



ETHICS GRAM

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15-01

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MILITARY BALLS

Ref: (a) NAVADMIN 095/15
(b) DoD 5500.07-R, Change 7
(c) 5 C.F.R. Part 2635
(d) SECNAVINST 5870.7
(e) 5 C.F.R. 950.102

Encl: (1) Military Balls Quick Reference Guide

1. **Purpose.** To provide a refresher on fundraising and other ethics issues related to military balls and the committees that organize these events in light of the release of reference (a), which specifically relates to the Navy Birthday Ball. Reference (a) introduces a two-tiered framework or sequence of events, consisting of the (1) official Navy Birthday Commemoration Ceremonies held in conjunction with the (2) unofficial Navy Birthday Balls and similar social events. As recent cases illustrate, commanding officers may be held accountable for prohibited fundraising for military balls. Staff Judge Advocates (SJAs) should disseminate this guidance within their commands, especially to those who may be serving on military ball committees. Enclosure (1) is a quick reference guide to assist SJAs and non-legal personnel in spotting and avoiding common issues with military balls.

2. **Background.** Military balls are unofficial social events that celebrate Navy history, traditions, and communities. Common characteristics include food, refreshments, music, dancing, formal presentations, guests of honor, and keynote speakers. Military personnel may often attend in uniform as further discussed below in paragraph five. While some military balls are hosted and organized by outside activities, such as the Navy-Marine Corps Relief Society or Navy League of the United States, many are planned, coordinated, and executed by Navy personnel and their dependents, such as the "Navy Birthday Ball," the "Submarine Ball," the "Surface Warrior Ball," the "Gator Ball," and the "SEABEE Ball." This Ethics Gram refers to these various events collectively as military balls. This Ethics Gram does not provide guidance on the Marine Corps Ball which is specifically governed by Marine Corps Order 7040.11A.

3. **Legal Authorities.** There is no single comprehensive reference that covers the ethical issues raised by military balls. While some touch upon specific military ball issues, most issues are analyzed using the same references when dealing with non-federal entities (NFEs), endorsement questions, and fundraising. Specifically, references (b) and (c) provide the primary legal framework for most issues. For Marine Corps Birthday Balls, Marine Corps Order 7040.11A provides detailed

guidance. For questions on the Marine Corps Birthday Ball, please contact the Marine Corps' Judge Advocate Division (Research and Civil Law Branch (JAR)) at 703-614-2510.

4. **Unofficial or Official?** Perhaps the most common misconception is that military balls are official functions. After all, they often celebrate naval history and traditions, may be attended in uniform, and are commonly referred to as a "Navy" ball or "USS NEVERSAIL" ball. Regardless of the title given to a military ball, military balls and similar social events are unofficial functions.¹ The committees that plan, coordinate, fundraise for, and execute military balls are considered NFEs and the individuals that make up these committees are participating in their personal capacity. Thus, these military ball committees are treated the same as any other NFE under references (b) and (c).

a. **Navy Birthday Ball Two-Tiered Approach.** While Navy Birthday Balls involve celebrations of the Navy's birthday, history, and heritage, they are not official Navy events. However, reference (a) contains express authorization for official Navy Birthday Commemoration Ceremonies to be held in conjunction with unofficial Navy Birthday Balls and similar social events where feasible and to the extent consistent with law and regulation. According to the message, "a 'two-tiered' approach may be employed to better leverage official engagement opportunities associated with certain unofficial Navy Birthday related events and allow for more flexibility in unit level planning of official evolutions."

(1) The two-tiered approach allows Navy leadership to maximize participation in the official Navy Birthday Commemoration Ceremony with follow-on attendance at the unofficial social component, e.g., the Navy Birthday Ball.

