



ETHICS GRAM

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NAVY-MARINE CORPS RELIEF SOCIETY (NMCRS) ANNUAL ACTIVE DUTY FUND DRIVE REFRESHER

Ref: (a) 5 C.F.R. 950.102
(b) SECNAVINST 5340.7
(c) DoD 5500.07-R, Change 7

1. **Purpose.** To provide a refresher on the NMCRS annual active duty fund drive by consolidating guidance provided over the years into one resource for staff judge advocates (SJAs). Thank you to all of our Ethical Conehead alumni whose work over the years on this issue provided the foundation for this ethics gram.

2. **NMCRS Annual Active Duty Fund Drive.** The annual active duty fund drive begins this month and in preparation for the variety of fundraising events held by commands, it is important for all SJAs to re-familiarize themselves with the regulations governing fundraising for NMCRS and the activities that are not permissible during the fund drive. While this ethics gram is lengthy, it is a one-stop shop for the most frequently asked questions.

a. Generally, reference (a) prohibits fundraising in the Federal workplace other than for the Combined Federal Campaign (CFC). As an exception, heads of departments or agencies may authorize solicitations by their own members for the benefit of their own members. Accordingly, the Secretary of the Navy enacted reference (b) which provides guidance for an annual active duty fund drive for NMCRS. NMCRS is a private, non-profit, charitable organization whose mission is to assist Navy and Marine Corps families in need. Reference (b) authorizes commanders/commanding officers to provide their personal support in ensuring an effective call for contributions, to inform Department of the Navy (DON) personnel of the work of NMCRS, and of the need for individual contributions and continuing support. Each year, the active duty fund drive occurs during the month of March.¹

b. The annual fund drive relies on personal solicitation of service members by designated individuals. This work place solicitation is permissible because the fund drive is a "by our own, for our own" (BOOFOO) solicitation which is a specific exception under references (a) and (c). Therefore, only members of the BOOFOO may be solicited. Civilians and contractors in the work place are not members of the BOOFOO and may not be solicited for donations.² The annual active duty fund

¹ Commanders/commanding officers may designate another time period if March is impractical due to operational schedules provided that the alternate time period does not conflict with other Federal fundraising campaigns, including the CFC.

² Civilian employees and contractors are not eligible for assistance from NMCRS which is why they are not members of the BOOFOO. However, if they voluntarily choose to donate, you may accept the donation.

drive is run by commands and is separate and distinct from fundraisers hosted by NMCRS. As a non-federal entity, NMCRS may fundraise among the public which commands may not do. In addition, Section 3-210 of reference (c) only permits Department of Defense endorsement of NMCRS fundraisers when they do not involve public solicitation. Therefore, for the active duty annual fund drive, NMCRS may not actively participate but may provide assistance in the form of advice, support, information, publicity materials, and copies of the active duty fund drive manual.

c. Each year, Code 13 fields questions regarding fundraising ideas and incentives. There are several recurring themes that will sound familiar to many SJAs. Below are the most frequently asked questions:

1. Coercion is prohibited. Charitable contributions should be truly voluntary. Reference (a) prohibits coercive types of fundraising activities in connection with the CFC and DON has incorporated this policy into reference (b). Actions that do not allow free choices, or create the appearance that employees do not have a free choice to give or not to give, or to publicize their gifts or to keep them confidential, are contrary to Federal policy. Types of actions that are specifically prohibited include: (1) supervisory inquiries about whether an employee chose to participate, or the amount of an employee's donation; (2) setting 100 percent participation goals;³ (3) establishing personal dollar goals and quotas; (4) developing and using lists of non-contributors; (5) providing and using lists of contributors for purposes other than the routine collection and forwarding of contributions and allotments; and (5) using the results as a factor in a supervisor's performance appraisal.

2. Civilian Clothes Privilege. There is no authority under the Navy Uniform Regulations for granting a "civilian clothes privilege" to those who contribute to a fundraising effort.

(i) Section 1202 of the Uniform Regulations states that "Navy personnel shall wear the uniform of their respective rate or rank as prescribed by the designated uniform prescribing authority." The "prescribing authority" is generally the regional coordinator and he/she is not permitted to delegate this authority.⁴

(ii) Section 1201.4 provides that "[a]ll military personnel on naval shore activities must wear either the uniform of the day or appropriate civilian attire prescribed by the activity's prescribing authority." Section 7101 of the Uniform Regulations details specific times when civilian clothes may be authorized for wear.⁵ There is no authority that allows a local command to "exempt" itself from the prescribed uniform of the day and authorize civilian clothes privileges for a military member in the work place during the regular duty day. If you are on duty, you wear your uniform.

