

Ethics Counselor Fundamentals



History

- Emoluments Clause to the Constitution
- Conflicts (Civil War)
- Congress reactive
- Texas Gulf Sulphur
- Civil Service Commission authorized agencies to issue ethics regulations
- DoD origins 1961 but values back to 1800s
- Watergate
- Ethics in Government Act
- Iran Contra
- Office of Government Ethics
- Standards of Ethical Conduct
- 5 C.F.R. part 3601 and DoD 5500.07-R (JER) 1993
- Standards are in Chapter 2 of JER

REFERENCES (4 pillars)

- 18 U.S.C. 201-209
- 5 C.F.R. part 2635
- 5 C.F.R. part 3601
- DoD 5500.07-R -
The Joint Ethics Regulation (JER)

Other Relevant References

- Ethics in Government Act of 1978
 - 5 U.S.C. app. 101 et. seq.
- Executive Order 12674
 - “Principles of Ethical Conduct for Government Officers and Employees,” April 12, 1989

Other Relevant References

- Principles of Federal Appropriation Law (GAO Redbook)
- Joint Travel Regulation (JTR)

The Practical Side

- Basic Ethics Counselor Workshop
Deskbook

Helpful Links

- Office of Government Ethics
 - <https://www2.oge.gov/>
- DoD Standards of Conduct Office
 - http://www.dod.mil/dodgc/defense_ethics/

Basic Obligations of Public Service Under Executive Order 12674

- Public Service is a Public Trust
 - Employees have a duty to place loyalty to the Constitution, laws, and ethical principles above private gain. 5 C.F.R. 2635.101(a)
- Impartiality
 - Employees shall act impartially and not give preferential treatment to any private organization or individual. 5 C.F.R. 2635.101(b)(8)

Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635)

- Gifts
 - Outside
 - Subordinates
- Conflicts
- Appearance of Conflict
- Seeking Employment
- Misuse of Office or Personnel
- Teaching, Speaking, and Writing
- Disclaimer requirement in 5 C.F.R. 3601.108
- Outside Activities and Fundraising

DoD Supplemental Standards of Ethical Conduct for Employees of the Department of Defense (5 C.F.R. part 3601)

- Seven parts
 - Designates 16 separate components for purposes of accepting gifts from outside sources and governing teaching, speaking, and writing.
 - Provides additional exceptions for gifts from outside sources such as an event sponsored by a state or local government or civic association (must be free attendance) or for scholarships received under certain criteria where the employee's performance or lack of performance does not affect the sponsor.

DoD Supplemental (cont.)

- Adds gift limitations such as not being able to use the group gift if it exceeds \$300 for an infrequent occasion and if the recipient knows the subordinate contributed; food, refreshment, and entertainment are not included in the \$300 group gift; and if a subordinate offers a gift to more than one donating group, then both groups are considered one group for purposes of the \$300 group gift rule.
- Limits solicitation of sales by superiors to subordinates.

DoD Supplemental (cont.)

- Standards for accomplishing disqualification
 - In writing
 - To Supervisor

DoD Supplemental (cont.)

- Prior approval for outside employment and business activities
 - Must be financial disclosure filer
 - Outside employer must be a defense contractor
- Disclaimer for Speeches and Writings Devoted to Agency Matters

Changing the Ethics Rules

- 5 C.F.R. part 3601, is the DoD supplemental regulation. Supplementation not permitted without approval by the Office of Government Ethics.

Joint Ethics Regulation

- Created by DoD Directive 5500.07, 8/30/93, amended 11/29/07 and 11/17/2011
- Single, comprehensive source of guidance
- Cancels all inconsistent instructions
- Prohibits supplementation without approval from DoD General Counsel
- Bolded provisions are punitive
 - Violation of general order punishable under Art. 92, UCMJ
- Change is coming

Designated Agency Ethics Official (DAEO) and Alternate

- Functional Authority to coordinate and manage the ethics program
- General Counsel is DAEO
- TJAG or Principal Deputy General Counsel is often the ADAEO

Deputy DAEOs

- Designated by the General Counsel (DAEO)

Ethics Counselors

- Defined at JER 1-212
- Shall be an attorney
- Communications received in EC capacity
NOT protected by attorney-client privilege

Deputy DAEO v. Ethics Counselor

- Deputy runs program, and EC assists
 - Provide ethics guidance
 - Training
 - Ensure Financial Disclosure Reports are filed
- NOTE: (1-202 of the JER) BOTH DDAEOs and ECs are “**Agency Designees**” for 0-7+ in command
- Practically, no difference but check the delegation of authority:
 - Certifying OGE Form 278?
 - Granting waivers of \$200 late filing fee?

