



COMDTINST 12310.3B
30 April 2014

COMMANDANT INSTRUCTION 12310.3B

Subj: RESTRICTIONS ON THE EMPLOYMENT OF RELATIVES AND ADVOCATING FOR THE EMPLOYMENT OF RELATIVES

- Ref: (a) 5 U.S. Code (USC), § 3110, Employment of Relatives; Restrictions
 (b) 5 Code of Federal Regulations (CFR) § 310, Employment of Relatives
 (c) 5 CFR § 2635, Standards of Ethical Conduct for Employees of the Executive Branch; Subparts D, E, G,
 (d) 5 USC § 2302, Prohibited Personnel Practices
 (e) 5 USC § 2108, Veteran; Disabled Veteran; Preference Eligible
 (f) Executive Order 11222, Prescribing Standards of Ethical Conduct for Government Officers and Employees, May 8, 1965
 (g) 5 CFR § 735, Employee Responsibilities and Conduct

- PURPOSE.** This Instruction provides guidance on interpreting restrictions contained in references (a) through (g) on both the employment of relatives and advocating for the employment of relatives to a civilian position.
- ACTION.** All Coast Guard unit commanders, commanding officers, officers in charge, deputy/assistant commandants, and chiefs of headquarters staff elements shall comply with the provisions of this Instruction. Internet release is authorized.
- DIRECTIVES AFFECTED.** COMDTINST 12310.3A, Restrictions on Employment of Relatives, is hereby cancelled.

DISTRIBUTION – SDL No. 163

	a	b	c	d	e	f	g	h	i	j	k	l	m	n	o	p	q	r	s	t	u	v	w	x	y	z
A	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x		x		x					
B	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x
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D	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x	x			x
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NON-STANDARD DISTRIBUTION:

4. SCOPE. This Instruction applies to:
 - a. Civilian employees
 - b. Military members who serve as public officials for civilian employment and advancement purposes, and
 - c. Non-appropriated fund (NAF) employees who serve as public officials for civilian employment and advancement purposes

5. BACKGROUND AND DISCUSSION. Reference (a) broadly prohibits any public official from advocating for the employment of a relative to any position within an agency in which they serve, exercise jurisdiction over, or perform a supervisory or oversight role.
 - a. The law further specifies, “an individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay,” but does not prohibit the appointment of “preference eligible” relatives when passing over that individual would result in the appointment of a non-preference eligible person.
 - b. Reference (b) contains the Office of Personnel Management (OPM) implementing regulations for reference (a) and allows the temporary emergency employment of relatives in the case of a national emergency or other unforeseen circumstances, not to exceed 30 days, with one additional 30-day extension granted by the implementing agency if emergency conditions warrant a continuance.
 - c. Reference (c) contains provisions relating to the proper use of official time and authority, non-public information, and government resources to which an employee has access because of Federal employment in order to ensure Federal employees avoid the appearance of misusing their official position for their own private gain.
 - d. Reference (d) defines advocating for the appointment, employment, promotion, or advancement of a relative as one of the prohibited personnel practices; specifies the responsibilities of agency heads and those appointed to positions involving personnel management; and describes the various legal remedies available for victims of discrimination, retaliation, and unfair labor practices with respect to the employment of relatives.
 - e. Employment of Relatives. The employment of relatives (as defined in paragraph 6) by public officials within the same chain of command is prohibited. The employment of relatives within closely related, unit-level organizations must be reviewed and approved by Commandant (CG-1211) before an offer of employment is extended. The following fictional examples of closely related, unit-level organizations describe working situations that should be avoided.

Example 1: Christopher and Katherine are married. Christopher is a senior contract specialist working at the SILC COCO for Base Support Services (BSS) in Norfolk, VA. His wife, Katherine, is offered a position as a contract specialist at Base Portsmouth, VA. As a senior contract specialist at the SILC COCO for BSS, Christopher may determine,

approve, or influence contractual approvals that could benefit the work by his spouse at Base Portsmouth. Additionally, Christopher would be in the same chain of command, since the Base shops report for performance up through the SILC COCO BSS. A contract specialist at a Base (Katherine) would likely have many issues raised up to the SILC COCO level.

Example 2: Melissa is a LCDR working as the Sector San Francisco Inspections Division Chief. Her brother, Keith, is a GS-12 Marine Investigator at Sector San Francisco. Inspections and Investigations are separate divisions under the Prevention Department at the Sector. However, as the Inspections Division Chief, the LCDR may be tasked to serve as the Acting Prevention Department Chief. In this instance, the military supervisor (Melissa) must exclude herself as Acting Prevention Department Chief. As acting Department Chief, she could potentially make resource decisions or other program decisions that could benefit her sibling.

