



# Office of Command Counsel Newsletter

October 1998, Volume 98-5

## AMC Command Legal Program for 1999-2000

The Command Legal Program (CLP) is a two-year plan initiated by the Command Counsel. The Command Counsel in conjunction with the MSC Chief Counsels determines the categories that will comprise the CLP. Then, each AMC legal organization develops initiatives under each category that are unique to each legal organization.

### Five CLP Categories Chosen

This year during the Chief Counsels' Workshop held at White Sands Missile Range, the Chief Counsels identified five CLP categories for 1999-2000:

- **Communication and Automation**
- **Quality of Life**
- **Professional Development**
- **Preventive Law**
- **Service to the Client**

Each AMC Major Subordinate Command is, of course, free to use its own methodology to identify components of the CLP.

In the Office of Command Counsel, we held a management off-site to develop a draft list of items under each of the five-categories.

### Developing Initiatives

Because we believe it essential that each employee actively participate in the development of initiatives, each member of the management team will meet with their respective groups to jointly discuss this draft list to develop a list that will be used as the final CLP package of initiatives.

I know the MSC Chief Counsel are actively engaged in developing their unique Command programs.

### Creativity

The CLP process permits

us to capture the work our people do in support of the AMC mission. It also focuses our attention on creative initiatives that improve our business processes, streamline procedures, define our roles and responsibilities, and assist us in establishing and maintaining progressive relationships with our clients. ©

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# COL Demmon F. Canner New AMC Deputy Command Counsel/Staff Judge Advocate

**COL Demmon F. Canner** arrived at Headquarters, AMC in August, to assume the position of Deputy Command Counsel/Staff Judge Advocate. "DC" comes to AMC from the Pentagon where he served for three years as Chief, Legal Assistance Policy Division, Office of The Judge Advocate General. He has a BBA from Temple University, a JD from Dickinson School of Law, and a LLM in Law, Psychology and Criminology, from the National Law Center, George Washington University.

Previous positions include SJA, Fort Sill, Oklahoma; Deputy Desert Storm Assessment Team, Falls Church; SJA, Fort Meade, Maryland; and Deputy Crimi-

nal Law Division, Office of The Judge Advocate General.

COL Canner is the recipient of numerous awards including the Meritorious Service Medal with five Oak Leaf Clusters.

DC's passion for auto racing may come in real handy as he negotiates those turns and curves that often characterizes the practice of law at the Headquarters. One person with whom DC is very familiar is **Nick Femino**—they were both in the same JAG basic class.

We extend a warm AMC welcome to DC, his wife, Beverly, and daughter, Jeannette.

The Canner's reside in Falls Church, Virginia. ©

## **Newsletter Details**

### **Staff**

*Command Counsel*

Edward J. Korte

*Editor*

Stephen A. Klatsky

*Layout & Design*

Holly Saunders

*Administrative Assistant*

Fran Gudely

*Typist*

Billy Mayhew

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Contributions are encouraged. Please send them electronically as a Microsoft® Word® file to [sklatsky@hqamc.army.mil](mailto:sklatsky@hqamc.army.mil)

Check out the Newsletter on the Web at [http://amc.citi.net/amc/command\\_counsel/](http://amc.citi.net/amc/command_counsel/)

Letters to the Editor are accepted. Length must be no longer than 250 words. All submissions may be edited for clarity.

**October is Combined  
Federal Campaign Time**

# Acquisition Law Focus

## WATCH THOSE OBLIGATIONS: The *Bona Fide Needs* Rule

**Maria Esparraguera**, CECOM Acquisition Counsel, DSN 992-9818, provides an excellent article on the Bona Fide Need Rule, including its ancient 1789 origin.

A fiscal year appropriation must be obligated only to meet a legitimate, or bona fide, need arising in the fiscal year for which the appropriation was made.

### The DFAS

The statute has been interpreted to require that the contractor will “start work promptly and perform under the terms and conditions of the contract without unnecessary delay.” See DFAS-IN 37-1 para.9.5c (3)(n). The rule is now codified at 31 USC Sec 1502(a).

### Anti-Deficiency Violation

The failure to comply with the bona fide need rule can result in an anti-deficiency violation under 31 USC Sec 1341. The article also

cites General Accounting Office precedent. For example, in United States Department of Agriculture Forest Service, B-235086, April 24, 1991, the Forest Service contracted to have two (2) bridges painted at the end of FY 1984, and because of environmental concerns, chose not to issue a “Notice to Proceed” to the contractor until May 1985. In that case, it was determined that the agency did not have a bona fide need for the services until FY 1985.