(2) How to distinguish the two tiers? Official Navy Birthday Commemoration Ceremonies (tier one) directly support the mission of the U.S. Navy. They often include a Navy color guard, a performance by the Navy Band (for ceremonial music only), a presentation or pageant commemorating the Navy's Birthday and mission, and appropriate Guest of Honor remarks. The social event portion (tier two), or Navy Birthday Ball, is traditionally organized by groups of Sailors acting in an unofficial capacity or other NFEs chartered to support to the military and/or its service members. Navy Birthday Ball celebrations often include an invited Navy speaker or Guest of Honor, dinner, dancing, refreshments, favors, entertainment and other social activities. The cost of the event is normally supported through NFE organized ticket sales to attendees, though they may also be supported by appropriate NFE fundraising activities and non-appropriated funds (NAF).²

(3) How does this change the advice we give our clients? The new approach explicitly allows for the connection of the official event, or the Navy Birthday Commemoration Ceremony, with the unofficial event, the Navy Birthday Ball and, for the most part, the rules that apply to all military balls as further explained in this Ethics Gram remain the same. For example, although appropriated funds (APF) can

¹ See SOCO Advisory 10-03, available at http://www.dod.mil/dodgc/defense_ethics/. The assessment that military balls are usually unofficial events is longstanding. See JAGC Ethics Grams 05-12 and 14-02.

² See Section 4(g) of this Ethics Gram for additional guidance on funding.

be used to support the official Navy Birthday Commemoration Ceremony to include security and transportation of ceremonial participants, appropriated funds are generally unavailable for unofficial events and cannot be used for the feeding and entertainment of Navy members and guests at the Birthday Ball.³ However, this construct could allow for certain logistical support to overlap. For example, a dais and audio/visual support used by the official ceremony could remain in place for use for the Birthday Ball, provided all the criteria in 3-211(a) of reference (b) are met. In addition, official time and resources could be used to set up seating and remain in place for tier two events IF the seating was used for the official ceremony. Conversely, commands would not be authorized to use official time and resources to set up the booth and audio equipment for the disc jockey hired for the Navy Birthday Ball.

(4) Staff Judge Advocates will need to be careful when giving advice involving travel, attendance, and the use of government resources at an official Navy Birthday Commemoration Ceremony followed closely in time by the Navy Birthday Ball. Consider the following scenario: a Flag Officer is attending an official Navy Birthday ceremony in his official capacity. The official ceremony commences at 1700 and is scheduled to end prior to the start of the Navy Birthday Ball at 1800, which the Flag Officer will attend in his personal capacity, in the same location. Can a Flag Officer use the government vehicle he took to the official ceremony for the return trip once the Ball is over? Under these facts, yes.⁴ The government vehicle is only permitted for travel to and from the official ceremony. However, because the social event immediately follows the official ceremony, he could use the government vehicle to return to work at the conclusion of the social event only because there is no additional cost to the government.

b. **BOOFOO v. Non-BOOFOO Military Balls.** Advice given on command endorsement may depend on the sponsors and/or attendees of the military ball, or tier two social event in the case of the Navy Birthday Ball. There are essentially three categories to consider:

(1) **An NFE-sponsored military ball.** Section 3-209 of reference (b) prohibits explicit or implied endorsement of an NFE event by Department of Defense (DoD) employees in their official capacities. Nor may the titles, positions, or organization names be used to suggest official endorsement or preferential treatment of any NFE, except in limited circumstances. Similarly, in accordance with Part 2635.702(b) of reference (c), personnel should not permit the use of their position or title or any authority associated with their public office in a manner that could reasonably be construed to imply that their agency or the Government endorses an unofficial military ball. However, this prohibition would not apply in the context of endorsing the tier one official ceremony.

³ The Department of Defense, Office of General Counsel released a memo dtd Mar 11, 2015, affirmatively stating that Defense Agencies should not use APF to provide food or light refreshments to personnel attending organizational anniversary commemorations. Because reference (a) does not list cake-cutting as an event that is often included in official Navy Birthday Commemoration Ceremonies, Code 13's guidance is that APF should not be used to purchase cake.

