

## Information Paper

SUBJECT: Ethics Rules Applicable to Annual PCS Gifts from Subordinates

1. Purpose: The purpose of this information paper is to provide judge advocates with an overview of the ethical rules applicable to permanent change of station (PCS) gifts.
2. Background. The well-intentioned custom of presenting a service member with a gift prior to his or her departure from an organization can present unforeseen problems for those that are unfamiliar with the law, policy, and regulations that govern this traditional practice. In order to avoid these problems, and any resultant investigation, service members must remember that federal law prohibits superiors from using their public office for private gain. *See* U.S. DEP'T OF DEFENSE DIR. 5500.7-R, JOINT ETHICS REGULATION (July 22, 2009) [hereinafter JER]. Consequently, subject to limited exceptions, ethical rules prohibit Soldiers from giving a gift to their superior. A gift given in recognition of a special, infrequent occasion, such as a permanent change of station, is one exception to this general rule.
3. Discussion. The following four rules apply to PCS gifts.

- a. Value of Gift. Gifts given for special, infrequent occasions, such as a permanent change of station, are limited to \$300 in value per donating group.

- (1) No Buy-Down. Although not specifically mentioned in the JER, the \$300 ceiling is subject to the no "buy-down" rule. That is to say, a commander cannot lawfully accept a gift valued at \$400 by agreeing to pay \$100 towards the gift.

- (2) Gift Splitting. It is impermissible to split a gift into component parts in order to stay under the \$300 limit. For example, in recognition of their commander's exceptional service the battalion officers chose to present him with a print valued at \$225. Additionally, the noncommissioned officers spent \$100 to frame the print. Independently, each gift is under \$300 but because the donors intended to combine the gifts, they must aggregate the value of each gift. Thus, in this example, the total value of the gift is \$325, which is impermissible because it exceeds the \$300 limit.

- b. Donating Groups. If one employee contributes to two or more donating groups, the value of the gifts from all groups with a common contributor must be added together for purposes of the \$300 limit. Additionally, with regard to multiple donating groups, it is important to remember that Executive Order 12674 directs employees to "endeavor to avoid any action creating the appearance that they are violating the law or the ethical standards." 5 C.F.R. § 2635.101(b)(7) (2006). Thus, while it may very well be appropriate for each battalion to present a departing brigade commander with a gift, it would surely create an unseemly appearance if each company within the brigade presented the commander with a gift.

- c. Contributions Are Voluntary. Although it is permissible to solicit donations, solicitations should not be onerous or oppressive and the organization should not maintain a list of

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contributors. In addition, it is critical to remember that the suggested donation amount cannot exceed ten dollars.

d. Consider the Recipient's Wishes. Commanders, and others, are often uncomfortable receiving gifts for their service. More than that, some commanders make a conscious decision to avoid potential ethical issues by limiting the number or types of gifts that they will accept. In this light, it makes good sense to consult the recipient prior to organizing the purchase of a gift.

4. Conclusion. This paper is meant to provide a summary of the rules governing PCS gifts between Soldiers. Other types of gifts, like those from private organizations, foreign governments, or others seeking to do business with the Army, are usually governed by different, more stringent rules. Proper application of these rules will ensure that the gift achieves its intended purpose without conflicting with important ethical policies and regulations.