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Sent: Friday, March 31, 2006 3:47 PM

To: Hare, Joseph

Cc: O'rourke, Kenneth J CAPT COMNAVSURFOR ,N00J

Subject: PARTICIPATION WITH NON-FEDERAL ENTITIES

RADM Hare:

It was a pleasure hearing from you. I look forward to working with you in the future. It is my understanding SNA has proposed that sitting Force Master Chiefs from SURFPAC and SURFLANT automatically receive appointments to the national Board of Directors. I understand the intent is to ensure enlisted surface warriors have a voice in the organization. In an effort to support your intent in an ethical manner, I have provided below a synopsis of the ethical rules pertaining to this issue and the attached ethics training information from the Army JAG School's ethics course.

BLUF: If the intent is hear an enlisted voice officially relay information between SNA and the Navy, a liaison position would be more appropriate. If the intent is to have enlisted members join the organization, participation must be voluntary, in a personal capacity, and membership benefits cannot be offered as a result of a member's official position (e.g., all Force Master Chiefs, or all COs). No government endorsement or fundraising support is authorized.

ATTENDANCE: Regardless of membership, DoD employees may attend meetings, conferences, seminars, or similar events sponsored by a non-Federal entity (NFE) in their official DoD capacities at Federal Government expense if there is a legitimate Federal Government purpose such as training or gathering information of value to the DoD (e.g., SNA National Symposium). DODD 5500.7-R, Joint Ethics Regulation (JER) 3-200 and 3-207.

PERSONAL CAPACITY PARTICIPATION: Any person meeting SNA's eligibility criteria may voluntarily serve as a member in a personal capacity provided the person acts exclusively outside the scope of his official position. Except for organizations specified in the JER (SNA is not one of them), DoD personnel may not serve in a personal capacity as an officer, member of the Board of Directors, or in any other similar position in any non-Federal entity when the position was offered because of their DoD assignment or position. Further, an employee shall not solicit or accept a gift given because of the employee's official position. 5 C.F.R. §2635.202(a). For example, an offer of free membership dues to any sitting COMNAVSURFPAC Force Master Chief must be declined. A DoD employee may not use or allow the use of his official title, position, or organization name in connection with personal participation because it suggests official endorsement. Further, he may not give SNA preferential treatment or take official action on particular matters involving SNA. (18 U.S.C. § 208; 5 C.F.R. § 2635.502). Finally he may not encourage, pressure, or coerce other employees, especially subordinates, to join, support, or otherwise participate in SNA. Because neither a Board position nor a gift has been offered, the individual may determine whether a voluntary personal membership in SNA is desirable.

LIAISON: Employees may not accept official, DoD Component command membership in an NFE except as provided by statute or regulation. The JER does not authorize a Board position in SNA. However, JER 3-201 allows commands to appoint DoD liaisons in an advisory capacity. Liaisons are not members of the organization, but official representatives of DoD interests to the NFE. DoD employees may serve as "liaisons" if the command determines this function serves a significant and continuing military interest. COMNAVSURFPAC may designate a liaison to attend SNA meetings on government time and at government expense if COMNAVSURFPAC determines there is sufficient value to the Navy justifying the expenditure of time and money. The liaison may officially represent DoD interests in meetings with the Association's Advisory Board or Board of Directors. The Board must be warned that any opinions expressed by the liaison are not binding upon the DoD or any of its subsidiaries.

Liaisons are prohibited from involvement in SNA's management or control. A management position includes any position as officer, director, trustee, or voting member. Because the liaison is participating in an official capacity and not as a member of the organization, he cannot receive any additional salary, compensation, gifts, or any benefits of membership in SNA. Additionally, there can be no official endorsement or appearance of endorsement of SNA, nor is it permissible for a liaison to participate in membership drives or fundraising activities. The liaison may use his rank (but not his position) in activities involving the advisory board as long as it does not create the appearance of government endorsement.

CONCLUSION: COMNAVSURFPAC may appoint a liaison to SNA in accordance with the liaison provision of the Joint Ethics Regulation. If the individual instead desires to participate as an SNA member in a personal capacity, he may not accept an offer of free membership, nor may he serve in a management role due to potential conflicts that may arise when he must interact with SNA on official Navy business. Because personal participation in an NFE must be voluntary, the individual has the right to decline membership in SNA if he so chooses.

Please let me know how I can be of further assistance to you. Thank you.

V/r
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