⁴ If the Flag Officer is asked to provide official remarks or is the Guest of Honor at the Birthday Ball, he could also be attending the social portion of the Ball in his official capacity, which would also allow the Flag Officer to use the government vehicle until after his official duties are complete.

a. It would be acceptable for the plan of the week to have a note announcing the date, time, and cost of the NFE-sponsored military ball and provide a point of contact from the military ball committee for service members to contact for more information.

b. However, if the announcements, invitations, and programs contain the command name, the command seal or logo, or some other indicator of the Department of the Navy (DON), this use of DON indicators implies endorsement of the event although the command has not stated in any way they are endorsing the military ball. Use of command names or other DON indicators is governed by reference (d).⁵ Generally, permission from the appropriate authority must be obtained before the use of these indicators. Reference (d) provides guidance for obtaining permission. Should permission be granted, disclaimer language is required on any electronic or printed material that use of the command name, etc., does not imply official endorsement.

(2) If carefully structured, a military ball and committee may qualify for “by our own, for our own” (BOOFOO) status. As discussed in section 3-210(a)(6) of reference (b), the committee must be composed primarily of DoD employees or their dependents and must fundraise solely among their own members for the benefit of their own members or dependents. Unlike the restrictions on the BOOFOO composition for the Navy-Marine Corps Relief Society Active Duty Annual Fund Drive, military ball committees may consist of DoD civilian employees and solicit DoD civilian employees. A military ball structured in this way could be endorsed by the command. For example, a Commanding Officer could endorse the BOOFOO Navy Birthday ball by making an announcement at an all-hands.

(3) A blended NFE and BOOFOO sponsored military ball. When the committee members are not comprised primarily of DoD employees or their dependents, but the committee is rather a blend of both DoD employees/dependents and NFE members, keep in mind that the ability to advertise the ball will be limited to advertising as a matter of common interest per section 3-208 of reference (b). For questions on endorsement, the advice should be the same as that given for an NFE-sponsored military ball.

c. **Fundraising.** In accordance with section 3-210 of reference (b) and reference (e), DoD employees are generally prohibited from fundraising for NFEs in their official capacities, and from officially endorsing or appearing to endorse fundraising drives. While an NFE is free to fundraise in any manner that meets their objective, there are some limitations that DoD employees involved with these committees need to keep in mind. SJAs are cautioned to be vigilant when fundraising activities for military ball committees cross their desk. A few key points:

(1) Fundraising in a Personal Capacity. DoD employees that are members of the NFE are still subject to the Standards of Conduct even when acting in their

⁵ Indicators is a broad term that incorporates all DON registered trademarks and all words, symbols, logos, patches, colors, sounds, seals, emblems, domain names, names of battles, names of ships, aircraft, and other platforms, systems, and technologies, and other officially adopted visual and/or oral displays in use or intended to be used by the DON.

personal capacities. Part 2635.808 of reference (c) allows personnel to fundraise in their personal capacities provided they do not personally solicit a subordinate or any person known to the employee to be a prohibited source. Furthermore, they may not represent the NFE back to the federal government, or state or imply official endorsement of the military ball or that it is an official event.⁶ In addition, general solicitations to large groups are permissible, unless the service member knows or has reason to know that the solicitation is targeted at groups including subordinates or prohibited sources.⁷ Lastly, and perhaps most importantly, fundraising in uniform is strictly prohibited.

(2) Command Endorsement of an NFE Fundraising Event. If a military ball committee attains BOOFOO status (made up primarily of DoD employees and their dependents) and is holding a BOOFOO fundraising event, section 3-210 of reference (b) permits endorsement of the fundraising event. Remember, the fundraising event must be by our own, for our own and among our own. Bake sales, hot dog sales, candy sales, or other events may be held on the Federal Government workplace subject to approval of the commander/commanding officer and other local instructions. For non-BOOFOO fundraising events, section 3-211 of reference (b) does not permit commands to endorse the event or provide logistical support.

(a) Fundraising that is not considered BOOFOO fundraising includes: (1) selling tickets to (or soliciting funds from) more than our own (such as the general public); (2) opening attendance to more than just our own (e.g., general public, local officials, etc.); and (3) sharing proceeds with other than our own (e.g., charities). If opening the event to more than “for our own”, the military ball committee would jeopardize its BOOFOO status and associated ability to hold fundraising events with the support of the command.