### GAO Precedent

Therefore, the General Accounting Office determined that FY 1984 appropriations should not have been used to fund the action.

The article also contains an interesting suggestion from the JAG School fiscal law course recommending that weather conditions be taken into consideration in determining the existence of the rule (Encl 1)<sup>c</sup>

## List of Enclosures

1. The Bona Fide Needs Rule
2. The Telecommunications Act of 1996
3. Appropriations, Availability, Obligations and Expirations
4. One Neutral's View: Suggestions for New (and Not So New) Mediators
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# Acquisition Law Focus

## GOCO Post-Retirement Benefits (--Other than Pensions): A \$270 Million Unfunded Liability

Post-retirement benefits other than pensions (PRBs) are health and life insurance benefits which contractors offer to their retirees. At the Government-owned, contractor operated (GOCO) Army ammunition plants, the industry practice for 40 years was to account for PRBs on a pay-as-you-go basis.

The Army under GOCO cost reimbursement contracts reimbursed these costs as the costs were incurred. No fund was set aside to pay future PRB costs. With the downturn in the defense budget, many GOCO plants were closed or the operating contractors changed. This resulted in large contractor claims for the unfunded PRB costs.

The Army's policy is that once the GOCO contract ends, there is no Government liability for the unfunded PRB costs. However, because of their strong equitable claims, many contractors

obtained extraordinary contractual relief from the Army Contract Adjustment Board (ACAB) pursuant to Public Law 85-804.

It is currently estimated that the unfunded PRB liability at the GOCO plants is approximately \$270 million. AMC has advised that any future ACAB rulings for PRBs will come out of procurement funds.

In order to remedy this situation, the IOC has submitted proposed legislation to make unfunded PRBs an allowable contract termination cost at the GOCO plants and requests \$270 million in appropriations.

If approved, this legislation would eliminate the administrative burden of the Public Law 85-804 process and provide a special appropriation that would give some relief to the Army's limited budget. POC is IOCs **Bernadine McGuire**, DSN 793-8436. ©

## Seen at Roadshow VII:

### Acquisition Reform Guiding Principles

1. Empower people to manage—not avoid risk.
2. Operate in integrated product teams.
3. Reduce Cycle Time by 50%.
4. Reduce cost of ownership.
5. Expand use of commercial products and processes.
6. Use performance specifications and non-government standards.
7. Issue solicitations that reflect the quality of a world class buyer.
8. Procuring goods and services with “best value” techniques.
9. Test and inspect in the least obtrusive manner to add value to the process or product.
10. Manage contracts for end results. ©

## *The Telecommunications Act of 1996: The Competitive Bell Is Ringing*

The Telecommunications Act of 1996 (the Act) is the first major statutory change to Communications law in over 60 years. The primary purpose of the Act is to increase competition in various communications markets and to reduce regulation of those markets. The law addresses telecommunications, cable and broadcast services.

The new law opens all telecommunications markets to competition, with particular emphasis on the local exchange market. Currently, in

most places, this market is a monopoly dominated by the Bell Operating Companies (BOCs) or other Local Exchange Carriers (LECs).

The Act allows cable television companies, interexchange companies (IXCs), subsidiaries of utility companies, Competitive Access Providers (CAPs) and others to enter and compete in the local exchange market.

In order to encourage competition in the local exchange market, the Act has a number of provisions requiring LECs to open their networks to their competitors in

a fair, non-discriminatory way. Since most new competitors do not have facilities-based networks in the local exchange market, access to and interconnection with the LECs' networks, facilities, service and equipment is key to developing competition in that market.

CECOM's **William Kampo**, DSN 992-6561, has prepared an excellent overview of the Act with specific emphasis regarding Bell operating companies, broadcasting, cable TV, and telecom competitive opportunities (Encl 2)<sup>c</sup>

## **Appropriations, Availability, Obligations and Expirations**

AMCOM's **Dayn Beam**, DSN 746-8195, provides an interesting paper that speaks to an administrative "swap" of FY 94 for FY 96 dollars on an existing obligation, and explains this process as it arose in an AMCOM acquisition program. Research does not reveal any statutory restriction for this type of ac-

tion, and Resource Management representatives were unaware of any regulatory limitations. Mr. Beam is unaware of any case directly on this point. However, the GAO's Principles of Federal Appropriations Law (hereafter referred to as "the Redbook"), Second Edition, Volume 1, Chapter 5, Section

7, concerning contract modifications, supports this analysis.

