

Unloading the “Aide Bag”: An Overview of the Legal and Ethical Concerns Carried by General Officer Aides

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I. Introduction

Who is that officer carrying a backpack and cup of coffee behind the general? Who are those Soldiers scheduling conference calls, enforcing standards of protocol, coordinating transportation, and preparing formal dinner meetings at the general’s quarters? They are the select few who are charged with providing direct support and assistance to the Army’s highest ranking officials—officer and enlisted personnel assigned as general officer aides. From the outside looking in, rank certainly appears to have its privileges.¹ But these privileges are significantly offset by the time, toil, and effort general officers expend exercising the incredible level of responsibility vested in them by the Army.² To accommodate the increased responsibility and workload, the Army provides its general officers with specialized staffs and aides to assist them in accomplishing mission requirements.³

Perhaps the most inconspicuous members of the general’s staff are the aides. Aides handle the wide-ranging administrative and logistical details of a general’s daily schedule, thereby enabling the general officer to focus on the big picture with minimal distraction.⁴ While generals spearhead strategic operations and missions, aides are behind the scenes, dutifully executing many of the more minor, mundane, or routine tasks. By its very nature, duty as a general officer aide is littered with its own unique challenges. These challenges are exacerbated by the paucity of regulations and formal written guidance articulating the aide’s specific role and responsibilities.⁵ Aides often find themselves overwhelmed by a myriad of tasks, many of which depend upon the broad discretion and varying needs of the generals they serve. While the mechanics of managing a general officer’s schedule are daunting, a closer look inside an aide’s bag⁶ reveals less obvious legal and ethical challenges, concerns, and areas for potential abuse. Itineraries, airline tickets, coins, gifts, and the general’s personal monies all add incredible weight to the aide bag. Understanding the aide’s role and the legal and ethical considerations involved is critical to unloading the burdens carried by general officer aides. The purpose of this primer is to (1) survey and explain the role of general officer aides, (2) identify and examine common legal and ethical concerns inherent to the position, and (3) provide suggested best practices to protect against actual or perceived misconduct.

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¹ See Major Timothy M. Tuckey, TJAGSA Practice Notes, *Ethics Note, The General Officer Aide and the Potential for Misuse*, ARMY LAW., Aug. 2002, at 36, 36 (discussing how “[r]ank has its privileges” and that “[a]long with respect and responsibility, promotion [to general officer] provides perks that are not available to lower ranking officers”).

² See *id.* at 42 (noting that “[r]ank may indeed have its privileges, but it also has significant responsibilities”).

³ See, e.g., 10 U.S.C. § 3543 (2006) (establishing the detail of general officer aides and number authorized); *id.* § 981 (providing the congressionally-established formula limiting the number of enlisted aides assigned to personal staffs of general officers).

⁴ See U.S. DEP’T OF ARMY, REG. 614-100, OFFICER ASSIGNMENT POLICIES, DETAILS, AND TRANSFERS (10 Jan. 2006) [hereinafter AR 614-100]; U.S. DEP’T OF ARMY, REG. 614-200, ENLISTED ASSIGNMENTS AND UTILIZATION MANAGEMENT (27 June 2007) [hereinafter AR 614-200]; OFFICER/ENLISTED AIDE HANDBOOK, GENERAL OFFICER MANAGEMENT OFFICE (July 2006) (unpublished, on file with General Office Management Office (GOMO) and with author) [hereinafter GOMO AIDE HANDBOOK].

⁵ Tuckey, *supra* note 1, at 37.

⁶ Aide-de-camps are often identified by the backpacks they carry in close proximity to the general officers they serve. These backpacks are commonly referred to as “aide bags” and are typically used to store the general officers’ essential personal and official items to support any number of aide-related tasks.

II. The Role of General Officer Aides

General officer aides⁷ often find themselves balancing a multitude of essential tasks under the broad discretion and direction of the generals they serve. At the same time, aides are dealing with the unique dynamics of the position, the relationship it engenders with the general and senior staff members, and the heightened public scrutiny inherent to high-ranking military officers. With little official guidance or written publications specifying roles and responsibilities, aides are left with the vague advice to “remain flexible” and execute duties dependent upon the “personality of the general” for whom they work.⁸ The *Officer/Enlisted Aide Handbook*, prepared by the General Office Management Office (GOMO), articulates this variance among aide duties.

An aide has to be a secretary, companion, diplomat, bartender, caterer, author, and map reader as well as mind reader. He or she must be able to produce at a minutes [sic] notice – timetables, itineraries, the speeds and seating capacity of various aircraft, trains, surface transportation, know seating arrangements at all occasions and all settings. He or she must know the right type of wine for a meal, how many miles it is to Timbuktu, where to get the right information, and occasionally, how the boss’s steak or roast beef ought to be cooked . . . always look fresh, always know what uniform to wear, know what is happening a week from today, have the latest weather report and, in their spare time, study to maintain military proficiency.⁹

Although aides may understand their basic function of assisting general officers, the absence of clear guidelines and the broad sweep of regulatory duty descriptions present real issues for aides trying to identify the left and right limits of their jobs.

The Standards of Ethical Conduct for Employees of the Executive Branch (Standards of Conduct)¹⁰ and Joint Ethics Regulation (JER)¹¹ provide the general framework for lawful employment of aides. In particular, the JER directs that a subordinate should not be encouraged, directed, coerced, or requested to “use official time to perform activities other than those required in the performance of official duties.”¹² The Standards of Conduct also provide corresponding ethical principles applicable to all government employees, including a prohibition against use of “public office for private gain.”¹³ A contemporaneous look at statutes and regulations promulgated specifically for enlisted personnel provides further insight on the role and responsibilities of aides.¹⁴ Army Regulation (AR) 214-200 states that an aide’s job is to relieve “general and flag officers of those minor tasks and details, which, if performed by the officers, would be at the expense of the officer’s primary

⁷ Selection to an aide position is generally considered an honor and privilege. Tuckey, *supra* note 1, at 37; Dana Priest, *A Male Prototype for Generals’ Protégés: In Choosing Aides de Camp, Army’s Leaders Nearly Always Exclude Female Officers*, WASH. POST, 29 Dec. 1997, at A1 (stating that “[t]here are few more subjective honors in the Army than being chosen as aide de camp”). Generals often personally interview and select the brightest officers from within their respective commands to serve as aides-de-camp, which professionally distinguishes them from peers. Tuckey, *supra* note 1, at 37; see AR 614-100, *supra* note 4, para. 3-4c. Selection of enlisted aides is similar, but candidates are subject to additional eligibility considerations and procedural steps required under the General Officer Enlisted Aide Program of Human Resources Command (HRC). Tuckey, *supra* note 1, at 37. Although enlisted aides volunteer for the duty, are managed under the Enlisted Aide Program, and receive specialized schooling, a general officer nonetheless retains the discretion to personally select his or her enlisted aide. General Officer Enlisted Aide Program, U.S. Army Human Resources Command, <https://www.hrc.army.mil/site/protect/Active/epqm/enlistedaideprogram.htm> (last visited Nov. 17, 2008) [hereinafter Enlisted Aide Program Website]; see Jamey Ryan, *Army Enlisted Aides: Service, Support, Sustainment*, http://www.quartermaster.army.mil/aces/programs/enlisted_adi/aide_program.html (last visited Sept. 2, 2008). In fact, enlisted aides are frequently hand-picked by generals themselves or are otherwise selected from lists of qualified candidates generated by HRC. Tuckey, *supra* note 1, at 37. Regardless of the process, there is little dispute that selection as an aide indicates success. *Id.*

⁸ Tuckey, *supra* note 1, at 37 (quoting General Officer Policies, General Officer Management Office (GOMO), Oct. 1995, at 10, 33 (unpublished, on file with GOMO)).

⁹ GOMO AIDE HANDBOOK, *supra* note 4, at 2. The *GOMO Handbook*’s explanation of an aide’s role directly correlates to the broad duty description provided in Army Regulation (AR) 614-100. Compare *id.* at 1 (stressing that aides must remain flexible and that “actual duties depend upon the personality of the general”), with AR 614-100, *supra* note 4, para. 3-4b (explaining that duties are variable and change with requirements of the assignment). In particular, AR 614-100 states that “[a]ides-de-camp perform many duties that include a combination of administrative tasks that change with the needs of the Army and the requirements of the assignment.” AR 614-100, *supra* note 4, para. 3-4b. This regulation further adds that “[a] description of the duties of one aide-de-camp would normally require modification to apply to another.” *Id.*

¹⁰ Standards for Ethical Conduct for the Executive Branch, 5 C.F.R. § 2635 (2008).