³ Remember, it is not 100 percent participation but rather 100 percent contact!

⁴ See section 1201, table 1-2-1 or section 4 of the Standard Navy Distribution List to determine the area regional coordinators and their assigned regions.

⁵ "[Civilian] clothing may be authorized for wear while leaving or returning to ships or stations, while awaiting transportation after permission to leave the ship has been given, while on authorized leave of absence, liberty, or in any off-duty status."

(iii) Separate from the Uniform Regulations, there is the principle that privileges should not be for sale or extended according to a member's ability to contribute to a fundraising campaign. The granting of such a privilege under these circumstances could be viewed as coercive. Remember, non-donor lists are not permitted. By having donors in civilian clothes and non-donors in uniform, the command has effectively published a donor/non-donor list to the whole command.

3. Selling Liberty. Commands may not award special liberty for charitable contributions. MILPERSMAN 1050-280 authorizes the awarding of special liberty for "unusual reasons, such as emergencies, to exercise voting responsibilities of citizenship, for observance of major religious events [which] require the individual to be continuously absent from work or duty, or for special recognition." Furthermore, MILPERSMAN 1050-280 states that special liberty in excess of three or four days are "intended as compensation for unusually long working hours, members on-board ship in overhaul away from home port, or as recognition for exceptional work performance." Contributing to a fundraising campaign does not meet the criteria set forth in the MILPERSMAN and may not be used as incentive to donate.

4. Parking Space Privileges. Perhaps the most contested fundraising idea is the raffle of parking spaces. Many commands want to authorize use of a senior officer's reserved parking space as an incentive to donate. It has always been Code 13's position that government property, including the use of such property, cannot be used as a prize for fundraising activities. The authority in section 3-210 of reference (c) for official endorsement of NMCRS does not equate to a finding that any action in support of the annual active duty fund drive is for an official purpose. Therefore, the limitations of section 2-301 of reference (c), regarding the use of Federal Government resources apply. Apart from these requirements, there is also the principle discussed above that privileges should not be for sale or extended to a member's ability to contribute to a fundraising campaign.

5. Gambling. Section 2-302 of reference (c) prohibits employees from conducting or participating in any gambling activity, including operating a gambling device, conducting a lottery or pool, participating in a game for money or property, or selling or purchasing a numbers slip or ticket while on Government-owned or leased property. There are limited exceptions to this prohibition, one of which is for activities composed primarily of Department of Defense (DoD) employees for the benefit of welfare funds for their own members under policies and procedures approved by the Secretary of the Navy.⁶ Reference (b) provides an exception to this prohibition against gambling and allows commanding officers to sponsor raffles, lotteries, and carnival-type games within their installations in conjunction with the annual fund drive. This exception does not extend to casino-type games of chance. Commands must also comply with local or state laws on gambling.⁷

⁶ Section 7 of Executive Order 12353.

⁷ Prior to holding an event, the commander/commanding officer must determine that the fundraising event complies with local/state laws, even when the command is located in an area of exclusive federal jurisdiction. States that prohibit gambling may have an exception for charitable organizations.

(i) Please keep in mind, that reference (b) does not provide an exception to the rule against solicitation. Personnel may not solicit businesses for donations to use as prizes for a raffle. These prizes may be purchased from a portion of the proceeds earned from those participating. Under no circumstances may personnel knowingly solicit a prohibited source for gifts to use in a raffle.

d. So, what may commands do? There are always the tried and true forms of fundraising such as bake sales, car washes, gently used baby clothing sales, or bowling tournaments. Again, these must be conducted on the installations or the fundraising group loses its BOOFOO status. Incidental contributions from civilians not targeted for solicitation do not cause the fundraising group to lose their BOOFOO status (e.g., a civilian employee sees the car wash at the on-base gas station and decides to have his car washed). More creative forms of fundraising are certainly acceptable provided they follow the guidelines in references (a) – (c). We realize that there are activities that remain in a “gray area,” such as those activities that occur at sea. If you have any doubt about a creative fundraising idea, please do not hesitate to contact us.

3. **Point of Contact.** For questions, please contact LCDR Catherine Chiappetta, at 703-614-6005 or catherine.chiappetta@navy.mil or LT Nick Kadlec at 703-614-7384 or nicholas.kadlec@navy.mil.