Three statutes and legal principles appear to be relevant to the appropriate use of this swap, and each is discussed in the article: type of funds-purpose statute, year of funds-bona fide needs rule and the amount of funds-Anti-Deficiency Act (Encl 3)

## One Neutral's View: *Goin' Mobile* Suggestions for New (and Not So New) Mediators with AMC's Civilian Employee Deployment Guide

**Steve Klatsky**, DSN 767-2304, recently was an adjunct faculty member for the Defense Equal Opportunity Management Institute (DEOMI) Mediation Course.

Steve made presentations on the Background and History of Alternative Dispute Resolution; Mediation: Premise, Process and Principles; and, ADR Program Design. He also observed and commented on mock mediation sessions conducted by the students.

As part of his feedback to the students, Steve provided information that DEOMI officials asked him to reduce to writing. A copy of his paper is provided (Encl 4 ).

1. Be Yourself
2. Describe the Benefits of Mediation in Your Introduction
3. Listen Carefully to Positive Comments Made By One Party About the Other
4. Pick Up An Expression

of Willingness to Change Requested Remedies

5. Don't Dominate the Conversation—"Direct Traffic" Between the Parties

6. Describe the Purpose of A Caucus In General, NOT Specific Terms

7. The First Caucus Question: "Is There Anything Else I Need to Know?"

8. Firmness Has Its Place—But Not In Your Opening

9. Room Design Is Important to the Mediation Process

10. Summarize Regularly

11. Keep At the Parties to Create Options and to Raise Ideas

12. "Are there Other Issues?"—The Loaded Question

13. Keep the Process Informal

14. Congratulate the Parties!

This paper has also been distributed by the Federal Mediation and Conciliation Service throughout the Federal ADR Network (FAN).<sup>©</sup>

**Cassandra T. Johnson**, DSN 767-8050, attended the DA Mobilization Planning and Contingency Operations Workshop. DA DCSPER gathered the DA subject matter experts to assist in writing draft changes to AR 690-11, Planning and Use and Management of Civilian Personnel in Support of Military Contingency Operations, as well as DA PAM 690-47, DA Civilian Employee Deployment Guide. You may recall that DA adopted the AMC Civilian Deployment Guide for its use.

The Workshop concentrated on a review of the AR.

DA asked AMCCC (Cassandra) and AMCPE's **Diane Blakeley**, to review the DA Guide and make draft changes, since they recently participated in the rewrite of the AMC Guide. <sup>©</sup>

# Employment Law Focus

## Workers Immune from Supervisor's Defamation Suit

The Court of Appeals for the Seventh Circuit has ruled that nine Federal employees who filed discrimination complaints against their supervisor, and later complained about his behavior to senior agency leaders, can not be sued by their supervisor for defamation. See Taboas v. Mlynczak, 7th Cir., No.97-3592, July 6, 1998.

The Court ruled that filing a discrimination complaint, and raising concerns about possible retaliation for

doing so, were legitimate actions of Federal employees acting within the scope of employment.

The plaintiff argued that these individuals acted in bad faith and the actions were made in malice and ill will. The Court said, however, that even acts of ill will could fall within one's legitimate scope of actions.

The US successfully removed the case to Federal court and substitute itself as the sole defendant. ©

## MSPB Regs on Atty Fees, Comp Damages and Consequential Damages

On Aug 3 the MSPB issued new regulations providing practitioners with guidance on how to proceed on requests for attorney fees, consequential and compensatory damages, as well as legal requirements on the choice of procedures in cases involving both an appealable action and a prohibited personnel practice. These provisions can be found at 63 Federal Register 41177.

MSPB said the new rules were issues to serve four pur-

poses: to implement the compensatory damage provisions of the Civil Service Reform Act of 1991; to implement the attorney fee provisions of the Uniformed Services Employment & Reemployment Act of 1994; to implement the attorney fee, consequential damage and choice of procedure provisions of PL 103-424 of 1994 reauthorizing the MSPB and the Office of Special Counsel; and, to amend existing rules governing attorney fees to change the time limits for filing requests. ©

## Tape Record those Conversations ...and Get Attorneys Fees

The Merit Systems Protection Board awarded attorney fees to a clerk who tape-recorded conversations with her supervisor during work-related meetings. In Capeless v. Department of Veteran's Affairs 98 FMSR 5221, June 24, 1998, the Board reduced a removal to a 45-day suspension against an employee charged with insubordination for failing to stop tape-recording when requested by her supervisor.

The Board ruling highlights that the agency knew or should have known that it would not prevail on the merits. Thus, the request for attorney fees is granted under the "warranted in the interest of justice" standard. ©

# Employment Law Focus

## Purge those Records...Or A Breach May Be Found

In Mullins v. Department of the Air Force, 98 FMSR 5276, Aug 4, 1998, the MSPB ruled that an agency failure to timely expunge records from the appellant's personnel folder constitutes a material breach of a settlement agreement between the parties. The settlement agreement permitted the employee to resign his position. The agreement required that his official personnel records be cleared so that there is no reference to "any disciplinary action...or removal."

