

# Good Idea Fairies: How Family Readiness Groups and Related Private Organizations Can Work Together to Execute the Good Ideas

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*Good Idea Fairy: Military term; An evil mythical creature that whispers advice and ideas into the ears of military leadership, causing hundreds [of] unnecessary changes and countless wasted man-hours every year. The Good Idea Fairy should be shot on sight if she is seen in your area.<sup>1</sup>*

## I. Introduction

As a brigade judge advocate (BJA), your commander's spouse, who is also the Headquarters and Headquarters Company (HHC) Family Readiness Group (FRG) leader, approaches you with an idea. After the monthly meeting, the FRG wants to host a luncheon. During the luncheon, there will be a raffle to raise money to fund the unit ball; to purchase a new scanner for the FRG office; and to purchase supplies for an orphanage in Afghanistan informally adopted by the brigade during their deployment. The FRG wants to solicit prizes for the raffle and to sell raffle tickets on its Facebook page. The FRG requests a room for the events; Soldiers to support the events; and child care. The FRG leader also asks the commander to encourage participation by announcing the raffle during staff call.

Judge advocates (JAs) often cringe the minute they hear the words, "The FRG wants to [insert good idea here]." Many JAs view the FRG leadership as well-meaning "good idea fairies" whose ideas run afoul of Army regulations and policies. Similarly, many FRG volunteers cringe at the prospect of asking a JA for legal advice because they perceive JAs as roadblocks when it comes to implementing their good ideas. While advising FRGs can be frustrating, it is helpful to understand that FRG volunteers suffer similar frustrations. Family Readiness Group volunteers donate countless hours and devote a significant amount of energy—many out of a sense of obligation<sup>2</sup>—to help make a challenging lifestyle a little better for the unit. They receive no financial compensation for their efforts, yet as a command-sponsored organization, they are restricted by the same rules and regulations as paid employees.<sup>3</sup> Judge advocates can help diffuse this conflict by engaging early and helping shape ideas so that FRG volunteers and commanders achieve their goals legally.

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<sup>1</sup> URBAN DICTIONARY, <http://www.urbandictionary.com/define.php?term=ood%20idea%20fairy> (last visited Jan. 12, 2013).

<sup>2</sup> Tim Hsia, *The Increasing Role and Influence of Military Spouses*, NY TIMES, Aug. 13, 2010, <http://atwar.blogs.nytimes.com/2010/08/13/the-increasing-role-and-influence-of-military-spouses> (discussing the social pressure for spouses of senior leaders to assume leadership positions in Family Readiness Groups (FRG)).

<sup>3</sup> U.S. DEP'T OF ARMY, REG. 608-1, ARMY COMMUNITY SERVICE CENTER para. J-2c (19 Sept. 2007) (RAR 21 Dec. 2010) [hereinafter AR 608-1].

Using the scenario in the introduction to provide context, this primer is designed to be a quick reference guide for JAs advising commanders on issues relating to FRGs and private organizations<sup>4</sup> (POs). Part II of this primer focuses on FRGs. Specifically, that section begins with a brief explanation of the changes FRGs have experienced since 2006, and then it discusses common FRG issues, including funding sources, fundraising, statutory volunteers, and the use of government resources. Part III defines POs and discusses some of the advantages and disadvantages of POs. Private Organizations—comprised of many of the same people as the FRG—might be able to accomplish what the FRG cannot, but there are limitations. That section highlights some ethics restrictions when dealing with POs.

## II. Family Readiness Groups

### A. Background

On July 21, 2006, the Department of the Army revised Army Regulation (AR) 608-1 to add the new Appendix J, Army Family Readiness Group Operations.<sup>5</sup> This revision represented a seismic shift in the world of FRGs—they became official Department of the Army (DA) organizations.<sup>6</sup> While gaining recognition as an official Army organization has advantages, it also means that FRG volunteers are subject to the same statutory and regulatory restraints as federal employees, including restrictions

<sup>4</sup> Private organizations (POs) are self-sustaining, non-federal entities (NFE), that operate on a Department of Defense (DoD) installation with the written permission of the installation commander or higher authority. U.S. DEP'T OF DEF., INSTR. 1000.15, PROCEDURES AND SUPPORT FOR NON-FEDERAL ENTITIES AUTHORIZED TO OPERATE ON DoD INSTALLATIONS (24 Oct. 2008) [hereinafter DODI 1000.15].

<sup>5</sup> AR 608-1, *supra* note 3 app. J. Appendix J of AR 608-1 provides regulatory guidance and policy for managing FRGs. *Id.* When advising on this topic, judge advocates (JAs) should ensure that their resources do not predate 2006, when FRGs became official Department of the Army organizations.

<sup>6</sup> *Id.* See also U.S. DEP'T OF ARMY REG. 600-20, ARMY COMMAND POLICY para. 5-10a(2)(b) (18 Mar. 2008) (RAR 4 Aug. 2011) [hereinafter AR 600-20] (stating that "Family Readiness is the mutual reinforcement provided to Soldiers, civilian employees, retirees (regardless of marital status), and their Family members—both immediate and extended"). Commanders must encourage an effective Family program and maintain a unit FRG "to encourage self-sufficiency among its members by providing information, referral assistance and mutual support." *Id.* para. 5-10b(7).

contained in the Joint Ethics Regulation (JER)<sup>7</sup> and the Department of Defense (DoD) Financial Management Regulation.<sup>8</sup> Gone are the days when Family Support Organizations, as they were formally called, could raise unlimited funds. Fundraising restrictions are a source of frustration for commanders and FRG volunteers, especially for those who fail to appreciate that the FRG's mission is communication, not social events. Having the wrong focus can lead to dysfunction in both the FRG and the unit, which may detract from the mission.<sup>9</sup>

## B. Mission: Communication!

Given the sacrifices military Families make,<sup>10</sup> it is not surprising that DoD focuses a significant amount of time and resources on Family programs.<sup>11</sup> To truly take care of Families, an open line of communication between the command and Families is critical. Recognizing that the FRG leadership is in the best position to accomplish this, FRGs have the explicit mission to: "(1) Act as an extension of the unit in providing official, accurate command information. (2) Provide mutual support between the command and the FRG membership. (3) Advocate more efficient use of available community resources. (4) Help families solve problems at the lowest level."<sup>12</sup> The extent of the individual FRG's mission will depend on the expectations and support provided by the commander. At a minimum, an FRG will hold FRG member meetings, hold FRG staff and committee meetings, draft and distribute official newsletters, maintain and update unit rosters and family readiness information, establish telephone trees, and schedule educational

<sup>7</sup> U.S. DEP'T OF DEF., REG 5500.07-R, JOINT ETHICS REG. (30 Aug. 1993) (C7, 17 Nov. 2011) [hereinafter JER].

