

ETHICS – Non-Federal Entities

Ethics Guidance Regarding Leadership Presentations by Non-Federal Entities

This responds to an Air-Force-wide question regarding whether certain non-Federal entities (NFEs) may provide leadership presentations given by retired Air Force senior leaders at official meetings of Air Force units. They propose that these presentations include a discussion of opportunities for professional development, such as voluntary advanced education and professional military education. The proposed discussion will also include the career and personal merits of participation in professional organizations, including “professional military associations” (PMAs).¹ One NFE, a PMA, has offered to fund travel by the speakers to visit installations in order to make these presentations. The PMA also desires to have the speaker(s) discuss membership in the sponsoring PMA and to use these occasions to make PMA membership materials available to attendees.

This opinion provides ethics guidance for handling requests of this nature. It addresses three distinct situations: the first involves presentations at official Air Force events; the second involves NFE-sponsored events held on the installation and the third involves a co-sponsored hybrid situation.

The Eighth Principle of Ethical Conduct provides the initial framework for considering such requests: “Employees shall act impartially and not give preferential treatment to any private organization or individual.”² Additionally, Section 3-210 of the *Joint Ethics Regulation* (JER), DOD 5500.7-R, must guide responses to requests such as the type addressed here.³

PMAs and other NFEs cannot solicit membership or contributions at official Air Force events, including co-sponsored events. Any government actions that involve or imply official endorsement or compulsion to join a particular NFE or PMA violate Section 3-210.

¹ Although the term “professional military association” (PMA) is not formally recognized, it captures a smaller subset of the universe of all NFEs and includes more than Department of Defense (DoD)-recognized national military associations (NMAs). PMAs focus in some manner on advancing the interests of the Armed Forces and/or military professionalism and are often oriented toward military veterans, specific military units, occupational fields/skills, campaigns or other groups. The “PMA” label does not confer any basis for special treatment beyond that allowed to all NFEs. NMAs are a very small group of PMAs which DoD has formally recognized (e.g., Air Force Association and Air Force Sergeants Association). This recognition allows very limited special treatment (provision of expanded logistical support in enumerated areas only for the NMA’s annual national convention and not for other national organization or chapter events). See, 10 U.S.C. § 2558, *National Military Associations; Assistance at National Conventions*, and JER 3-212. While this does not apply here, it offers a distinguishing factor to consider in addressing these types of requests.

² See 5 CFR Section 2635.101(b)

³ JER 3-210 states, “DoD employees shall not officially endorse or appear to endorse membership drives or fundraising for any non-Federal entity except for [a few pre-approved organizations] which are not subject to the provisions of subsection 3-211.”

Official Air Force Events

An installation may utilize training resources proffered from a PMA or other NFE; however, installation commanders are not required to accept all offers from all NFEs.⁴ Where an offer is accepted, it should be documented and formally processed through the appropriate gift acceptance authority as a gift of voluntary services to the government.

The identity of all outside presenters should be vetted through the installation Public Affairs office. Speakers should be briefed in advance on the limitations applicable to the presentation(s), e.g., the talk should focus on general principles of leadership and professionalism and avoid advocacy for participation in any particular NFE. The speaker's affiliation with a specific NFE may be referenced only as biographical information in an introduction. He or she may not, directly or indirectly, solicit membership in or contributions to the NFE at the official event. Written materials from the NFE should not be made available at the site of the official event except for those related to the presentation (e.g., copies of slides, educational materials, etc.).⁵ This approach is consistent with the JER prohibitions on Air Force logistical support for NFE membership solicitation and fundraising events⁶ and avoids potential challenges of endorsement or preferential treatment of a particular NFE.⁷

Since the presentation is an official event, commanders may make attendance mandatory. The event may be announced through official communication channels; however, announcements should avoid referencing the NFE as underwriting the speaker's participation. The commander, or designee, may thank both the individual speaker(s) and the NFE for their support at the conclusion of the presentation.

NFE-Sponsored Events

Where a NFE desires to hold a membership solicitation or fundraising event on an installation, especially one featuring a former senior Air Force leader as a guest speaker, the event must not take on an official character. It must be strictly a private event that the Air Force cannot expressly or impliedly endorse.

Each installation should follow the JER, Air Force, and any local procedures and policies on facility access and use for the NFE event. The JER specifically prohibits the provision of logistical support for NFE membership solicitation or fundraising events. If the event will include solicitation of membership or contributions, the installation commander may require the NFE to pay for use of the facility to avoid the prohibition against providing logistical support for such activities under Section 3-211. If, however, leadership determines the event's main purpose is an

⁴ See SECAF Memo, *Installation Access and Support Services for Nonprofit Non-Federal Entities (NFE)*, 2 May 2015 (stating, "...installation commanders do not have to approve all requesting NFEs for base access and office space. The SecDef memorandum [on the same topic] makes it clear that installation commanders have the discretion to select those NFEs that provide the most services to Airmen and their families for the smallest footprint.")