The agency position was that there was no material breach, in part, because the individual was hired for another position.

The Board ruled that the breach was material, not because it resulted in a monetary loss, but because the breached provision was material to the settlement agreement. As a remedy the appellant has the option of seeking enforcement of the breached provision or to rescind the agreement and reinstate his appeal. ©

## Frivolous Discrimination Claim Must Have Hearing

In Currier v. U.S. Postal Service, 98 FMSR 5261 (July 29, 1998), the Merit Systems Protection Board ruled that it was improper for an Administrative Judge to dismiss a discrimination claim as frivolous, without providing a hearing. Citing Bennett v. National Gallery of Art, 98 FMSR 5259, and 5 USC Code Sec 7702, the Board stated that the law does not distin-

guish between frivolous and nonfrivolous allegations. An appellant who has a right to an MSPB hearing because he or she has filed an appeal from an action that is appealable to the Board, also has a right to have the Board decide an allegation of discrimination raised in that appeal, based on evidence presented at the hearing. ©

## FECA & Rehab Act & FTCA go to the Fed Circuit

An injured employee who is not satisfied with the outcome of his Federal Employee Compensation Act decision can not then bring suit under the Rehabilitation Act of 1972 seeking a more favorable result.

In Meester v. Runyon, 8th Cir.; No.97-1580, July 16,1998, the Circuit Court majority ruled that an employee dissatisfied with a FECA decision can appeal the Labor Department's rul-

ing, but can not file suit under the Rehabilitation statute. FECA is the exclusive remedy for federal employees who are injured on the job.

The dissent suggests that FECA does not bar suit under the Rehab Act because the two statutes provide for very different remedies. Interestingly, the majority and the dissent both conclude that FECA would bar suit under the Federal Tort Claims Act. ©

## FLRA on the Scope of Bargaining...

The General Counsel of the Federal Labor Relations Authority (FLRA) recently issued an important Guidance Memorandum to Regional Directors discussing the concept of the scope of bargaining under the Federal Service Labor-Management Relations Statute.

### Scope of Bargaining

Regional Directors are frequently required to make decisions on the negotiability of union proposals in situations where management is seeking to make a change in a condition of employment.

The Memorandum serves as guidance to the Regional Directors in investigating, resolving, litigating and settling unfair labor practice charges where negotiability is an issue. It also is intended to assist parties in improving their labor-management relationship and avoiding litigation.

The Guidance Memorandum is available to the public to assist union officials and agency representatives in working together to develop productive labor-management relationships, to avoid negotiability disputes and to obtain a better understanding, and take advantage, of the entire scope of bargaining under the Statute.

### Four Parts

The Guidance is divided into four parts. **Part I — “Ways to Engage in Collective Bargaining In the Federal Sector”** — discusses how proper utilization of a pre-decisional involvement process and interest-based problem-solving techniques limits dramatically negotiability disputes. **Part II — “Differences Between the ‘Duty to Bargain’ and the ‘Scope of Bargaining’”** — describes these two different statutory

concepts and explains: when there is a duty to bargain; what constitutes good faith bargaining; and what the concept of negotiability means. **Part III — “Approaches to Obtaining the Benefits From the Scope of Bargaining Under the Statute”** — presents approaches which allow the parties to improve the effectiveness of bargaining within the current statutory scope of bargaining. In particular, this Part explains the concept of “appropriate arrangements” and suggests a protocol for parties to follow to develop meaningful, negotiable appropriate arrangement proposals. **Part IV — “Negotiability Disputes Should Not Impede Collective Bargaining”** — suggests some techniques to avoid negotiability disputes and not disrupt the collective bargaining process by filing unfair labor practice charges in unilateral change situations. ©

## ...and Unfair Labor Practices

The General Counsel (GC) of the Federal Labor Relations Authority has proposed revisions to the regulations regarding the preven-

tion, resolution, and investigation of ULP disputes (5 CFR Part 2423, subpart A) The purpose of the changes is to facilitate dispute resolution

and to simplify and improve the processing of ULP charges. AMCCC has sent these materials through the labor counselor E-Mail list. ©

## Corporate Liability, Fines & Penalties, Geronimo at Ft. Sill and ELD Assignments

## The L O N G Reach of Institutional Controls

Environmental Law Division Bulletins for July, August, Sept, and October 1998 are provided (Encl 5,6,7,and 8).