¹¹ U.S. DEP’T OF DEF., DIR. 5500.07-R, JOINT ETHICS REGULATION (29 Nov. 2007) [hereinafter JER].

¹² *Id.* para. 2-100; 5 C.F.R. § 2635.705(b).

¹³ 5 C.F.R. §§ 2635.101(b)(7), 2635.702.

¹⁴ Note that officer aides-de-camp essentially have no formal guidance explaining their roles and responsibilities and, therefore, must analogize to the more specific guidelines articulated in statutes and regulations for enlisted aides. See *supra* notes 8–9 and accompanying text.

military and official duties.”¹⁵ However, general officers are strictly precluded under statute from using “an enlisted member of the Army as a servant,”¹⁶ and AR 214-200 specifically provides that “aide duties must . . . serve a necessary military purpose.”¹⁷ Therefore, aides are to perform only official military duties, rather than “duties that inure solely to the personal benefit” of the general officer.¹⁸

The greatest challenge is determining where the line exists between lawfully employing an aide and situations presenting actual or perceived misuse of an aide.¹⁹ In most scenarios, the general officer will ensure that duties or tasks assigned to the aide are reasonably connected to an official military purpose.²⁰ But the minutia—the minor administrative tasks and coordination efforts that often go unnoticed—place aides in the precarious position of making tough decisions while also safeguarding their generals’ legal and ethical obligations.²¹ As a practical matter, aides must remember that public perception is a benchmark for the ethical performance of duty.²² Therefore, aides should always consider how their actions and service to general officers could be perceived by the casual observer.²³ Promptly addressing concerns and clarifying the aide’s roles and responsibilities are critical for protecting both the general and the aide from allegations of unethical conduct. The

¹⁵ AR 614-200, *supra* note 4, para. 8-11b.

¹⁶ 10 U.S.C. § 3639 (2006); Tuckey, *supra* note 1, at 38 (quoting 10 U.S.C. § 3639 (2000)). See *United States v. Robinson*, 20 C.M.R. 63 (C.M.A. 1955) (stating that 10 U.S.C. § 3639 was intended to “prevent the use of enlisted men in assignments that contributed only to the convenience and personal benefit of individual officers which had no reasonable connection with the efficient employment of the armed services as a fighting force”).

¹⁷ AR 614-200, *supra* note 4, para. 8-11b (stating that the propriety of an aide’s duties will be primarily determined upon its official purpose rather than the nature of the duties themselves). To assist in further defining roles and responsibilities, AR 214-200 and Department of Defense Instruction (DODI) 1315.09 include a reference point for some of the “official functions and duties” of enlisted aides. See U.S. DEP’T OF DEF., INSTR. 1315.09, UTILIZATION OF ENLISTED PERSONNEL ON PERSONAL STAFFS OF GENERAL AND FLAG OFFICERS para. 5.2 (2 Oct. 2007) [hereinafter DoDI 1315.09]; see also AR 614-200, *supra* note 4, para. 8-11b(1)–(5). Army Regulation 614-200 essentially mirrors the DOD Instruction, and provides the following reference point for permissible enlisted aide duties:

- (1) Assist with care, cleanliness, and order of assigned quarters, uniforms, and military personal equipment.
- (2) Perform as point of contact (POC) in the GO’s quarters. Receive and maintain records of telephone calls, make appointments, and receive guests and visitors.
- (3) Help to plan, prepare, arrange, and conduct official social functions and activities, such as receptions, parties and dinners.
- (4) Help to purchase, prepare, and serve food and beverages in the GO’s quarters.
- (5) Perform tasks that aid the officer in accomplishing military and official responsibilities, including performing errands for the officer, providing security for the quarters, and providing administrative assistance.

AR 614-200, *supra* note 4, para. 8-11b(1)–(5). Indeed, enlisted aides perform a number of duties, to include “planning social events, providing administrative assistance, purchasing and preparing food, running errands and providing security for the officer’s quarters.” T. Anthony Bell, *Enlisted Aides Support Mission Behind Scenes*, ARMY NEWS SERVS. (Mar. 13, 2008), available at <http://www.army.mil/news/2008/03/13/7917-enlisted-aides-support-mission-behind-scenes>. All of these tasks or actions are permitted by regulations under the auspice of supporting a general’s official military responsibilities. Yet some of these “official functions” also appear purely personal in nature. Ostensibly, a nexus exists between almost any function and a general’s official military duties. See Tuckey, *supra* note 1, at 41. However, such broad application will inevitably present circumstances for intense public scrutiny, if not outright abuse under current statutes and ethics regulations. Even in the absence of a clear abuse of authority, perception can be enough to ethically derail a general officer.

¹⁸ Tuckey, *supra* note 1, at 41. For example, issues with unethical employment of an aide often arise when a general’s family is involved. *Id.* at 40. First and foremost, an aide’s service statutorily belongs to the general officer—to assist and enhance the general officer’s official military duties. *Id.* Therefore, “use of the general officer’s aide[] to assist the general’s spouse with organizational chores,” or for other personal, familial tasks or errands is wholly inappropriate. *Id.* at 40–41. An aide performing “unofficial” duties or “favors” for a general’s spouse, friends, or family members not only runs afoul of ethical rules and principles, but also presents the clear appearance of misuse. *Id.* at 41. A general officer should “take care to avoid requesting [personal] favors.” *Id.* at 39. As a practical matter, favors may include “chores reasonably related to the officer’s military duties,” but still present an appearance of a personal request, rather than an official task. *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 39.

²¹ See *id.* Often, aides will execute assigned tasks without question or hesitation. This is particularly true for less experienced, younger aides who diligently carry out all tasks to please their superiors. Many of these same tasks are left for the aide to accomplish with little oversight or guidance. As a result, the personal or official nature of such routine or implied tasks may be overlooked or simply become an afterthought. Moreover, the aide’s close relationship and loyalty to a general officer may compound the matter. Even in the midst of clear ethical derogations, aides may feel too intimidated or proud to raise or address concerns.

²² *Id.* at 42.

²³ *Id.* (noting that “if a reasonable person would believe that an action violates the law or the standards of conduct, then most likely the action violates the Standards for Ethical Conduct”).

remainder of this paper will discuss some of the more common legal and ethical issues aides may encounter in their role as personal assistants and representatives of general officers.

III. Travel Arrangements and Transportation Considerations

One of the most common ethical pitfalls for general officers involves transportation. As administrative coordinators, aides are often responsible for booking flights, filling gas tanks, and shuffling generals between various engagements.²⁴ Aides truly face great stress getting general officers from point *A* to point *B*. Many generals get frustrated when transportation is at issue, particularly when it interferes with smooth, efficient transitions between meetings and other work-related functions or tasks.²⁵ Even more troublesome is when general officers inadvertently direct violations of statutes and regulations involving ground and air transportation. Aides must be well-versed in the current transportation rules, while also being skilled, courteous, and knowledgeable travel agents for their general officers. Understanding the inner workings of the Defense Travel System (DTS)²⁶ and knowing the key players, specific rules, and procedures, will keep both aides and generals above the fray.

A. Use of Government Non-Tactical Vehicles

General officers will typically have access to assigned, government-owned, or government-leased vehicles in support of day-to-day operational requirements. Non-tactical vehicles (NTVs) are frequently used to transport generals to ceremonies, meetings or other training events in the garrison environment. The current rules for NTV use remain relatively clear—NTVs must be used for official purposes only.²⁷ Official purposes are those uses that “support . . . authorized DOD functions, activities, or operations.”²⁸ However, “[p]roviding a Government vehicle solely or even principally to enhance the comfort or convenience of a Government officer or employee is not permissible.”²⁹ Thus, NTVs generally may not be used to support activities involving the purely personal business or activities of the general officer.³⁰

Determining whether an official purpose exists is a matter of both discretion and judgment.³¹ Aides should consider whether use of an NTV is essential to successful completion of their general’s mission requirements and whether the NTV is being used consistent with the purpose for which it was acquired.³² In most cases, NTV transportation will be authorized to support generals in their day-to-day business. Current regulations specifically permit NTV transportation when the general is

²⁴ See GOMO AIDE HANDBOOK, *supra* note 4, at 2–12 (discussing general duties, including travel).

²⁵ See generally Aaron Rosencrans, *A Day in the Life of a CG’s Aide*, MULTI-NATIONAL DIVISION—BAGHDAD MEDIA RELEASE NO. 20080524-06 (May 24, 2008), available at <http://pao.hood.army.mil/4id/news/Articles/08may/may183.pdf> (discussing the importance of the aide’s role in getting generals to appointments “without any delays and with minimal effort”).