<sup>8</sup> U.S. DEP'T OF DEF., REG 7000.14-R, FINANCIAL MANAGEMENT REGULATION (last modified on 25 Jan. 2012) [hereinafter DOD FMR].

<sup>9</sup> Associated Press, *Wife of O-6 Told to Stay Away from BCT Families*, ARMY TIMES, June 11, 2010, [http://www.armytimes.com/news/2010/06/ap\\_drinkwine\\_wife\\_bragg\\_bct\\_061110](http://www.armytimes.com/news/2010/06/ap_drinkwine_wife_bragg_bct_061110) (discussing a dysfunctional FRG in which the commander's spouse threatened the careers of her husband's subordinates). The article reported that one of the subordinate commanders, Lieutenant Colonel Frank Jenio, who was in charge of 800 troops while deployed, "said the need to deal with challenges involving the unit's family support group nearly every other day took time away he could have been using to focus on the war." *Id.*

<sup>10</sup> One study concluded that one-third of military children studied are at high risk for psychosocial morbidity. The most significant predictor of child psychosocial functioning was parenting stress. The study also found that family stress during deployments was mitigated by military, family, and community support. See Eric M. Flake et al., *The Psychological Effects of Deployment on Military Children*, 30 J. OF DEVELOPMENTAL & BEHAVIORAL PEDIATRICS No. 4, Aug. 2009, at 271-78.

<sup>11</sup> See OFFICE OF THE UNDER SEC'Y OF DEF. (COMPTROLLER)/CFO, OVERVIEW: UNITED STATES DEPARTMENT OF DEFENSE FISCAL YEAR 2013 fig.5-3, at 5-6 (2012). Despite the initiatives to reduce the defense budget, the DoD requested \$8.5 billion for family support programs for the fiscal year (FY) 2013 budget, an increase of \$0.5 billion from the FY 2011 budget. *Id.*

<sup>12</sup> AR 608-1, *supra* note 3, para. J-2a.

briefings.<sup>13</sup>

Fundraising and party planning are noticeably absent from the FRG mission. Recognizing that social events are beneficial to its members, Appendix J of AR 608-1 includes social activities under FRG roles and functions.<sup>14</sup> Family Readiness Groups are permitted to host social activities paid for with informal funds,<sup>15</sup> but it is not their mission. Many commanders and senior spouses have not embraced the 2006 changes and still want to channel a large portion of FRG time and money into social events.<sup>16</sup> Consequently, the supporting JA's role with FRGs is primarily providing fiscal advice.

## C. Money Matters

There are three potential funding sources for FRGs: appropriated funds (APFs), FRG supplemental mission funds, and informal funds.<sup>17</sup> Each fund has a different purpose and different restrictions. Congress has imposed fiscal controls, such as a prohibition against augmenting funds, and failure to adhere to these rules could result in adverse personnel actions and criminal penalties.<sup>18</sup> Therefore, it is essential that the JA know the purpose of an acquisition and the commander's view of the FRG mission before rendering fiscal advice. The following section discusses the three funds and the proper use of each fund.

### 1. Appropriated Funds

The first funding source for FRGs is the APFs, which may be used to pay for FRG mission-essential activities.<sup>19</sup> Appropriated funds are tax-payer money, and as such, have

<sup>13</sup> *Id.* para. J-2d.

<sup>14</sup> *Id.* para. J-2.

<sup>15</sup> Commanders may authorize FRGs to maintain one informal fund (IF). *Id.* para. J-7a(1).

<sup>16</sup> See, e.g., E-mail from Amy Oskey, to author (Jan. 4, 2012 12:28 EST) (on file with author) (stating that "[t]here are many misconceptions as to what an FRG is. The FRG's main function is to disseminate information to family members. Some spouses think the FRG's main function is fund raising and party planning."). See also *Something Needs to Change*, SPOUSEBUZZ.COM (Sept. 14, 2007), <http://www.spousebuzz.com/blog/2007/09/something-needs.html> (discussing frustrations with FRG fundraising restrictions stating that "[t]hey can't raise funds in order to provide the services expected of them yet the services ARE expected of them. . .").

<sup>17</sup> AR 608-1, *supra* note 3, paras. J-3, J-7 and J-9.

<sup>18</sup> The Anti-Deficiency Act (ADA) prohibits making or authorizing an expenditure or obligation in excess of or in advance of an appropriation or formal subdivision. 31 U.S.C. §§ 1341 and 1627 (Westlaw 2012). A government official who violates the ADA could receive administrative discipline, up to \$5,000 fine or imprisonment for two years. *Id.* §§ 1349, 1350 and 1519; DOD FMR, *supra* note 8, vol. 14, ch. 9.

<sup>19</sup> AR 608-1, *supra* note 3, para. J-3. Family Readiness Groups acquire appropriated funds (APFs) through the unit's budget process. *Id.* para. J-6.

many strings, or fiscal rules attached.<sup>20</sup> Expenditures must meet purpose, time, and amount tests.<sup>21</sup> Time and amount will be dictated by the unit's resource manager; therefore, the JA's advice is typically limited to a purpose analysis. Where a particular expenditure is not specifically provided for in the appropriation act,<sup>22</sup> the expenditure must be necessary and incident to the proper execution of the general purpose of the appropriation. The Government Accountability Office (GAO) established a three-part test to determine whether expenditure is a necessary expense of a particular appropriation: (1) the expense must be necessary and incident to the purpose of the appropriation; (2) the expenditure must not be prohibited by law; and (3) the expenditure must not be otherwise provided for.<sup>23</sup> Expenses are typically funded with Operation and Maintenance Funds (O&M);<sup>24</sup> therefore, an FRG's expenditure must be necessary and incident to the operation and maintenance of the unit; not be prohibited by law; and not be otherwise provided for.

The determination of whether the requested FRG expenditure is necessary and incident to the unit's mission has been made by DA: the DA has determined that FRG mission-essential activities are necessary expenses and specifically enumerates what expenditures are within the scope of FRG mission essential activities in Appendix J of AR 608-1.<sup>25</sup> Hence, a JA's analysis in the legal review will focus on whether the purpose of the expenditure is within the FRG mission-essential activity and the type of expenditure falls within the enumerated expense. In the FRG leader's proposal discussed in the introduction, the FRG requests APF to provide child care. Child care is expressly authorized for command-sponsored training.<sup>26</sup> Therefore, APFs may be used to fund child care during the FRG meeting. Child care is not authorized for the fundraiser since fundraising is not a FRG's essential mission. The unit may also purchase a scanner because FRG may use unit office equipment in support of FRG mission (disseminating command information and communicating with Families). If APF are not authorized for a purchase or activity, FRG

<sup>20</sup> See *United States v. MacCollom*, 426 U.S. 317 (1976) (explaining that "the established rule is that the expenditure of public funds is proper only when authorized by Congress, not what public funds may be expended unless prohibited by Congress").