The **July** bulletin highlights the Supreme Court's decision in U.S v. Bestfoods, et al, 1998 U.S. LEXIS 3733 (June 8, 1998), concerning corporate liability for parent corporations arising in an environmental context.

The **August** bulletin has an update on the status of fines and penalties. Since 1993, the Army has been assessed with 172. The Response Conservation and Recovery Act (RCRA) accounts for 96, the Clean Air Act 44, and the Clean Water Act 23.

The **September** bulletin highlights a recent United States District Court for the District of Columbia decision dismissing a suit by *pro se* individual and organization plaintiffs to compel repatriation of the remains of Geronimo, an Apache leader who is buried at Fort Sill, Oklahoma. Idrogo and Americans for Repatriation of Geronimo v. United States Army and William Clinton,

*No. 97-2430, slip op. (D.D.C. Aug.6, 1998).*

Plaintiffs also demanded that Geronimo be given full military honors and that his prisoner-of-war status be removed. The court concluded that the plaintiffs lacked standing to maintain such a suit.

Plaintiffs based their claim on the Native American Graves Protection and Repatriation Act (NAGPRA), which requires federal agencies to return human remains upon request from a lineal descendant or Native American tribe.

The court found that the plaintiffs did not fall into the class given repatriation rights under NAGPRA. The individual plaintiff did not allege that he was a descendant of Geronimo, and the organizational plaintiff was not a Native American tribe.

The **October** bulletin sets forth the issues and roles assigned to the various office attorneys. ©

Institutional controls restricting property use or activities are a recognized measure to reduce cleanup costs consistent with anticipated land use decisions. However, they are difficult to document and to ensure effective compliance.

The Army has issued Guidance on Using Institutional Controls (ICs) in the CERCLA Process, 4 September 1998. The guidance applies to both BRAC and active military installations. If you need a copy, contact **Bob Lingo**, DSN 767-8082.

An extensive study of Institutional controls for Future Land Use at Active Installation Restoration Program (IR) Sites recently appears in Summer 1998 edition of the *Federal Facilities Environmental Journal*. ©

# Environmental Law Focus

## Get the BRAC Facts

The Department of Defense has published three important BRAC Environmental Fact Sheets on the following topics: "CERCLA/RCRA Overlap in Environmental Cleanup," "Early Transfer Authority," and "National Priorities List Reform: A More flexible Approach to Federal Facilities." Although the fact sheets were developed for use by BRAC cleanup Teams, and distributed at BRAC cleanup Team Workshops during the summer, the information is also applicable for cleanups being conducted at Army operational installations. These are available at the BRAC cleanup page on the World Wide Web, as follows: <http://www.dtic.mil/envirodod/brac>.

## Do you have a RCRA hazardous waste issue?

EPA has a complete explanation of the RCRA Subtitle C Hazardous Waste Regulatory Program, including references to corrective action, military munitions, radioactive waste, and waste minimization and pollution prevention at <http://www.epa.gov/epaoswer/osw/hazwaste.htm>.

## Greening

## the Government

Here is a new Executive Order to add to the list provided in previous Newsletters. Executive Order 13101, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition, was signed on September 14, 1998.

While the order repeats many of the requirements of the prior Executive Order 12873, which the new Order revokes, it does contain several new requirements, including a provision that inspections pursuant to RCRA and the Federal Facilities Compliance Act should include evaluations of facility

compliance with section 6002 of RCRA, and implementing regulations, regarding the Federal program for affirmative procurement of EPA designated items containing recovered materials.

The DAR Environmental Committee is working on FAR implementation. A copy of the Executive Order may be obtained at <http://www.ofee.gov>. If you need additional information about affirmative procurement, the Army Environmental Center has an area under pollution prevention dedicated to this topic, at <http://aec-www.apgea.army.mil:8080/>

## Preserving Our Military Heritage

Many of our Army installations and BRAC facilities have properties of historical significant. It is important that these properties are identified and proper coordination conducted with the State Historical Preservation Officer (SHPO) concerning any undertaking which might ad-

versely affect the properties.

A good summary of the National Historical Preservation Act Section 106 consultation process, by **Valerie DeCarlo** of the Advisory Council on Historic Preservation is available by contacting **Bob Lingo**, DSN 767-8082.

## Cleaning Up the Range: The Military Range Rule

The Army Environmental Center has prepared an excellent briefing on the substance and current status of the proposed Military Range Rule for addressing UXO and other constituents at Closed, Transferring (BRAC), and Transferred (FUDS) military ranges. You may obtain a copy by contacting **Bob Lingo**, DSN 767-8082 or **Stan Citron**, DSN 767-8043.