(3) Fundraising Off the Installation. Since military ball committees are considered NFEs, holding a fundraising event off the installation is within their discretion. Fundraising off the installation may cause the committee to lose BOOFOO status for that particular event because it is not “among our own.” Also, when doing so, personnel are subject to the limitations in sections 3-209 and 3-211 of reference (b) and, as discussed above, Part 2635.808 of reference (c). Specifically, the NFE may not imply command endorsement of the fundraising event, may not use DON seals and logos (without proper permissions) when advertising their fundraising event, and personnel still may not target subordinates or prohibited sources for funds. For example, the military ball committee may not advertise a car wash as the “SURFLANT Surface Warrior Ball Car Wash.” However, an advertisement that reads “Surface Warrior Ball Car Wash” is

⁶ Unless the fundraising is for a purely BOOFOO military ball. 18 USC § 205 provides an exception if “any cooperative, voluntary, professional, recreational, or similar organization or group not established or operated for profit, if a majority of the organization’s or group’s members are current officers or employees of the United States or of the District of Columbia, or their spouses or dependent children.”

⁷ The Office of Government Ethics (OGE) provides broad guidance on fundraising in personal capacities that appears to permit personnel to solicit large groups even if they have knowledge that a subordinate or prohibited source is a member of that group. However, additional OGE opinions on this topic caution that if large group solicitations target subordinates or prohibited sources, personnel may not allow the use of their name and title. For example, see <http://www.oge.gov/topics/outside-employment-and-activities/fundraising/> and OGE 97X13: Fundraising for a Professional Society.

acceptable.

(4) **Types of Fundraisers.** Military ball committees are exceptionally creative when it comes to fundraising ideas. Common themes include bake sales, car washes, chocolate sales, or flower sales. And then there are the more popular themes:

(a) **Raffles, Bingo, and other types of gambling.** In accordance with section 2-302 of reference (b), gambling is prohibited while on federal government-owned or leased property or while on duty for the government. Gambling requires three elements: (1) a game of chance, (2) consideration for the opportunity to play the game, and (3) an offering of a prize. This includes operating a gambling device (e.g., slot machines), conducting a lottery or pool, or selling or purchasing a numbers slip or ticket. Examples of prohibited activities include, but are not limited to, March Madness brackets, raffles that are pay to play, or Fantasy Football leagues where money or prizes other than bragging rights are exchanged. There are very limited exceptions to the prohibition on gambling (e.g., Navy-Marine Corps Relief Society Active Duty Fund Drive) and generally require approval by the Secretary of the Navy.

(b) **Golf Tournaments.** Golf tournaments (or even bowling tournaments) can be difficult to navigate. Due to the many ethical issues that arise, a separate ethics gram has been devoted to this subject. Please see Ethics Gram 14-03 for guidance on golf tournaments.

(c) **Civilian Clothes Privilege.** Please see Ethics Gram 14-01 on selling civilian clothes privileges. The same guidance applies: it is not permissible to use the privilege of wearing civilian clothes as a method of raising funds.

d. **Advertising the Military Ball.** Since military balls are unofficial, personnel should limit use of official channels – such as government Email and the command’s official social media page – to distribute information about military balls. First, in accordance with section 2-301(a) of reference (b), government communication systems and equipment (e.g., telephones, Email, internet) are for official use and authorized purposes only. Second, using official channels risks the appearance of official endorsement or preferential treatment of an NFE.⁸ Nonetheless, when used properly, several options allow for widespread dissemination by a command:

(1) **Matter of Common Interest.** Pursuant to section 3-208 of reference (b) and in accordance with public affairs regulations, official channels may be used to notify employees of events of common interest sponsored by an NFE. However, the recommendation is that a general disclaimer be added that states that the information provided about the military ball is not an official endorsement by DoD.

(2) **Military Ball Committee is BOOFOO.** When a military ball and committee qualify for BOOFOO treatment, commands have greater flexibility to use official channels to disseminate information about the military ball, committee,

⁸ See ALNAV 056/10, para. 3(I)(8) (prohibiting official internet posts that endorse/promote NFEs).

and related activities (such as information about fundraising events). As stated earlier, reference (b) permits endorsement and support of BOOFOO events.

(3) Distribute information in personal capacity via unofficial channels.