Agency Designee

- First Supervisor above a GS-11
- Works with Ethics Counselor
- Agency interest in attending WAG
- Outside Activity Approval

DoD Employees (JER 1-209)

- Civilian officer or employee (including NAFL)
- Active Duty (AD) regular or reserve officers including warrants
- Active Duty enlisted
- Reserve member (AD, Title 10 status, or performing any reserve function)
- Student of any DoD academy, college, university, or school
- Foreign nationals working for DoD when consistent with agreements

Application of Ethics Rules to Enlisted and UCMJ

Application to Enlisted

JER 1-300(b), 5-301, 5-404

- Criminal conflict of interest statutes do not apply to enlisted, except for bribery
(18 U.S.C. 201)
- Application of ethics rules for enlisted is through JER

Applicability of 208 and 209 to Enlisted

Conflicts of Interest

- Applies financial interest and supplementation of salary conflict laws to enlisted (18 U.S.C. 208 and 209) (JER 5-301 and 5-404)
- Solicitation prohibitions (superior to subordinate) 5 C.F.R. 3601.106 (JER 5-409)

Training

(5 C.F.R. part 2638)

- Annual Ethics Training
- Ethics Letters
 - New employee
 - New supervisor

Enforcement

- What violations are reportable
 - See DoD Directive 5505.06, Investigations of Allegations Against Senior Officials of the Department of Defense
- When a violation is reportable
- How to report violations to the Inspector General (Chapter 10 of the JER)

Miscellaneous

- Presidential Executive Order authorizing Standards (JER, Chapter 12)
- DoD Employee Ethical Value Goals (JER, Chapter 12)
- Ethical Values and Decision-Making (JER, Chapter 12)

The Committee on Standards of Conduct

- Created to provide interpretive guidance to resolve conflicting ethics provisions, define vague terms, and identify and remedy inconsistencies in the application across the Military Services

Secretary of Defense James Mattis



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

AUG - 4 2017

MEMORANDUM FOR ALL DEPARTMENT OF DEFENSE EMPLOYEES

SUBJECT: Ethical Standards for All Hands

Those entrusted by our nation with carrying out violence, those entrusted with the lives of our troops, and those entrusted with enormous sums of taxpayer money must set an honorable example in all we do.

I expect every member of the Department to play the ethical midfield. I need you to be aggressive and show initiative without running the ethical sidelines, where even one misstep will have you out of bounds. I want our focus to be on the essence of ethical conduct: doing what is right at all times, regardless of the circumstances or whether anyone is watching.

To ensure each of us is ready to do what is right, without hesitation, when ethical dilemmas arise, we must train and prepare ourselves and our subordinates. Our prior reflection and our choice to live by an ethical code will reinforce what we stand for, so we remain morally strong especially in the face of adversity.

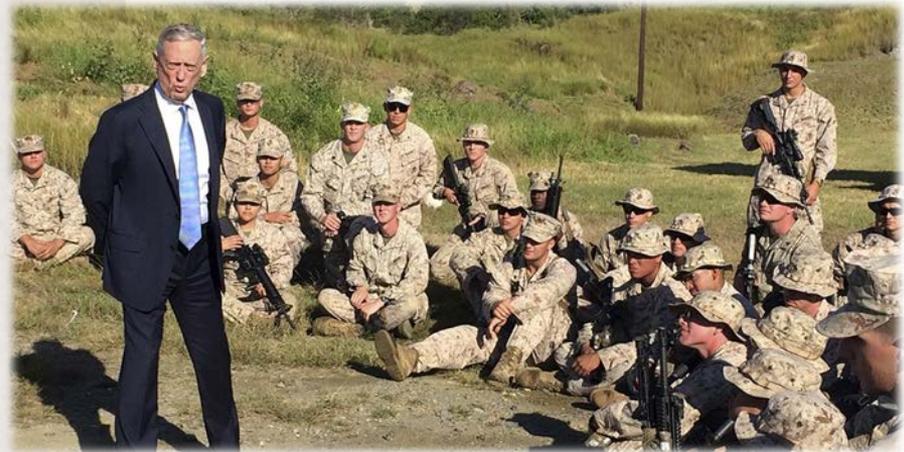
Through our example and through coaching of all hands, we will ensure ethical standards are maintained. Never forget, our willingness to take the Oath of Office and to accept the associated responsibilities means that even citizens who have never met us trust us to do the right thing, never abusing our position nor looking the other way when we see something wrong.