The paper describes the applicability of the range rule to the US and US Territories (Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands). The range rule does not apply to active or inactive ranges, ranges with prior agreements (unless all parties agree), air maneuver areas, and historic battlefields.

The overall range rule

process consists of five phases: range identification, range assessment/accelerated response, range evaluation/site-specific response, recurring review, and administrative close-out of response action.

The overall process consists of nine steps:

1. Developing the draft proposed rule.
2. Internal and Federal agency consultation.
3. Stakeholder consultation.
4. OMB review.
5. Publishing the proposed rule in the Federal Register.
6. Public consultation--90 days,
7. Revise rule per comments received.
8. Internal and Federal agency re-coordination.
9. Publish revised "final" rule in the Federal Register. ©

## Special Veteran's Benefits Note

Veterans who separated under special separation benefits programs and who were subsequently determined to be eligible for VA disability pay may be entitled to a refund from VA.

Title 10, United States Code, section 1174, authorizes separation pay for those who are involuntarily separated prior to becoming entitled to retired pay. If the VA subsequently determines that the member is entitled to VA disability compensation, VA must withhold disability compensation monthly until the amount paid as separation pay is recouped.

Even though VA disability compensation is tax-free and military separation pay is taxable, section 1174 required the VA to recoup gross, not net, separation pay. Service members complained that the Government was recouping too much.

VA will administer this program and is working with DOD to identify those eligible for a refund. Anyone affected by this recent change should contact the nearest VA Office or call the VA's toll free number: (800) 827-1000). POC is **Alex Bailey**, DSN 767-8004. ©

# Solicitations in the Federal Workplace

**T**here are some limited exceptions, but the starting point and general rule is that there is no solicitation in the Federal workplace. The general rule is that employees may not solicit the sale of magazine subscriptions, cosmetics, household products, hair replacement systems, vitamins, candy, cookies, insurance, weight loss programs, etc. while on the job or in their offices.

Even if off the job and outside the workplace, they may not knowingly solicit DoD employees who are junior to them.

## Fellow Employees

For a fellow-employee for a special, infrequent occasion such as wedding, birth or adoption of a child, transfer out of the supervisory chain, and retirement. A promotion is not considered a “special, infrequent occasion.” [Yes, I know, promotions are “special,” and they certainly are “infrequent;” but the fact of the matter is that they are not

“special, infrequent occasions” for purposes of the ethics rules unless the promotion is accompanied by a transfer outside of the supervisory chain.] We can solicit no more than \$10 from other employees, and contributions must be entirely voluntary. The value of the gifts usually may not exceed \$300.

## Keep In Mind...

Even if the solicitation fits one of the exceptions, be careful. Voluntariness is the key. It should not be a senior employee who does the solicitation. Don't make repeated entreaties. Don't require the employee who declines to explain him or herself. Always make a provision for an employee to “opt out” of the gift contribution that is included in the price of the luncheon.

An excellent Ethics Advisory on this subject is provided by POCs **Mike Wentink**, DSN 767-8003, and **Alex Bailey**. DSN 767-8004 Encl 9).<sup>c</sup>

## More on Private Organizations and AMC

HQ AMC Ethics Counsel **Mike Wentink**, DSN 767-8003 and **Alex Bailey**, DSN 767-8004 provide another in a series of papers on AMC and AMC employee relations with private organizations (POs) (Encl 10).

There are general ethics rules that apply. For example, employees who are officers, directors or active participants in POs, are disqualified from participating in official Army matters that affect their PO. We may not use our official position to endorse or promote a PO, encourage employees to join specific POs. We must also avoid bias or preferential treatment in our dealings with POs.

But, does this mean that we cannot have any sort of “official relationship” with POs? The answer is “yes,” there is room for an “official relationship” with such organizations.

What we can do is this: in those cases where there is a strong and continuing DoD interest, heads of commands and organizations may assign an employee as an “official liaison” to a PO. As an “official liaison,” the employee acts in his or her official capacity and represents the command and agency's interests to the PO. <sup>c</sup>

# Special Attention: Widely Attended Gatherings--OGE and DA SOCO Guidance; AMC CG Wants You to Know!

The Army Standards of Conduct Office prepared an article on when and under what circumstance employees may accept free attendance at an event. **General Wilson** read this article and directed that it be passed “to all senior folks in the command.” **Mike Wentink** prepared a paper on the subject as a “Special Edition” ETHICS ADVISORY.

### General Gift Rule

The Office of Government Ethics (OGE) Standards of Ethical Conduct for Employees of the Executive Branch and DOD Joint Ethics Regulation, DOD 5500.7-R, generally prohibit Executive Branch employees from accepting any gift offered by a prohibited source or because of the employee’s official position.

