



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

7 July 2014

MEMORANDUM FOR 438 AEW/CoS

FROM: 438 AEW/SJA

SUBJECT: Participation in GeneralLeadership.com's Blog Promoting Tony Robbins Free Offer

1. You asked whether military members who privately participate in the activities of a nonprofit organization may write about and/or publish information about an offer, free of charge to military members, of access to a Tony Robbins web-based personal development program called Ultimate Edge. I find that they may, so long as there is no perception of government sanctioning or endorsement.

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 recently published a blog highlighting an offer to military members of free access to a Tony Robbins web-based personal development program called Ultimate Edge. The blog, self-characterized as a "Press Release," announces the availability of the free access to the program. It further describes the program and proclaims that Brigadier General Michel, identified as a "Senior Curator of GeneralLeadership.com," endorses the program as a "tool to bolster resiliency, passion, purpose and inner-strength."

b. GeneralLeadership.com is a non-profit organization composed of civilian and 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 the public's understanding of military culture, leadership, and professionalism. It also provides "leadership insight, training, coaching and development" to "high-profile clientele." *Id.*

c. Neither GeneralLeadership.com nor its individual members are being compensated for the blog and/or its contents.

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-ae33-339619eab080_story.html (last visited on 1 Jun 14).

4. **LAW & DISCUSSION:** In general, DoD employees may voluntarily participate in activities, including the 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.

5. The Blog Constitutes Permissible Private Writing. Government employees may engage in uncompensated teaching, speaking, or writing in their personal capacities, even if the subject matter relates to the employee's official duties.² See 5 C.F.R. §§ 2635.807(a).³ However, when teaching, speaking, or writing in a private capacity, employees may not use either nonpublic information, or their official title, except as part of other biographical information or for an article in a scientific or professional journal where there is a disclaimer. 5 C.F.R. §§ 2635.703(a), 2635.807(b), 3601.108; DoD 5500.7-R, ¶ 3-305.⁴ An employee also may not use official time or that of another employee to prepare materials. DoD 5500.7-R, ¶ 3-303.

Here, the blog constitutes a private writing activity. The blog address, page, and content unquestionably identify GeneralLeadership.com and its activities as non-governmental. Regarding the blog's contents, although the subject matter targets military members in general, none of the information presented implicates an official duty or function of the 438 AEW, the

² Where employees participate in outside organizations in their personal capacities as a matter of personal choice, no agency approval is generally necessary. They will have made a personal choice to undertake the activity rather than having been assigned to perform the activity by a supervisor as part of their official duties. However, if the activity will involve service as an officer, director, fiduciary, or employee of the organization, and the work of the organization is related to the work of the employee's component, then prior approval must be obtained from the employee's component head.

³ 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 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).

⁴ "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. 5 C.F.R. § 2635.703(b).

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

Air Force, or the DoD at large.⁵ Rather, the material and opinions therein are clearly that of private persons and solely focused on individual personal development, an area of personal expertise and interest to Brigadier General Michel and GeneralLeadership.com in general.

6. The Blog Does Not Conflict With Official Duties. Private participation in professional organizations is generally encouraged. Indeed, the Joint Ethics Regulation provides that, with agency approval, DoD employees may even “be excused for reasonable periods of time to voluntarily participate in the activities of non-profit professional associations and learned societies and may permit [under specified circumstances] the limited use by their DoD employees of Federal Government equipment or administrative support services to prepare papers to be presented at such associations or society events or to be published in professional journals.” DoD 5500.7-R, ¶ 3-300.b. Notwithstanding this permissive rule, employees shall be mindful not engage in outside activities that conflict with their official duties. 5 C.F.R. § 2635.802; *see also* DoD 5500.7-R, ¶¶ 3-301, 3-302.⁶ 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. 5 C.F.R. § 2635.802; *see also* DoD 5500.7-R, ¶ 3-204.⁷

In this case, the blog is a permissible private uncompensated activity that does not conflict with an official duty. First, the blog is not statutorily or regulatorily prohibited. As GeneralLeadership.com is a non-profit organization whose primary activity is the discussion and sharing of information relating to leadership principles, none of its members have an apparent financial gain from its activities. Second, there is no indication that the blog’s contents would tend to disqualify 438 AEW personnel from performing their official duties; neither Generalleadership.com nor Robbins Research International, Inc. enjoy a current or potential contractual relationship with the government. It is nevertheless worth noting that a conflict may arise if, for example, Robbins Research International, Inc. or an affiliate seeks an award of a government contract to which a generalleadership.com author/military member is a decision-maker.⁸

⁵ Under 5 C.F.R. § 3801.103 most components in the DoD are designated as separate. This means that an employee would only be prohibited from accepting compensation for speaking or writing on a subject matter related to the policies, programs, or operations of his component, i.e. the Air Force in this case, not the entire Department. DoD 5500.7-R, ¶ 2-201a.

