



United States
Office of Government Ethics

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Dear Mr Mora

The Office of Government Ethics (OGE) recently completed a review of the ethics program at the Department of the Navy (the Navy). This review focused primarily on the immediate offices of the Secretary of the Navy (SECNAV) and the Chief of Naval Operations (OPNAV), and the offices of the four Assistant Secretaries of the Navy (ASN), consisting of the Assistant Secretary for Financial Management and Comptroller, the Assistant Secretary for Installations and Environment, the Assistant Secretary for Manpower and Reserve Affairs, and the Assistant Secretary for Research, Development, and Acquisition.¹

This review was conducted pursuant to section 402 of the Ethics in Government Act of 1978, as amended. Our objectives were to determine the ethics program's effectiveness and compliance with applicable laws and regulations. We also evaluated the Navy's systems and procedures for ensuring that ethics violations do not occur. The review was conducted from August through October 2004.

HIGHLIGHTS

Based on the results of our review, we have concluded that the Navy's ethics program is effectively administered by dedicated and knowledgeable civilian and military officials. We especially commend the Assistant General Counsel (Ethics) (AGC (Ethics)) for actively managing and coordinating such a large and decentralized program. We also laud the efforts of ethics counselors from the office of the Deputy Assistant Judge Advocate General (Administrative Law) (DAJAG (Administrative Law)) for effectively overseeing those portions of the program dedicated to the support of the Navy's military personnel and for their cooperative endeavors with the AGC (Ethics). Finally, we commend the ethics counselors at the four ASNs and other offices included

¹The Office of the Chief Information Officer and the Office of the General Counsel's Litigation Office, as well as any office for which the Assistant General Counsel (Ethics) or officials from the office of the Deputy Assistant Judge Advocate General (Administrative Law) serve as primary ethics counselors, were also included in our review.

Mr Alberto J Mora

Page 2

in this review for their efforts on behalf of the programs at their respective organizations. The consistent cooperation between the AGC (Ethics), DAJAG (Administrative Law), and ethics counselors Navy-wide reflects favorably upon the program as a whole. We believe that this type of cooperation and coordination is vital to the successful administration of such a large and decentralized program.

PROGRAM STRUCTURE

As the Navy's General Counsel, you are the Designated Agency Ethics Official (DAEO) and the Navy's Judge Advocate General is the Alternate DAEO. The AGC (Ethics) is primarily responsible for the day-to-day management and coordination of the Navy's overall ethics program. The AGC (Ethics) is physically co-located with DAJAG (Administrative Law) which, with support from the AGC (Ethics), oversees those portions of the program dedicated to the support of the Navy's military personnel. Finally, ethics counselors throughout the Navy are responsible for the day-to-day administration of the ethics program at their respective organizations or activities (such as the ASNs), including initial review of public financial disclosure reports, final review and certification of confidential financial disclosure reports, providing ethics-related advice, and conducting ethics training.

PUBLIC FINANCIAL DISCLOSURE SYSTEM

The public financial disclosure system Navy-wide is effectively managed through a cooperative effort by the AGC (Ethics), DAJAG (Administrative Law), local ethics counselors, and officials from both civilian and military personnel offices. The coordination between these individuals ensures that public financial disclosure report filers are identified and notified of the filing requirements in a timely manner and that reports are appropriately filed, reviewed, and certified.

The civilian public reports (except those filed by Presidential appointees requiring Senate confirmation (PAS)) are filed initially with the appropriate local ethics counselor and are finally reviewed and certified by the AGC (Ethics).² The public reports filed by military personnel are also initially filed with their respective local ethics counselors, however, they are finally reviewed and certified at DAJAG (Administrative Law).

Non-PAS Public Reports

To evaluate the effectiveness of the public system for both civilian and military filers, we examined a sample of 44 of the approximately 150 public reports filed in 2004 by Navy personnel from SECNAV, OPNAV, the four ASNs, and the other offices included in our review. All but one

²PAS reports are filed directly with the AGC (Ethics)

of these reports were filed in a timely manner³ and all were reviewed and certified in a timely manner

The review of these reports appeared to be quite thorough, as was evidenced by the several layers of review that each report underwent before being finally certified. As further evidence of the thorough review process, many report files contained handwritten notes and/or copies of e-mail correspondence documenting reviewers' conversations with filers to clarify or correct certain entries. We also noted several copies of cautionary memoranda used by reviewing officials to apprise filers of potential conflicts arising from their reported financial interests and the possible need to disqualify themselves from certain matters should they come before them for action.