<sup>21</sup> 31 U.S.C. §§ 1301(a), 1552, and 1341-1344.

<sup>22</sup> An appropriations act is a statute "that generally provides legal authority for federal agencies to incur obligations and to make payments out of the Treasury for specified purposes." U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-05-734SP, A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS 13 (2005).

<sup>23</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-04-261SP, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, VOL. I, at 4-21 (3d. ed. 2004).

<sup>24</sup> DoD FMR, *supra* note 8, vol. 2A, ch. 1, para. 010201.

<sup>25</sup> AR 608-1, *supra* note 3, para. J-3.

<sup>26</sup> 10 U.S.C. § 1788b (Westlaw 2012); U.S. DEP'T OF DEF. INSTR. 1342.22, FAMILY CENTERS (30 Dec. 1992); AR 608-1, *supra* note 3, para. J-3e.

supplemental mission funds might be an alternative funding source.

## 2. Family Readiness Group Supplemental Mission Funds

The second potential funding source for FRGs is the supplemental mission fund. The supplemental mission program is managed—and the money is controlled—by the Director of Morale, Welfare, and Recreation (DMWR).<sup>27</sup> These funds are generated entirely from unsolicited donations intended for family support. Unit commanders only have the authority to accept donations of \$1,000 or less on behalf of a particular FRG.<sup>28</sup> Donations exceeding \$1,000 must go to the supplemental mission program.<sup>29</sup>

Supplemental mission funds may be used "for any purpose the commander determines clearly supplements an established mission of the FRG."<sup>30</sup> To receive funds, the battalion or rear detachment commander must approve the request.<sup>31</sup> Before approving a purchase request, the commander must determine that: (1) the expenditure clearly supplements the established FRG mission;<sup>32</sup> (2) APF are not authorized, except when reimbursing a statutory volunteer's incidental expenses;<sup>33</sup> (3) the purchase can withstand the test

<sup>27</sup> U.S. DEP'T OF ARMY, REG, 215-1, MILITARY MORALE, WELFARE, AND RECREATION PROGRAMS AND NONAPPROPRIATED FUND INSTRUMENTALITIES para. 5-10 (24 Sept. 2010) [hereinafter AR 215-1].

<sup>28</sup> U.S. DEP'T OF ARMY, REG, 1-100, GIFTS AND DONATIONS para. 5b(3) (15 Nov. 1983) [hereinafter AR 1-100]; AR 608-1, *supra* note 3, para. J-7f.

<sup>29</sup> AR 608-1, *supra* note 3, para. J-9. See also *id.* para. 3-2a (authorizing supplemental mission funds). Only the garrison commander can accept unsolicited gifts for the FRG supplemental mission fund. Memorandum from the U.S. Army Installation Management Command, For See Distribution, subject: Letter of Instruction—Family Readiness Group (FRG) Supplemental Mission Activity para. 7a(2) (14 Mar 2001) [hereinafter Letter of Instruction]. Donations exceeding \$1,000 cannot be designated for a particular FRG, but can be designated for a specific category of FRGs, such as FRG's preparing for a deployment. AR 608-1, *supra* note 3, paras. J-9f and J-2g. Garrison commanders have authority to accept gifts up to \$50,000. AR 215-1, *supra* note 26, para. 13-14e.

<sup>30</sup> AR 608-1, *supra* note 3, para. J-9c.

<sup>31</sup> Letter of Instruction, *supra* note 29, para. 7d(1). If there is a brigade FRG or a separate detachment with no battalion commander, the next higher commander will likely be the approval authority but JAs should contact the MWR Supplemental Mission Funds point of contact for clarification.

<sup>32</sup> The expenditure cannot directly support the official FRG mission because then APFs would be authorized. For example, supplemental mission funds could not be used to pay for child care during the FRG meeting because, as discussed in Part ILC.1.a, APFs are authorized. This is true even if APFs are not available. Similarly, supplemental mission funds could not be used to provide child care during the fundraiser, but for a different reason. Providing child care for a fundraiser does not supplement the FRG mission.

<sup>33</sup> See 10 U.S.C. § 1588(e) (Westlaw 2012) (authorizing the service secretaries to provide reimbursement of incidental expenses from APFs and nonappropriated funds). Child care is an incidental expense. AR 608-1, *supra* note 3, para. J-4b(1)(b)(2). Therefore, even if APFs are authorized, but are not available to fund child care for the FRG statutory volunteers during the FRG meeting, supplemental mission funds may be used.

of public scrutiny and waste, fraud, and abuse; and (4) the vendor's price is fair.<sup>34</sup> Finally, priority must be given to encourage maximum attendance and participation at FRG meetings, such as purchasing food and refreshments.<sup>35</sup>

Applying the scenario from the introduction, supplemental mission funds could be used to purchase food for the FRG meeting. A commander could reasonably determine that food supplements the mission by attracting more attendees to the FRG meeting; that APFs are not authorized to purchase food; and that providing food at an official meeting withstands public scrutiny. Supplemental mission funds could not be used to purchase food for the fundraiser because it would not be supplementing a mission activity. However, if the luncheon was a morale event, such as a picnic, the commander could reasonably determine that the event supplements the FRG mission. If APF and FRG supplemental mission funds cannot be used for a purchase or activity, the FRG informal fund may be an alternative.

### 3. Family Readiness Group Informal Funds

#### a. What is the Family Readiness Group Informal Fund?

The third funding source for FRGs is the informal fund (IF), which is a self-generated fund, similar to a unit's cup and flower fund.<sup>36</sup> Appendix J of AR 608-1 cautions that "FRGs are not established to raise funds, solicit donations, or manage large sums of money."<sup>37</sup> Accordingly, FRG IFs may not exceed an annual gross receipts cap of \$10,000.<sup>38</sup> Funds are generated through unsolicited gifts, donations, and fundraising and are typically used for unofficial social activities.

As a command-sponsored program, the unit commander is responsible for how funds are generated and used. The commander must have visibility on the creation and use of the fund by approving an IF Standard Operating Procedure (SOP),<sup>39</sup> authorizing a bank account,<sup>40</sup> and requiring the

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However, the volunteer must be a statutory volunteer as defined in Part II.D.

