

Reserve Personnel Ethics Issues





Office of the Chief Counsel National Guard Bureau



Potential RC Ethical Issues

- Conflicts of interest
 - Personal and organizational
- Filing financial disclosure reports
- Outside employment and business enterprises
- Reservists holding civil office
- Supplementation of salary
- Post-Government employment restrictions
- ...and many more we don't have time to discuss



AGENDA

- Background
- Applicability of Ethics Rules
- National Guard Status
- Commander Responsibilities
- Screening
- Conflicts of Interest
- Financial Disclosure
- Special Gov't Employees

- Outside Employment
- Holding Civil Office
- Supplementation of Salary
- Post-Government Employment
- Wartime Gifts
- Conclusion



“DoD Employee”

- Active Duty - Regular or Reserve Officers
- Active Duty enlisted members
- DoD civilians (including NG technicians)
- Reserve or National Guard on Title 10 active duty (e.g., AGR program)
- Reserve or NG performing official duties or functions under Title 10 or 32, or while engaged in any activity related to the performance of such duties or functions.



National Guard Status

Four Hats



Hat #1 -- Civilian



Hat #2 -- Title 32--State Militia/Training Status
(Usually IDT, AT, FTNGD)



Hat #3 -- Title 10—National Guard of the United States. Usually Reserve Component (AD, ADT, & FST(School Status)) -- Fighting Status



Hat #4 -- State Active Duty—Purely State Mission

- Statuses Mutually Exclusive—One Hat at a Time!
- Mobilized/Volunteers relieved of state status (32 USC 325) Convert to NGUS



Commander Responsibilities

- Affirmative obligation (JER 5-408) to refrain from assigning reservists duties that could
 - give reservist access to non-public information
 - result in an unfair advantage
 - present an actual or apparent conflict of interest
- Adequate **SCREENING** is a necessity
- This is usually **NOT** being accomplished



Reservist Screening

- Civilian employer information
- Reserve duty information
 - How long performing duty
 - Responsibilities
- Supervisory review
- Conflict of interest analysis
- Updated regularly
- Reviewed by ethics counselor when necessary



Conflicts of Interest

- Mobilization / activation dramatically increases the potential for conflicts of interest
- Conflicts must be resolved in the same manners as with Active service or civilian employees
- Civilian employment may create organizational conflicts of interest
 - FAR 9.501
 - can negatively impact Reservist when he/she returns to civilian job



Financial Disclosure Reports

- SF 278 required when 61 or more days of active duty are performed during reporting period by O-7 or above
 - New entrant and annual
 - **VERY DIFFICULT TO TRACK**
- OGE Form 450
 - Reservists on active duty for more than 30 consecutive duty days, serving involuntarily or voluntarily serving in excess of 130 days
 - Special Government Employee
 - Filing requirement?



Officer vs. SGE

- 18 U.S.C. § 202(a) definition of “SGE”

Officer or employee who is retained, designated, appointed, or employed to perform, with or without compensation, for not to exceed one hundred and thirty days during any period of three hundred and sixty-five consecutive days

- Guard and Reserve officers are SGEs when:

- Performing Title 10 Reserve or NG duty (for less than 130 in a rolling year)
- While on active duty solely for training (for any length of time)
- While involuntarily mobilized (for any length of time)

- Guard and Reserve officers are “officers” when on voluntary active duty > 130 days

- Counting days



Officer vs. SGE

Why do we care?

- 18 U.S.C. §§ 203 & 205
 - Limited applicability only to particular matters in which the SGE participated personally and substantially
 - Limited to matters pending in the SGE's agency if >60 days in the last year
- 18 U.S.C. § 207(c)
 - “Cooling-Off” period applies only to >60 days in the last year



Outside (off-duty) Employment

- Includes off-duty business enterprises
- Supervisory knowledge enables ID of possible misuse of Government resources
- No conflict with official duties
- “Telling their story”
 - Not for personal compensation while on active duty
 - “Official duties” test
 - 5 CFR 2635.807



Outside (off-duty) Employment

- Wrapping up business affairs upon mobilization
 - May use official resources to wind up affairs
 - Must be reasonable



Holding Civil Office

- DoD Directive 1344.10
- Retirement/separation is not permitted during periods of war or national emergency
- If under a call or order to in excess of 270 days, reservist cannot perform functions of the office
- May continue to hold the office unless prohibited by state law or conflicts with official duties
 - New process for approval
- Some exceptions for nonpartisan offices
- Applicability to FTNGD



Supplementation of Salary

- 18 US Code 209 has four elements:
 - (1) receipt of salary or contribution to or supplementation of salary
 - (2) as compensation
 - (3) for services as an employee of the United States
 - (4) from any source other than the United States
- JER 5-404 Compensation From Other Sources



Supplementation of Salary (cont)

- 18 US Code 209 does not apply to Special Government Employees (SGEs) -- that is, many reservists
 - depends on # of days serving and whether serving voluntarily or involuntarily
- 10 U.S.C. § 12601
 - Any Reserve who was receiving compensation before being ordered to AD may continue to receive compensation while on AD.



Post Government Employment

- Restrictions are triggered each time an employee performs duty as an “officer” or “SGE”
- Reservists may need to disqualify themselves from certain military duties in order to not jeopardize their ability to return to their civilian jobs
- SCREENING will help ID problem areas
- 18 U.S.C. §§ 207 and 208 restrictions



Wartime Gifts

- A&E Channel “Home with the Brave.”
- OPRAH!
- Bussing folks home for the holidays
- First-Class airline tickets



Wartime Gifts

- “Wartime” gift exception
- Need to fit other gifts into one of the listed exceptions:
 - Discount or similar benefit
 - Meritorious award
 - 5 C.F.R. 2635.204(c)(2)(iii)
- Solutions can be difficult



Questions?

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