²⁶ E-mail from Major Ellen S. Jennings, Chief of Administrative Law, 10th Mountain Division & Fort Drum, to Major Nate G. Hummel, Student, 57th Graduate Course, The Judge Advocate Gen.’s Legal Ctr. & Sch. (Oct. 7, 2008, 7:49 EST) (stressing the importance that aides understand the inner workings of DTS) (on file with author).

²⁷ U.S. DEP’T OF DEF., REG. 4500.36-R, MANAGEMENT, ACQUISITION, AND USE OF MOTOR VEHICLES para. C2.5 (16 Mar. 2007) [hereinafter DoD REG. 4500.36-R]; U.S. DEP’T OF ARMY, REG. 58-1, MANAGEMENT, ACQUISITION, AND USE OF MOTOR VEHICLES para. 2-3 (10 Aug. 2004) [hereinafter AR 58-1].

²⁸ AR 58-1, *supra* note 27, at 54; see H.R. REP. NO. 451, at 6 (1986).

²⁹ H.R. REP. NO. 451, at 6; see AR 58-1, *supra* note 27, para. 2-3b (stating that “[v]ehicles will not be provided when the justification is based solely on reasons of rank, position, prestige, or personal convenience”).

³⁰ See DoD REG. 4500.36-R, *supra* note 27, para. C2.5.3. Note that some otherwise personal uses may be authorized during temporary duty status while away from a general’s permanent duty station. Army Regulation 58-1, states:

When a NTV is authorized for use while on TDY, the NTV may be operated between places where the person’s presence is required for official business, or between such places and temporary lodgings. In the absence of regularly scheduled public transportation, or its use is impractical, a NTV may be operated between places of business or lodging and eating establishments, drugstores, barber shops, places of worship, and similar places required for the comfort or health of the member, and which foster the continued efficient performance of Army business. Using a NTV to travel to or from commercial entertainment facilities (that is professional sports, concerts, and so forth) is not authorized.

AR 58-1, *supra* note 27, para. 2-3i(3).

³¹ DoD REG. 4500.36-R, *supra* note 27, para. C2.5.1.

³² *Id.*

participating in public ceremonies, training exercises, or other programs directly related to official duties.³³ This also extends to situations where general officers are not directly participating, but are nonetheless attending as a command or organizational representative.³⁴

While general rules regarding NTV use are quite simple, its application often presents recurring issues with transportation among a general officer's home, place-of-duty, and commercial or military air terminal. Transportation between a personal residence and place-of-duty is generally prohibited by regulation.³⁵ Only in exceptional circumstances, with high-level authorization, may general officers use NTVs for home-to-work transportation.³⁶ Transportation between a general's home and an air terminal presents similar restrictions, but may be an option if certain conditions are met.³⁷ For instance, a NTV may be used to transport a general between quarters and an air terminal if it is "[n]ecessary because of emergency situations or to meet security requirements."³⁸ Non-tactical vehicle transportation may also be provided if the particular terminal is located in an area "where other methods of transportation cannot meet mission requirements in a responsive manner."³⁹ Under this particular exception, use of an NTV between home and a terminal may be permissible if transportation is "determined to be essential to the performance of official business"⁴⁰ and scheduled DOD bus services or public transportation is unavailable.⁴¹ Regardless of whether a general personally believes special circumstances exist authorizing NTV travel from home, aides must exercise caution by ensuring that such practices first receive appropriate legal review and approval. In fact, absent a written ethics opinion, the best practice is to follow the general principle that NTV transportation should always "begin and end at the transported individual's normal place of duty, . . . not a personal residence/domicile."⁴²

B. Considerations for Commercial Air Travel

Department of the Army policy⁴³ and the Joint Federal Travel Regulation (JFTR)⁴⁴ provide the basic guidelines and highlight the key issues for aides to consider in coordinating air travel. Under current policy, servicemembers—including general officers—are required to use coach-class accommodations on commercial air carriers during travel on official

³³ AR 58-1, *supra* note 27, para. 2-3a; *see* DoD REG. 4500.36-R, *supra* note 27, para. C2.5.

³⁴ *See* AR 58-1, *supra* note 27, para. 2-3a(2) (stating that "official ceremonies (for example, changes of command, promotions, retirements, unit activations/deactivations) . . . are considered official business internal to the Army community"). Spouse use of the NTV is yet another attendant concern. Army Regulation 58-1 makes it clear that spouses of government employees "may be transported in [a NTV] only when accompanying the military member . . . in the Government vehicle." *Id.* para. 2-3b. The regulation further explains that this privilege only applies on a space available basis. *Id.* Therefore, spouses may travel in NTVs under the auspice of similar official duty requirements, so long as space is available and they accompany the servicemember. *Id.*

³⁵ *Id.* ch. 4.

³⁶ *See id.* para. 4-3. Pursuant to AR 58-1, only the Secretary of the Army and the Army Chief of Staff are authorized domicile-to-duty (D-T-D) transportation. *Id.* para. 4-2(c); 31 U.S.C. § 1344 (2006); *see* 26 U.S.C. §§ 61, 132 (2006). However,

[t]he Secretary of the Army may authorize, in writing, on a nondelegable basis, D-T-D transportation for other personnel under conditions that are considered essential in response to highly unusual circumstances that present a clear and present danger, and public or private transportation cannot be used; an emergency exists; other compelling operational considerations make such transportation essential to the conduct of business; considered essential for the safe and efficient performance of intelligence, counterintelligence, protective services, and criminal law enforcement duties.

AR 58-1, *supra* note 27, para. 4-3a.

³⁷ *Id.* paras. 2-3i(1), 4-6.

³⁸ DoD REG. 4500.36-R, *supra* note 27, para. C2.5.3.2.2.

³⁹ *Id.* para. C2.5.3.2.3.

⁴⁰ *Id.* para. C2.8.

⁴¹ *See id.* paras. C2.5.3.2, C2.8; *see also* AR 58-1, *supra* note 27, para. 2-3i(1) (providing for NTV use if "[t]erminals are located where other means of transportation are not available or cannot meet mission requirements"). For example, general officers assigned to the District of Columbia (National Capital Region) do not have a claim for NTV support from home to commercial air terminals due to the viability of public and commercial transportation systems. U.S. DEP'T OF DEF., INSTR. 4515.7, USE OF MOTOR TRANSPORTATION AND SCHEDULED DOD BUS SERVICE IN THE NATIONAL CAPITAL REGION para. 4.2 (31 July 1985).

⁴² AR 58-1, *supra* note 27, para. 2-3a(3).

⁴³ U.S. DEP'T OF ARMY, DIR. 2007-01, POLICY FOR TRAVEL BY DEPARTMENT OF THE ARMY OFFICIALS (25 Jan. 2007) [hereinafter DA DIR. 2007-01].

⁴⁴ U.S. DEP'T OF DEF., JOINT FEDERAL TRAVEL REGULATIONS (1 Jan. 09) [hereinafter JFTR].

business, unless justifying circumstances exist.⁴⁵ Even where such special circumstances exist, premium or first-class travel funded by the Government may only be authorized by certain high-level authorities.⁴⁶ Therefore, aides must book only coach-level accommodations through the Defense Travel System, unless the aide or general receives advanced written authorization.⁴⁷

Upgrades from coach-class to business, premium, or first-class on commercial flights may be allowed without prior authorization in limited instances. Commercial airline promotional programs—those available on standard terms to the public at large—are lawful for retention and use.⁴⁸ Therefore, an aide may upgrade a general officer's seating accommodations using the general's personal frequent flyer miles, or under other, equivalent promotional programs.⁴⁹ Generals may also upgrade seating accommodations with personal monies while on official travel.⁵⁰ Finally, there may be circumstances where airlines provide on-the-spot upgrades due to space availability. Generals may accept on-the-spot upgrades provided the upgrades are not offered on the basis of the general's military rank or position.⁵¹ However, general officers and aides must be cognizant of the Army travel policy's specific prohibition against travelling in premium class while in uniform.⁵² The only exception to this policy does permit first-class travel in uniform when an airline provides an unsolicited, on-the-spot upgrade without cost to the Government.⁵³ Even this situation presents an ethical dilemma for the general officer, who wants to avoid the perception that an upgrade was offered based upon military rank or purchased with Government funds. Although otherwise lawful, a general officer should consider declining on-the-spot upgrades while in uniform. If an airline will not accept return of a ticket, the best practice is to offer the upgrade to a junior Soldier or private citizen in order to avoid the perception of impropriety.

