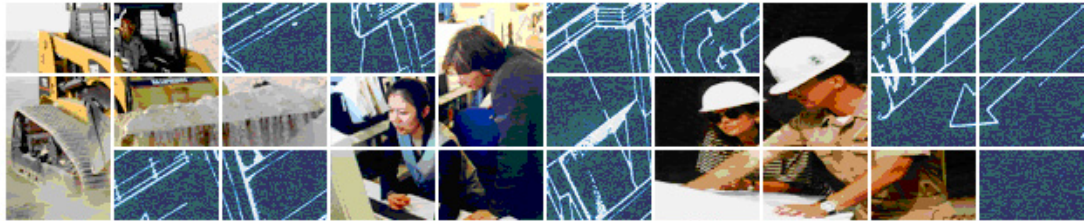


# SOCIETY OF AMERICAN MILITARY ENGINEERS



## Primer on Federal Ethics Standards *as related to SAME*

### Introduction

This primer is intended to provide general guidance regarding participation by DOD personnel and others within the federal government in the Society of American Military Engineers (SAME). It is not intended to be complete, and it does not have the approval of DOD or any of the uniformed services. It was provided to the engineering elements of the uniformed services for review and comment. If DOD personnel have questions or concerns about their activities with SAME, they should consult with their leadership or their organizations' ethics advisors.

Ethics standards and implementation of those standards for the Department of Defense are vested with (1) the United States Office of Government Ethics ("OGE"), which publishes ethics standards for the executive branch of government, (2) the DOD Standards of Conduct Office ("SOCO"), which is charged with the responsibility of coordinating the ethics programs of the military departments, (3) DOD component Designated Agency Ethics Officials ("DAEO"), who are designated as the senior ethics officials within each military department, and (4) a DOD Ethics Oversight Committee ("EOC"), comprised of the DAEOs, which considers current ethics issues and provides recommendations to the DAEOs on particular issues. Every individual employed by DOD should know that there is an ethics advisor designated for every DOD organization and office.

The primary standards of ethical conduct for DOD personnel are set forth in the Department of Defense Joint Ethics Regulation ("JER"). The JER was first issued in August 1993 (under the authority of DOD Directive 5500-7, "Standards of Conduct") and has since been revised four times, with the last revision on September 6, 1998. The JER is nearly all-inclusive in that it incorporates most laws, Executive Orders, codes and standards of ethics pertinent to DOD. It applies (almost) equally to those in uniform and those in the civil service.

There are two fundamental distinctions particularly pertinent to SAME that are drawn in the JER. One is the distinction between activities undertaken by DOD personnel in an "official capacity" and activities undertaken in a "personal capacity." There is a grey area overlapping between the two, and activities that have the appearance of being undertaken in an official capacity will be deemed to be in that capacity. The nature of the relationship guides the permissible activities. Much can be done by government personnel in their personal capacities, whereas there are restrictions on "official capacity" activities.

The other fundamental distinction pertinent to SAME activities is the distinction between federal entities and non-federal entities. “Non-federal entities” encompass “private organizations.” SAME is a “private organization” and therefore is classified as a “non-federal entity” by the JER. The JER has a full chapter entitled “Activities with Non-Federal Entities,” and it is most pertinent to the relationship between DOD personnel and SAME.

Ethics standards alone do not define the parameters of the relationship between DOD personnel and entities such as SAME. Consideration also has to be given to public affairs community relations policies. DOD policy states that there be community relations activities having a principal goal of increasing public awareness of the DOD mission, including its programs, facilities, personnel and equipment, (DOD Directive 5410.18, ¶ 4.1.1.1). This includes the fostering of relations with elements of the public upon which the military services rely for support and cooperation, (DOD Directive 5410.18, ¶ 4.1.3.1). These public relations activities must fit within the JER, but there is an overlap between public affairs policies and ethics regulations that promote cooperation between DOD organizations and personnel and private organizations such as SAME that promote DOD.