In addition to the technical review of the reports conducted by Navy ethics officials, our examination revealed that reports appear to undergo a thorough substantive review, as we did not identify any conflicts of interest.

PAS Public Reports

We also examined all five annual public reports required to be filed in 2004 by PAS filers. Four of the reports were filed by the annual filing deadline. The fifth report was filed within the 90-day filing extension period granted to the filer. All five of the reports were reviewed, certified, and forwarded to OGE in a timely manner.

CONFIDENTIAL FINANCIAL DISCLOSURE SYSTEM

The Navy's decentralized confidential financial disclosure system is administered primarily by local ethics counselors at the Navy's various organizations and activities. Ethics counselors at each organization or activity certify the reports after they have undergone an initial review by the filers' immediate supervisors and possibly other reviewing officials, such as paralegals or administrative assistants. Local ethics counselors work in concert with their respective human resources offices, administrative officers, and supervisors to identify confidential filers and notify them of the filing requirements, especially with regard to new entrant filers entering into covered confidential filing positions.

To evaluate the confidential system, we examined a sample of 204 of the approximately 315 confidential reports required to be filed by employees within SECNAV, OPNAV, the four ASNs, and the other offices included in our review. Of these reports, 186 were filed in a timely manner and 196 were reviewed and certified in a timely manner.

Of the 18 late reports we examined, 11 were filed by new entrants. During the exit conference, we explained that the late filing of new entrant reports is one of the most common

³The one late filer paid the \$200 late filing fee.

findings of our reviews of agencies with large, decentralized systems While we did not consider the number of late new entrant filers to be egregious, and thus not warranting a formal recommendation, we urged ethics counselors to be diligent in ensuring that employees entering into covered filing positions are identified and notified of the new entrant filing requirement in a timely manner

As with the public reports, the review of the confidential reports appeared to be conducted in a conscientious manner, our examination did not reveal any substantive deficiencies While we did uncover a few minor technical deficiencies, we have already discussed them with the appropriate ethics counselors and do not feel that formal recommendations addressing these deficiencies are necessary to maintain the integrity of the system

Confidential System for Advisory Committee Members

Within OPNAV and SECNAV there exist two Federal advisory committees the Chief of Naval Operations Executive Panel (CNO Executive Panel) and the SECNAV Advisory Subcommittee on Naval History The members of these committees have been designated as special Government employees (SGE) and as such are required to file confidential financial disclosure reports upon initial appointment and annually thereafter on the anniversary of their appointment date

To evaluate the confidential system for these two committees, we examined samples of 14 of the 28 confidential reports required to be filed by members of the CNO Executive Panel and 7 of the 13 reports required to be filed by members of the SECNAV Advisory Subcommittee on Naval History in 2003 Based on our examination of the filers' dates of appointment and discussions with OPNAV ethics officials, all but one of the reports appeared to be filed in a timely manner In addition, all of the reports were reviewed and certified in a timely manner We did not uncover any substantive or technical deficiencies during our examination of the reports

According to OPNAV ethics officials, committee management officials from both committees routinely review meeting agendas against members' financial disclosure reports to assist them in identifying potential conflicts of interest prior to upcoming meetings OPNAV officials explained that in accordance with new procedures, they too will begin receiving agendas of committee meetings from both committees for use in conducting their reviews

ETHICS EDUCATION AND TRAINING

As noted during previous OGE ethics program reviews, the Navy places considerable emphasis on training, often exceeding OGE's minimum training requirements We commend the Navy for routinely providing additional training, not only to covered employees, but to new and seasoned ethics counselors as well

Initial Ethics Orientation

To meet the initial ethics orientation requirement, the Secretariat Human Resources Office provides written orientation materials, prepared by the AGC (Ethics), to new civilian Navy employees and instructs them to take at least one hour to review the materials. These materials consist of a summary of the ethics rules entitled, "Employees' Guide to the Standards of Conduct," a current list of ethics counselors, and information on how to contact them.⁴ New civilian employees are required to certify that they have received the orientation materials and return the signed certification statement to the appropriate human resources office.

New military personnel are provided initial ethics orientation as part of their indoctrination training prior to reporting for duty at their first assigned activity.

In addition to receiving the written orientation materials, new civilian and military employees are often provided with an additional orientation when they report to a newly-assigned organization or activity. This additional orientation is typically part of a standardized check-in process whereby new employees are required to visit their assigned ethics counselor, among other offices, upon entrance on duty.