During official travel, airlines may also involuntarily bump a general officer from a scheduled flight due to overbooking. In such situations, any compensation a servicemember receives for an involuntary bump belongs to the Government,⁵⁴ and must be documented and returned to the servicing military travel agency for government accounting.⁵⁵ Conversely, if a general officer volunteers to be bumped, he or she may accept any and all airline compensation, so long as the delay does not interfere with the general's official duties or accrue additional expense to the Government.⁵⁶

Gifted travel is yet another important consideration for aides. Gifts of travel, whereby private organizations or non-federal entities (NFEs) offer to fund the transportation costs associated with attendance at their respective meetings, functions, or other similar events, are among the most prevalent forms of gifts offered to general officers.⁵⁷ A general officer

⁴⁵ DA DIR, 2007-01, *supra* note 43, para. 3.b. Current exceptions that may permit premium-class accommodations include situations when: (1) the flight only provides premium-class seating; (2) there is no space available in coach and "travel is so urgent it cannot be postponed"; (3) a "traveler's disability or other physical impairment substantiated in writing by a competent medical authority" mandates accommodation; or (4) "[o]verall savings to the Government result by avoiding additional subsistence costs, overtime, or lost productive time that would be incurred while waiting for available coach seats." *Id.* para. 3.c.

⁴⁶ *See generally id.* para. 3.d (providing the schedule of premium-class (less than first-class) authorizing and approving officials). Note that all "first-class travel paid by government funds or by a non-federal source pursuant to 31 U.S.C. § 1353" must be authorized and approved by the Secretary of the Army. *Id.* para. 3.e.

⁴⁷ *See id.* para. 3.

⁴⁸ *Id.* para. 4.

⁴⁹ *See id.*

⁵⁰ *See id.*; *see also* JFTR, *supra* note 44, para. U2010 (stating that any "excess costs or luxury accommodations that are unnecessary or unjustified are the member's financial responsibility").

⁵¹ JER, *supra* note 11, para. 4-202.

⁵² DA DIR, 2007-01, *supra* note 43, para. 4 (expressly stating that general officers "are prohibited from wearing uniforms and/or publicly discussing their position with the government while in [premium-class] accommodations, unless highly unusual circumstances exist where travel in uniform cannot be avoided").

⁵³ *Id.*

⁵⁴ *See* JER, *supra* note 11, paras. 4-201, 4-202. Airline compensation for a bumped flight may include additional frequent flier miles, travel vouchers, or other promotional items. If the bump is involuntary, these forms of compensation contractually belong to the government. *Id.*

⁵⁵ *See id.* para. 4-200. As a practical matter, general officers and aides must ensure that any compensation received as a result of an involuntary bump is attached to the recipient's travel voucher upon return to home station.

⁵⁶ JFTR, *supra* note 44, para. U1200.

⁵⁷ *See* JER, *supra* note 11, para. 4-101.

may accept such travel only if all the following conditions are met: (1) the privately-funded travel is sufficiently related to official duties; (2) the event will take place away from the general's permanent duty station; (3) the event is determined to be in the interest of the Government; (4) there are no appurtenant conflicts of interest with the private entity in question;⁵⁸ and (5) prior authorization is received before acceptance.⁵⁹ Since gifts of travel are a highly visible matter, aides are strongly advised to consult with their respective ethics advisor for appropriate review and processing prior to acceptance.

Finally, the ethical and legal implications of an accompanying Family member during official travel should never be overlooked. Current rules generally prohibit family members from accompanying general officers on official business at Government expense.⁶⁰ Dependent travel may only be authorized if an independent basis exists as a specific exception to Army policy and the JFTR.⁶¹ Even then, appropriate invitational travel orders, official duty itinerary, and legal opinion should be obtained from the ethics counselor prior to scheduling travel for dependents.⁶² As a practical matter, many of the same ethical pitfalls that exist for general officers often translate to spouses and dependents in some form or fashion. In fact, the acts or omissions of a Family member can be imputed to a servicemember—this is most true in instances of gifts.⁶³

IV. Gifts

The prestige and public stature of a general officer frequently raise concerns regarding gifts.⁶⁴ Subordinates, private organizations, associations, businesses, and foreign governments all have varying interests or motives for giving gifts to a general officer. Many times these gestures are sincere displays of gratitude or appreciation. Other times, gifts are intended to induce personal favor, influence critical decisions, or otherwise promote career advancement. Whatever the intent behind the giving of a gift, general officers are held to the same ethical standard as all Government employees with regard to gift acceptance.

Employees shall not . . . solicit or accept a gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interest may be substantially affected by the performance or non performance of the employee's duties.⁶⁵

The Standards of Conduct explain that Government employees hold a position of public trust, and should therefore, never use their position or rank for private gain.⁶⁶ This is particularly true for general officers and, by extension, their Family members.⁶⁷ Moreover, the same ethical principles and obligations that apply to general officers also apply to their aides.⁶⁸ Consequently, aides must be aware of the basic rules and the appropriate disposition of gifts for both the generals and

⁵⁸ Payment of Travel Expenses from a Non-Federal Source, 41 C.F.R. § 304-5.1 (2006); *see* discussion *infra* Part VI.

⁵⁹ JER, *supra* note 11, para. 4-101c.

⁶⁰ U.S. DEP'T OF DEF., DIR. 4500.56, DOD POLICY ON THE USE OF GOVERNMENT AIRCRAFT AND AIR TRAVEL para. E2.5.1 (2 Mar. 1997).

⁶¹ *Id.*; *see generally* DA DIR. 2007-01, *supra* note 43, para. 10 (providing the general rule, exceptions, and approval authorities for accompanying spouse travel).

⁶² *See* DA DIR. 2007-01, *supra* note 43, para. 10.b.

⁶³ *See, e.g.*, 5 C.F.R. § 2635.203(f)(1) (providing a definition of an "indirect gift" for purposes of rules governing gifts from outside sources: Gifts "[g]iven with the employee's knowledge and acquiescence to his parent, sibling, spouse, child, or dependent relative because of that person's relationship to the employee").

⁶⁴ Gifts are generally defined as "any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value." *Id.* § 2635.203(b).

⁶⁵ *Id.* § 2635.101(b)(4).

⁶⁶ *Id.* § 2635.101.

⁶⁷ The gift rules are analogous to other ethics areas, whereby a gift to a spouse or family member may be imputed to the general officer. *E.g., id.* § 2635.203(f)(1).

⁶⁸ Aides, who are also subject to the same ethics rules and regulations, are also vulnerable to receiving improper gifts by virtue of their close relationship with general officers. Due to the aides' interaction with senior staff members, high-ranking officers, and other associates of the general officers they work for, aides must understand the gift acceptance rules as they apply to them, as well as to the general officers and their dependents.

themselves.⁶⁹ Aides also need to assist general officers in accounting for gifts in order to adequately address and protect against potential ethical violations or the appearance of such impropriety.⁷⁰

A. Gifts from Subordinates

The military culture fosters an environment where gift-giving is a tradition of service. When general officers retire, change duty stations, or complete command tenure, peers and subordinates rush to get plaques, trophies or other commemorative items to mark the occasion. General officers are often flooded with multiple gifts from individuals, subordinate commands, or larger, more ornate gifts from pooled donating groups. Although such gestures may be well-intentioned and heartfelt, the end result may prove ethically disastrous. The Standards of Conduct prohibit Government employees from directly, or indirectly, giving gifts to superiors.⁷¹ General officers are also prohibited from accepting gifts from subordinates⁷² unless (1) the gift is appropriate for a special, infrequent occasion;⁷³ or (2) the gift is unsolicited and given on an occasional basis.⁷⁴ Group gifts on special infrequent occasions, such as those terminating the superior-subordinate relationship, create the greatest issue. Although this exception often permits ornate and expensive gifts, aides face various challenges with valuation, contribution, and other ethical concerns. The JER specifically limits the acceptance of such group gifts to \$300 or less (per donating group), if the general “knows or has reason to know that any member of the donating group is his subordinate.”⁷⁵ Furthermore, aggregation is required in situations where subordinates contribute to multiple donating groups.⁷⁶ If donating groups fail to remain distinct in terms of contributions, the value of each donating group’s gift will be considered in aggregate for purposes of the \$300 limit.⁷⁷

⁶⁹ See ARMY ETHICS, LEGIS., & GOV’T INFO. PRAC. BRANCH, OFFICE OF THE JUDGE ADVOCATE GEN., ETHICS GUIDE FOR SENIOR OFFICIALS (Aug. 2008) [hereinafter ETHICS GUIDE]. Many individuals or organizations offering gifts to general officers are unfamiliar with the Joint Ethics Regulation and restrictive rules regarding gifts. *Id.* at 7. Therefore, aides “must constantly be on the alert for gift problems.” *Id.*

⁷⁰ Attached to Appendix A is a recommended form to assist the aide in tracking gifts received by the general officer. Aides should keep track of the following information at a minimum: (1) description of gift received; (2) date of receipt; (3) circumstances of receipt; (4) estimated retail value of gift; (5) description or identification of the gift-giver (the “person making the presentation and the organization or Government entity he/she represents”); and (6) disposition of the gift. *Id.* at 13. As a practical matter, “[e]ven small items, such as pens, baseball hats, and coffee cups should be accounted for.” *Id.* Aides are also strongly encouraged to consult with the ethics counselor on all gifts. *Id.*

⁷¹ 5 C.F.R. § 2635.302(a).