- f. Advocating for Employment. Managers, supervisors, public officials, team leaders, employees, and human resource advisors must scrupulously avoid even the appearance of using their influence to circumvent prohibited hiring practices and the regulations regarding the employment of relatives.
6. DEFINITIONS. For the purposes and applicability of this Instruction, the following definitions apply:
- a. Relatives: A relative is a public official's father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister.
 - b. Public Official: A "public official," as defined in 5 U.S.C 3110, is anyone (including Coast Guard military personnel or personnel of another military service assigned to the Coast Guard) who by law, rule, regulation, or delegation has authority "to appoint, employ, promote, or advance individuals, or to recommend individuals for appointment, employment, promotion, or advancement in connection with (civilian) employment in an agency" (e.g. team leaders, civilian human resource specialists, civilian personnel liaisons/resources coordinators, etc.).
 - c. Supervisor: The individual responsible for rating the performance of his or her employees is defined as a public official for the purposes of this Instruction.
 - d. Chain of Command: The succession of commanding officers/supervisors from superior to subordinate through which command or supervisory control is exercised.
 - e. Agency: Describes the Department of Homeland Security (DHS) and each of its operating components, including the Coast Guard.
 - f. Employee: Any civilian employee of the DHS.

- g. Preference Eligible: A veteran discharged or released from active duty in the Armed Forces under honorable conditions; a disabled veteran; the unmarried widow or widower of a veteran; the wife or husband of a service-connected disabled veteran if the veteran is unable to qualify for any appointment in the civil service or in the government of the District of Columbia; the mother of an individual who lost his/her life under honorable conditions while serving in the armed forces; the mother of a service-connected permanently and totally disabled veteran, or a veteran who was discharged or released from a period of active duty by reason of a sole survivorship discharge. See reference (e) for additional qualifications and restrictions.
- h. National Emergency: An unforeseen natural or man-made event, national in scope, declared by the President or Congress that endangers the safety, security, or stability of the United States and requires a national program specifically intended to address or mitigate the event.

7. RESPONSIBILITIES.

- a. The Chief of the Office of Civilian Human Resources, COMDT (CG-121), is responsible for providing public officials information regarding restrictions on employment of relatives and, when necessary, procedural guidance to avoid potential violations.
- b. Coast Guard members meeting the definition of a public official (e.g. supervisors, team leaders, management officials, etc.) shall familiarize themselves with guidance in this Instruction and comply with its provisions.
- c. Employees reassigned or promoted to a supervisory, team leader or management position, shall immediately notify their supervisor and command staff advisor (CSA) of any relatives working in their chain of command or a closely related, unit-level organization.
- d. Whenever a relative is reassigned within a public official's chain of command, the official must promptly notify their supervisory chain of command and Commandant (CG-121) of this occurrence to ensure resolution within 60 calendar days.

8. POLICY RESTRICTIONS.

- a. Advocacy. A public official shall not advocate the appointment, employment, promotion, or advancement of a relative to a civilian position anywhere in the agency in which he or she serves or where that official exercises any jurisdiction or control. A public official is considered an advocate of appointment if he/she recommends or suggests an individual for appointment, either orally or in writing.
 - (1) A public official advocates selection if a relative is referred for consideration to one of the official's subordinates, i.e., to someone lower in the chain of command.

- (2) A supervisor is prohibited from supervising a relative in his/her chain of command regardless of the number of supervisory levels between them. A relative cannot be hired in a geographically-detached duty location, if they are within the supervisory chain of command.
- (3) A public official's referral for consideration is an action that indicates an interest in securing or facilitating a relative's information for appointment, employment, promotion, or advancement.
- (4) A public official must not respond to a request for an employment recommendation or a request to advocate or plead the case of employment, promotion, or advancement for his or her relative. For example, issues of impropriety may extend beyond strict chain of command relationships. The perception of an unethical hiring/advocacy action or of a *quid pro quo* agreement between hiring officials in different unit-level organizations must be avoided, and any actions creating such a perception are prohibited.
- (5) A public official may not supervise, rate, or review the performance of a relative.
- (6) The Standards of Ethical Conduct for Employees of the Executive Branch, as set forth in references (c), (f), and (g), prescribe several conflict of interest statutes and regulations, that prevent federal employees from engaging in, or appearing to engage in, a particular matter that may have a direct and predictable effect on the financial interests of themselves or certain relatives (including a same-sex spouse), members of the employees household, or others with whom they are affiliated in a non-governmental capacity. Additionally, references (f) and (g) prohibit employees from using their public office for their own private gain or for the private gain of friends, relatives, or persons with whom they are affiliated in a non-government capacity, or for the endorsement or any product, service, or enterprise. Therefore, given the expansive nature of the conflict of interest laws and regulations, a Coast Guard employee should avoid the appearance that he/she is using his/her position to influence an official to hire or promote a relative. For example, it is unethical for a Coast Guard employee to advocate or promote the employment or advancement of a relative for a permanent or temporary civilian position. Sending or promoting the application of a relative to a selecting official or other official is also prohibited. Questions relating to the specific application of the various conflicts of interest laws and regulations should be referred to the servicing legal office.

b. Hiring and Promotion Actions.

