

## ETHICS

### Employment of Wing Commander's Son

In addition to 5 U.S.C. § 3110, I have reviewed Air Force Publication Directive (AFPD) 36-2, *Civilian Recruitment and Placement*, AF Manual (AFMAN) 36-2303, *Staffing Civilian Positions*, AF Pamphlet (AFPAM) 36-213, *Employment Information for Families Assigned to Foreign Overseas Areas*, Air Force Instruction (AFI) 36-2707, *Nondiscrimination in Programs and Activities Assisted or Conducted by Air Force*, AFI 36-2909, *Professional and Unprofessional Relationships*, and AFI 36-602, *Civilian Intern Program*. I have also reviewed the following OpJAGAFs: 1985/36, 1986/84, 1996/109, 1997/1 and 1998/75.

As you know, the statute has a very broad definition of relative and mandates that a public official may not “appoint, employ, promote, advance or advocate” on behalf of a relative in a civilian position over which the official exercises “jurisdiction or control.” The Air Force instructions were not very helpful except for AFPD 36-2, paragraph 6, which states that “managers or supervisors will not select a relative for a position anywhere in the organization under his or her jurisdiction or control.”

The OpJAGAFs uniformly expand the prohibition far beyond mere selection and bar an official from having a relative in any civilian position over which they might be the decision maker for employment actions. OpJAGAF 1986/84 opined that an installation commander's child could not participate in a summer hire program even where all students on base over 14 years of age could participate in the program. The opinion noted that the commander's approval of the overall summer hire program was itself an exercise of discretion. OpJAGAF 1996/109 came to the same conclusion on similar facts and further opined that the commander's child could not be employed by a tenant unit on the installation. OpJAGAF 1997/1 did note that it would be acceptable for an official to recommend the hiring of a relative where the appointing official was higher in the chain of command than the related official. However, OpJAGAF 1998/75 noted that, even if the hiring action was completed by higher headquarters, the relative of an installation commander could still not work for the installation because the commander was “ultimately responsible for myriad decisions which affect an employee's potential advancement within the agency.” This opinion, and several others, noted that even the appearance of impropriety in employment actions can undermine employee morale and mission accomplishment.

Looking at the 2001 opinion of the MAJCOM judge advocate, I concur with his first point that existing law and regulation would not bar the child of the Wing Deputy Commander from participating in a summer hire program because the Vice Commander does not exercise the requisite jurisdiction and control over the civilian employees.

However, I am afraid I must disagree with his second point which is that the daughter could continue to be employed by the installation when the Vice Commander was temporarily appointed as the Wing Commander. She would still be employed under his jurisdiction and control and the Vice Commander might have to make one of those “myriad decisions” that could

affect her employment status. Even the suggested recusal from making employment decisions that directly affect the daughter would not cure this potential appearance of favoritism because he might have to make decisions regarding other employees that could affect the daughter's standing as an employee or decisions regarding the summer hire program as a whole.

I will caveat this last point with the opinion that if the periods of appointment as the acting Wing Commander were temporary and observing that the working conditions, hours, pay and opportunities for advancement for summer hire student interns are relatively stagnant, it would be acceptable if the daughter could enter a leave without pay status during those periods of temporary assignment. It is of course a matter for Human Resources, but a summer hire program may be flexible enough to accommodate such an arrangement.

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