



United States
Office of Government Ethics
1201 New York Avenue, NW., Suite 500
Washington, DC 20005-3917

March 8, 2005

Matt Reres
Acting Designated Agency Ethics Official
Department of the Army
104 Army Pentagon
Washington, DC 20310-0104

Dear Mr. Reres:

The Office of Government Ethics (OGE) has completed its review of the Army's ethics program within the headquarters of the U.S. Army Training and Doctrine Command (TRADOC) at Fort Monroe and one of its major subordinate commands, the U.S. Army Transportation Center (Center) at Fort Eustis. This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978 (Ethics Act), as amended. Our objective was to determine the ethics program's compliance with applicable statutes and regulations. We also evaluated the systems and procedures for ensuring that ethics violations do not occur. The review was conducted in September and October 2004. The following is a summary of our findings and conclusions.

HIGHLIGHTS

Members of TRADOC's Army Education Advisory Committee, who are all special Government employees (SGE), must immediately file current confidential financial disclosure reports. The last reports filed by committee members were destroyed in September 2003. Committee members were not required to provide duplicate reports and no subsequent reports have been filed.

Prior to our review, neither TRADOC nor the Center had a program to ensure newly-hired civilian employees were given initial ethics orientation. Ethics counselors identified the deficiency in preparing for our review and have taken steps to ensure the training is provided, as required. Both organizations met and exceeded annual training requirements in 2003. In addition, they were progressing towards meeting the Acting Secretary of the Army's directive to provide in-person training to all assigned military and civilian personnel. We commend this effort.

Both the public and confidential financial disclosure programs within TRADOC and the Center were well administered for annual financial disclosure filers. However, neither organization had a program to timely identify new entrant confidential filers within 30 days of their entering a covered position. Ethics counselors also identified this deficiency prior to our review and have taken appropriate actions.

Although our report notes the deficiencies regarding initial ethics orientation and new entrant confidential filers, it also notes that ethics counselors have already moved to correct these

deficiencies. Therefore, our report makes no formal recommendations in their regard. However, the action recommended at the end of our report regarding the advisory committee members must be taken to bring the ethics program into full compliance with applicable ethics statutes and regulations.

PROGRAM STRUCTURE

The ethics program within TRADOC is administered by the Military and Administrative Law Division (MAL) of the Office of the Staff Judge Advocate. The Staff Judge Advocate (SJA) is the senior ethics counselor and is responsible for the program. One military staff attorney serves as the primary ethics counselor who administers the program on a day-to-day basis; however, all attorneys within MAL are appointed as ethics counselors and perform ethics functions to some degree. This includes: conducting training, reviewing financial disclosure reports, and providing advice and counseling.

The structure of the program within the Center is very similar to TRADOC's. The SJA is the Center's senior ethics counselor. He has appointed attorneys within his office as ethics counselors to administer the program. Although subordinate to TRADOC, the Center administers its own separate and independent ethics program, subject to guidance and direction from TRADOC. Staffing levels appear to be appropriate to the size of each organization.

THE ARMY EDUCATION ADVISORY COMMITTEE

All six members of TRADOC's one advisory committee, the Army Education Advisory Committee, who are SGEs, must file current confidential financial disclosure reports. The most recent reports filed by committee members were destroyed in a flood in September 2003, following a hurricane. The primary ethics counselor stated that it had been the practice to require a committee member to file a report only at their appointment/reappointment to a two year term. In preparing for this review, they realized that members should file new entrant reports every year upon their reappointment or redesignation, in accordance with 5 C.F.R. § 2634.903(b)(1). As stated in DAEOgram DO-00-003, in years in which members are not reappointed, they would still have to be redesignated as SGEs. This means they could be required to file follow-on new entrant reports within 30 days of the anniversary of their appointment (or reappointment) or, to ease the administrative burden, on some arbitrary date on which all SGEs would file reports. Ethics counselors had planned to wait until September 2005 to require the SGEs to file the reports.

Rather than wait until September 2005, ethics counselors could have sought duplicate forms from members or required them to recreate their current reports when the originals were destroyed. This would have allowed ethics counselors to determine if a member had a potential conflict of interest prior to a committee meeting. Further, reports should have been filed annually by no later than September 2004, the approximate anniversary of members' appointment/reappointment. At the time of our review, there were six members on the committee. All committee members must file reports annually now, and, in accordance with 5 C.F.R. § 2634.903(b)(3), reports must be reviewed prior to members' participation in any meetings.

Ethics counselors verified that committee members received all required initial ethics orientation and annual ethics training.