I am proud to serve alongside you.

James Mattis

cc:
Deputy Secretary of Defense

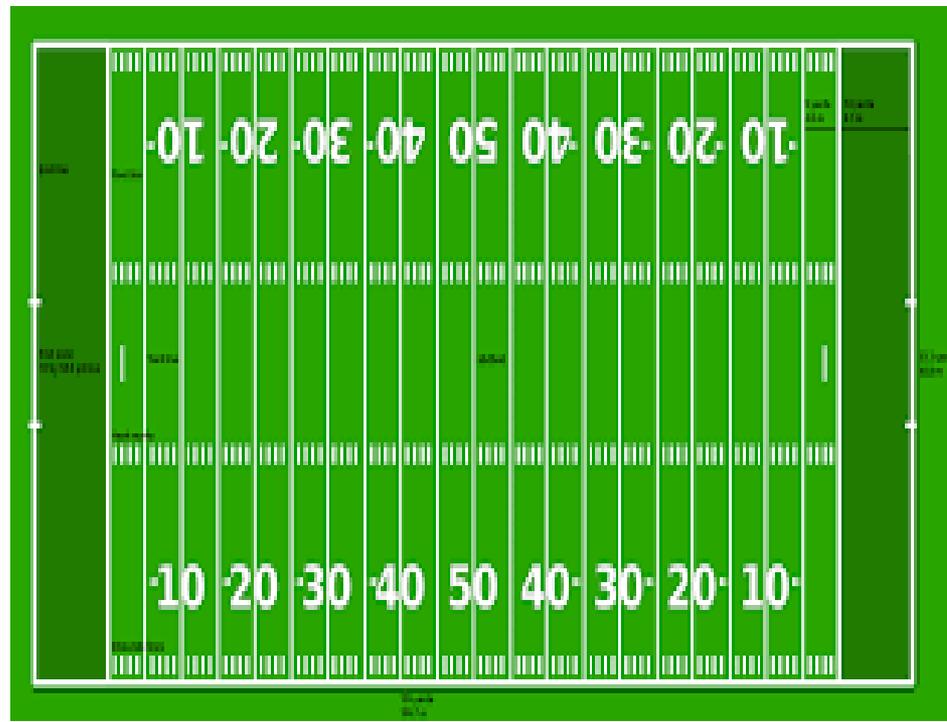
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Sentinels for Ethical Decision-Making

"I expect every member of the Department to play the ethical midfield. I need you to be aggressive and show initiative without running the ethical sidelines, where even one misstep will have you out of bounds."

Secretary of Defense James N. Mattis



Leading with an Ethics Mindset

“I expect Senior Leaders to be personally involved in presenting annual ethics training”
“Remain in the ethical midfield”



SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-1000

2/2/2019

MEMORANDUM FOR ALL DEPARTMENT OF DEFENSE PERSONNEL

SUBJECT: Leading with an Ethics Mindset

Congress and the Nation have placed their trust in us – trust that we will deliver high performance results and remain accountable to the American people as good stewards of their tax dollars. As we continue translating strategy into action, we must demonstrate our commitment as leaders in carrying this trust forward. A key component of leadership is reinforcing ethical behavior across the full spectrum of our work and recognizing ethics principles as the foundation upon which we make sound, informed decisions.

I ask that you and your teams reinforce this foundation at every turn. Make ethics a natural and constant part of your everyday conversations. Identify gray areas to prevent future missteps. Remain in the ethical midfield and take advantage of the resources at your disposal to gain clarity. We are accountable for our actions as individuals, but we are also strongest when we work as one team to achieve results – ethics is no exception.

Our mindset must focus on more than just meeting minimum compliance standards. Experience has shown that discussions of potential or past scenarios is the most effective way to reinforce a culture of values-based, ethical decision-making. I expect senior leaders to be personally involved in presenting annual ethics training to their organizations and ensuring completion of that training by November 30th of each calendar year. While DoD ethics counselors will participate and provide resources for these events, I expect leaders to take initiative in developing the content. Lead by example with your commitment to ethical decision-making and conduct.

I am proud to serve alongside you as we drive progress along our strategic priorities and maintain the most lethal – and ethical – fighting force in the world.

A handwritten signature in black ink that reads "Patrick M. Shanahan".