⁷² *Id.* § 2635.302(b).

⁷³ *Id.* § 2635.304(b) (including “occasions of personal significance such as marriage, illness, or the birth or adoption of a child” or on “occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer”).

⁷⁴ *Id.* § 2635.304(a). This necessarily includes gifts given on traditional gift-giving occasions. See *id.* Traditional gift-giving occasions that may permit acceptance include non-cash items with an aggregate value of \$10 or less, for birthdays, holidays, or personal hospitality. *Id.*

⁷⁵ JER, *supra* note 11, para. 2-203(a). Note that a recent Standards of Conduct Office (SOCO) Advisory specifically precludes the application of an exception to the \$300 limit for gifts to superiors. SOCO Advisory No. 09-03 (23 Mar. 2009) [hereinafter SOC DESKBOOK], available at http://www.dod.mil/dodge/defense_ethics/2009_Advisories/ADV_0903.htm.

As a reminder and clarification, please note the rule regarding a \$300 limit on gifts to superiors from subordinates has been routinely interpreted to mean that the gift could exceed the \$300 limit - only if the gift was appropriate for the occasion that terminated the superior-subordinate relationship, and was uniquely linked to the employee’s position or tour of duty and commemorated the same. The exception was often referred to as the “Perry Exception” as it was once used by the subordinates of the former Secretary of Defense to provide him the gift of his government chair upon his departure from office. Because the cited reference to Joint Ethics Regulation (JER) 2-203(a)(3) on which the exception was premised has never been formally approved by OGE, and therefore was never officially enacted, the Perry Exception should no longer be invoked as an exception to the \$300 limit.

Id.

⁷⁶ JER, *supra* note 11, para. 2-203(a)(2).

⁷⁷ *Id.* For example, if two separate donating groups (i.e., two battalions) each provide a gift to a general officer, and each gift has a value under \$300, then no violation occurs. See *id.* However, if one Soldier contributes to both donating groups, the value must be aggregated for purposes of the rule. *Id.* In such a scenario, if the combined total exceeds \$300, the general officer would be forced to use appropriate remedial measures consistent with the gift rules. *Id.*; see *infra* notes 88–89 and accompanying text. As a practical matter, it may be in the general’s best interest to inform subordinates that he or she will accept a gift from only one donating group in order to avoid exceeding the \$300 threshold. This would protect against the inadvertent mixing of donating groups, and also minimize the number of expensive gifts. Aides could further assist by directly communicating with subordinate commands to ensure pooled gift efforts do not run contrary to ethics rules.

Improper solicitation of gift contributions is another pitfall aides may encounter. Solicitation of individuals for contribution to a supervisor's gift must not exceed \$10, and any contribution must be voluntary.⁷⁸ Keeping a by-name list of contributors and money received may appear prudent but is highly discouraged. The appearance of keeping a list cuts against the voluntariness requirement for contributions.⁷⁹ Knowledge that an aide or another Soldier is keeping such a list may pressure an individual who would otherwise not contribute to contribute out of a sense of obligation. The best practice in this scenario is to have a lower-ranking Soldier or even the office secretary collect contributions.⁸⁰ A by-name list is not necessary as long as the collecting agent maintains a simple accounting so as not to exceed the statutory limitation of \$300. Doing so will avoid instances of pressured contribution or the appearance of coercion,⁸¹ while also giving the aide a point of contact to determine whether a gift complies with respective monetary value limitations.

Aside from larger gifts for special, infrequent occasions, generals may also face ethical issues with the smaller, more routine gifts given on an occasional basis. These gifts may include cards or smaller items of nominal value given on birthdays, holidays, or other traditional gift-giving occasions.⁸² Gifts of this kind are generally permitted, so long as the item—not cash—is valued at \$10 or less.⁸³ This rule is also particularly relevant for an aide, who may mistakenly commingle personal money with the general officer's petty-cash fund.⁸⁴ A petty-cash fund is typically comprised of the general's personal monies for an aide to "purchase small items such as stamps, uniform accessories, cigarettes," or other similar expenses.⁸⁵ However, if an aide uses his or her own money to "subsidize[] either the general's personal or official expenses," the aide is essentially making an improper gift.⁸⁶ Therefore, aides must be methodical in tracking all petty-cash expenditures and receipts, not only for income tax purposes, but also to avoid an inadvertent violation of the aforementioned gift rules.⁸⁷

Whenever a questionable gift is offered or received, aides should immediately contact the servicing staff judge advocate or ethics counselor. Upon review, if the gift is deemed improper, the general officer must take certain remedial or disposition actions. In most instances, the general officer will be able to retain the gift by paying its fair market value, or otherwise donating, sharing, or destroying the gift.⁸⁸ Other options may include outright refusal of the gift, or simply returning the gift to the donor.⁸⁹

B. Gifts from Foreign Governments

The U.S. Constitution provides, in part, that "no person holding any Office of Profit or Trust . . . shall, without the consent of Congress, accept any present, Emolument, Office or title from a King, Prince or *foreign state*."⁹⁰ Nonetheless, statutory

⁷⁸ *Id.* para. 2-203(b).

⁷⁹ See ETHICS GUIDE, *supra* note 69, at 11.

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² 5 C.F.R. § 2635.304(a); see SOC DESKBOOK, *supra* note 75, at B-18.

⁸³ 5 C.F.R. § 2635.304(a)(1).

⁸⁴ Tuckey, *supra* note 1, at 40 (suggesting that "[i]t is not unthinkable that an aide may 'absorb' expenses for which a receipt was lost"); see GOMO AIDE HANDBOOK, *supra* note 4, at 11.

⁸⁵ GOMO AIDE HANDBOOK, *supra* note 4, at 11.

⁸⁶ Tuckey, *supra* note 1, at 40 (if an aide uses personal funds to subsidize the general's petty-cash fund, the aide is essentially gifting the money to the general officer—such a situation bears directly upon the ethics rules relating to gift acceptance).

⁸⁷ *Id.* Attached to Appendix B is a recommended ledger to assist the aide in tracking the general officer petty-cash fund. Aides should use the ledger much like they would when balancing a check-book. Additionally, aides should retain all receipts and keep petty-cash monies secured separate and apart from the aide's personal funds.

⁸⁸ Note that a general officer could not pay the difference between the fair market value and the \$300 threshold; no "buy-down" provision exists under the rules. SOC DESKBOOK, *supra* note 75, at B-19 (stating that "[a]lthough not specifically mentioned in JER 2-203, the \$300 limited in JER-203 is also subject to the no "buy-down" provisions"). For example, if a general officer receives a gift exceeding the \$300 threshold, he or she may not pay the difference, but instead, would have to either return the gift or pay its fair market price. With any situation involving gifts, aides and general officers should consult with the ethics advisor and supervisor for approval of a proposed disposition.

⁸⁹ *Cf.* 5 C.F.R. § 2635.304(a) (2006) (outlining options for disposing of prohibited gifts from outside sources).

⁹⁰ U.S. CONST. art. I, § 9, cl. 8 (emphasis added).

rules permit acceptance of gifts from foreign governments if they are of “minimal value.”⁹¹ Gifts exceeding the current minimum value threshold may be accepted “when such gift is in the nature of an educational scholarship or medical treatment or when it appears that to refuse the gift would likely cause offense or embarrassment or otherwise adversely affect the foreign relations of the United States.”⁹² However, such foreign gifts exceeding the minimal value threshold may only be accepted on behalf of the United States and, therefore, become property of the United States.⁹³

The rules for foreign gifts require specific attention to detail because of particular reporting and depository requirements.⁹⁴ The foreign gift rules also contain certain nuances that differ materially from rules governing gifts from other sources.⁹⁵ Accordingly, aides should consult with their ethics counselor regarding the appropriate disposal or disposition of all foreign gifts, even when the value of the item is not at issue.⁹⁶ Maintaining detailed information on the presentation of foreign gifts will greatly assist the aide’s role in protecting the general officer against allegations of actual or perceived ethical impropriety.⁹⁷

C. Gifts from Outside Sources

The rules for gifts from outside sources precipitate from the basic rule that Government employees may not solicit or accept a gift “[f]rom a prohibited source” or “given because of the employee’s official position.”⁹⁸ In most instances, gifts from outside sources will categorically fall within the definition of a “prohibited source.” However, there are several exceptions permitting acceptance of gifts from “prohibited” outside sources.⁹⁹ The most frequent exception involves gifts valued at \$20 or less.¹⁰⁰ Under this exception a general officer may accept unsolicited gifts of \$20 or less per source, per occasion, so long as the general officer does not accept gifts of an aggregate value of more than \$50 per calendar year from that same source.¹⁰¹ As with gifts from subordinates, general officers may not “buy down” such gifts to meet threshold

⁹¹ 5 U.S.C. § 7342(c)(1)(A) (2006). This minimal value threshold adjusts every three years based upon the Consumer Price Index, and currently applies to foreign gifts having a United States retail value of \$335 or less at the time of acceptance. *Id.* § 7342(a)(5) (providing definition of “minimal value” and requirement for GSA review every three years under the consumer price index); Utilization, Donation, and Disposal of Foreign Gifts and Decorations, 41 C.F.R. § 102-42.10 (2006) (providing the current “minimum value” of \$335). Because the minimal value threshold adjusts every three years, aides and general officers are strongly encouraged to communicate directly with the ethics counselor or servicing judge advocate on all matters related to acceptance of foreign gifts.

