

Subject: Gifts for Departing Commanders and Other Superiors

1. **REFERENCES:**

a. Office of Government Ethics regulations at 5 C.F.R. Subpart B: Gifts from Outside Sources; and Subpart C: Gifts Between Employees.

b. DOD 5500.7-R, Joint Ethics Regulation (JER), Chapter 2.

2. **PURPOSE.** To publicize Department of Defense rules under the JER concerning gifts for departing military or civilian superiors.

3. **BACKGROUND.** As commands change, many commanders and other senior leaders will be departing their commands or positions for new assignments. Subordinates often extend gifts to the departing officer or senior NCO on these special occasions. Such gifts are authorized under the Joint Ethics Regulation (JER), but the JER contains specific rules regarding gifts and ceremonies. Fiscal law also imposes some limitations on the use of appropriated funds the amenities for these events. I expect every member of the MANSCEN team to adhere to the following simple but important rules.

4. **PHILOSOPHY AND FISCAL LAW:**

a. ***“LESS IS MORE”*** – It may be easy to fall into thinking about how to out-do someone else’s ceremony, or a previous ceremony in the same unit. This is not the point of a change of command ceremony. While it is unquestionably a key professional milestone for the arriving and departing commanders, to the rest of the unit and the Army it symbolizes the continuity of tradition and succession of command. Official ceremonies should therefore have a certain basic similarity, simplicity, and formality, and not be an excuse for excess. (Keep in mind that senior leaders also have a weight limit on their household goods, too.) The unofficial events connected with the change of command are paid for by the participants, not out of Army appropriations, which leads to the next point...

b. ***WHO IS PAYING THE BILL?*** – In addition to the boundaries of propriety and tradition, there are fiscal law rules that apply. Appropriated funds, including IMPAC card funds, are not allowed for a lot of the bells and whistles in a change of command ceremony or related events. Food items, personalized or special printings of items like business cards, greeting cards, and embossed announcements cannot normally be purchased with appropriated funds. For that matter, neither can they be used to replace military property which might have been improperly given away to a departing commander as a memento. Resource managers are available to consult on any purchase that is not a routine and required part of unit mission operations. If you are planning on spending appropriated funds on something that does *not* fit that description, you need to discuss it with Resource Management before using the credit card.

## 5. THE RULES ON GIFTS

a. ***GIFTS SHOULD BE APPROPRIATE FOR THE OCCASION.*** What is considered appropriate for the occasion depends on the circumstances. Use sound judgment. Cash or other monetary gifts, like a gift certificate, are not appropriate. Plaques, photographs, and other sentimental mementos are usually the most appreciated gifts. The policy point in the JER is that superiors should not appear to be privately profiting from their positions.

b. ***A GIFT FROM A DONATING GROUP MAY NOT EXCEED \$300 IN VALUE.***

(1) A departing superior may accept a gift from more than one group of subordinates. These groups are classified as "donating groups." Each donating group's gift is limited to \$300 in value. If even one employee has contributed to more than one donating group, the groups meld together for the \$300 total value limit. Therefore, early designation of "donating groups," and keeping them separate afterward, is important to ensure that no one person contributes to more than one group gift.

(2) Donating groups may not work together to circumvent the \$300 rule. For example, two groups may not conspire to purchase a \$500 framed painting by agreeing that one group will buy the \$250 painting and the other group will buy the \$250 frame. The policy point here is that "gift" means a complete and stand-alone item in the end state.

(3) The appropriate number and size of donating groups depends on the circumstances. If a brigade commander is departing, the brigade staff and each battalion could be separate donating groups. If a battalion commander is departing, the battalion staff and each company could be separate donating groups -- but, in that case, nobody donating to the battalion staff gift could contribute to the HHC gift. If a company commander is departing, a single donating group for the company is usually appropriate.

(4) The costs of food, refreshments, and entertainment at the event where the departure gift will be presented are not included in the \$300 gift limit. Accordingly, contributors may voluntarily give a reasonable, nominal or at least proportional amount toward these expenses, in addition to any contribution for the departure gift.

(5) An employee may choose to give a gift to a departing superior on an individual basis. As long as the employee did not contribute to a donating group's gift, and the gift is appropriate for the occasion, the gift may be accepted. While a donating group's gift may be up to \$300 in value, it is extremely unlikely that an individual gift of such value would ever be appropriate for the occasion or offered, but in such an extremely unusual event, the \$300 limit still applies to the individual gift.

(6) \$300 means fair market value. The rule cannot be avoided by a "wash transaction" where one overly-enthusiastic person purchases a \$500 item and "sells" it to the donating group for \$1, \$299, or some other lesser amount.

(7) There are NO exceptions to the \$300 rule! The DOD Standards of Conduct Office recently advised that the so-called **Perry Exception** (For gifts with some special and unique connection to the departing person) had never been approved by the Office of Government Ethics, and has therefore been pulled from the JER, and henceforth **may not be used**.

**c. AN EMPLOYEE MAY BE SOLICITED FOR A VOLUNTARY CONTRIBUTION TOWARD A GROUP GIFT AS LONG AS THE SOLICITED AMOUNT DOES NOT EXCEED \$10.** All contributions toward a superior's departure gift must be strictly voluntary and this fact should be clearly communicated in the solicitation. An employee may not coerce or pressure another employee to donate toward the departure gift. To avoid the appearance of coercion, a junior employee should collect the gift donations. Further, no list of contributors or non-contributors should be maintained. You can use a routing slip or checklist to ensure everyone has been notified, but do not keep book on who refused to donate or who made donations and in what amount.

**d. GIFTS TO A SUPERIOR'S SPOUSE ARE CONSIDERED GIFTS TO THE SUPERIOR.** Again, donating groups may not circumvent the rules by giving separate gifts totaling more than \$300 to the superior and his/her spouse, or giving a gift of over \$300 value to the spouse alone. This rule does not apply if there is a legitimate independent basis for giving a gift to the spouse in her/his own right, such as when the commander's spouse is also the unit's family support coordinator and the family readiness group offers the spouse a gift for work done in that capacity.

**e. GIFTS TO THIRD PARTIES ARE CONSIDERED GIFTS TO THE SUPERIOR AS WELL.** A gift to charity in the superior's name, or to any other third party identified to the superior, would fall under the same rule as a gift to the superior through his or her spouse.

**6. CONSEQUENCES.** Failing to heed these rules can result in a grave embarrassment for the person whom a gift was intended to please and honor. In particular circumstances it can even place the recipient or even the giver in a UCMJ violation. A gift that violates the rules cannot be accepted, and the recipient will have to decline it; pay fair market value for it; or accept it "on behalf of the Army" and then surrender it to the government. These rules must be taken seriously, at face value, and not "war-gamed."

**7. POINT OF CONTACT.** Questions regarding the subject matter of this information paper should be addressed to the Office of the Staff Judge Advocate, ATTN: Ethics Counselor (Mr. Vince Zahnle) at 596-0626, or vince.zahnle@us.army.mil. I strongly encourage all members of the command to contact Mr. Zahnle if questions arise regarding the applicability of these rules in a given situation.

Prepared by Mr. Vince Zahnle, Ethics Counselor, Administrative Law Division, OSJA, USAMANSCEN and FLW (6-0626).

Authenticated by COL Steven E. Walburn, Staff Judge Advocate, USAMANSCEN and FLW (6-0624). *SEW* 1 Apr 09