

# Ethics Counselor Fundamentals



May 2016

Navy Department,

Washington, December 14, 1875.

The Chief Clerk regrets to be under the necessity of calling attention to the practice, which prevails with many of the employees in the Office of the Secretary of the Navy, of visiting, *socially*, from room to room, during office hours and engaging in conversation, often boisterous, thus interrupting others, within the vicinity, who are disposed to discharge their duty faithfully.

Each employee is requested to remain at his post during office hours, visiting other rooms only as the public business requires, and not interrupt others in the discharge of their duties.

JOHN W. HOGG,  
*Chief Clerk*

Approved

GEO. M. ROBESON,  
*Secretary of the Navy.*

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Persons not connected with the Department are requested not to interrupt the clerks in the discharge of their duties, except on official matters.

JOHN W. HOGG,  
*Chief Clerk.*

# History

- Emoluments Clause to the Constitution
- Conflicts (Civil War)
- Congress reactive
- Texas Gulf Sulphur
- Civil Service Commission authorized agencies to issue ethics regulations
- DoD origins 1961 but values back to 1800s
- Watergate
- Ethics in Government Act
- Iran Contra
- Office of Government Ethics
- Standards of Ethical Conduct
- 5 C.F.R. part 3601 and DoD 5500.07-R (JER) 1993
- Standards are in Chapter 2 of JER

# REFERENCES (4 pillars)

- 18 U.S.C. 201-209
- 5 C.F.R. part 2635
- 5 C.F.R. part 3601
- DoD 5500.07-R -  
The Joint Ethics Regulation (JER)

# Other Relevant References

- Ethics in Government Act of 1978
  - 5 U.S.C. app. 101 et. seq.
- Executive Order 12674
  - “Principles of Ethical Conduct for Government Officers and Employees,” April 12, 1989

# Other Relevant References

- Principles of Federal Appropriation Law (GAO Redbook)
- Joint Travel Regulation (JTR)

# The Practical Side

- Basic Ethics Counselor Workshop  
Deskbook

# Helpful Links

- Office of Government Ethics
  - <https://www2.oge.gov/>
- DoD Standards of Conduct Office
  - [http://www.dod.mil/dodgc/defense\\_ethics/](http://www.dod.mil/dodgc/defense_ethics/)

# Basic Obligations of Public Service Under Executive Order 12674

- Public Service is a Public Trust
  - Employees have a duty to place loyalty to the Constitution, laws, and ethical principles above private gain. 5 C.F.R. 2635.101(a)
- Impartiality
  - Employees shall act impartially and not give preferential treatment to any private organization or individual. 5 C.F.R. 2635.101(b)(8)

# Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635)

- Gifts
  - Outside
  - Subordinates
- Conflicts
- Appearance of Conflict
- Seeking Employment
- Misuse of Office or Personnel
- Teaching, Speaking, and Writing
- Disclaimer requirement in 5 C.F.R. 3601.108
- Outside Activities and Fundraising

# DoD Supplemental Standards of Ethical Conduct for Employees of the Department of Defense (5 C.F.R. part 3601)

- Seven parts
  - Designates 16 separate components for purposes of accepting gifts from outside sources and governing teaching, speaking, and writing.
  - Provides additional exceptions for gifts from outside sources such as an event sponsored by a state or local government or civic association (must be free attendance) or for scholarships received under certain criteria where the employee's performance or lack of performance does not affect the sponsor.

## DoD Supplemental (cont.)

- Adds gift limitations such as not being able to use the group gift if it exceeds \$300 for an infrequent occasion and if the recipient knows the subordinate contributed; food, refreshment, and entertainment are not included in the \$300 group gift; and if a subordinate offers a gift to more than one donating group, then both groups are considered one group for purposes of the \$300 group gift rule.
- Limits solicitation of sales by superiors to subordinates.

# DoD Supplemental (cont.)

- Standards for accomplishing disqualification
  - In writing
  - To Supervisor

# DoD Supplemental (cont.)

- Prior approval for outside employment and business activities
  - Must be financial disclosure filer
  - Outside employer must be a defense contractor
- Disclaimer for Speeches and Writings Devoted to Agency Matters

# Changing the Ethics Rules

- 5 C.F.R. part 3601, is the DoD supplemental regulation. Supplementation not permitted without approval by the Office of Government Ethics.

