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WESTERN REGIONAL ETHICS ADVISORY

Subj: SELLING TIME WITH COMMANDERS AS FUNDRAISING PRIZES

Ref: (a) DoD Directive 5500.7-R of 17 Nov 11
(b) MCO 5760.4C of 18 Mar 2010
(c) 5 C.F.R. 2635

1. **Purpose.** To provide an ethics advisory regarding selling time with a Commander as a prize for a fundraising effort.

2. **Background.** Occasionally, Commanders in the Western Region are asked to participate in a fundraiser of some sort by serving as the "prize." This typically involves some sort of time spent with the Commander and/or spouse as incentive for participants to contribute towards a fundraising effort of some kind. This situation has several ethical pitfalls to be avoided, as outlined below.

3. **Bottom Line.** Commanders should avoid incentivizing fundraising efforts by serving as the prize.

4. **Analysis**

a. **No Official Endorsement of NFEs or Fundraising Efforts.** Per section 3-209 of reference (a), endorsement of any non-Federal entity (NFE), event, product, service, or enterprise may neither be stated nor implied by DoD or DoD employees in their official capacities. Per section 3-210 of reference (a) and reference (b), DoD employees shall not officially endorse or appear to endorse membership drives or the fundraising efforts of an NFE with certain limited exceptions.

b. **By our own for our own fundraiser exception.** Per section 3-209 of Reference (a), the prohibition against official endorsement of fundraising efforts does not apply to organizations composed primarily of DoD employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members or their dependents. This is known as the by our own, for our own (BOOFOO) exception.

c. **Personal Participation in Non-Federal Entities.** Per references (a) and (c), DoD employees may participate in NFE activities, including fundraising activities, in their personal capacity. They must exercise caution in the use of titles, positions, or organization names so as to avoid the appearance of official endorsement or preferential treatment. Per reference (c), seniors may not solicit funds from subordinates.

d. **Application.** The three main contexts where a Commander might be asked to serve as the prize for a fundraising effort is for a unit, BOOFOO, or NFE fundraiser. Each of these three contexts present ethical risks, or are

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explicitly prohibited.

1. Unit Fundraiser. When dealing with relationships between subordinates and superiors, the issue of command influence is always a consideration. Here, that issue bears on the voluntariness of the Marines participation in a unit fundraiser. Marines may be motivated to participate out of a genuine desire to assist the unit. However, Marines participating to impress superiors in their chain of command, or Marines who participate because they feel like they must are examples of common motivations that undermine the voluntariness of the decision to participate, and this is exacerbated when time with the Commander is offered as a prize for participating. Commanders can and should endorse these fundraising efforts, but should avoid serving as the prize for them.

2. BOOFOO Fundraiser. This type of fundraiser may be officially endorsed. In theory, it may even be permissible to serve as the prize for fundraising efforts. In practice, this type of fundraiser has many of the same concerns as the previous, and still runs afoul of the "selling access to the Commander" as a prize perception. In addition, this exception does not apply when fundraising for the event is opened to any portion of the general public.

3. NFE Fundraiser. This type of fundraiser may not be officially endorsed. Per section 3-300 of reference (a), DoD employees, including Commanders, may participate in the fundraising efforts of NFEs. However, the reason that time with a Commander is offered as a prize for a fundraiser is directly related to his official position. References (a) and (b) both proscribe even the appearance of official endorsement. Thus, while Commanders may participate in the fundraising efforts of an NFE in their personal capacity, it is not permissible to sell access to the Commander as a prize because of the appearance of official endorsement.

5. **Conclusion.** Selling access to a Commander as a prize for a fundraising effort is problematic in the context of unit and BOOFOO fundraisers, and cannot escape the appearance of official endorsement in the context of NFE events. Avoiding even the appearance of impropriety by refusing to serve as a prize for fundraising efforts is advisable in most cases.



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