

INFORMATION PAPER

ARNO-JA  
11 March 2014

SUBJECT: Activities Regarding Commercial Publications

1. Overview. Military officers and Federal civilian employees are prohibited from officially endorsing any commercial publications in their official capacity. Moreover, there are restrictions on such activities in their personal capacity.

a. Improper endorsement and misuse of official title. DoD personnel may not use, or permit the use of, their Government positions, titles, organization names, or any other authority associated with public office to endorse, or to imply that DoD or any of its components endorse, sanction, or treat in a preferential manner, any non-Federal entity (NFE), or NFE event, product, service, or enterprise. (5 C.F.R. subsections 2635.702(b) and (c), and subsection 3-209 and subparagraph 3-300.a.(1) of the JER) In certain circumstances the use of one's title or position or the wear of the uniform may reasonably imply impermissible endorsement.

(1) The JER also provides that, military grade, department, or Service may be used as part of an individual's name (e.g., Captain John Doe, U.S. Marines) for use in his or her conventional title, however, such use may not suggest official endorsement or preferential treatment by DoD or their military department.

(2) Furthermore, subsection 2-207 of the JER requires DoD personnel who use, or permit the use of, their military grade, title or position with their name, as part of biographical details, to make a disclaimer to prevent the perception that a personal activity is an official endorsement. The following disclaimer wording is recommended: "The views expressed are my own and do not reflect the official policy or position of the [DoD Component], Department of Defense, or the U.S. Government."

b. Misuse of position. Under 5 C.F.R. § 2635.702(a), DoD personnel may not use, or permit the use of, their Government positions, titles, organization names, or any other authority associated with public office in a way intended to induce another person to provide any benefit, financial or otherwise, to themselves, friends, or persons with whom they are affiliated in a non-governmental capacity. For example, to the extent that a DoD official wants to write a favorable review of a book written by a friend, which would encourage members of the public to purchase the book, the activity would be prohibited.

(c) Covered Relationships. Under 5 C.F.R. § 2635.502, where circumstances would raise a question of a DoD employee's impartiality, so that a reasonable person

with knowledge of the relevant facts would question his or her impartiality, the DoD employee should not participate in any particular matter involving specific parties connected to those circumstances. The employee should use the process and procedures in the cited section to determine if he or she may be authorized to participate in the matter. For example, if an officer is involved in a particular matter involving specific parties and wants to assist a commercial venture related to the matter, he would be disqualified from any future participation in the matter. As discussed above, his participation with the commercial venture would be restricted regarding public endorsements or certain other public support. Other restrictions and requirements may also apply.

(d) Public Affairs. In addition to the ethics rules, Public Affairs policies should be reviewed because in some circumstances the use of one's title or other identification connected with DoD is limited. For example, the Department of the Army requires military members and Federal civilian employees to include the disclaimer at a.(2) above in any unofficial writing.

## 2. Scenarios.

a. An Army or Air Force general officer currently assigned to a Joint Command has been asked to write a comment or provide a quotation to be incorporated on a book jacket. The book is on Operation Iraqi Freedom. The general officer may not write a comment or give a quotation in his or her official capacity. The general officer may write a comment or give a quotation in his or her personal capacity. The officer's rank and Service may be included, however, a disclaimer must also be included. The general officer's duty title or official position cannot be included. For certain senior officials who are widely recognized by the public, it is recommended that they not provide such a writing, as the public will identify them by their DoD position. The general officer should seek advice from the Joint Command's ethics officials, as any advice proffered by Army or Air Force ethics officials would not protect the general when he is assigned to a Joint Command.

b. The Secretary of Defense has been asked to write a book review for the same publication for a web site. Access to the web site is free. The Secretary of Defense may write the book review, but only in his personal capacity. Since his name and position are so well known by the public, a disclaimer should also be included. His duty title or official position cannot be included. Because he is so widely recognized by the public with his DoD position, it is recommended that he also not provide such a writing.

c. Military members and Federal civilian employees may not participate in commercial book launches in their official capacity. Such participation includes speaking at the event while wearing a uniform, as it is an indication of the authority associated with public office, or taking other actions that imply that DoD or the respective DoD component endorses the publication. For military members, civilian attire is appropriate if they attend or otherwise participate in their personal capacity.

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They also need to comply with the restrictions regulating use of their titles, positions, organization names or any other authority.

d. Sometimes private publishers will re-publish DoD or DoD component regulations, instructions, field manuals, or pamphlets. For example, the "Dictionary of Military Terms" has been republished by a commercial publishing company, which charges \$19.95 per book. Military members and Federal civilian employees may not participate in an official capacity at the publishing company's event at which it announces its publication or holds a book launch. The restrictions discussed in 1., above, are also applicable.

e. Retired military members or inactive Reserve Component members may use their titles and military departments if they clearly identify their retired or inactive status and if such use does not imply DoD, or the respective DoD component, endorsement. A disclaimer should be included.