⁹² 5 U.S.C. § 7342(c)(1)(B).

⁹³ *Id.* § 7342(c)(1)(B).

⁹⁴ See ETHICS GUIDE, *supra* note 69, at 12; see generally U.S. DEP’T OF DEF., DIR. 1005.13, GIFTS AND DECORATIONS FROM FOREIGN GOVERNMENTS E3 (19 Feb. 2002) [hereinafter DoDD 1005.13] (detailing the procedures for the receipt and disposition of foreign gifts and decorations).

⁹⁵ See, e.g., DoDD 1005.13, *supra* note 94, para. 4.6 (detailing the aggregation rules for foreign gifts). Although “[t]here are special DoD rules governing gifts from foreign governments,” many of the same principles regarding aggregation and gifts to spouses may apply. JER, *supra* note 11, para. 2-300(b). However, the JER provides the following additional interpretations for purposes of the foreign gift rules:

(1) The values of gifts from different officials of the same foreign government during the same presentation shall be aggregated and such gifts are considered to be from that foreign government. A gift from the spouse of a representative or official of a foreign government is deemed a gift from the representative or official. A gift given to the spouse of the DoD employee is deemed a gift to the DoD employee. Conditions and exceptions regarding gifts to and from spouses in 5 U.S.C. 7342 . . . may apply.

(2) Gifts received at separate presentations, even on the same day or from the same official, are separate gifts and their values are not aggregated. When more than one gift is included in a single presentation, only those gifts with an aggregate of less than the minimum allowed may be retained by the DoD employee, the remainder to be disposed of in accordance with enclosure 2 of DoD Directive 1005.13.

Id.

⁹⁶ See ETHICS GUIDE, *supra* note 69, at 13.

⁹⁷ *Id.*

⁹⁸ 5 C.F.R. § 2635.202(a). The Standards for Ethical Conduct defines “prohibited sources” to include both individuals and entities that generally: (1) seek official action from the general officer; (2) conduct business with, or are regulated by, the general officer’s service agency; (3) have interdependent interests with the general officer; or (4) involve an organization primarily comprised of conflicted members. *Id.* § 2635.203(d).

⁹⁹ See generally *id.* § 2635.204 (outlining each specific exception dealing with gifts from outside sources).

¹⁰⁰ *Id.* § 2635.204(a).

¹⁰¹ *Id.*

requirements.¹⁰² However, if the aide accurately accounts for the gifts in question, a general may be able to take appropriate measures to maintain the aggregate value below the \$20 and \$50 thresholds.¹⁰³

Other common exceptions to the general rule regarding gifts from outside sources include (1) gifts based on an existing personal relationship,¹⁰⁴ (2) discounts or other similar benefits available to the general public,¹⁰⁵ and (3) awards and honorary degrees.¹⁰⁶ Although these exceptions and others would permit the acceptance of gifts from outside sources, aides should always consider how the situation may appear to the public.¹⁰⁷ Aides should ask whether accepting a gift would otherwise undermine or appear to undermine Government integrity.¹⁰⁸ One strategy to avoid the appearance of impropriety is simply not to accept gifts from a single source “so frequently that anyone would question whether the [general officer] is using . . . public office for private gain.”¹⁰⁹ More importantly, aides should always keep a gift log with detailed notes and immediately seek the appropriate legal review from an ethics counselor.¹¹⁰

V. Procurement and Presentation of General Officer Coins

The proper treatment of general officer coins¹¹¹ is one of the most frequent issues presented to ethics counselors and judge advocates.¹¹² Senior officers realize that coins are potentially “powerful and versatile tools which can instill unit pride, enhance esprit de corps, and reward outstanding performance.”¹¹³ Many senior officers view the presentation of coins as a way to show “appreciation for a job well done,” “build rapport, say thank you, [or] buy goodwill for the command.”¹¹⁴ Although these intentions may be admirable and purely altruistic, it is easy for generals and commanders to unwittingly violate fiscal laws and ethics related to coin procurement and presentation.¹¹⁵ As a result, aides frequently encounter issues, especially when many regularly carry bundles of coins in their bags while trudging alongside general officers.

¹⁰² See *id.*; see *supra* notes 88–89 and accompanying text (discussing plausible recourses for receipt of an improper gift and the prohibition against buy downs).

¹⁰³ See 5 C.F.R. § 2635.204(a). For instance, if a gift exceeds \$20 on a particular occasion, or the aggregate of all gifts will exceed \$50 for that calendar year from that particular outside organization, the gift may be refused or returned to stay under the statutory threshold and avoid an ethical violation. The general officer would also have the option of retaining the gift if he or she pays its fair market value.

¹⁰⁴ *Id.* § 2635.204(b). This exception permits the acceptance of a gift “under circumstances which make it clear that the gift is motivated by a family relationship or personal friendship rather than the [general’s] position Relevant factors in making such a determination include the history of the relationship and whether the family member or friend personally pays for the gift.” *Id.*

¹⁰⁵ *Id.* § 2635.204(c).

¹⁰⁶ *Id.* § 2635.204(d).

¹⁰⁷ See, e.g., *id.* § 2635.202(c)(3).

¹⁰⁸ See *id.* § 2635.101(a).

¹⁰⁹ *Id.* § 2635.202(c)(3).

¹¹⁰ The ethics counselor or servicing staff judge advocate will be a critical partner in objectively evaluating the circumstances surrounding a gift issue. If a gift cannot be accepted, the ethics counselor may advise the general officer to refuse or return the gift, or otherwise dispose of it. See *generally id.* § 2635.205 (providing information regarding the proper disposition of prohibited gifts). Alternatively, the item received may not even qualify as a “gift” for purposes of the rules. See *id.* § 2635.203(b). Gifts are generally defined as “any gratuity, favor, discount, entertainment, hospitality, loan, forbearance, or other item having monetary value.” *Id.* This does not include light refreshments; items of little intrinsic value; or awards, prizes, or other promotional items available to the general public. *Id.* § 2635.203(b)(1)–(9). Ultimately, the respective facts and circumstances will assist the ethics advisor in determining whether a gift limitation should be imposed. The aide, on the other hand, must simply act as the honest broker.

¹¹¹ A “general officer coin,” “commander’s coin,” or “HQDA coin” are synonymous for purposes of this primer. These terms refer to a “custom minted and emblazoned coin about the size of a U.S. half dollar, or silver dollar coin, typically with an insignia on the front side (obverse) and inscription on the reverse side.” U.S. DEP’T OF ARMY, MEMO 600-70, PROCUREMENT AND PRESENTATION OF COINS BY HEADQUARTERS DEPARTMENT OF THE ARMY PRINCIPAL OFFICIALS para. 3.b (11 Feb. 2004) [hereinafter DA MEMO 600-70]; see Major Kathryn R. Sommerkamp, *Commanders’ Coins: Worth Their Weight in Gold?*, ARMY LAW., Nov. 1997, at 6.

¹¹² See Sommerkamp, *supra* note 111, at 6 (discussing how over the course of several years, procurement and presentation of coins increased dramatically, presenting numerous ethical questions and issues).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.* at 14. This is particularly true because no single, specific regulation exists to articulate the appropriate guidelines and parameters for all coins. See, e.g., U.S. DEP’T OF ARMY, REG. 600-8-22, MILITARY AWARDS para. 11-1 (11 Dec. 2006) [hereinafter AR 600-8-22]. Army Regulation 600-8-22 is the primary authority commonly cited for coins, but it does not provide specific information, procedures, or implementing instructions regarding all types of coins.