<sup>34</sup> Letter of Instruction, *supra* note 29, para. 7d(2). Expenditures should comply with Army Regulation (AR) 215-4. U.S. DEP'T OF ARMY, REG. 215-4, NONAPPROPRIATED FUND CONTRACTING (29 July 2008).

<sup>35</sup> AR 608-1, *supra* note 3, para. J-9c(1).

<sup>36</sup> See *supra* note 15 and accompanying text.

<sup>37</sup> AR 608-1, *supra* note 3, para. J-7e.

<sup>38</sup> Memorandum from the Sec'y of Army, For See Distribution, subject: Army Directive 2008-01, Increase in Family Readiness Group Informal Fund Cap (7 Mar. 2008) (increasing the cap from \$5,000 to \$10,000).

<sup>39</sup> AR 608-1, *supra* note 3, para. J-7c. The FRG IF Standard Operating Procedure (SOP) is a description of the funds purpose. The SOP must be signed by the FRG leader, the fund custodian and the alternate fund custodian, and be approved by a majority of the FRG membership and the unit commander. At a minimum the SOP must include the FRG's name; a

treasurer to provide monthly and annual reports on IF use.<sup>41</sup> The IF SOP provides notice to the commander and membership on how the fund will be used. The servicing JA should review the IF SOP to ensure compliance with the JER and other relevant regulations. A well-written SOP should answer most of the questions asked by FRG volunteers, such as how the funds are generated and how the funds may be spent.

#### b. The "F" Word: Fundraising

Informal funds are generated through gifts, donations, and fundraising. Although volunteers are acting unofficially when fundraising, they are still subject to the same restrictions as paid employees.<sup>42</sup> Specifically, FRGs may not conduct external fundraising,<sup>43</sup> they may not fundraise for the benefit of a single person or a cause,<sup>44</sup> and they are prohibited from soliciting gifts or donations.<sup>45</sup> As discussed in Part II.C.2, commanders may accept unsolicited gifts or donations with a value of \$1,000 or less for the FRG IF.<sup>46</sup> However, the majority of funds will likely come from internal fundraising.

A FRG "may officially fundraise from its own community members or dependents and from all persons benefitting from the Army organization."<sup>47</sup> This has been

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description of the fund's purpose and functions; and a summary of its routine activities. *Id.*

<sup>40</sup> *Id.* para. J-7b. Funds will be deposited in a non-interest bearing bank account authorized by the unit commander. The commander designates a fund custodian (treasurer) and an alternate fund custodian, and signs a letter authorizing the designees to open a non-interest bearing bank account in the FRG's name. The fund custodian and the alternate fund custodian must not be the unit commander, a deployable Soldier, or the FRG leader. *Id.*

<sup>41</sup> *Id.* The treasurer must provide monthly fund reports to the commander an annual report to the first O6 in the chain of command no later than January 30 each year. The reports consist of a summary of the fund's financial status, including current balance, total income, and an itemized list of expenditures along with an explanation showing how the expenditures are consistent with the fund's SOP. *Id.*

<sup>42</sup> Fundraising will be governed by AR 600-29 and the JER. U.S. DEP'T OF ARMY REG. 600-29, FUND-RAISING WITHIN THE DEPARTMENT OF THE ARMY (7 June 2010) [hereinafter AR 600-29].

<sup>43</sup> AR 608-1, *supra* note 3, para. J-8; JER, *supra* note 7, secs. 2, 3-210a(6).

<sup>44</sup> AR 608-1, *supra* note 3, para. J-7d(1).

<sup>45</sup> *Id.* para. J-8. However, after consulting with an ethics advisor, FRGs may convey their needs in response to an inquiry. *Id.*

<sup>46</sup> AR 1-100, *supra* note 28, para. 5b(3); AR 608-1, *supra* note 3, para. J-7f. Gifts and donations are considered income and will count against the annual \$10,000 cap. AR 608-1, *supra* note 3, para. J-7f. The fair market value (FMV) of tangible items will be assessed against the funding cap. For example, a local church donates 200 toothbrushes to the FRG for care packages. If the FMV of a toothbrush is \$1.25, then \$250 would be assessed against the cap.

<sup>47</sup> AR 608-1, *supra* note 3, para. 1-7. See also E-mail from Mr. Brian Howell, U.S. Army Legal Servs. Agency, to Major Army Command Staff Judge Advocates (Jan. 11, 2006 13:30 EST) (on file with author) (explaining the Office of the General Counsel (Ethics and Fiscal Law

interpreted broadly to allow for garrison-wide fundraising.<sup>48</sup> Generally, fundraising in a personal capacity may not occur in the federal workplace<sup>49</sup> and should not conflict with the Combined Federal Campaign (CFC).<sup>50</sup>

Commanders may endorse FRG fundraising activities,<sup>51</sup> including using their “name, title, and position in memorandums, employee newsletters, or other routine communications to promote the fund-raising.”<sup>52</sup> However, commanders cannot direct or coerce subordinates into participating or contributing.<sup>53</sup> The commander may not offer special favors, such as leave privileges or authorization to wear civilian clothes for servicemembers as an incentive to participate.<sup>54</sup> Keeping lists or asking whether certain personnel contributed is also prohibited.<sup>55</sup> Servicemembers and DoD civilians may participate in their personal capacity (off duty and out of uniform),<sup>56</sup> but it must be truly voluntary. Commanders are not prohibited from placing servicemembers in a pass status to fundraise in their personal capacity. When participating in their personal capacity, servicemembers and civilians may not solicit funds from a subordinate or a prohibited source, such as contractors.<sup>57</sup>

Applying the scenario from the introduction, the commander could approve the fundraiser if the raffle does not meet the definition of gambling and raffles are permitted under state and local law. Gambling is prohibited on government-owned or leased property, including military installations.<sup>58</sup> To qualify as gambling, the event must have

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Division) and the Army Standards of Conduct Offices’ interpretation of JER para. 3-210(a)(6)).

<sup>48</sup> *Id.* However, contractors may not be solicited. AR 600-29, *supra* note 42, para. 1-10*h*.

<sup>49</sup> AR 600-29, *supra* note 42, para. 1-7. Commanders may designate areas that are outside of the federal workplace, such as common areas or outside of the commissary where groups may fundraise. *Id.* para. 1-7*c*(1).

<sup>50</sup> *Id.* para. 1-8. The Combined Federal Campaign begins annually on 1 September. The local coordinating committee determines the dates of the campaign, but generally it will go through the fall. *Id.* para. 3-2*b*.