Information may be disseminated in a personal capacity via unofficial channels, such as to and from personal Email accounts. In some cases, cognizant commanders may permit limited use of government equipment for these purposes, provided the commander determines all of the criteria in JER 3-211 are met. This does not include providing command contact lists containing personally identifiable information (PII) to the committee to facilitate advertising. Personal, unofficial communications should be carefully crafted to not state or imply official endorsement. Personnel may identify themselves by rank in personal communications, but may not include their position, title, authority, or organization name.⁹

e. **Official Invitations and Programs.** DoD 4525.8-M, para. C1.4.6, prohibits the use of APF to mail invitations to social functions. Determining whether official stationary and official mail can include information about the Navy Birthday Ball when the Navy Birthday Ball is held in conjunction with the official ceremony is fact dependent and can be complicated. Commanders should discuss in depth with their local Ethics Counselor. A printed program for the official tier one ceremony could include information pertaining to the follow-on tier two social event if there is no/minimal additional cost to the government. However, the program should not have three pages for the tier two event and only one line for the tier one event.

f. **Other Logistical Support.** Since military balls are unofficial events and the committees who plan the events are NFEs, commands may provide only limited logistical support (e.g., facilities, equipment), provided the cognizant commander determines all the criteria in 3-211(a) of reference (b) are met. Otherwise, government resources (including personnel, equipment, and property) must not be used for unofficial purposes and unofficial activities in support of NFEs. As discussed above in paragraph c(2), logistical support for non-BOOFOO fundraising events is not permitted under reference (b).

g. **Funding.** With limited exception, appropriated funds (APF), non-appropriated funds (NAF), and official representation funds (ORF), should not be used for military balls, since they are unofficial functions.¹⁰ As a key exception, and in accordance with Commander, Navy Installations Command Instruction 1710.3, regional and installation commanders who administer MWR programs ashore are permitted to use NAF to support one annual installation-wide Navy birthday celebration event.

(1) Sponsorship. In general, personnel should not solicit or accept

⁹ 5 CFR 2635.702(a)-(c), (e); JER 3-209, 3-300(a)(1).

¹⁰ See, e.g., CNICINST 11000.1, para. 3(e)(4) (directing commands to preclude unauthorized expenditures of APF and NAF to support NFEs); SECNAVINST 7042.7K, para. 9(a)(17) (prohibiting use of ORF for expenses for DoD personnel, or other non-ORF eligible persons in connection with social functions, including Navy Birthday Balls); DoD 4525.8-M, para. C1.4.6 (prohibiting use of APF to mail invitations to social functions); cf. DOD Standards of Conduct Office, Office of General Counsel Memo, Dec 2012 (noting that use of APF for unofficial parties is prohibited).

“commercial sponsorship” of a military ball because this could create an appearance of government endorsement of a NFE. The rules governing commercial sponsorships are generally very restrictive and in almost all circumstances, only the official Morale, Welfare, and Recreation organizations may enter into commercial sponsorships. Co-sponsorship is also generally prohibited per reference (b). Co-sponsorship with NFEs is only permissible for civic/community events (excluding fundraising) or scientific/technical-type events, and only where the requirements of section 3-206 are met. If your command is contemplating a commercial sponsorship, please contact Code 13 with any questions.

5. **Uniforms.** Although uniform regulations generally prohibit wearing uniforms to assemblies that may imply official endorsement of an NFE,¹¹ personnel are generally permitted to wear uniforms to social and informal gatherings of a Navy nature in accordance with the Uniform Regulations. The same is true for reservists and retirees.¹² Caution should be exercised, however, when a military ball involves other NFEs (e.g., co-sponsored), where wearing the uniform could imply endorsement of those NFEs and therefore might be inappropriate.

6. **A Note About Bands.** Use of military bands at military balls can further complicate matters when planning these events. Military bands may play at an event that is a traditional military event intended to foster the morale and welfare of members of the armed forces and their families. This includes unofficial events such as military balls provided that the events are held only for service members, service members and their immediate families, or service members, their immediate families and guests.¹³ In regards to the non-BOOFOO Navy Birthday Ball, the military band would only be available for the tier one official ceremony and not for the tier two social event. For more on military bands, please see SJA Update 09-10.