Generals may acquire coins through a variety of fiscal sources, including: operation and maintenance funds (O&M); private organization funds; nonappropriated funds (NAF); official representation funds (ORF); and personal funds.¹¹⁶ The most frequent funding source for coin procurement is O&M appropriated funds, which consistently cause issues for general officers attempting to build unit morale and effective awards programs.¹¹⁷ Current Army policy establishes relatively clear guidelines for coins procured with O&M appropriated funds. First, aides and general officers must understand that O&M coins are only authorized for Soldiers and Department of Defense (DoD) personnel, including DoD civilian employees.¹¹⁸ Such coins should never be presented to contractor personnel,¹¹⁹ unaffiliated individuals (civilians), or nonfederal agencies.¹²⁰ Second, generals should avoid presenting multiple coins for the same service or achievement.¹²¹ Third, aides must ensure accurate accounting of all coins. Additionally, each coin awarded should not exceed \$75 per individual or \$250 per group.¹²² This monetary limitation is further capped by DA Memo 600-70, which requires DA-level approval for coin acquisitions in excess of \$5,000 for each fiscal year.¹²³ Finally, coins minted or manufactured with the presenter's name are generally prohibited.¹²⁴ Aides may, however, have individual coins engraved on a case-by-case basis.¹²⁵

Beyond the basic rules cited above, DA Memo 600-70 articulates a relatively subjective standard for the presentation of coins.¹²⁶ Pursuant to DA Memo 600-70, coins may only be presented in recognition of (1) "excellence in an Army competition or similar activity" or (2) "a *unique accomplishment* that furthers the efficiency and effectiveness of the Army's mission."¹²⁷ Whether coins are presented in accordance with this stated purpose is a difficult question at best.¹²⁸ Generals and aides must carefully evaluate whether certain conduct or actions are truly unique before presentation.¹²⁹ If situations involve close-calls or questionable justification, the best practice would be to consult an ethics advisor.

In practice, aides must be aware of the underlying reasons for awarding a coin to determine whether presentation would run afoul of the regulatory standard and gift prohibition.¹³⁰ As one commentator explains,

To steer clear of problems, [individuals] should ask themselves the following questions: Am I giving the coin to say "thank you" or "remember me?" Am I giving the coin to build esprit de corps or to instill unit pride? Am I giving the coin to say "job well done?" Only in the last instance, when the commander's

¹¹⁶ Sommerkamp, *supra* note 111, at 6–7. The source of funds used to procure a coin generally dictates the permissible recipient of a coin. *See id.* For example, a foreign dignitary could receive a coin procured with ORF but not a coin procured with O&M appropriated funds. *See id.* This primer is limited to a discussion of the most common funding sources that general officer aides encounter while procuring coins: O&M appropriated funds and a general officer's personal funds.

¹¹⁷ *See id.* at 8–11. Department of the Army Memorandum (DA Memo) 600-70 provides the most pertinent information regarding coins procured with appropriated funds (O&M). DA MEMO 600-70, *supra* note 111. The memorandum does not, however, tread new ground—much of DA Memo 600-70 reiterates basic rules promulgated under fiscal principles and the Army's military awards regulation. *Compare id.* (establishing standard for which HQDA coins may be presented), with AR 600-8-22, *supra* note 115, para. 11-1 (proving standard for which "[t]ropies and similar devices may be presented to military members, units, or Department of the Army agencies"), and 31 U.S.C. § 1301(a) (2006) (providing the "Purpose Statute," which restricts the types of items that may be procured with appropriated funds).

¹¹⁸ *See* DA MEMO 600-70, *supra* note 111, para. 5(a) (stating the general policy that "[c]oins are intended for . . . recognition to HQDA and other DOD personnel").

¹¹⁹ *Id.* para. 5(d)(2).

¹²⁰ *See* Sommerkamp, *supra* note 111, at 8–13.

¹²¹ AR 600-8-22, *supra* note 115, paras. 1-19(a), 11-2(b).

¹²² *Id.* para. 11-13.

¹²³ DA MEMO 600-70, *supra* note 111, para. 5(c)(3).

¹²⁴ *Id.* para. 5(c)(2).

¹²⁵ *See id.*

¹²⁶ Pursuant to DA Memo 600-70, "[c]oins are intended for use as a tool by HQDA principals to provide tangible, honorary recognition to HQDA and other DOD personnel for acts of exceptional service, achievement, or special recognition." *Id.* para. 5(a). This necessarily prohibits generals from gifting coins procured with appropriated funds. Sommerkamp, *supra* note 111, at 8–9. In fact, numerous opinions from the Government Accountability Office (GAO) "repeatedly emphasize that [appropriated funds such as O&M] cannot be used for personal gifts." *Id.* at 10.

¹²⁷ DA MEMO 600-70, *supra* note 111, para. 5(d)(1) (emphasis added).

¹²⁸ Sommerkamp, *supra* note 111, at 9–10.

¹²⁹ *Id.* at 10.

¹³⁰ *Id.*

intent is to reward outstanding duty performance, can the coin properly be purchased with appropriate appropriated funds.¹³¹

Because of the prohibition against giving coins procured with appropriated funds, aides are left in the precarious position of monitoring their generals' underlying intent. This task is particularly harrowing in situations where coins are simply traded among general officers or otherwise presented for no apparent reason at all.¹³² The aide can remedy these bad habits by communicating these concerns to the general officer and ethics counselor. Early involvement of the ethics counselor and recurrent ethics training are both essential to correct routine and improper appropriation of Government funds for personal benefit.¹³³

Coins funded with personal monies or other sources implicate separate requirements and additional concerns.¹³⁴ For example, general officers may use their own personal funds to procure an unlimited amount of coins for any number of purposes.¹³⁵ Coins acquired with a general's personal funds will not be limited by regulation, the gift prohibition, or fiscal constraints beyond the size of his or her own pocketbook.¹³⁶ However, aides must be mindful of appearances and potential problems associated with the commingling of coins. Even an innocent gift of a personal coin to an outside agency or unaffiliated individual may create the perception of improper endorsement, preferential treatment, or conflict of interest.¹³⁷

In order to avoid issues related to general officer coins, aides should maintain accurate records of coin procurement expenditures, including the source of funds used, date of receipt or issuance, and the circumstances under which the coin was awarded.¹³⁸ Aides should also physically separate coins funded by different sources, maintaining distinct tracking documents for each group. Finally, aides must consistently consult with the designated ethics counselor or staff judge advocate on all coin-related issues. Frequent interaction with the legal community will assist aides in keeping abreast of current policies¹³⁹ and trends in the relevant area of operations.

VI. Conflict Management

A constant thread among the issues and concerns carried by general officer aides involves management of perceived or actual conflicts of interest. Pursuant to the JER, generals are prohibited from engaging in outside activities that conflict with the official performance of military duties.¹⁴⁰ Additionally, general officers and aides must always consider the appearance

¹³¹ *Id.*

¹³² *See, e.g., id.* at 11 (stating that “[c]ommanders’ displays of their own extensive collections of [coins] suggest that these items may have become more [like gifts or] collectors’ items than awards”).

¹³³ General officers or aides may have little concern over coins—how they are acquired or presented. However, “minor infractions” of giving coins as “personal gifts, tokens of appreciation, . . . recognition of the contribution of unaffiliated parties, and . . . recognition of volunteers” implicate certain statutory and regulatory limitations. *Id.* at 14. Therefore, “[t]he unfettered purchase and distribution of these coins is certainly not worth jeopardizing a [general’s] career or reputation.” *Id.*

¹³⁴ *See id.* at 7.

¹³⁵ *Id.*

¹³⁶ *See id.*

¹³⁷ For example, a general officer may present a personally-funded coin to a local civilian business as a token of appreciation for its support to Soldiers. That same business may subsequently use the same coin in advertisements or promotions implying official endorsement by the general officer or Army. Although unintended, an improper implied endorsement will necessarily implicate the general officer in a violation of the JER. JER, *supra* note 11, para. 3-209; 5 C.F.R. § 2635.702(b) (2006). Therefore, general officers should consider not presenting personally-funded coins to unaffiliated individuals or entities when such a scenario exists.

¹³⁸ As a practical matter, DA 600-70 mandates that general officers “establish a method for maintaining a record of fiscal year expenditures for coins purchased.” DA MEMO 600-70, *supra* note 111, para. 5(d). Attached to Appendix C is a recommended form to assist the aide in tracking general officer coins. Aides should maintain an accurate record of the following information at a minimum: (1) amount of coins on hand; (2) date of receipt or presentation; (3) name, unit and position of awardee; and (4) a description of the awardee’s unique accomplishment. Note that a separate coin tracker should be used for each funding source (i.e., a separate tracker for O&M, NAF, personal, etc.).