<sup>51</sup> Department of Defense personnel may officially endorse membership drives or fundraising for “organizations composed primarily of DoD employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members or their dependents . . .” JER, *supra* note 7, para. 3-210.

<sup>52</sup> AR 600-29, *supra* note 42, para 1-11.

<sup>53</sup> *Id.* para 1-10.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> JER, *supra* note 7, para. 3-300. Family readiness support assistants, paid employees who provide the FRG support, are prohibited from fundraising. AR 608-1, *supra* note 3, para. J-5*b*.

<sup>57</sup> AR 600-29, *supra* note 42, para. 1-10*h*.

<sup>58</sup> JER, *supra* note 7, para. 2-302 (deleting the exception for activities by organizations composed primarily of DoD personnel or their dependents, such as FRGs, when they were fundraising internally for the benefit of their welfare funds).

three elements: (1) the payment of money or something of value; (2) it must be a game of chance; and (3) it must offer a reward or prize.<sup>59</sup> For example, a raffle that requests donations for a raffle ticket is not considered gambling because it does not require the payment of money or something of value. In this case, the commander should only approve the raffle if it does not require the payment of money or something of value and it is also permitted under state and local law.

The fundraiser must take place in an area designated as a non-federal workplace and can be open to all Soldiers and Family members on the installation. If the raffle is authorized, the FRG could sell tickets on its Facebook page if the page is restricted to FRG members and state law permits selling raffle tickets over the internet.<sup>60</sup> At a minimum, the FRG could advertise the raffle on its Facebook page and disclose where to purchase the raffle tickets.

The FRG could not solicit prizes for the raffle. The FRG would have to purchase raffle items with the IF. The commander could also accept unsolicited gifts valued at \$1,000 or less, but the fair market value of the gift would be assessed against the annual \$10,000 cap. The commander could not direct Soldiers to assist with the fundraiser; however, Soldiers may voluntarily assist when off-duty or in a pass status and while wearing civilian clothes. The commander could announce the fundraiser in a staff call, but should be careful not to create an impression that staff members are required to contribute. In addition to all the restrictions placed on raising funds, FRGs are restricted in how they can spend their funds.

### *c. Family Readiness Group Informal Fund Expenditures*

Family readiness groups may only raise funds for a particular purpose which must be consistent with the approved SOP and reflected in the fund ledger.<sup>61</sup> Generally, the fund should be used for morale events that benefit the membership as a whole.<sup>62</sup> For example, the FRG may not raise funds for a specific member whose house burned down because, although kind, it does not benefit the FRG as a whole. Likewise, IFs cannot be used for purchases for which

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<sup>59</sup> *Brooklyn Daily Eagle v. Voorhies*, 181 F. 579 (C.C.N.Y. 1910); 41 C.F.R. §102-74.395 (Westlaw 2012).

<sup>60</sup> *See, e.g., CALIFORNIA PENAL CODE 320.4* (Westlaw 2012) (prohibiting the sale of raffle tickets on-line).

<sup>61</sup> AR 608-1, *supra* note 3, para. J-7*e*.

<sup>62</sup> *Id.* para J-7*a*(1). Examples include: “FRG newsletters that contain predominantly unofficial information and purely social activities, including, but not limited to, parties[,] social outings, volunteer recognition (not otherwise funded with APF), and picnics.” *Id.* para. J-7*a*(2). Purchasing traditional military gifts and funding the unit’s ball are expressly prohibited. *Id.* para. J-7*a*(3).

APFs are authorized, even if APFs are not available.<sup>63</sup> This is considered an illegal augmentation.<sup>64</sup>

Informal funds may not be co-mingled with FRG supplemental mission funds, the unit's cup and flower funds, or any other fund.<sup>65</sup> However, FRGs may coordinate and pool their funds for large events as long as the money is not co-mingled. For example, for a battalion-wide event, the HHC FRG could purchase the food, the Alpha Company FRG could pay for a bouncy castle; and the Bravo Company FRG could pay for face painting.

Applying the scenario from the introduction, the FRG wants to spend IFs to host a unit ball, to purchase a scanner, and to purchase supplies for an orphanage in Afghanistan. First, funding a unit ball is expressly prohibited.<sup>66</sup> However, the FRG could use IFs to host a morale event, such as a picnic. Second, IFs could not be used to purchase a scanner because, as discussed in Part II.C.1, APFs are authorized. Finally, IFs could not be used to purchase supplies for orphans because the funds must be for the benefit of FRG members, not a cause.

#### D. FRG Statutory Volunteers and Use of Government Resources

As an official DA program, FRG volunteers are authorized the use of government resources. The level of support will depend on whether the FRG volunteer is acting in an official or unofficial capacity. But first, the volunteer must go through the process to become a statutory volunteer.

Family readiness groups are official DA programs and as such, FRG volunteers are volunteering their services to the government. The Anti-Deficiency Act (ADA) prohibits an officer or employee from accepting voluntary services unless authorized by law.<sup>67</sup> Commanders are specifically authorized to accept volunteers to support the FRG mission.<sup>68</sup> These volunteers are referred to as statutory volunteers. However, volunteers must in-process through the local Army Community Services (ACS) Center as part of the

Army Volunteer Corps Program to be statutory volunteers.<sup>69</sup> Although commanders are responsible for ensuring that certain criteria are met,<sup>70</sup> ACS or the Army Volunteer Corps Coordinator will assist the commander.<sup>71</sup> However, JAs will also play a crucial role by providing fiscal and ethics guidance or advising on specific statutory protections afforded to statutory volunteers.<sup>72</sup>

When volunteers are performing duties in accordance with their job descriptions, they are authorized to use government resources, including office space, equipment, office supplies, installation post offices, official mail,<sup>73</sup> and the use of government vehicles.<sup>74</sup> Family Readiness Group volunteers are not considered statutory volunteers when they are engaged in unofficial activities such as fundraising.<sup>75</sup> For example, a FRG statutory volunteer could use a government vehicle to pick up supplies for a FRG meeting, but not to pick up supplies for a fundraiser.

Statutory volunteers may be reimbursed for incidental expenses, such as training, travel, mileage, parking, telephone, and child-care expenses, with APF<sup>76</sup> or supplemental mission funds if APF are not available.<sup>77</sup> Although reimbursement of incidental expenses is authorized, it is not a right. The commander will determine whether resources are necessary and available. Commanders

<sup>69</sup> AR 608-1, *supra* note 3, para. J-1a(1).