### **Society Membership**

DOD personnel may join SAME as members, (JER 3-301). In fact, individuals are encouraged to participate in activities that enhance their professional or personal development or enhance the local military or civilian community. SAME does that for those involved in national security and military engineering. As individual members, they must join personally and be responsible for membership dues, (JER 3-201 b; 5 USC §5946).

There are two exceptions to this. An individual can serve as a “liaison” to a private organization such as SAME at the national, regional or local level by appointment by the head of his command, (3-201 a). Such service will be considered part of that individual’s official duties, (JER 3-201 a). However, as a “liaison,” that individual may only serve in an advisory capacity and may not participate as an officer or board member in the management or control of SAME, (JER 3-201 a). His/her role is to represent his command, and in that role, it is appropriate that an appointed liaison keep SAME informed of the command’s programs, priorities and concerns and vice versa.

The second exception involves public agency membership. Public agency membership, with dues paid by the government, is permissible when such membership furthers the mission of the agency or organization, (24 Comp. Gen. 814). In such cases, the agency should decide on those individuals whose membership in SAME would most benefit the government. The membership belongs to the agency and not to the individuals, and therefore, the agency has the prerogative of changing the agency representatives at any time.

In summary, individuals are free to join SAME as individual members without restriction. Furthermore, membership in organizations that will enhance the individual’s professional life or the local military community is encouraged. And finally, federal agencies and organizations are permitted to join SAME and derive benefit from the association.

### **Attendance at Society Meetings and Events**

The ethics rules permit attendance at meetings and events in an “official capacity” at government expense when there is a legitimate government purpose such as training and education or gathering of information of value to the government, (JER 3-200 a). The use of government funds for travel is permissible where participation is undertaken in an official capacity. The rules governing travel

approval and reimbursement must be satisfied. The travel approving authority must be someone other than a member of SAME, (JER 3-203; JER 3-300 d).

Beyond attendance in an “official capacity,” DOD personnel may attend SAME meetings and events, without restriction, on their own time and at their own expense in their personal capacities. The JER promotes the granting of excused absences or administrative leave for voluntary participation in the activities of organizations such as SAME where there may be some benefit to the individual’s work or to the agency. The JER has specific provision for the authorization of excused absences for employees to participate in the activities of “professional associations and learned societies,” such as SAME, (JER 3-300 b).

Reduced attendance fees for public sector members are permissible as long as the reduced charges are offered to all government members, (5 CFR §2635.204 c). The acceptance of food and entertainment is also permissible where no attendees are charged for food or entertainment, (5 CFR § 2635.204 h), or where the value of the food and entertainment is \$20 or less.

Leave is treated differently for military and civilian personnel. Military are considered on duty at all times and have latitude in the nature of time off for attending luncheons and meetings or presentations. Civilians normally charge their work hours to projects or overhead or otherwise account for their work hours. Where the meeting topic benefits the organization or the employee’s professional development, leave is not normally required, but individuals would follow their organization’s policies on charging their time for such training activities, or work an extended day that allows for attendance without charging time to the government.

Personnel may also attend as a participant “widely attended gatherings” sponsored by SAME free of charge, as long as a supervisor or ethics counselor determines such attendance to be in the interests of the agency or command, (5 CFR §2635.204 g). An event is considered a “widely attended gathering” as long as at least 100 attendees, including industry and government representatives, are expected to attend and the fee charged for attendance is \$285 or less. This includes such things as award dinners and luncheons, and technical symposia (including dinner and cocktails). Free attendance also can extend to spouses or guests as well where the event is otherwise open to spouses or guests. If the value exceeds \$250, gift reporting requirements must be met.

### **Participation in Society Meetings and Events**

The rules regarding active participation at SAME functions and meetings are similar to the rules for attendance. DOD personnel may participate as speakers or panelists in their official capacities with some limitations meeting government public affairs guidelines, (JER 3-207). As official duty, official travel is also normally authorized. When in “official capacity,” government equipment and administrative support to the DOD participant can also be made available, (JER 3-300 b). Thus, the participant may use an assistant to help with a presentation and may use government equipment for that presentation. Similarly, to a limited degree, government personnel, equipment and support services may be utilized for preparing papers to be presented at SAME events in an “official capacity.”