¹³⁹ Major Army commands (MACOMS) and various installations will often maintain their own policies that further supplement or restrict coin procurement and presentation. *See, e.g.,* Policy Memorandum CG-99-22, Headquarters, FORSCOM, subject: Commander’s Coin Medallion Awards Program (1 Dec. 1999) (on file with author); Policy Memorandum 04-54, Headquarters, Third U.S. Army/USARCENT/CFLCC, subject: Unit Coin Policy (1 July 2004) (on file with author).

¹⁴⁰ JER, *supra* note 11, para. 2-100; 5 C.F.R. § 2635.802.

of dealings with outside agencies or instrumentalities, to include those involving spouses and Family members.¹⁴¹ Several of the more predominant conflicting scenarios include: (1) improper receipt of compensation (including unauthorized gifts) for teaching, speaking, or writing;¹⁴² (2) official endorsement of personal activities or NFEs;¹⁴³ (3) logistical support for outside organizations;¹⁴⁴ (4) involvement in fundraising activities;¹⁴⁵ and (5) other specific statutory conflicts with a general's personal financial interests.¹⁴⁶

Mandatory annual public financial disclosure reports serve as the primary tool for identifying many of the potential conflicts between a general's official duties and outside financial interests.¹⁴⁷ Pursuant to 18 U.S.C. § 208, general officers are prohibited from "participating personally and substantially in an official capacity in any particular matter in which . . . they have a financial interest, if the particular matter will have a direct and predictable effect on that interest."¹⁴⁸ This criminal statute¹⁴⁹ further explains that personal honesty is irrelevant as to whether a conflict exists and that the financial interests of spouses and dependants may be imputed to the general officer.¹⁵⁰ There are regulatory exemptions to this statutory prohibition against conflicting financial interests,¹⁵¹ but aides should focus primarily on the procedural aspects of the mandated filing requirements.

Standard Form (SF) 278 is the public financial disclosure form general officers are required to file no later than 15 May each calendar year.¹⁵² Early filing of the SF 278 is critical—late filing may lead to a \$200 fine.¹⁵³ Aides can assist in completing the form by collecting and organizing financial documentation for the SF 278, and scheduling the necessary appointments with the ethics counselor or servicing staff judge advocate to review the pertinent forms. As a practical matter, meeting the submission deadline can be extremely burdensome, particularly when unit operational tempo is high and generals are engaged in other pressing matters. In such instances, generals should consider utilizing the ethics counselor to serve as the SF 278 filing assistant, thereby alleviating either the aide or the general of this cumbersome task.¹⁵⁴

With all instances of potential conflict—whether related to finances, gifts, or other relationships—aides must always express concerns directly to the general officer and coordinate with the ethics counselor at the earliest opportunity. Often, the nature of the general's interaction with an outside organization will dictate whether a conflict exists and will provide insight as to the appropriate remedial measures.¹⁵⁵ In some cases, a substantiated conflict may be cause for disciplinary action or disqualification.¹⁵⁶ In other cases, a general may be required to divest a conflicting interest, change duty positions, or otherwise receive specific limitations on duties.¹⁵⁷ Regardless, identifying and eliminating conflicts must be of paramount

¹⁴¹ See, e.g., 5 C.F.R. § 2635.801(c).

¹⁴² See *id.*

¹⁴³ See *id.* § 2635.702.

¹⁴⁴ See JER, *supra* note 11, para. 3-211.

¹⁴⁵ See 5 C.F.R. § 2635.808.

¹⁴⁶ *Id.* §§ 2635.401–2635.403.

¹⁴⁷ ETHICS GUIDE, *supra* note 69, at 43.

¹⁴⁸ SOC DESKBOOK, *supra* note 75, at F-4 (paraphrasing the prohibition against conflicting financial interests codified in 18 U.S.C. § 208 (2006)).

¹⁴⁹ 18 U.S.C. § 208(a) (2006).

¹⁵⁰ See *id.*

¹⁵¹ See *id.* § 208(b)(5); see also 5 C.F.R. § 2640.201.

¹⁵² JER, *supra* note 11, para. 7-203(c). Generals must file electronically with the Army's Financial Disclosure Management (FDM) program. ETHICS GUIDE, *supra* note 69, at 43 (explaining that the secure Army-managed website—<https://fdm.army.mil/FDM>—will store "data from each [SF 278] so filing successive reports is essentially a matter noting changes from a previous year"). The FDM Website is an excellent resource for aides, general officers, and judge advocates, as it provides detailed information, guidance, and references for reporting and filing financial disclosures. See Financial Disclosure Management Website, <https://www.fdm.army.mil> (last visited 28 Feb. 2009).

¹⁵³ JER, *supra* note 11, para. 7-203(g)(1).

¹⁵⁴ E-mail from Mr. George L. Hancock, Associate Deputy General Counsel, Office of the General Counsel, Department of the Army, to Major Nate G. Hummel, Student, 57th Graduate Course, The Judge Advocate Gen.'s Sch. (Mar. 10, 2009, 16:23 EST) (on file with author).

¹⁵⁵ See ETHICS GUIDE, *supra* note 69, at 24–36.

¹⁵⁶ See 5 C.F.R. §§ 2635.401–2635.403; see also 18 U.S.C. § 216 (2006) (providing criminal penalties for violations of 18 U.S.C. § 208).

¹⁵⁷ See generally SOC DESKBOOK, *supra* note 75, at F-8–14 (outlining the remedies for conflicts of interest).

concern to both general officers and aides. Preservation of Government integrity hinges upon the integral role the aide plays in protecting the general officer's reputation and credibility in instances of actual or perceived conflict.

VII. Conclusion

A myriad of complex legal issues and ethical concerns fill the aide bag. The burdens and stress that accompany the aide position increase exponentially with the absence of clear guidance. The many inherent risks and pitfalls require attention to detail, knowledge of rules and regulations, and keen insight. Violation of the rules, republished and proscribed by the JER, include administrative, civil, or criminal sanctions, including potential punishment under the Uniform Code of Military Justice.¹⁵⁸ In order to support these ethical burdens, aides must utilize their respective ethics counselors and staff judge advocates by asking tough questions, seeking out training opportunities, and promptly requesting legal guidance on difficult issues. The advice or opinion of the ethics counselor may not always be welcome or what the general wants to hear, but taking a hard stance in favor of caution is often the most prudent course, particularly when a general's reputation and career are at stake.

¹⁵⁸ U.S. DEP'T OF DEF., DIR. 5500.07, STANDARDS OF CONDUCT para. 2.2.6 (29 Nov. 2007) (stating that many provisions of the JER "constitute lawful general orders or regulations within the meaning of Article 92 . . . of the UCMJ, are punitive, and apply without further implementation"). *Id.*

Appendix A

Gift Log

1. PURPOSE: To provide general officer aides with a means to track and account for gifts received from subordinates, foreign governments, or outside sources.

2. GENERAL INSTRUCTIONS:

- a. **Date:** Provide the date of gift receipt or presentation.
- b. **Gift Description:** Provide detailed description of item received by the general officer.
- c. **Est. Retail Value (\$):** Provide the accurate or estimated retail value of gift in U.S. dollars.
- d. **Donor Information:** Provide the name and/or unit or organization of the gift-giver.
- e. **Gift Disposition:** Based upon the donor information and other available information available, determine classification (e.g., whether the gift is from a subordinate, foreign government, outside source, or "other" if unknown). Provide any action taken in response to the gift (i.e. accepted, returned, pending an ethics opinion, etc.).

DATE	GIFT DESCRIPTION	EST. RETAIL VALUE (\$)		DONOR INFORMATION		GIFT DISPOSITION	
				NAME (Last, First)	UNIT/ ORGANIZATION	CLASSIFICATION	ACTION TAKEN/ REMARKS

GENERAL OFFICER GIFT LOG

Appendix C

Coin Tracker

1. PURPOSE: To provide general officer aides with a means to track and account for coins procured with appropriated funds (O&M), non-appropriated funds (NAF), personal funds, or other funding sources.

2. GENERAL INSTRUCTIONS:

- a. **Date:** Provide the date of the coin award presentation.
- b. **Presentation Information:** Provide the name and/or units/organizations receiving coin(s), and the reason(s) for the award.
- c. **No. (#):** Provide the number of coins awarded for presentation.
- d. **Deposit (+):** Provide the amount of coins recently received (if applicable).
- e. **Balance:** Add or subtract the respective withdrawal or deposit from the preceding balance to acquire the current balance of coins.

DATE	PRESENTATION INFORMATION			No. (#)	Deposit (+)	Balance
	NAME (Last, First)	UNIT / ORGANIZATION	REASON(S) FOR AWARD			

COIN TRACKER