<sup>70</sup> *Id.* para. 5-9b. The commander must ensure that volunteer documentation is complete, personnel records are maintained, awards and recognition are planned and executed, costs or reimbursable expenses and organization awards are budgeted, and a representative serves on the Volunteer Council. *Id.* Volunteers and supervisors must sign a DD Form 2793, Volunteer Agreement for Appropriated Fund and Nonappropriated Fund Instrumentalities. *Id.* para. 5-9k. Commanders must use the Volunteer Management Information System (VMIS) on Army OneSource to register volunteers and log volunteer hours. *Id.* para. 5-9b. The commander must supervise the volunteer in the same manner as a paid employee providing similar services. 10 U.S.C. § 1588 (Westlaw 2012); AR 608-1, *supra* note 3, paras. 5-9f and J-4a(1).

<sup>71</sup> AR 608-1, *supra* note 3, para. J-4a(2).

<sup>72</sup> When volunteers are performing duties in accordance with their job descriptions, they are considered federal employees only for the purpose of the following laws: workers compensation; tort claims; criminal conflict of interest laws; and malpractice. 10 U.S.C. § 1588(d) (Westlaw 2012).

<sup>73</sup> AR 608-1, *supra* note 3, para. 5-10b. The unofficial content in newsletters may not exceed twenty percent of the printed space used for official information; it may not increase the costs to the Government; and it may not include personal wanted/for sale advertisements. *Id.* para. J-3c(1). Many FRGs now distribute newsletters via e-mail. While including additional information may not result in increased costs to the government, the restrictions regarding content still apply.

<sup>74</sup> *Id.* para. 5-10c. The commander must determine that the use of the vehicle is for official purposes and that failure to provide such support would have an adverse effect on Soldier morale; the use will not hinder the accomplishment of the unit's needs; and the volunteer meets the requirements to operate the government vehicle. *Id.*

<sup>75</sup> *Id.* para. J-3f.

<sup>76</sup> *Id.* para. J-4b(1)(b)(2).

<sup>77</sup> *Id.* para. J-9c.

<sup>63</sup> *Id.* para. J-7a(3).

<sup>64</sup> There is no specific statute which prohibits the augmentation of appropriated funds, but the concept can be found in several statutes: 31 U.S.C. § 3302(b), the miscellaneous receipts statute, 31 U.S.C. § 3301(a), the purpose statute, and 18 U.S.C. § 209, which prohibits the payment or supplementation of a federal employee's salary. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-06-382SP, PRINCIPLES OF FEDERAL APPROPRIATIONS LAW, VOL. II, at 6-102(3d. 2006).

<sup>65</sup> AR 608-1, *supra* note 3, para. J-7a(3).

<sup>66</sup> *Id.*

<sup>67</sup> 31 U.S.C. § 1342 (2012). See *supra* note 18 (discussing the consequences of violating the Anti-Deficiency Act (ADA)).

<sup>68</sup> 10 U.S.C. § 1588 (2012); AR 608-1, *supra* note 3, para. J-3f.

may not authorize travel or reimbursement of volunteer expenses for members of their household or other persons that could present a potential conflict of interest.<sup>78</sup> Such decisions must be forwarded to the next senior level officer within the chain of command.<sup>79</sup>

### III. Friends of the FRG: Private Organizations

While being an official DA program has benefits, FRGs are severely restricted when it comes to social activities. Private organizations are not subject to the same restrictions and consequently can be an excellent alternative when it comes to social activities.

#### A. What is a Private Organization?

Non-federal entities (NFE) are exactly what the name implies—they are organizations that are not part of the federal government. On-post private organizations (POs) are NFEs that have received express permission to operate on a military installation.<sup>80</sup> There are many NFEs and POs that support the military. Some share the same family readiness goals and objectives of a specific FRG as well as much of the same membership. Judge advocates cannot directly advise POs, but a JA who understands the regulations pertaining to POs can offer alternate options to the leadership when the FRG cannot or should not fund an activity. Because of the potential for real and perceived ethics violations,<sup>81</sup> JAs should ensure commanders and FRG leaders are aware of the pitfalls to avoid when interacting with these POs.

#### B. Private Organizations: Advantages and Disadvantages

Private organizations are subject to fewer restrictions regarding how they raise and spend funds than those imposed on FRGs.<sup>82</sup> When fundraising internally, POs are

subject to some of the same limitations applicable to FRGs discussed in Part II, such as the prohibition against fundraising in the federal workplace and conflicting with the CFC. However, other limitations applicable to FRGs do not apply, which gives POs a significant fundraising advantage. For example, POs may fundraise outside the installation and solicit gifts and donations.<sup>83</sup> Another significant advantage is that POs do not have an income cap like FRGs do. A PO could send letters to businesses in the community soliciting donations and they can raise as much money as desired to meet their goals. Additionally, POs are not restricted in how they spend their funds.<sup>84</sup> A PO could use its funds for independent readiness purposes, such as care packages for deployed Soldiers; it could donate funds to the FRG IF; and it could even host a ball and invite members of the unit and their Families.<sup>85</sup>

Private organizations also have disadvantages. As an organization that is not part of the government,<sup>86</sup> POs are subject to some restrictions that are more burdensome than those applicable to FRGs. There are several restrictions as a condition of becoming a PO approved to operate on post,<sup>87</sup> but the more troublesome ones are discussed here. First, a PO may not use the seal, logo, or insignia of the DoD, a military department, or a unit.<sup>88</sup> This restriction means that the unit's crest cannot be part of the PO's logo, on its letterhead, or on its resale items. However, with the commander's approval, a PO may use the unit's name or an abbreviation of the name as long as it is clear that there is no official sanction or support by DoD.<sup>89</sup>

Second, POs must have adequate insurance as protection against liability, claims, property damage, or other legal actions arising from PO activities.<sup>90</sup> It must also

<sup>78</sup> 5 C.F.R. § 2635.502 (Westlaw 2012); *id.* § 2635.702; AR 608-1, *supra* note 3, para. J-4c.

<sup>79</sup> AR 608-1, *supra* note 3, para. J-4c.

<sup>80</sup> U.S. DEP'T OF ARMY REG. 210-22, PRIVATE ORGANIZATIONS ON DEPARTMENT OF THE ARMY INSTALLATIONS para. 1-1 (22 Oct. 2001) [hereinafter AR 210-22]. Non-federal entities seeking PO status must submit a written application to the garrison commander in accordance with paragraph 2-1a(2). Once approved, POs are required to submit a report to the garrison's commander's designee at least annually and to seek revalidation every two years. *Id.* para. 2-1c and *d.*

<sup>81</sup> See 5 C.F.R. § 2635.10 (discussing the basic obligations of public service, including the obligation to avoid actions that would create an appearance of violating the law or ethical standards).