# Joint Ethics Regulation

- Created by DoD Directive 5500.07, 8/30/93, amended 11/29/07 and 11/2011
- Single, comprehensive source of guidance
- Cancels all inconsistent instructions
- Prohibits supplementation without approval from DoD General Counsel
- Bolded provisions are punitive
  - Violation of general order punishable under Art. 92, UCMJ
- Change is coming

# Designated Agency Ethics Official (DAEO) and Alternate

- Functional Authority to coordinate and manage the ethics program
- General Counsel is DAEO
- TJAG or Principal Deputy General Counsel is often the ADAEO

# Deputy DAEOs

- Designated by the General Counsel (DAEO)

# Ethics Counselors

- Defined at JER 1-212
- Shall be an attorney
- Communications received in EC capacity  
NOT protected by attorney-client privilege

# Deputy DAEO v. Ethics Counselor

- Deputy runs program, and EC assists
  - Provide ethics guidance
  - Training
  - Ensure Financial Disclosure Reports are filed
- NOTE: (1-202 of the JER) BOTH DDAEOs and ECs are “**Agency Designees**” for 0-7+ in command
- Practically, no difference but check the delegation of authority:
  - Certifying OGE Form 278?
  - Granting waivers of \$200 late filing fee?

# Agency Designee

- First Supervisor above a GS-11
- Works with Ethics Counselor
- Agency interest in attending WAG
- Outside Activity Approval

# DoD Employees (JER 1-209)

- Civilian officer or employee (including NAFL)
- Active Duty (AD) regular or reserve officers including warrants
- Active Duty enlisted
- Reserve member (AD, Title 10 status, or performing any reserve function)
- Student of any DoD academy, college, university, or school
- Foreign nationals working for DoD when consistent with agreements

# Application of Ethics Rules to Enlisted and UCMJ

## Application to Enlisted

JER 1-300(b), 5-301, 5-404

- Criminal conflict of interest statutes do not apply to enlisted, except for bribery  
(18 U.S.C. 201)
- Application of ethics rules for enlisted is through JER

# Applicability of 208 and 209 to Enlisted

## Conflicts of Interest

- Applies financial interest and supplementation of salary conflict laws to enlisted (18 U.S.C. 208 and 209) (JER 5-301 and 5-404)
- Solicitation prohibitions (superior to subordinate) 5 C.F.R. 3601.106 (JER 5-409)

# Training

(5 C.F.R. part 2638)

- Annual Ethics Training
- Annual Ethics Training Plans

# Enforcement

- What violations are reportable
  - See DoD Directive 5505.06, Investigations of Allegations Against Senior Officials of the Department of Defense
- When a violation is reportable
- How to report violations to the Inspector General (Chapter 10 of the JER)

# Miscellaneous

- Presidential Executive Order authorizing Standards (JER, Chapter 12)
- Presidential Executive Order regarding the Pledge (JER, Chapter 12)
- DoD Employee Ethical Value Goals (JER, Chapter 12)
- Ethical Values and Decision-Making (JER, Chapter 12)

# The Committee on Standards of Conduct

- Created to provide interpretive guidance to resolve conflicting ethics provisions, define vague terms, and identify and remedy inconsistencies in the application across the Military Services

# Running an Effective Program

- Be proactive in working with Commander or agency head
- Does this idea benefit the agency or the individual
- Operations Law vs. Ethics law

# Basic Items for program review

- Delegation
- Procedures for collecting reports
- Tracking system for disclosure
- Training records
- Advisory committees
- 1353
- Relationship with OIG
- 208 waivers

# What We Will Cover

# Gifts

- Gifts From Outside Sources
- Gifts Between Employees
- Gifts From Foreign Governments
- Gifts to the Department
- Gifts of Travel

# Non-Federal Entities

- Endorsing
- Supporting
- Fundraising
- Official and personal participation

# Outside Activities

- Outside Employment
- Teaching, Speaking, and Writing

# Travel

- Government Vehicles
- Rental Cars
- Commercial Air

# Conflicts of Interest

- 18 U.S.C. 208
  - Regulatory and individual waivers
- Impartiality Standards
  - Authorizations
- Bribery, Representation, and Supplementation of Salary

# Financial Disclosure

- Public Financial Disclosure
  - OGE Form 278 e
- Confidential Financial Disclosure
  - OGE Form 450

# Post-Government Employment

- Seeking Employment
- Procurement Integrity Act
- Representation Statutes
  - 18 U.S.C. 207(a), (b), (c), and (f)
- Terminal Leave Issues
- Foreign Employment

# Fundraising

- Fundraising in the workplace
- By your own, for your own
- Gambling
- Official support of fundraising
- Personal fundraising

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Enjoy