career. She schedules dinner with a former colleague who works for a lobbying firm. The former colleague provides perspective and advice on general areas of employment the COS may want to consider. At some point, the conversation evolves into a discussion of interest in having the COS meet with the former colleague's business partners about opportunities in their firm.
  - Is it okay for the COS to talk with her former colleague about job opportunities?
  - Is there any action the COS must take?







# Training Scenario 8 - Answer

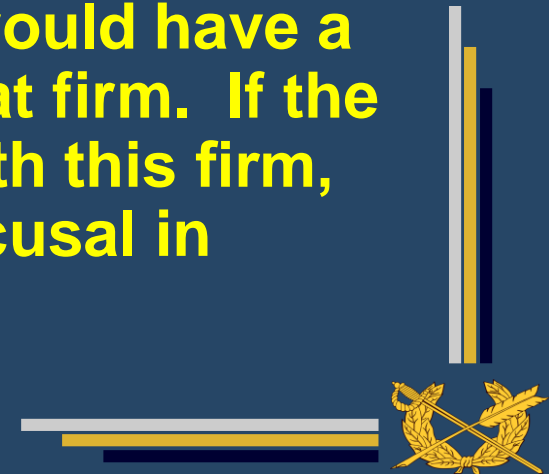
- Is it okay for the COS to talk with her former colleague about job opportunities?
  - It is crucial for the COS to recognize at what point she is “seeking employment” vis-à-vis this dinner. Federal employees trigger the financial conflict of interest statute, which results in additional action to be taken, if they are “seeking employment.” This statute prohibits participating personally and substantially in any particular matter that will have a direct and predictable effect on a non-federal entity with which a federal employee is “seeking employment.” A federal employee is “seeking employment” when he/she makes an unsolicited communication regarding potential future employment, engages in negotiation for employment, or responds to an unsolicited communication regarding possible employment other than to make an immediate and clear rejection.
  - This dinner initially appears to be aimed at the COS receiving advice on general areas of employment. This conversation is not “seeking employment.” But when the discussion steers to “having the COS meet with the former colleague’s business partners about opportunities in their firm,” the COS has crossed the line into “seeking employment” unless she clearly and immediately rejects this offer.





# Training Scenario 8 - Answer

- Is there any action the COS must take?
  - The COS should clearly and immediately reject the offer until she verifies that her supervisor will permit her to recuse herself from personal and substantial participation in any particular matter, such as an on-going contract solicitation at that employee's agency where that firm is a likely bidder, which would have a direct and predictable effect on that firm. If the COS's office regularly interacts with this firm, then the COS should issue this recusal in writing to her supervisor.





# Training Scenario 9 – Political Activities

- During a press conference about DoD policies, you (a GS employee) are asked to comment on a particular Presidential candidate's position on those policies.
  - **How do you respond?**





# Training Scenario 9 - Answer

- How do you respond?
  - **The Hatch Act prohibits you from engaging in partisan political activity while in your official government status. Therefore, you are prohibited from providing your opinion on a candidate's view concerning the Administration's policies. You should not answer the question and should tell the interviewer that you are in your official government capacity and that the purpose of the interview is to discuss official government matters, and not to engage in political activity. If that line of questioning continues, you should end the interview.**





# QUESTIONS

**Administrative Law Division**

**Ethics, Legislation, and Government Information  
Practices Branch**

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