7. **Points of Contact.** There has been turnover at Code 13. CAPT Eva Loser is onboard as the Division Director and is thrilled to be a Conehead. In Branch 132, Ethics & Standards of Conduct, LCDR Abby Kagle has been relieved by LCDR Bill Lucier. For questions, please contact LCDR Lucier at 703-614-7406 or george.w.lucier@navy.mil, LCDR Deni Baykan at 703-692-2423 or deniz.baykan@navy.mil, LT Kathy Paradis at 703-614-7384 or kathryn.a.paradis@navy.mil, or LT Michael Jones at 703-693-3389 or michael.e.jones7@navy.mil.

¹¹ DoDI 1334.01.

¹² See U.S. Navy Uniform Regulations 61001(2)(b); 61002(2)(a).

¹³ ‘Guests’ has been interpreted to mean immediate guests with whom the service member has a personal relationship.

MILITARY BALLS QUICK REFERENCE

The guidance provided below is not a substitute for legal advice. Commanders should discuss fundraising and hosting military balls in depth with their local Ethics Counselor. If there is not an Ethics Counselor (EC) at your command, ECs are located at Region Legal Service Offices or at the Region Commander's Office.

Key References: Joint Ethics Regulation (JER); 5 CFR part 2635; CNICINSTs 11000.1 & 1710.3, NAVADMIN 095/15.

Background: Military balls are unofficial functions (see NAVADMIN 095/15 for guidance on the Navy Birthday Ball). Committees that plan, fundraise, and execute balls are non-federal entities (NFEs). DoD employees who participate in these committees are acting in their personal capacity. As NFEs, these committees are treated the same as any other NFE and subject to restrictions on endorsement, fundraising, logistical support, and gifts.

Endorsement: DoD employees may not state/imply official endorsement of a ball or planning/fundraising activities. Examples of endorsement:

- Using official position to encourage others to buy tickets, attend the ball, donate etc.
- Giving the ball/committee preferential treatment compared to other similar NFEs/events.
- Using Navy indicators (e.g., command names, logos) without permission and disclaimers.
- Activities that may be permissible:
 - Disseminating information about a ball as a matter of common interest, such as in a plan of the week.
 - If a military ball is a BOOFOO,* commands/personnel may officially endorse the event.

Fundraising and Gifts:

- DoD employees may not fundraise or endorse fundraising drives for balls in their official capacity.
- Personnel may fundraise in purely personal capacity, provided they do not:
 - Personally solicit funds from a subordinate or from anyone known by the employee to be a prohibited source;
 - Solicit or accept, directly or indirectly gifts from prohibited sources (e.g., individuals/companies who seek or do business with the government) or given because of the employee's official position;
 - Solicit in the workplace (may, however, solicit in designated areas on base or in command space with permission from cognizant commander); and
 - Use official title, position, or organization names (may use name, rank, and service).
- If a fundraising event is a BOOFOO event, commands may endorse the event.

Logistical support: If a ball or fundraising event is a BOOFOO, restrictions on providing logistical support to the committee and ball are generally relaxed. For other balls, commanders may authorize only limited logistical support IAW the JER and gov't resources (e.g., equipment, personnel, comms systems, time) beyond the authorized limited support should not be used to plan or conduct the ball.

Sponsorship/Co-Sponsorship:

- Commands/personnel may not solicit or accept "commercial sponsorship."
- Offers of "co-sponsorship" with an NFE should be discussed with an Ethics Counselor.

Funding: CNIC has authorized use of NAF for one region- or installation-wide Navy Birthday Ball. Otherwise, official government funds (APF, NAF, ORF) are not normally used to fund balls.

***BOOFOO ("Buy Our Own, For Our Own"):** If properly structured, balls and planning/fundraising can qualify for BOOFOO treatment. BOOFOOs are composed primarily of DoD employees or dependents and must fundraise solely among its own for the benefit of its own or dependents. Caution: Opening attendance at a ball beyond DoD employees/dependents, fundraising from outside individuals/business, or giving some of the ball's proceeds to another charity could jeopardize BOOFOO status.