Annual Ethics Training

Annual verbal ethics training for covered Navy employees is typically provided electronically using the online training modules prepared by the Department of Defense's (DOD) Standards of Conduct Office (SOCO). However, in-person briefings are also routinely provided on a one-on-one or small-group basis. For example, the AGC (Ethics) provides all Navy PAS officials at least one hour of in-person one-on-one training annually, with the participation of the cognizant ethics counselors if so desired.

Based on our examination of relevant documentation and discussions with the AGC (Ethics), ethics counselors from DAJAG (Administrative Law), and ethics counselors at the four ASNs, all but a handful of covered employees assigned to the offices included in our review received annual training in 2003. Typically, this training was provided using one or more of the DOD SOCO-developed online modules, although some ethics counselors mandated, or offered as an option, live training.

Almost all of the ethics counselors included in our review maintained records of who received annual training in 2003 (e.g., certificates of completion, sign-in sheets, etc.), enabling us to determine whether covered employees received training. However, one ethics counselor admitted

⁴The same materials are provided to new Senior Executive Service employees by the Office of Civilian Human Resources (Senior Executive Service Manager).

that her office had not maintained such records for her covered employees (although she assured us that all had received the training) Upon identifying this oversight while preparing for our review, the ethics counselor developed a system for tracking training attendance which is currently being used to ensure employee completion of 2004 annual training at this organization

In addition to providing annual training to covered regular employees, OPNAV ethics counselors provide annual training to all SGE committee members from both OPNAV and SECNAV advisory committees Committee members were provided written materials to meet the annual training requirement in 2003

While we commend all the Navy ethics counselors included in our review for providing accurate and timely training to their employees, we were especially impressed with a practice developed by the Special Counsel to the CNO Because of the CNO's busy schedule, it can be challenging for him to allocate time in his schedule to focus on ethics training Therefore, the Special Counsel instituted a practice of loading a computer-based training module on a laptop computer that the CNO takes with him on a trip using a military aircraft Once airborne, one of the CNO's aides, who has been thoroughly briefed on the training, runs through the module with the CNO The Special Counsel, as the ethics counselor for the CNO, stands by via a phone connection to answer any questions the CNO may have during the training We applaud this creative effort to ensure that the Navy's highest ranking military official receives the required annual ethics training

Additional Training Efforts

The AGC (Ethics) and ethics counselors from DAJAG (Administrative Law) provide a variety of ongoing ethics training each year in addition to the routine provision of initial ethics orientation and annual ethics training

For example, the AGC (Ethics) maintains an ethics Web site, "The Ethics Compass," containing a myriad of ethics-related information Visitors to the site may submit questions to which the AGC (Ethics) responds Also, DAJAG (Administrative Law) recently developed its own section on the "Navy Knowledge Online" Web site as a resource for both military and civilian personnel in the legal community

The AGC (Ethics) and DAJAG (Administrative Law) also routinely disseminate ethics advisories (Ethics-Grams) on various and timely ethics issues via an extensive e-mail distribution list These Ethics-Grams are also posted on their respective Web sites

In addition to providing training to non-ethics personnel, the AGC (Ethics) and DAJAG (Administrative Law) provide a significant amount of training for ethics counselors throughout the Navy on a routine basis

For example, each year the AGC (Ethics) and ethics counselors from DAJAG (Administrative Law) conduct 5 90-minute Ethics Roundtables for Navy and Marine Corps ethics counselors worldwide via video teleconferencing. During these sessions, for which agendas are developed by the AGC (Ethics), ethics counselors are provided updates on new developments in the ethics arena, share lessons learned, and participate in open discussions on ethics-related issues.

Additionally, ethics counselors from DAJAG (Administrative Law) developed and provided a two-day ethics program for senior ethics counselors, one conducted on the east coast, the other on the west coast. The AGC (Ethics) participated in both of these programs. A similar program, tailored for new ethics counselors, was provided twice in 2003. Additionally, a three-day program was offered in 2003 for both new and experienced ethics counselors alike.

The AGC (Ethics) and ethics counselors from DAJAG (Administrative Law) also participate in the annual week-long Basic Ethics Course for ethics counselors sponsored by the Judge Advocate General's School of the U.S. Army in Charlottesville, Virginia.