However, should the support become extended, it will be considered “logistical support,” in which case certain findings are required to be made by the head of the command. These findings include (1) the support will not interfere with performance of official duties, (2) the support serves community interests, (3) the support is appropriate for DOD to associate itself with, (4) the event being supported is of interest and benefit to the local civilian community or to the command itself, (5) similar support would be provided to other requesting organizations, and (6) where the support is more than “incidental,” admission fees will not produce a profit, at least for that portion of the event for which the

support is provided, (JER 3-211). If the logistical support becomes “substantial,” the command may be considered a “co-sponsor,” which is permissible only as approved by the military department, (JER 3-206).

The rules are different for participation in a personal capacity. In those circumstances, there can be no use of government logistical support or resources (such as secretaries, military aides or equipment) for example, to prepare presentations, speeches or papers, (JER 3-305 b). Travel costs likewise are at personal expense. The presentation of policies, programs and agency positions should normally be given in an “official capacity,” but if given in a personal capacity they should be accompanied by “disclaimers” to the effect that what is being presented are the views of the individual and not those of the agency, (JER 2-207; JER 3-307 a). Presentations on military matters or national security issues should be pre-cleared by appropriate security and public affairs offices, (JER 3-307 b).

### **Participation in the Management of the Society**

DOD personnel may not participate as officers or board members of SAME in their “official capacities” without the prior approval of the military department Secretary and the DOD General Counsel, (JER 3-202). However, they may fully participate in their “personal” capacities as long as that participation is outside the scope of their official positions, (JER 3-301). As an officer of SAME in his/her personal capacity, the officer also may accept voluntary assistance, again in a personal capacity, from others such as younger staff members or junior officers.

DOD personnel may not serve as officers or board members of SAME where they are appointed on the basis of their government official positions even if they serve in a “personal capacity,” (JER 3-301). Such appointments are considered as giving rise to service in an “official capacity.” However, if elected to serve as officers or board members through the election process, such service is considered “personal” rather than official and is allowable.

Related to that, military members may use their rank and component designation in connection with their SAME activities, but they may not refer to their official positions or use the authority associated with those positions, (JER 3-209; JER 3-300 a).

In summary, DOD personnel may serve as SAME officers or directors outside their official duties and in their “personal” capacities when elected to such positions.

### **Endorsement of the Society**

DOD personnel are free to endorse SAME as long as such endorsements are made in a “personal” capacity. Retired personnel have this same latitude immediately upon retirement, since upon retirement, they no longer occupy “official” positions within DOD. There is no time period from retirement in which such activities are precluded.

DOD personnel may not endorse SAME, including membership, event attendance or fund raising, in their “official” capacities or when such endorsements would have the appearance of being “official” endorsements, (JER 3-209). They may lead by example, however, by their own attendance and participation.

Government offices may release information about SAME events through official channels such as email bulletin boards and newspapers or magazines when it is considered that such information is of value or benefit to the office employees and the opportunity to disseminate such information is provided for other organizations of interest to the office as well, (JER 3-208).

### **Fundraising**

DOD personnel may participate in fundraising events in their personal capacity, but there can be no suggestion of “official” endorsement, (JER 3-210; JER 3-300 a). When so doing, official titles and positions of DOD personnel may not be used, (JER 3-300 a). If charges for attendance at an event exceed \$200 a day, the event is considered to be a fund-raising event unless it can be shown that the event is not-for-profit. This is a per day figure. If an event is considered fund-raising, there can be no DOD support provided to the event.

### **Conclusions**

The ethics rules and regulations exist and should be understood by both DOD personnel and private sector individuals in positions of responsibility in SAME. It is the intent of this primer to provide SAME leaders at all levels with an understanding of government ethics regulations and their impact on SAME activities. While the ethics rules limit some activities, they also promote participation of DOD personnel in private organizations such as SAME that benefit them professionally and benefit their organizations. SAME is proud of the benefits it provides to the military departments, the uniformed services and its members. Let's all work together to ensure we comply with these ethical standards.