INITIAL ETHICS ORIENTATION

Prior to our review, neither TRADOC nor the Center had a program to ensure that new civilian employees received initial ethics orientation within 90 days of entry on duty, as required by 5 C.F.R. § 2638.703. Both organizations identified this deficiency prior to our review and took steps to meet the requirement. Ethics counselors at both TRADOC and the Center have created initial ethics orientation packets, which are provided to new civilian employees by the respective Civilian Personnel Advisory Center (CPAC) for each organization. The two CPACs also provide ethics counselors with monthly lists of new employees who have received initial ethics orientation, which assist ethics counselors in verifying that all new employees receive orientation. In addition, TRADOC provides in-person initial ethics orientation every other Monday, while the Center provides in-person orientation quarterly. All military personnel, however, are assumed to have received initial ethics orientation prior to assignment at either TRADOC or the Center.

ANNUAL ETHICS TRAINING

TRADOC and the Center met all annual training requirements in 2003, as defined in 5 C.F.R. §§ 2638.704 and 2638.705. The materials used to conduct training met the relevant content requirements. Verbal training was provided to all public filers. A combination of in-person and computer-based training was used to meet requirements for all other covered employees. Receipt of annual training was affirmatively tracked. In addition, ethics counselors at both TRADOC and the Center provided tailored ethics training to individual offices or groups whenever requested.

In April, 2004, the Department of the Army's (Army) Acting Secretary directed that "...the Army General Counsel and Army ethics counselors throughout the world work to ensure that face to face ethics training is provided to every Soldier and civilian employee, regardless of grade, rank, or position." At the time of our review, efforts were well underway at both TRADOC and the Center to meet this requirement. This has resulted in TRADOC and the Center exceeding OGE training requirements by virtue of all employees receiving at least one hour of verbal training when, otherwise, certain covered employees might only have been required to receive written ethics training for an unspecified duration and non-covered employees would not have been required to receive training at all. Accordingly, we commend the Army's commitment to provide in-person training to all military and civilian personnel.

In addition to providing required training, ethics counselors at both TRADOC and the Center have exceeded requirements by providing a variety of ethics education materials. These include information papers, handouts, briefings, and, upon request, additional training specifically tailored to the needs of individual groups. These efforts speak well of the ethics counselors' devotion to providing practical assistance to their clients.

PUBLIC FINANCIAL DISCLOSURE

We examined 26 of the 27 public financial disclosure reports required to be filed in 2004 by the General Officers and Senior Executive Service members assigned to TRADOC and the Center. We examined the reports after they had been filed with and certified by the Chief, Army Standards of Conduct Office. All were filed and reviewed timely, and, in general, were certified timely. Moreover, the reports were thoroughly reviewed, as evidenced by the many notations made by reviewers of their analysis and discussions with filers. There were no substantive deficiencies. Neither TRADOC nor the Center had Presidential appointees confirmed by the Senate.

CONFIDENTIAL FINANCIAL DISCLOSURE

The confidential financial disclosure system at TRADOC and the Center appears to be well managed; however, neither organization had a program to capture new entrant confidential financial disclosure filers prior to our review. This problem was identified prior to our review and ethics counselors have since taken action to ensure that new entrant filers are identified within 30 days of entering a covered position. The CPAC and equivalent military personnel office at each organization will now provide ethics counselors with monthly updates identifying new employees. Ethics counselors will determine which new employees are required to file financial disclosure reports. This should help ensure that individuals hired into covered positions file within the required time frame.

We examined a sample of 21 of the 84 reports required to be filed with TRADOC's ethics counselors in 2003. These included 19 incumbent reports and 2 new entrant reports. Both new entrant reports were filed more than two months late. The incumbent reports were generally filed timely. All reports were reviewed and certified timely. Reports appeared to be thoroughly reviewed as evidenced by reviewers' notations. There were no conflicts noted during our examination. When appropriate, filers were issued cautionary memorandums to raise their awareness of potential conflicts of interest between reported interests and official duties. We did advise ethics counselors to ensure that filers use only the current version of the OGE Form 450, as we noted six of the reports in our sample were either the 1996 or 1999 versions.

We also examined a sample of 39 of the 156 reports required to be filed with the Center's ethics counselors in 2003. These included 37 incumbent reports and 2 new entrant reports. One of the new entrant reports was filed late. It was not filed until the annual filing cycle, when ethics counselors and supervisors typically review which positions are covered. The remainder of the reports included in our sample were filed timely. However, only one report in our sample had been reviewed within 60 days of being filed. Ethics counselors stated that this was the result of inadequate staff. Staffing has since improved and ethics counselors fully expect to be able to provide timely review and certification of reports in the future. Reports appeared to be well reviewed and filers were issued cautionary memorandums as appropriate. We noted no conflicts. We did find five outdated versions of the OGE Form 450 in our sample of the Center's reports and ethics counselors were advised to ensure only current versions are used in the future.

