



DEPARTMENT OF THE AIR FORCE
NATO AIR TRAINING COMMAND-AFGHANISTAN
438TH AIR EXPEDITIONARY WING
KABUL, AFGHANISTAN

2 June 2014

MEMORANDUM FOR 438 AEW/COS

FROM: 438 AEW/SJA

SUBJECT: Military Members' Participation in Generalleadership.com

1. You asked for a legal review of military members' participation in the operation of and engagement in a non-profit, non-federal government activity – Generalleadership.com. I find the participation of military members in this activity, as it is currently operated, to be legally sufficient.

2. REFERENCES:

- a. The Federal Standards of Conduct, 5 C.F.R. § 2635
- b. DOD's supplement to the Standards of Conduct, 5 C.F.R. § 3601 et. seq.
- c. Joint Ethics Regulation, DOD 5500.7-R

3. FACTS:

a. Generalleadership.com is a non-profit organization composed of command-level active and retired U.S. military members who participate in the organization in their private capacities. *See* The General Leadership Foundation, *Leadership Resource Guide*, Chap. 1 (2014). The organization aims to materialize the CJCS's 2013 vision of "connect[ing] the warrior to the citizen"¹¹ by providing an information-sharing platform through which it promotes public understanding of military culture, leadership, and professionalism. It also provides "leadership insight, training, coaching and development" to "high-profile clientele." *Id.*

b. According to its Resource Guide, Generalleadership.com utilizes the following forums or "venues:" Daily articles/publications; Video Spotlights and Audio Podcasts; Interactive Webinars; and Twitter-based TweetChats. *See id* at Chap. 2.

c. The Resource Guide also lists resources and/or leadership tools it recommends, including book titles, computer/web applications, social media platforms, and various gadgets. *See id* at Chap. 3.

4. LAW & DISCUSSION: The crux of this matter is whether and to what extent may

¹¹ On 3 July 2013, General Martin E. Dempsey, the 18th Chairman of the Joint Chiefs of Staff, articulated his notion that it is important for military members to endeavor to connect the warrior to the citizen. *See* Dempsey, Martin E., *The Military Needs to Reach Out to Civilians*, The Washington Post Opinions, 3 July 2013, available at http://www.washingtonpost.com/opinions/general-dempsey-the-military-needs-to-reach-out-to-civilians/2013/07/02/b10c3bb0-e267-11e2-ae3-339619eab080_story.html (last visited on 1 Jun 14).

military members engage in activities outside their governmental employment. In general, DoD employees may voluntarily participate in activities, including management, of non-Federal entities as individuals in their personal capacities, provided they act exclusively outside the scope of their official positions. DoD 5500.7-R, ¶ 3-300, 3-301. Thus, any such outside activity must not conflict with the members' official governmental duties and obligations, and must not profit from the members' governmental position or influence.

5. No Apparent Conflicting Outside Employment and Activities. An employee shall not engage in outside employment² or any other outside activity that conflicts with his official duties. 5 C.F.R. § 2635.802 (emphasis added).³ An activity conflicts with an employee's official duties:

(a) If it is prohibited by statute or by an agency supplemental regulation; or

(b) If it would require the employee's disqualification from matters so central or critical to the performance of his official duties that the employee's ability to perform the duties of his position would be materially impaired.

*Id.*⁴ See also DoD 5500.7-R, ¶ 3-204.⁵

Here, no statute prohibits military members from writing articles and sharing information about general leadership concepts through the various venues described in ¶ 3.b., *supra*. Further, there is no indication that the content Generalleadership.com publishes would tend to disqualify active duty military officers from performing their official duties. It is nevertheless important to note that a conflict may arise, to the extent any current or future "high-profile clientele" engages in federal government business, for example, competing on a government contract to which a generalleadership.com author/military member is a decision-maker.⁶

²² "Employment" is defined as "[a]ny form of non-Federal employment or business relationship involving the provision of personal services by the DoD employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner or trustee." 5 C.F.R. § 3601.107.