### Exception: Widely Attended Gatherings

However, OGE has established several exceptions to this general prohibition, where gifts may be accepted

without undermining government integrity. One of these is attendance at a “**widely attended gathering.**”

OGE has identified “widely attended gatherings” as events in which the Army has interest, but which are not necessarily official. Acceptance of free attendance at a widely attended gathering is a personal gift, but a gift which may be accepted because it offers an opportunity to represent the Army’s interests or share information on matters of mutual interest. Typically, the event will be a conference or a seminar, but it could also be a social event, such as a cocktail party. The consistent feature of these events is that they are of sufficient size and diversity to promote the Army’s interests.

### Definition

To qualify as widely attended, the event (or the relevant portion of the event) must either be open to interested parties from throughout a given industry or profession, or be attended by a

number of persons with diverse views or interests. For example, a gathering with a large number of employees of a particular defense contractor, where some Government employees are invited, is not sufficiently diverse. Similarly, a small gathering of 12 individuals with diverse interests is not sufficiently large. Typically, an event must have at least 20 or more individuals attending to qualify under this exception.

### Determining Factor

The determining factor is whether the event will give the employee an opportunity to exchange views or information with a sufficient number of people who represent a variety of views or interests.

There are rules regarding attendance depending on whether your participation is official or personal, differing rules when someone other than the sponsor of the event bears the cost of the employee’s attendance. The best advice is to meet early with your Ethics Counselor (Encl 11). ©

## Ethics Focus

# **GIFTS:** *Ethics & Fiscal* *Wrapped Up Together*

Issues concerning use of funds and the color of money often also involve ethics questions. One interface between fiscal law and standards of conduct is in the gift area (Encl 12).

The general rule is that appropriated funds may not be used to purchase or make gifts for employees, or to honor employees, even for those who are being reassigned or retiring after many years of honorable service. Certainly, there are official aspects of a transfer or retirement such as award and retirement ceremonies, and appropriated funds are often available in support of these official functions.

However, when it comes time for the gift, the taxpayer does not underwrite it. If we want to give a gift to honor the employee's service, then we pay for it using our personal funds, but keeping within the rules (e.g., the value generally may not exceed \$300 and we may not solicit more than \$10 each from other employees).

In general, appropriated funds are not available to buy or craft plaques, framed me-

mentos, or other items to give to employees **unless** the presentation item is part of an officially approved awards program. These Army awards programs are set out in AR 672-5-1 and AR 672-20. There is also an AMC supplement to AR 672-5-1 and a number of AMC regulations governing awards.

### **Using Installation Crafts and Supplies**

This issue comes up in a number of different ways. For example, a group of employees at one installation purchased a military print for the retiring commander. Although the print was less than the \$300 gift limit, to have it properly matted and framed would take it over the \$300 limit. The employees thought that the answer would be to have the post engineer use his carpenters, tools and materials to frame the print.

Ethics Counsel **Mike Wentink** and **Alex Bailey** are joined in an article addressing this relationship by AMC Fiscal Law counsel **Lisa Simon**, DSN 767-2552. ©

## **Savings Deposit Program for Overseas Contingency Operations**

Under section 1035, title 10, United States Code, and in accordance with Chapter 51, DoD Financial Management Regulation (FMR), Volume 7, Part A, members serving in contingency operations outside the United States are permitted to deposit unallotted pay and allowances with the Government in the Savings Deposit Program (SDP). As set by Executive Order 11298, deposits earn interest at 10% for amounts up to \$10,000.

On 14 August 1998, the Assistant Secretary of Defense (Force Management Policy) signed a memorandum extending the SDP to service members participating in Operation Joint Forge

If you are entitled to Legal Assistance and you have questions, contact your local legal assistance officer or **LTC Thomas K. Emswiler**, Executive Director, Armed Forces Tax Council, Office of the Assistant Secretary of Defense, Force Management Policy (Military Personnel Policy), Telephone (703) 693-1066; DSN 223-1066. Thanks to Chief, Legal Assistance, **Alex Bailey**. ©

# Faces In The Firm

## WELCOME

### IOC

**Captain Marc Howze** joins the IOC Law Center from Ft. Lewis, specializing in the Acquisition Law area.

**Summer Blakney** is participating in a minority college intern program through the end of the summer. She is attending Central State University in Ohio and will be a junior this fall, studying foreign business. Best of luck Summer as you continue your education and thanks for your help.

### ARL

Effective 19 July 1998, **Mr. Mark D. Kelly** started working for the Intellectual Property Law Branch. He left a position in a private sector law firm located in Milwaukee, WI, to assume the position at ARL.