Patrick M. Shanahan
Acting

Reinforcing Ethical Behavior



SECRET
1000 DE
WASHING

MEMORANDUM FOR ALL DEPARTM

SUBJECT: Guidance from Secretary Jim M

The start of a new fiscal year comm



February Message to the DoD Team

Earlier this month, Congress passed the Bipartisan Budget Act, a significant step towards ensuring our Department is able to field the most lethal, capable, and resilient military in the world, now and in the future.

We have shown our nation is best served when Congress and the Department of Defense work together to achieve results. While we still need a final appropriations bill, the Congressional budget deal provides our service members and civilian employees the confidence they need to perform their duties. It also provides our allies and industry partners the necessary stability to

CHIEFS OF THE
SUBJECT: Dialogue with Industry

One key component of this leadership is reinforcing ethical behavior across the full spectrum of our work, recognizing it as a foundation of our ability to make sound, informed decisions. I ask that you reinforce this foundation at every turn. Make ethics a natural and constant part of your conversations. Identify gray areas to prevent future missteps. If unsure of ethical boundaries, take advantage of the resources at your disposal to gain clarity. We are all accountable for our actions as individuals, but we are strongest when we work as one team to achieve results – this is no different when it comes to ethics.

must accompany your initiative to collaborate and offsetting advantages. I request that you provide representatives within legal boundaries to engage our enemies.

cc:
DSD

year plan to rapidly rebuild the warfighting and lethality while preparing for sustained and secure nuclear deterrent, the fielding of warfare as a core competency.

Second, strengthen alliances and partnerships provide avenues for peace, fostering the same vision. Strong alliances and nations or try to impose their will over the nations with strong allies thrive, while those work with our allies, partners, and coalition

must show leadership in carrying this trust forward.

One key component of this leadership is reinforcing ethical behavior across the full spectrum of our work, recognizing it as a foundation of our ability to make sound, informed decisions. I ask that you reinforce this foundation at every turn. Make ethics a natural and constant part of your conversations. Identify gray areas to prevent future missteps. If unsure of ethical boundaries, take advantage of the resources at your disposal to gain clarity. We are all accountable for our actions as individuals, but we are strongest when we work as one team to achieve results – this is no different when it comes to ethics.

As a team, you bring unmatched grit to every fight in order to protect our nation. We owe it to those we work alongside every day, as well as those we serve, to cultivate an environment where we practice good judgment and respect ethical boundaries. Thank you for your continuous efforts to make this type of environment a reality.

As always, I'm proud to serve alongside you,
-Pat

Values-Based Decision Making 101

Evaluate the Big Picture

- ✓ Is it legally sound?
 - ✓ *Can* I do it?
 - ✓ *Should* I do it?
- ✓ Is it *right for the government*?
- ✓ How will it be perceived?

Remember your duty as a public servant

OGE Tips

• Procedures (JER)

- Delegations
- Agency Organization Chart
- Agency Mission
- Public and Confidential Financial Disclosure Program Tracking System
- Training
- Counseling
- Advisory Committees
- 208 waivers
- 1353 travel
- Relationship with OIG
- Job Offer and Supervisor ethics letter requirements

Ethics Calendar of Events

- Office of Government Ethics Publishes
- <https://www.oge.gov/web/oge.nsf/Dates%20and%20Deadlines>

Training

- Check with who you report to
- OGE examples
- Shanahan letter requiring management be involved

Building an Ethics Office

- Turnover
- Call on superior
 - Field Activity
 - Combatant Command
- HR
 - Lists of Public Financial Disclosure Filers
 - Assist with Training
 - Organization Chart

What We Will Cover

Gifts

- Gifts From Outside Sources
- Gifts Between Employees
- Gifts From Foreign Governments
- Gifts to the Department
- Gifts of Travel

Non-Federal Entities

- Endorsing
- Supporting
- Fundraising
- Official and personal participation

Outside Activities

- Outside Employment
- Teaching, Speaking, and Writing

Travel

- Government Vehicles
- Rental Cars
- Commercial Air

Conflicts of Interest

- 18 U.S.C. 208
 - Regulatory and individual waivers
- Impartiality Standards
 - Authorizations
- Bribery, Representation, and Supplementation of Salary

Financial Disclosure

- Public Financial Disclosure
 - OGE Form 278 e
- Confidential Financial Disclosure
 - OGE Form 450

Post-Government Employment

- Seeking Employment
- Procurement Integrity Act
- Representation Statutes
 - 18 U.S.C. 207(a), (b), (c), and (f)
- Terminal Leave Issues
- Foreign Employment

Fundraising

- Fundraising in the workplace
- By your own, for your own
- Gambling
- Official support of fundraising
- Personal fundraising

Enjoy