⁵ Written materials may be made available in common areas permitted to any NFE IAW Air Force Policy.

⁶ See JER Section 3-211.

⁷ See JER Section 3-210.

official NFE one (e.g., a local chapter or business meeting) and is not for the purpose of solicitation of membership or contributions to the NFE, or that such activities are incidental to the purpose of the meeting, then an installation commander may exercise his or her discretion to make an installation location available at no cost.⁸ Personnel whose responsibilities include coordination with any NFE seeking to schedule activities to be conducted on military installations must ensure they treat PMAs no differently than any other NFE in these situations. They must avoid anything more than *de minimis* use of appropriated fund assets or official time in making such arrangements to avoid real or perceived conflicts of interest or inappropriate support or endorsement.⁹

Attendance at NFE-sponsored events must be voluntary and on personal time (not duty time). To the extent possible, NFE-sponsored events should be held outside of normal duty hours. However, such an event scheduled for lunchtime or shift changeover is acceptable as long as attendance does not impact duty responsibilities. If a NFE-sponsored event is held on the same day as an official event featuring a NFE-provided speaker, there should be a marked break between the events and it must be clear to all personnel that attendance at the NFE-sponsored event is voluntary. At such events, the presenter can encourage attendees to join the NFE and may hand out membership materials. While they may introduce prominent speakers, senior leaders should avoid any action that could be construed as officially endorsing the NFE or encouraging Airmen to join the organization on behalf of the Air Force.

For a NFE-sponsored event, installation personnel may be notified about the meeting through public bulletin boards and other similar modes of communication that are generally made available for NFEs to post information of interest to Airmen. Notifications of this type of event may not be made through official channels because events focused exclusively on expanding membership are not considered “events of common interest” under JER 3-208.

Co-Sponsored Events

A third alternative is for the installation and the NFE to enter into a memorandum of agreement (MOA) to co-sponsor an event which includes speakers on appropriate professional development topics. These types of events are likely longer in duration than those discussed above and involve a mix of speakers provided by both the NFE and the Air Force. All of the requirements of JER Section 3-206 must be met, including signature of a MOA that outlines the contributions and responsibilities of the various parties.¹⁰ As with all co-sponsored events, the session must retain the overall character of an official event, meaning the limitations outlined above for an official event must apply, including that there can be no solicitation of membership in or contributions to the co-sponsoring NFE (which should also be an express condition in the MOA).

⁸ All other applicable JER restrictions and requirements apply, as do base access and security requirements. In assessing requests for no-cost access, the installation commander must adhere to JER 3-210 and 3-211, including avoiding preferential treatment by determining that the installation is willing and able to offer the same access to other similarly-situated NFEs for similar events.

⁹ This advice is not intended to preclude the extension of appropriate protocol support to retired senior officials and for staff activities required to coordinate such events to minimize mission impact.

¹⁰ JER Section 3-206 sets out a series of factors, all of which must be met before a co-sponsored event can be held. Subsection 3-206(b)(4) discusses specific provisions that must be included in the MOA.

All speakers should be advised in advance of this limitation. Some limited use of the NFE's logo may be allowed on par with the Air Force logo as a co-sponsor, but the NFE may not make membership or fundraising materials available at the event. Consistent with Air Force policy and practice, the MOA for a recent similar event was forwarded to the Administrative Assistant to the Secretary of the Air Force for advance approval [contact SAF/GCA for a sample MOA for this type of event]. Before entering into this type of MOA, the command must weigh the JER requirement for impartial treatment of all NFEs and their willingness/ability to engage in similar events when requested by other similarly-situated groups (what they do for one NFE they need to be prepared for others)—and the potential time and resource costs of doing so. This type of event may be announced through official channels and the command must determine whether to make attendance by Air Force personnel mandatory.

Each of these situations presents unique ethics challenges under the JER. While these events can provide value to our Airmen, they must be conducted in a way that avoids actual or perceived violations of the JER, federal ethics regulations or other applicable federal laws for which all government employees can be held personally accountable.

Staff judge advocates (SJAs) who have any questions regarding this memorandum should seek further guidance through their functional chain of command. Any issues requiring higher headquarters assistance will be addressed by major command SJAs to SAF/GCA and/or AF/JAA.

The Administrative Law Directorate (AF/JAA) and the Deputy General Counsel for Fiscal, Ethics and Administrative Law (SAF/GCA) join in this opinion.

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