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Protecting ROA Access to ROTC Units and Reserve Centers

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9.0—Miscellaneous

12.0—Military criminal justice

Q: I am a Marine Corps Reserve Colonel and a life member of ROA and I am President of our local chapter. I received my undergraduate degree and my commission from our local university and its Naval Reserve Officers Training Corps (NROTC) unit, 25 years ago. I have an excellent relationship with the Professor of Military Science (PMS)—the Navy captain who heads up the NROTC unit. I have had similar relationships with the last two officers who held that position, and our local ROA chapter has for years supported this NROTC unit with special award programs, ribbons and medals, etc.

I recently sent the PMS an e-mail about my plan to pitch ROA to the NROTC midshipmen, and he responded as follows: “I would definitely be interested in having you at one of our drill periods next fall as a distinguished alumnus to discuss your leadership experience and your career in the Reserve! However, I cannot let you come here to ‘pitch’ ROA. My boss has aggressively gone after the practice of granting time to non-federal entities.” He then quoted from a memorandum put out by his Immediate Superior in Command (ISIC), as follows:

“I have received quite a few calls requesting guidance regarding outside agencies (e.g., AUSN, USAA, Abbott Tailors, ...) wanting to ‘visit’ units and ‘talk’ to [NROTC] battalions. Ethics regulations prohibit us from endorsing (or appearing to endorse) any non-federal entity (NFE) event, product, service or enterprise. An NFE is defined as a ‘self-sustaining, non-federal person or organization established, operated, and controlled by any individual(s) acting outside the scope of any official capacity as officers, employees or agents of the Federal Government.’ USAA, AUSN, NFCU and commercial entities such as Abbott Tailors all come within this definition and are NFEs. The fact that many of these NFEs have ‘Navy’ in their names or that they are led by retired, high ranking military officers may cause them to appear official, but they are not. Granting access to these entities so they can promote their products or services violates the prohibition against endorsement.”

With all that our local ROA chapter and I personally have done for this NROTC unit, I think that we have the right to address the NROTC midshipmen and to solicit them to join ROA. What do you think?

A: First, let us say that here at ROA headquarters we would much prefer that state departments and local chapters concentrate scarce time and resources on junior officers serving in the Reserve Components (RC), and not on ROTC and NROTC cadets and midshipmen. The word “Reserve” in ROTC is a misnomer, since virtually all of these young men and women will be going on regular active duty at least for five years after graduation and commissioning.

The \$20 per year membership for ROTC, NROTC, and service academy cadets and midshipmen is a money-losing proposition, and very few cadets and midshipmen become regular dues-paying ROA members after commissioning. When they complete their initial active duty periods (typically five or six years), that is the time to solicit them to join ROA, not when they are in college. The money spent by ROA chapters and departments to send ROTC and NROTC cadets and midshipmen to ROA meetings like the National Security Symposium is a noble but questionable investment. This money could be redeployed at a higher return if it were invested in sponsoring company grade (O-1 to O-3) officers who are actively participating in the Reserve Components. These officers know why they volunteered to serve in the Reserve and they deserve the support of ROA departments and their chapters.

Whether we are speaking of your local ROTC or NROTC unit or your local Reserve Center or Naval Operational Support Center, the access issue is always going to be difficult. It is simply not permissible for a commander to allow an organization such as ROA to gain access to a military facility to speak to military members in a “captive audience” *for the purpose of soliciting members*.

We find that the memorandum quoted by your local NROTC PMS accurately summarizes sections 3-209 and 3-210 of the *Joint Ethics Regulation (JER)*, which read as follows:

3-209. Endorsement. ***Endorsement of a non-Federal entity, event, product, service, or enterprise may be neither stated nor implied by DoD or DoD employees in their official capacities and titles, positions, or organization names may not be used to suggest official endorsement or preferential treatment of any non-Federal entity except those listed in subsection 3-210., below.*** DoD employees may use or allow the use of their titles, positions, or organization names in conjunction with their own names only to identify themselves in the performance of their official duties. Use of titles, positions, and organization names when acting in a personal capacity is covered by subsection 3-300., below. Offering group life insurance programs sponsored by the State Military Department, to the same extent and similar manner as offering of the Servicemen’s Group Life Insurance (SGLI) program, is not an endorsement of a non-Federal entity in violation of this Regulation.

3-210. Fundraising and Membership Drives

a. DoD employees shall not officially endorse or appear to endorse membership drives or fundraising for any non-Federal entity except the following organizations which are not subject to the provisions of subsection 3-211 of this Regulation, below:

DoD 5500.07-R, sections 3-209 and 3-210 (emphasis in original).

Section 3-210 lists organizations like the Navy-Marine Corps Relief Society and Army Emergency Relief. ROA is *not* on this list of excepted organizations. The legal maxim *expressio unius est exclusio alterius* applies. That maxim has been defined as follows: “Expression of one thing is the exclusion of another. ... Mention of one thing implies exclusion of another. ... When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred. ... Under this maxim, if a statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded.” *Black’s Law Dictionary, Revised Fourth Edition*, page 692 (citations omitted).

The bottom line is that if the drafters had intended ROA to be included among the organizations that DoD entities are permitted to endorse, the drafters would have included ROA in this list, or at least they would have included language specifying that the listing of specific organizations should not be read as excluding other organizations with similar good purposes.

The JER is a lawful general order. That means that an active duty service member can be tried and convicted by court martial of violating this order, and it is not necessary for the prosecution to prove that the defendant had actual knowledge of the order. The JER is published and readily available on-line. Those who are subject to the JER have the responsibility to familiarize themselves with it and to comply. Please do not ask your local ROTC or NROTC PMS or reserve center commander to ignore the JER and to permit you to come on board *for the purpose of soliciting memberships*.

Of course, the PMS or reserve center commander is permitted and encouraged to allow knowledgeable speakers to address military personnel about topics that are directly pertinent to their military service, and that can certainly include ROA officers and members. At the end of a pertinent and worthwhile presentation on leadership or other military-relevant topics, you can include a *subtle* “and we encourage you to learn more about ROA by visiting our website” sentence. We are working with on presentations that ROA members can give to reserve units.

Our Member Development Department also has a program to place ROA informational kiosks in reserve centers. We need help from ROA chapters and departments to get these kiosks placed and then to monitor them on a monthly basis to ensure that the kiosks have an adequate supply of ROA information materials and that the kiosks have not been vandalized or removed. If you can help us with the kiosk program, please contact Colonel Holahan at WHolahan@roa.org.

If ROA is to survive into the next generation, we need to recruit and retain a new generation of serving members and leaders. Otherwise, ROA will wither and transform into another inconsequential veteran entitlements and benefits organization. But we need to be smart as well as diligent in our recruiting efforts. The JER and its restrictions on membership solicitation for private associations is part of the environment with which we must deal. Carping about “those darned JAGS” serves no useful purpose and probably makes it more difficult for us to reach out and recruit new, younger members whose experience with JAGs is far different than our own just as our own past experience with rules of engagement is far different from today’s serving Reservists.

If we are to have a major effort to recruit serving reservists through their drill sites, we need to carefully consider opening our membership to enlisted Reservists, because more than 85% of serving Reservists are enlisted. A constitutional amendment to permit enlisted service members to join ROA will be considered at our national convention in August.