

FAIR HIRING - AND AVOIDING THE IG INVESTIGATION

Key References: 5 U.S.C 2301 and 5 U.S. C. 2302

Background: Over the past several years NAVIG has had to look at a number of questionable senior civilian recruitments and hires (GS-14 and above) that occurred at activities around the globe. Based on those actions, I thought a few words on the basics in hiring senior people might be helpful.

Key concepts: All civil service actions, including hiring, are based on the Merit System Principles codified at 5 U. S.C. 2301, which states: *Recruitment ...selection and advancement should be determined solely on the basis of relative ability, knowledge and skills after fair and open competition, which assures that all receive equal opportunity.*

Further on it states: *All employees and applicants should receive fair and equitable treatment in all aspects of personnel management.*

In the follow on section (5 U.S.C. 2302) the law proscribes as a prohibited personnel practice the granting of: *...any preference or advantage not authorized by law, rule, or regulation to any employee or applicant for employment...for the purposes of improving or injuring the prospects of any particular person for employment.*

Factors to consider: Although these rules seem understandable and straightforward the number of cases we have seen involving potential violations of these rules argues otherwise. The following practical points are offered for your consideration as you begin the process of recruiting and selecting a senior civilian. Many of these areas of concern are especially pertinent when a retiring officer is an applicant for the position.

1. Applicants should not be involved in writing or reviewing Position Descriptions (PDs), Knowledge, Skills and Abilities (KSA) or job announcements.
2. PDs or KSAs should not include unusual requirements or restrictions, e.g., requiring a unique degree that coincidentally the retiring captain has.
3. Job announcements should be advertised widely and for a reasonable period of time – an advertisement on an OPM job site will be seen by more than if it is only posted on the command website.
4. Area of consideration should seek to maximize the number of applicants, e.g., nationwide consideration will obviously expand the potential field of applicants beyond an advertisement limited to the National Capital Region.
5. PCS costs should be provided, if necessary to attract competitive applicants.
6. Pay attention to the number, quality and geographic diversity of the applicants.
7. Pay attention to the composition and independence of the rating panel. This is a particular concern when a retiring senior officer in the command is an applicant.
8. Ranking of applicants should be reasonable.

Analysis: Since the goal is to maximize the number of quality applicants to choose from, the process from start to finish should be designed to do just that and to place restrictions only where necessary to meet external mandates, budgetary constraints and emergency conditions. Commanders, Commanding Officers and other deciding officials need to establish at the very beginning of the hiring process that they expect the rules to be followed and that no one should receive special consideration. As in all situations, senior officers need to recognize that staffs do their best to accommodate the perceived desires of the “boss.” In the hiring process, the HRO rightfully aims to provide maximum customer satisfaction. This can lead to problems, if the “boss” in anyway suggests who he or she might like to see selected. For the reality is, the system has enough flexibility in it that a clever personnel specialist can manipulate it in such a way that the desired applicant will be selected. Even when this is accomplished within the rules, the spirit of the Merit System is violated and morale at the command may suffer.

Conclusion: These problems can be minimized if the deciding official clearly states that he or she expects the process to be run fairly for all involved and that there are no favorites or expected outcomes. The process, despite the confidential aspects of reviewing, ranking and recommending based on an examination of material protected under the Privacy Act, must be transparent, promoting confidence in its fairness through a public and private commitment by the Commander to Merit System Principals.