### CECOM

**LTC Diana Moore** reported for duty as the Staff Judge Advocate, 3 August 1998. She comes to us from Falls Church, VA.

**Jeffrey Smith** reported for duty as a patent attorney in the Intellectual Property Law Division on 6 July 1998. He comes to us from the US Patent and Trademark Office in Alexandria, VA.

**CPT Syc Hussain** reported for duty in the SJA Division of the CECOM Legal office in Tobyhanna in September 1998. He comes to us from Ft. Leavenworth, Kansas.

## FAREWELL

### CECOM

Best wishes to two departing administrative personnel **Dolores Howell** and **Janet Cugini**.

**Michelina LaForgia**, currently the Competition Management Division Chief has received a promotion to the CECOM Acquisition Center. She will be a Division Chief.

### IOC

**Captain Brian Weber** and his family - wife Mary and daughter, Katherine - have left military service and moved to Massachusetts. Mr. Weber will be handling legal assistance at Fort Devens. Best of luck to you - we'll miss you. We'll be anxiously awaiting news on the arrival of their second child this November.

**Brian Klinkenberg**, an intern working in the Law Center since December 1997, left the office in August to begin the college studies at the University of Iowa. Brian will be majoring in the computer field. He did a lot of work with the scanning equipment and workgroup manager duties while in the Law Center.

**CPT Doug Faith** left for Turkey. CPT Faith has been the Judge Advocate General at Pine Bluff Arsenal for the past couple of years.

### ARL

**Mr. Ben Roberto**, Patent Attorney, Intellectual Property Law Branch, retired from Government service effective 11 August 1998. Best wishes to Ben who also served many years at HQ, AMC.

# Faces In The Firm

## AWARDS

### MARRIAGES & BIRTHS

#### IOC

**Angela Keel** (Legal Assistant, IOC Environmental/Safety Law) and **John Davila** were married on May 30. We wish Mr. And Mrs. Davila, and their three boys, the best in their new lives together.

**Bill Bradley** (Attorney Advisor, IOC Environmental/Safety Law) and **Linda Tyler** were married on June 6. Mr. and Mrs. Bradley make their home in Davenport, Iowa. We offer congratulations and best wishes for a wonderful future together.

Congratulations Grandpa Sam!! **Mr. Sam Walker** (Acquisition Law) and his wife, Chris, celebrated the birth of their first grandchild, Kira Paige, on 1 Sep 98. Congratulations, too, to daughter and son-in-law, Anna and Adam Copp!

**Mr. Rick Murphy** (Environmental/Safety Law) and his wife, Janene, were blessed with a baby boy on 3 Sep 98 - Scott James. This is their second child. He weighed in at 8 pounds, 15 ounces and was 21 1/2 inches long. Congratulations to Rick, Janene, and big sister, Robin.

#### AMCOM

**CPT David Dahle** and his wife, Jodie, are the proud parents of Elizabeth Corrine, who was born on 30 July weighing in at 7 pounds and 1 ounce.

**CPT Scott Gardiner** and his wife, Renae, welcomed Theresa Rose on 16 August. She weighed 8 pounds and 15 ounces.

**CPT Erika Cain** birth to Erik Deshaun on 7 September. He weighed 9 pounds and 7 ounces and was 22 inches long.

### PROMOTIONS

#### AMCOM

**CPT Andrew J. Sinn** was promoted on 1 September 1998. He is assigned to the Office of Staff Judge Advocate as the Legal Assistance Officer.

**Rick Murphy** has been promoted to GS-13, Attorney Advisor. Rick has done fine work in the environmental law area.

**Mary Ernat** has been promoted to GS-12, Management Analyst.

#### IOC

Congratulations to **Mr. John Seeck** who recently received the Commander's Award for Civilian Service.

**Captain Brian Weber** received the Defense Meritorious Service Award before his departure.

#### WSMR

**Willie Smith**, Claims Clerk, was selected as the WSMR Civilian of the Year (admin category). This is the first time in White Sands history that a member of the JAG office has received such an honor.

**SGT James Mersfelder**, our Claims NCOIC, has just returned from an 8-month, all expenses paid, TDY in beautiful downtown Bosnia. He served as a NCOIC, Operational Law, for 1AD's Task Force Eagle.

**SGT Christopher Buscarini**, NCOIC for military justice and claims, was selected as the White Sands Noncommissioned Officer of the Year. He then followed this exceptional accomplishment by competing for and being selected as the TECOM NCO of the Year. SGT Buscarini is now at AMC competing for AMC NCO of the Year. To my knowledge, this is "first" for a JAGC NCO to receive such recognition