³ See also DoD 5500.7-R, ¶ 3-202 (prohibiting participation in official capacity in the management of a non-Federal organization (e.g., as an officer, director, or trustee) without approval by the DOD General Counsel); DEPSECDEF Memo, 23 Jul 96 (Senior military officers (O-7 and above) cannot accept compensation from non-Federal organizations for service as an officer or member of a board of directors); DoD 5500.7-R, ¶ 3-201a (member may serve in an official capacity as a "DOD Liaison" to a non-Federal organization with the commander's written approval).

⁴ Example: An employee of the Environmental Protection Agency has just been promoted. His principal duty in his new position is to write regulations relating to the disposal of hazardous waste. The employee may not continue to serve as president of a nonprofit environmental organization that routinely submits comments on such regulations. His service as an officer would require his disqualification from duties critical to the performance of his official duties on a basis so frequent as to materially impair his ability to perform the duties of his position. 5 C.F.R. § 2635.802. See also DoD 5500.7-R, ¶ 3-302 (prohibiting DoD employees from engaging in any official activity in which a non-Federal entity is a party or has a financial interest if the DoD employee is an active participant in the non-Federal entity or has been an officer in the non-Federal entity within the last year).

⁵ The Joint Ethics Regulation generally prohibits DoD employees from engaging in any official activities in which a non-Federal entity is a party or has a financial interest if the DoD employee is an active participant in the non-Federal entity or has been an officer in the non-Federal entity within the last year.

⁶ In such an event, 5 C.F.R. § 3601.105 requires disqualified employees to provide written notice of such disqualification to his supervisor upon determining he will not participate in the matter.

6. No Apparent Use of Public Office for Private Gain. An employee shall not use his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, *including nonprofit organizations of which the employee is an officer or member*, and persons with whom the employee has or seeks employment or business relations. 5 C.F.R. § 2635.702 (emphasis added). *See also* DoD 5500.7-R, ¶¶ 3-209, 3-210 (prohibiting official endorsement (or appearance of endorsement) to non-federal entities, their membership drives or fundraising events).

Here, Generalleadership.com members are identified by their military ranks and may potentially realize benefits, monetary or otherwise, from their membership in the organization. However, based on my review of the organization’s website and Resource Guide, there is no indication that references to ranks or military affiliations are used to coerce or induce the readership/audience into providing a benefit to individual members or Generalleadership.com.⁷ Indeed, active duty military members who are ordinarily addressed by their a rank may use that term of address or rank in connection with a personal activity, including when teaching, speaking, or writing in a personal capacity. 5 C.F.R. §§ 2635.702 (b), (e), 2635.807(b). Furthermore, there is otherwise no appearance of governmental sanction or endorsement. For example, the organization does not appear to use military symbols, etc. in a manner that could reasonably be construed to imply that the Government or the members’ respective agencies or offices endorse Generalleadership.com, its methodologies, or the various resources and tools it recommends.

7. Activities Constitute Permissible Teaching, Speaking, and Writing. Generally, an employee, shall not receive compensation from any source other than the Government for teaching, speaking, or writing that relates to the employee’s official duties. 5 C.F.R. § 2635.807(a); *see also* 5 C.F.R. §2635.807(a)(2)(i)(A)-(E).⁸ Additionally, an employee engaged

⁷ *See, e.g., Mann v. Department of Health and Human Services*, 78 M.S.P.R. (1998) (charge of using one’s public office for private gain cannot be sustained when no private gain has been shown).