⁶*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, ¶ 3-201 (members may serve in an official capacity as a “DOD Liaison” to a non-Federal organization with the commander’s written approval).

⁷ 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.

⁸With some exceptions, 18 U.S.C. § 208 (2003) forbids any officer or employee of the executive branch from participating “personally and substantially” in his or her official capacity in a contract, controversy, “or other particular matter” in which he or she, or any person or organization with whom he is she is negotiating employment, has a financial interest. Anyone violating this law “shall be imprisoned for not more than one year,” fined, or both. *See* 18 U.S.C. § 216. 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.

“Aim High...Fly Fight Win”
“Shohna ba Shohna”

7. No Government Endorsement. As the government does not control or direct its employees in outside activities undertaken in an individual capacity, employees should take care to ensure that their actions and positions taken while participating in these activities are recognized as their own, and not those of the government. Thus, the permissibility of DoD employees' voluntary participation in non-Federal activities is conditioned on compliance with the Regulation itself and the promise that employees "act exclusively outside the scope of their official positions." DoD 5500.7-R, ¶ 3-300a. Additionally, the Joint Ethics Regulation permits "[p]urely personal, unofficial volunteer efforts to support fundraising outside the Federal Government workplace . . . where the efforts do not imply DoD endorsement." DoD 5500.7-R, ¶ 3-300a(2).⁹ Accordingly, as long as they do not create a perception of government endorsement, government employees may write and publish articles – including blogs – in their personal capacities, for the specific purpose of promoting a product or organization they prefer or recommend to others. Moreover, the fact that Brigadier General Michel is identified by his military rank does not make the blog objectionable as: (a) his rank is conventionally used as part of his name; (2) there is no reference at all to his official title and/or position or the 438 AEW; and (3) the blog clearly identifies him as a Senior Curator of GeneralLeadership.com. See DoD 5500.7-R, ¶ 3-300a(1).¹⁰ Indeed, the entire blog site contains no reference to any official military unit, emblem, or insignia.

8. No Apparent Use of Public Office for Private Gain.¹¹ 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. 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).

In this case, as neither the blog site nor the contents make any reference to any official governmental agency or office, there has been no use of public office in the production of the blog and/or its contents. In addition, no member of the 438 AEW is employed by or is otherwise known to have a financial interests in Robbins Research International, Inc. Furthermore, although some 438 AEW personnel are members of GeneralLeadership.com, the organization is not engaged in business for profit. Of course it may be argued that GeneralLeadership.com members are identified by their military ranks and may potentially realize benefits, monetary or otherwise, from their membership in the organization. However, 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 writing in their personal capacity, and there is no indication that references to ranks are used to coerce or induce their readership/audience into providing a benefit to themselves, GeneralLeadership.com, or Robbins Research International, Inc. 5 C.F.R. §§ 2635.702 (b), (e),

⁹ See also 5 C.F.R. § 3601.107 (limiting the requirement for prior agency approval to business activities or compensated outside employment with a prohibited source).

¹⁰ Providing that, although "DoD employees may not use or allow the use of their official titles, positions or organization names in connection with activities performed in their personal capacities as this tends to suggest official endorsement or preferential treatment by DoD of any non-Federal entity involved[,] [m]ilitary grade and military department as part of an individual's name (e.g., Captain Smith, U.S. Navy) may be used, the same as other conventional titles such as Mr., Ms., or Honorable, in relationship to personal activities."

¹¹ *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).

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

2635.807(b). Thus, there being no use of public office nor apparent motivation for private gain, the members' writing and publication of the blog do not violate this rule.

9. CONCLUSION: Based on my review of the facts against the applicable relevant laws and regulations, I conclude that it is permissible for members of the 438 AEW, in their personal capacities, to write and publish the blog promoting the free offer by Robbins Research International, Inc. on the GeneralLeadership.com website. The activity constitutes a permissible private writing, it does not conflict with official duties, it does not create a perception of government endorsement, and there is no apparent use of public office for private gain.



IMELDA U. ANTONIO
Major, USAF
Staff Judge Advocate

“Aim High...Fly Fight Win”
“Shohna ba Shohna”