ENFORCEMENT

Ethics counselors at both TRADOC and the Center have active and effective working relationships with their respective Offices of the Inspector General (OIG) and the regional Criminal Investigative Division (CID) office. This allows them to review information developed by OIG and CID and to use the services of those offices, as appropriate, in accordance with 5 C.F.R. § 2638.203(b)(11) and (12). Through discussions with ethics counselors and OIG and CID representatives, it was clear that the offices work closely when cases of alleged ethics violations are investigated.

Both TRADOC and the Center thoroughly investigate alleged ethics violations and take prompt and effective action against those who commit violations, as required by 5 C.F.R. § 2638.203(b)(9). This conclusion is based on our review of documentation recording the actions taken against one officer assigned to TRADOC, and several military personnel and two civilians assigned to the Center who violated the Standards of Ethical Conduct for Employees of the Executive Branch (Standards). The employees were found to have violated provisions concerning misuse of Government resources, misuse of official title and position, and the basic obligations of public service. Actions taken ranged from letters of reprimand to suspension, which served to enforce the Standards and demonstrate to all employees the consequences of unethical conduct.

While neither TRADOC nor the Center made any referrals to the Department of Justice regarding the potential violation of the criminal conflict of interest statutes during the period covered by the review, both organizations have clear procedures and policies for doing so, should it be necessary in the future.

ADVICE AND COUNSELING SERVICES

Ethics advice and counseling services meet the requirements of 5 C.F.R. § 2638.203(b)(7) and (8). We examined a sample of ethics-related advice and counseling rendered by ethics counselors from both TRADOC and the Center. We concluded that all of the written advice, which covered a variety of subjects, complied with applicable ethics statutes and regulations. It was provided in a timely manner and was comprehensive in addressing the relevant issues. Ethics counselors provided complete analyses of the issues raised, identified the relevant authorities, and, on occasion, cautioned that even if an activity was permitted, it may not be prudent. It was apparent that ethics counselors were willing to provide objective opinions even when those opinions would be unpopular.

RESERVISTS AS SPECIAL GOVERNMENT EMPLOYEES

During the course of our review, we asked TRADOC's ethics counselors if it was appropriate that the Department of Defense's Joint Ethics Regulation (JER) designate as SGEs, reservists who have been activated and require that they file confidential financial disclosure reports. The Army's Office of General Counsel (Ethics & Fiscal) was contacted by the primary ethics counselor and responded that the determination of filing status should be based on the positions to be held by the reservists while they are activated. The Department of Defense apparently intends to change the JER

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to that affect. In the meantime, an exemption request is being sought from the Acting Secretary of the Army to exclude such reservists from filing, as appropriate, under 5 C.F.R. § 2634.905.

31 U.S.C. § 1353 TRAVEL PAYMENTS

We examined two of TRADOC's semiannual reports of travel payments accepted from non-Federal sources of more than \$250 per event, covering the period April 1, 2003 through March 31, 2004, which were forwarded to Army headquarters for submission to OGE. There were four acceptances of travel payments which were reported, all of which appeared to comply with the statute, the implementing regulation at 41 C.F.R. Chapter 304, and the JER. The Center's ethics counselors submitted negative reports for the period April 1, 2003 through March 31, 2004.

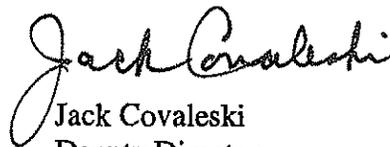
RECOMMENDATION

We recommend that you:

Ensure that members of the Army Education Advisory Committee file new entrant confidential financial disclosure reports immediately and every year on the anniversary of their appointment/reappointment, in accordance with 5 C.F.R. § 2634.903(b)(1) and OGE DAEOgram DO-00-003.

In closing, I would like to thank everyone involved in this review for their cooperation on behalf of the ethics program. Please advise me within 60 days of the specific actions planned or taken concerning the recommendation in our report. A follow-up review will be scheduled approximately six months from the date of this report. In view of the corrective action authority vested with the Director of OGE under subsection 402(b)(9) of the Ethics Act, as implemented in subpart D of 5 C.F.R. part 2638, it is important that you take actions to correct the deficiency in a timely manner. We are sending a copy of this report by transmittal letter to the Inspector General of the Army. Please contact Doug Chapman at 202-482-9223 if we may be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs

Report Number 05- 003