

MEMORADUM FOR THE RECORD

From: Force Judge Advocate, Commander Naval Air Forces

Subj: ACTIVE DUTY PARTICIPATION IN NON-FEDERAL ENTITY LEADERSHIP POSITIONS

Ref: (a) DoD 5500.7-R, Joint Ethics Regulation  
(b) 5 C.F.R. § 2635  
(c) 18 U.S.C.

1. The guidance in this memorandum is intended to assist service members in abiding by the rules and regulations regarding interactions with non-federal entities (NFEs). Per reference (a), section 1-217, an NFE is a self-sustaining organization, established, operated, and controlled by individuals acting outside of the scope of the federal government, such as scouting units, civic organizations, and professional associations. Though an NFE is any non-federal organization, some NFEs have a close military nexus and with membership that includes high numbers of DoD personnel. There are several such NFEs that have historically been associated with naval aviation, including the Tailhook Association, the Maritime Patrol Association, the Naval Helicopter Association, the Association of Aviation Ordnancemen, and many more.

2. In accordance with reference (a), section 3-301, DoD personnel may voluntarily become members of and actively participate in NFEs, including managing NFEs, in their personal capacities. Such participation must be exclusively outside the scope of their official position. References (a) through (c) include specific rules governing interactions between DoD employees and NFEs. All active duty service members must abide by these rules. Specifically:

a. DoD personnel may not give their NFE preferential treatment, and must ensure that they do not create any appearance that they are using their public office to assist the NFE in any way. See reference (b), section 702.

b. DoD personnel may not endorse the NFE in their official capacity, including allowing the NFE to utilize their official titles or positions in connection with the NFE. See reference (a), section 3-302.

c. DoD personnel may not encourage, pressure, or coerce other personnel, especially subordinates, to join, support, or otherwise participate in outside organizations. See reference (b), section 702(a).

d. DoD personnel may not personally solicit funds for the NFE from subordinates or prohibited sources. See reference (b), section 808(c).

h. DoD personnel may not use appropriated funds, Government resources, or official personnel to assist them in their work with the NFE. Work for the NFE may not be performed

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during official time. Examples of prohibited behavior include running, planning, and holding meetings for the NFE during normal working hours, using a government email address to conduct NFE business, and making references to the NFE leadership position when conducting business on behalf of the Navy. Any work conducted for NFEs should be done using a personal or NFE email account, limited to lunch time, after or before regular working hours, or other liberty/leave time to avoid this issue. See reference (a), sections 2-301 and 3-300.

i. DoD personnel may not disclose non-public Government information to the NFE. For example, the use of distribution lists, VIP visit schedules, and other contact information which the DoD employee may come across during the course of their official duties, but is not available to the public, may not be used to further the NFE's interests. See reference (b), section 703(a).

j. DoD personnel must treat all NFEs equally. Senior officers, especially Commanding Officers and Executive officers, must be cautious that they do not use their official positions to give preferential treatment for logistical support to any NFE in which they participate in their personal capacities. See reference (b), section 101(b)(8).

3. Additional rules apply if military personnel wish to serve as officers, directors, trustees, or otherwise in a leadership position on an NFE that you must be aware of, specifically:

a. Members wishing to serve in an NFE leadership position in their official capacities must seek permission from the DoD General Counsel per reference (a), section 3-202. Members may serve in uncompensated NFE leadership roles in their personal capacity, however, reference (a), section 3-301, prohibits members from serving as an officer, member of the Board of Directors, or in any similar position offered because of their DoD assignment or position. Several naval aviation affiliated NFEs offer leadership positions to military members serving in key billets, such as Wing Commodores or Commanding Officers of Fleet Replacement Squadrons. Prior to assuming a leadership role in an NFE, military members should familiarize themselves with the organization's bylaws to ensure their leadership position within the NFE is not predicated on their official position within the Department of the Navy. Service members should decline any positions offered because of their current billet; acceptance is a direct violation of reference (c).

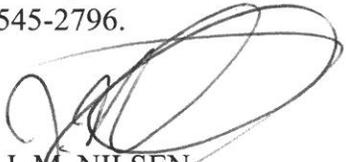
b. Members serving in the management of NFEs in their personal capacities must take caution not to violate federal conflict of interest statutes as a result of their positions. Reference (c), section 208 prevents members from participating in any particular matters that may directly and predictably affect the NFE during the course of their government employment. Furthermore, sections 203 and 205, prevent federal personnel from acting as an agent for or representing the NFE before federal agencies on particular matters in which the Government is a party or has a direct and substantial interest. This could include making arrangements for military members to attend annual symposiums at government expense. Active Duty Officers and leaders of NFEs must recuse themselves from official Navy meetings and planning connected to Navy attendance at or support of NFE symposiums and events. Further, Active Duty Officers and leaders should leave communications to the Navy or Department of Defense from the NFE to civilian employees or civilian officers of the NFE.

4. The contribution of NFEs to the naval aviation community and the DoD at large is undisputed.

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However, notwithstanding the close military nexus and mission of certain NFEs, all NFEs must be treated equally. Senior officers and junior personnel alike should be mindful of these regulations and the scrutiny involved with NFE interactions.

5. Should you have any questions about this memorandum or the guidance contained herein, my point of contact is LT Sarah Burkett, JAGC, USN, who can be reached at sarah.burkett@navy.mil or by phone at 619-545-2796.



J. M. NILSEN  
COMNAVAIRPAC  
Force Judge Advocate and  
Ethics Counselor