- (1) A public official in the Coast Guard shall not appoint, employ, promote, or advance to a civilian position:
 - (a) One of his or her relatives, or
 - (b) The relative of any other public official in the agency if that official has

recommended or advocated the action

- (2) Anyone involved in the selection process cannot use his or her authority to review applications or otherwise recommend, or advocate for the employment of a relative.
- (3) A relative of a public official may not be promoted if the public official was a member of the promotion panel that selected the relative for promotion unless the public official asked to be disqualified and did not participate in the decision affecting the relative.

c. Supervision of Subordinates. A relative of a Coast Guard public official cannot be assigned to any position where the public official may directly or indirectly supervise, control, or influence the work or employment status of the relative, or the affairs of the organization in which the relative is employed.

- (1) Supervision, in this sense, is not limited to authority to appoint or promote, or to recommend appointment or promotion, but extends to such factors as: developing, approving, or reviewing performance appraisals, setting work hours, granting leave, assigning work, controlling resources, or controlling contracts.
- (2) Regardless of the organizational standing and location of the employee within the chain of command, supervisor-employee relationships (or team leader-employee relationships) between military or civilian relatives are similarly prohibited.

9. SELECTION OF RELATIVES FROM CERTIFICATES OF ELIGIBLES.

a. Preference Eligibles.

- (1) In accordance with reference (a), restrictions in this Instruction do not apply to the appointment in the competitive service of a relative who is a preference eligible candidate if:
 - (a) The relative's name is within reach for selection from an appropriate Delegated Examining Unit or Office of Personnel Management (OPM) certificate of eligibles
 - (b) An alternative selection cannot be made from the certificate without passing over the preference eligible candidate and selecting a person who is not a preference eligible candidate.
- (2) A public official cannot later promote or advocate the promotion of a relative who is appointed under the provisions of paragraph 9.a. (1) above. The exemption provision applies to appointments only.

b. Non-preference Eligibles. Appointing officials may not consider a non-preference eligible on a certificate if appointment of the eligible is prohibited by the restrictions in this Instruction. The appointing official should consider the next available eligible instead.

10. EMERGENCY EXCEPTIONS. Reference (a) allows a Coast Guard public official to temporarily employ relatives when necessary to meet urgent needs resulting from an event posing an immediate threat to life or property, or a national emergency as defined in paragraph 6. Temporary appointments under these conditions are not to exceed one month, but may be extended for a second month if the emergency need still exists.
11. CONFLICT OF INTEREST. An agency may otherwise prohibit the employment of relatives if it can justify this prohibition on conflict of interest grounds pursuant to reference (f), reference (g) (governing employee conduct), or other reasons that might adversely affect the public confidence in the integrity of government or otherwise interfere with the orderly operation of the agency's mission.
12. PENALTIES. Reference (a) prohibits payment to persons employed in violation of that section, and by regulation these payments are subject to recovery. Disciplinary actions, up to and including removal, may be taken against public officials who violate Federal regulations and Coast Guard policies, that prohibit the appointment of or advocacy for the advancement of relatives.
13. RECORDS MANAGEMENT CONSIDERATIONS. This Instruction has been evaluated for potential records management impacts. The development of this Instruction has been thoroughly reviewed during the directives clearance process, and it has been determined there are no further records scheduling requirements, in accordance with Federal Records Act, 44 U.S.C. 3101 et seq., National Archives and Records Administration (NARA) requirements, and the Information and Life Cycle Management Manual, COMDTINST M5212.12 (series). This policy does not have any significant or substantial change to existing records management requirements.
14. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.
 - a. The development of this directive and the general policies contained within it have been thoroughly reviewed by the originating office and are categorically excluded under current Coast Guard categorical exclusion (CE-1) from further environmental analysis, in accordance with section 2.B.2. and figure 2-1 of the National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1 (series).
 - b. This directive will not have any of the following: significant cumulative impacts on the human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment.

All future specific actions resulting from the general policies in this Instruction must be individually evaluated for compliance with the National Environmental Policy Act (NEPA), Council on Environmental Policy NEPA regulations at 40 CFR Parts 1500-1508, DHS and Coast Guard NEPA policy, and compliance with all other environmental mandates. Environmental considerations were examined in the development of this directive and have been determined to be not applicable.

15. FORMS/REPORTS. None.

D. A. NEPTUN /s/
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Assistant Commandant for Human Resources