<sup>82</sup> AR 608-1, *supra* note 3, para. J-11. While POs have more latitude with raising funds, it cannot be established solely for a monetary purpose (individual shall not accrue money from the PO's activities), unless it is an investment club. AR 210-22, *supra* note 80, para. 3-1c; DODI 1000.15, *supra* note 4, encl. 2, para. 11.

<sup>83</sup> The prohibitions contained in AR 608-1, *supra* note 3, para. J-8 and the JER, *supra* note 7, para. 3-210a(6) does not apply to POs.

<sup>84</sup> A PO's application to operate on post must include a description of how the PO intends to use the funds, but is not restricted on how they are spent. AR 210-22, *supra* note 80, para. 2-1a(2)(b).

<sup>85</sup> These would be considered gifts from a prohibited source and as such, acceptance must comply with 5 C.F.R. Part 2635 (Westlaw 2012), AR 1-100, *supra* note 28, and the JER, *supra* note 7. Generally, Service Members may accept unsolicited gifts valued at \$20 or less per source, per occasion as long as the total value of all gifts received do not exceed \$50 in a calendar year. 5 C.F.R. § 2635.204(a).

<sup>86</sup> AR 210-22, *supra* note 80, para. 1-5d.

<sup>87</sup> *Id.* ch. 3.

<sup>88</sup> *Id.* para. 3-1; DODI 1000.15, *supra* note 4, encl. 2, para. 1.

<sup>89</sup> DODI 1000.15, *supra* note 4, encl. 2, para. 1. If a PO uses all or part of the unit's name, it must include the following disclaimer whenever the name is used (in print or orally): "THIS IS A NON-FEDERAL ENTITY. IT IS NOT A PART OF THE DEPARTMENT OF DEFENSE OR ANY OF ITS COMPONENTS AND IT HAS NO GOVERNMENTAL STATUS." *Id.*

<sup>90</sup> Army Regulation 210-22 does not define adequate insurance. AR 210-22, *supra* note 80. A commander could reasonably determine that no insurance is adequate when the PO does not own any real property and has little personal property.

have fidelity bonding for members handling a monthly cash flow exceeding \$500.<sup>91</sup> Liability insurance and bonding can be very expensive. For example, the cost of insurance for a PO with no real property and approximately \$10,450 in income costs \$1,341 annually.<sup>92</sup>

Third, POs are subject to state, federal, and host nation laws, including tax laws. Private organizations do not receive tax-exempt status by virtue of operating on a military installation. A PO may apply for § 501(c)(3) tax exempt status from the Internal Revenue Service if it is established for religious, educational, or scientific purposes, but it is a lengthy process and may restrict the PO from engaging in social activities.<sup>93</sup> Seeking § 501(c)(3) status may be appropriate for an organization created to raise money for a memorial or scholarships for dependents of fallen Soldiers but would not be helpful to a PO that wants to engage in a lot of social events.

Finally, similar to FRGs engaged in fundraising activities, POs receive limited logistical support (meeting space and equipment) from the command. Private organizations cannot use Army services, such as “legal, audit, transportation, postal, printing, information management activities, clerical, financial, copying, management, and procurement services.”<sup>94</sup>

Applying the scenario from the introduction, a PO could be established to benefit the Soldiers and Families of the Battalion HHC. Once approved, the “Friends of the HHC” PO could conduct a fundraiser on the installation, with permission from the garrison commander or his designee. A raffle would be subject to the same limitations discussed in Part II.C.3.b. The command could provide space (non-federal workplace) and limited logistical support for the fundraiser. The “Friends of the HHC” PO could also solicit businesses off-post for donations. Proceeds from the fundraiser or solicitations could be used in a variety of ways. The PO could purchase a scanner for the PO, fund a party, pay for child care during PO events, and purchase supplies for an orphanage in Afghanistan. The PO could also donate money to the FRG, which the commander could accept in accordance with AR 1-100. The PO could also host a ball and invite the members of the unit and their Family members. Members of the unit and their Family members could accept the gift of food and entertainment, after consulting an ethics attorney, if it complies with the

<sup>91</sup> *Id.* para. 3-2.

<sup>92</sup> Legal Center and School Club Revalidation Request to Operate as a Private Organization (24 Mar. 2010) (on file with command judge advocate) (submitted as required by AR 210-22, *supra* note 80, para. 2-1d).

<sup>93</sup> The organizing documents must limit the organization’s purposes to exempt purposes set forth in section 501(c)(3) and only an insubstantial part of its activities may be for other than the organization’s purpose. INTERNAL REVENUE SERVICE, PUB. 557, TAX EXEMPT STATUS FOR YOUR ORGANIZATION (2011).

<sup>94</sup> AR 210-22, *supra* note 80, para 5-3c.

standards of conduct gift rules.

On the down side, the “Friends of the HHC” PO could not use the unit’s logo and will likely pay federal and state taxes on the money raised. If managed effectively, the advantages of the PO outweigh the disadvantages and the unit can benefit greatly from the PO’s efforts. However, the close relationship to the unit can be confusing and is an area where inadvertent ethics violations can occur.

### C. Ethics Considerations: Pitfalls to Avoid When Dealing with Private Organizations

Private organizations can be established to support the Soldiers and Families of a particular unit and FRG. As long as DoD employees, including FRG volunteers, avoid ethics violations in their interactions with the PO, the two organizations can be very compatible. First, unlike the FRG, the commander has no control over the management of the PO, and cannot direct the activities of the PO.<sup>95</sup> Army personnel cannot serve in the management of a PO in their official capacity,<sup>96</sup> but can serve as a liaison when the commander determines that there is a significant and continuing DoD interest in such representation.<sup>97</sup> For example, the Dragoon Foundation was originally established on Rose Barracks in Vilseck, Germany, to raise money for a memorial for the 2d Stryker Cavalry Regiment’s (2SCR) fallen Soldiers.<sup>98</sup> Since the memorial would later be gifted to the Army, the 2SCR leadership had an interest in ensuring that the memorial was tasteful and the names were correct. In this situation, it was proper for the commander to authorize a servicemember to serve as a liaison to the Dragoon Foundation in his official capacity. Since the servicemember was serving in his official capacity, he could attend meetings in uniform, on government time, and use government resources as well as his title and position to accomplish his mission of acting as a liaison.

Army personnel may voluntarily participate in PO activities in their personal capacity and can even serve as an officer as long as the position is not offered because of the servicemember’s official position.<sup>99</sup> The servicemember participating in his personal capacity should not give the

<sup>95</sup> See U.S. Army Inspector General Agency Report of Investigation, Case 09-006 (redacted copy on file with the author) (sustaining an allegation that either the commander or the commander’s spouse (it is unclear from the redacted report) improperly participated in the management of the Fort Polk Officers’ Spouses Club, a PO).