We commend these efforts to train and educate ethics counselors as an excellent way to ensure accurate and consistent management of the Navy's large and geographically dispersed ethics program.

ADVICE AND COUNSELING PROGRAM

Counseling is provided by the ethics counselors at each of the Navy's individual organizations and activities. The AGC (Ethics) provides overall guidance to the ethics counselors and often assists them in providing accurate advice. In addition, the physical co-location of the AGC (Ethics) and DAJAG (Administrative Law) fosters a collaborative approach to providing ethics counseling, ensuring that consistent and accurate advice is provided throughout the Navy.

To evaluate the quality of advice provided by the AGC (Ethics), DAJAG (Administrative Law), and ethics counselors at the four ASNs and other organizations included in our review, we examined a sample of ethics-related written determinations rendered by these officials from 2003 to the present. The advice we reviewed covered the entire spectrum of the ethics rules, including gifts, post-employment, conflicts of interest, and travel. We found the advice to be thorough, accurate, and rendered in a timely fashion. Moreover, ethics counselors often provided counseling beyond merely responding to the question posed in an effort to ensure that employees understood all of the potential pitfalls in taking a particular course of action.

ENFORCEMENT

An effective working relationship exists between ethics counselors, the Navy's Office of Inspector General (OIG), and the Naval Criminal Investigative Service (NCIS). Accordingly, it appears that the requirement at 5 C.F.R. § 2638.203(b)(12) is being met, wherein the services of OIG

and NCIS are being utilized by ethics officials, including the referral of matters to and the acceptance of matters from OIG and NCIS. The OIG and NCIS officials with whom we met agreed that there is ongoing communication and interaction between their offices and the AGC (Ethics), DAJAG (Administrative Law), and local ethics counselors. In addition to this routine coordination, other cooperative initiatives have taken place or are planned to be implemented. For example, in January 2004, the Navy's Judge Advocate General and Inspector General provided a joint standards of conduct briefing to the Navy's most senior leadership officials attending the Three and Four Star Conference. In addition, the AGC (Ethics) hopes to provide an ethics counselor to assist in scheduled IG audits by conducting ethics evaluations.

Investigations regarding alleged violations of the criminal conflict of interest laws are handled by NCIS. The status and results of these investigations are routinely shared with you by NCIS or through the AGC (Ethics). NCIS is also responsible for referring any such cases to the Department of Justice (DOJ) for possible prosecution and, in accordance with 5 C F R § 2638.603, concurrently notifying OGE of any such referral.

At the start of our review, NCIS had made no referrals to DOJ of alleged violations of the criminal conflict of interest laws by any employee at the organizations included in our review in the past year. However, at the time of our review, one possible violation of 18 U S C § 208 was still under investigation by NCIS. Since the completion of our review, NCIS completed its investigation of the case and referred it to DOJ, which declined to prosecute. Since the employee in question has already retired from the Navy, no further disciplinary action is planned.

In addition, there have not been any standards of conduct or related violations resulting in disciplinary or administrative action in the past year involving any employee at the organizations included in our review. We were informed that the responsibility for taking any such disciplinary or administrative action rests with the individual command or organization to which the offending employee is assigned. However, the CNO and the Vice Chief of Naval Operations routinely monitor cases involving flag officers throughout the Navy.

TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES

The Navy has procedures in place to approve the acceptance of payments of travel and related expenses from non-Federal sources under 31 U S C § 1353. These procedures are spelled out in Chapter 4 of the DOD Joint Ethics Regulation and further refined by SECNAV INSTRUCTION 4001.2G.

To evaluate the effectiveness of these procedures, we examined all 21 gifts of travel in excess of \$250 accepted during the reporting period from October 1, 2003 to March 31, 2004 by OPNAV and SECNAV (we did not identify any payments accepted during this period by any of the ASNs). All of the payments appeared to be approved and accepted in accordance with 31 U S C § 1353.

Mr Alberto J Mora

Page 9

In closing, I wish to thank the AGC (Ethics), DAJAG (Administrative Law), ethics counselors from the four ASNs and other offices included in our review, and all other Navy officials who participated in this review for their cooperation and their efforts on behalf of the ethics program. A follow-up review is usually scheduled within six months from the date of this report. However, since this report contains no formal recommendations, this will not be necessary. A copy of this report is being forwarded to the Naval Inspector General. Please contact Dale Christopher at 202-482-9224 if we may be of further assistance.

Sincerely,



Jack Covaleski
Deputy Director
Office of Agency Programs

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