⁸ Teaching, speaking, or writing relates to the employee’s official duties if:

- (a) The activity is undertaken as part of the employee’s official duties;
- (b) The circumstances indicate that the invitation to engage in the activity was extended to the employee primarily because of his official position rather than his expertise on the particular subject matter;
- (c) The invitation to engage in the activity or the offer of compensation for the activity was extended to the employee, directly or indirectly, by a person who has interests that may be affected substantially by performance or nonperformance of the employee’s official duties;
- (d) The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information; or
- (e) The subject of the activity deals in significant part with (1) any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period; (2) any ongoing or announced policy, program or operation of the agency; or (3) in the

in teaching, speaking, or writing as outside employment or as an outside activity shall not use or permit the use of his official title or position to identify him in connection with his teaching, speaking, or writing activity or to promote any book, seminar, course, program or similar undertaking, except when inclusion of his title or position (1) is one of several biographical details given to identify him, provided that his title or position is given no more prominence than other significant biographical details; (2) is used in connection with an article published in a scientific or professional journal, accompanied by a reasonable prominent disclaimer stating that the views expressed do not necessarily represent the views of the agency or the United States; and (3) merely reflects the general term of address given him, such as a military rank. 5 C.F.R. §§ 2635.807(b), 3601.108; DoD 5500.7-R, ¶ 3-305.

Generalleadership.com members are generally engaged in teaching, speaking, or writing activities. In fact, some members enjoy military leadership roles and write, speak, or teach about leadership in general. However, based on my review of the organization's website and its Resource Guide, it is not apparent that any of their engagements are prohibited as being related to members' official duties. *See* 5 C.F.R. §2635.807(a)(2)(i)(A)-(E). In any event, any members in doubt may continue to use their military rank and/or official titles or positions so long as they make a disclaimer in accordance with 5 C.F.R. § 3601.108(a)-(c).⁹

6. CONCLUSION: DoD employees may voluntarily participate in Generalleadership.com's activities as individuals in their personal capacities, provided they act exclusively outside the

case of a noncareer employees, the general subject matter area, industry, or economic sector primarily affected by the programs and operations of his agency.

5 C.F.R. § 2635.807(a)(2)(i)(A)-(E). *See also* 5 CFR 2635.703(a) (Executive Branch employees may not disclose "non-public information" to further the private interests of any individual, company or organization.); 5 C.F.R. § 2635.703(b) ("Non-public information" means information that the employee gains by reason of Federal employment and that he knows (or reasonably should know) has not been made available to the general public.).

⁹ 5 C.F.R. § 3601.108 provides that: A DoD employee who uses or permits the use of his military rank or who includes or permits the inclusion of his title or position as one of several biographical details given to identify himself in connection with teaching, speaking or writing, in accordance with 5 CFR 2635.807(b), shall make a disclaimer if the subject of the teaching, speaking or writing deals in significant part with any ongoing or announced policy, program or operation of the DoD employee's agency, and the DoD employee has not been authorized by appropriate agency authority to present that material as the agency's position. The disclaimer shall be made as follows:

- (a) The required disclaimer shall expressly state that the views presented are those of the speaker or author and do not necessarily represent the views of DoD or its components.
- (b) Where a disclaimer is required for an article, book or other writing, the disclaimer will be printed in a reasonably prominent position in the writing itself.
- (c) Where a disclaimer is required for a speech or other oral presentation, the disclaimer may be given orally provided it is given at the beginning of the oral presentation.

Id. It is also noteworthy that the Joint Ethics Regulation permits DoD employees to participate in their official DoD capacities as speakers or panel members at conferences, seminars, or similar events sponsored by non-Federal entities, subject to the approval of the head of a DoD component command, and in accordance with public affairs regulations and appropriations rules under 31 U.S.C. § 1345. DoD 5500.7-R, ¶¶ 3-207, 3-211.

"Aim High...Fly Fight Win"
"Shohna ba Shohna"

scope of their official positions. Based on my review of the organization's website and Resource Guide, I find no activity running afoul of the relevant regulatory standards.

6/2/2014

X I. Antonio

Signed by: ANTONIO.IMELDA.UDUI.1294178194

IMELDA U. ANTONIO

Major, USAF

Staff Judge Advocate