<sup>96</sup> JER, *supra* note 7, para. 3-202.

<sup>97</sup> *Id.* para. 3-201.

<sup>98</sup> This information is based on the author’s personal knowledge as the legal advisor to the Second Stryker Cavalry Regiment. See also DRAGOON FOUNDATION, <http://www.dragoonfoundation.com/DragoonFoundation/Home.html> (last visited Jan. 12, 2012).

<sup>99</sup> JER, *supra* note 7, para. 3-301.

appearance of endorsement or preferential treatment, such as using his official title.<sup>100</sup> If actively serving in a PO, the servicemember cannot take official action regarding the PO, such as approving fundraising requests or approving meeting space.<sup>101</sup>

The FRG leadership has stricter requirements than do servicemembers. Appendix J of AR 608-1 specifically prohibits managers or board members of the related PO from being placed in FRG leadership positions.<sup>102</sup> Consequently, FRG leadership can participate in PO activities, but they cannot serve as board members in the related PO. While the commander is not expressly prohibited from serving on a PO board in his personal capacity, he must endeavor to avoid appearances of endorsement or preferential treatment.<sup>103</sup> It would be extremely difficult to overcome the appearance issue if the commander was also serving on a related PO's board.

Second, DoD employees must remain neutral when dealing with POs.<sup>104</sup> They may not endorse a PO that is established for the benefit of the unit and must treat all similarly situated POs the same.<sup>105</sup> However, DoD employees may officially endorse PO fundraising events.<sup>106</sup> For example, a commander can endorse an internal fundraising event for the "Friends of the HHC" PO, but he must also endorse fundraising events for similarly situated POs. Furthermore, DoD employees can use official channels, such as electronic mail, to notify DoD personnel of events sponsored by a PO if it is of common interest to the unit.<sup>107</sup> Electronic mail contents must be factual and should not express support for a particular PO, which may be construed as official DoD endorsement of that PO.<sup>108</sup>

Third, commanders may provide limited logistical support to POs, such as the use of DoD facilities and equipment if the seven factors contained in JER, paragraph

3-211 are met.<sup>109</sup> Additionally, Army personnel serving in a PO in a personal capacity may be permitted to use government resources if it (1) does not adversely affect performance in official duties; (2) is of a reasonable duration and frequency and not on official time; (3) serves a legitimate public interest; (4) does not reflect adversely on DoD; and (5) creates no significant additional cost to DoD.<sup>110</sup>

Applying the scenario in the introduction, members of the HHC, including the FRG leadership, may voluntarily join the "Friends of the HHC" PO in their personal capacity. The FRG leadership may not serve as officers, but members of the unit can as long as the position is not offered because of the servicemember's official position. The HHC commander could provide the PO space for meetings and fundraisers, but would be required to offer the same support to similarly situated POs. The commander could announce PO events, but could not coerce members of the unit into joining or contributing to the PO. As long as federal employees, including FRG statutory volunteers, avoid the potential ethics conflicts discussed above, the PO could successfully raise funds and host social events that will benefit members of HHC and their Families.

#### IV. Conclusion

As the BJA, you are attending the HHC FRG meeting. The FRG leader suggests that after the next monthly meeting, the FRG host a luncheon and hold a raffle to raise money to fund the unit ball; to purchase a scanner; and to purchase supplies for an orphanage in Afghanistan. Excited about the idea, the membership suggests soliciting prizes for the raffle; selling raffle tickets on its Facebook page; requesting logistical support from the commander; and requesting APF to fund child care.

You quickly and wisely advise the FRG that while a fundraiser may be permissible, fundraising is limited to the installation, they cannot solicit funds, and the IFs cannot be used to fund a unit ball, pay for a scanner, or benefit orphans in Afghanistan. Sensing frustration in the room, you suggest that the FRG request APF for the scanner and child care for the FRG meeting. You also note that the "Friends of the

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<sup>100</sup> *Id.* para. 3-300a(1). It is permissible to use the Service Member's rank. *Id.*

<sup>101</sup> 5 C.F.R. § 2636.502 (Westlaw 2012); JER, *supra* note 7, para. 3-300.d.

<sup>102</sup> AR 608-1, *supra* note 3, para. J-11.

<sup>103</sup> 5 C.F.R. § 2635.101(b)(14).

<sup>104</sup> *Id.* § 2635.101(b)(8). Additionally, DoD employees, including FRG volunteers, must be careful not to disclose non-public Government information, such as the FRG membership roster, with the PO. *Id.* § 635.703.

<sup>105</sup> AR 608-1, *supra* note 3, para. J-11.

<sup>106</sup> JER, *supra* note 7, para. 3-210a(6) (Department of Defense employees may not officially endorse membership drives or fundraising efforts of NFEs, but provides an exception for "organizations comprised of DoD employees or their dependents when fundraising among their own members for the benefit of welfare funds for their own members. . . .").

<sup>107</sup> *Id.* para. 3-209.

<sup>108</sup> *Id.*

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<sup>109</sup> *Id.* para. 3-211 (setting forth the following factors: (1) The support may not interfere with the performance of official duties or detract from readiness; (2) The support serves DoD community relations, DoD public affairs or military training interests; (3) It is appropriate to associate DoD with the event; (4) The event is of interest and benefit to the local civilian community, the unit, or any other part of DoD; (5) The unit is able and willing to provide the same support to comparable events sponsored by other similar NFEs; (6) The use is not restricted by other statutes; and (7) No admission fee (beyond what will cover the reasonable costs of sponsoring the event) is charged for the event, or the portion of the event supported by DoD, or DoD support to the event is incidental to the entire event in accordance with public affairs guidance).

<sup>110</sup> *Id.* para. 2-301b.

HHC” PO might be in a better position to host a party and would be able to invite members from the unit and their Families (as long as the cost of food and entertainment does not exceed \$20 per person). The PO could also send supplies to the orphans. You further suggest that instead of a fundraiser, the FRG host a morale event, which would allow them to request supplemental mission funds to pay for the food and entertainment. Before the meeting ends, the FRG members readjust their plan and their expectations.

While asking FRG volunteers to change their expectations so quickly may be highly optimistic, an involved JA who provides alternative solutions will

minimize frustration. Helping shape the ideas early can also keep the command mission-focused rather than having to deal with a dysfunctional FRG. When interacting with POs, there exists much potential for ethics violations. Judge advocates should proactively brief the leadership on ethics issues relating to participation in PO activities, endorsement, and providing logistical support to POs.