



Department of Veterans Affairs Office of Inspector General

Administrative Investigation Conduct Prejudicial to the Government and Misuse of Position in the VA Office of General Counsel Washington, DC



DEPARTMENT OF VETERANS AFFAIRS
Office of Inspector General
Washington, DC 20420

TO: VA General Counsel

SUBJECT: Administrative Investigation – Conduct Prejudicial to the Government and Misuse of Position in the VA Office of General Counsel Washington, DC (2016-03330-IQ-0005)

Purpose, Finding, and Impact

On April 29, 2016, the VA Office of General Counsel (OGC) asked VA's Office of Inspector General (OIG) to investigate allegations that Mr. John Thomas Burch, Jr., a GS-14 General Attorney and Deputy Director of OGC's Homeland Security and Operations Division, used his official position for private gain, misused Government property, and misused official time in connection with his outside employment as President of a non-profit charity organization, National Vietnam Veterans Foundation, Inc. (NVVF). This request came after Cable News Network (CNN) contacted VA and inquired about Mr. Burch's employment status as an attorney, and disclosed that they were researching a story involving Mr. Burch and NVVF. As discussed in more detail below, we found that Mr. Burch engaged in conduct prejudicial to the Government, used his public office for private gain, and misused Government resources.

The OIG also worked in collaboration with the New York Office of the Attorney General Charities Bureau (NYAGCB), sharing evidence that resulted in Mr. Burch admitting he breached his fiduciary duties to NVVF, and used NVVF funds for his personal benefit. Our investigation also found that Mr. Burch used his public office for private gain, and misused Government property and resources. As an attorney and supervisor with the VA OGC, Mr. Burch is held to a higher standard of conduct and is expected to put the interests of VA, as well as the veterans it serves, first and foremost. However, Mr. Burch's conduct, as described in this report, only served to tarnish VA's reputation and diminish the trust of veterans, which is paramount to the success of the Department.

Objective, Scope, and Methodology

To assess the allegations, we interviewed Mr. Burch; four of his current and former supervisors; five current and former direct reports; five members of a VA committee on which Mr. Burch was also a member; five current and former officers, directors and employees of NVVF; and other current and former VA employees. We also forensically examined the contents of Mr. Burch's OGC-assigned network shared drive, VA-assigned computer hard drive, and VA-assigned Blackberry smartphone. Further, we reviewed Mr. Burch's VA email, office telephone records, personal cellular telephone records, time and attendance records, and personnel records. During the course of our investigation, we considered relevant Federal laws, regulations, and VA policy.

While the scope of our investigation necessarily focused on Mr. Burch's use of his official position and VA resources in furtherance of NVVF activities, we collaborated with the NYAGCB in their charities fraud investigation of Mr. Burch and NVVF by sharing information we found during our respective investigations.

Background

On October 9, 2001, Mr. Burch received his initial appointment to serve as an Attorney Advisor within the VA's OGC. Currently, Mr. Burch is serving as the Deputy Director of OGC's Homeland Security, Operations, Legislation, and Docket Division within OGC's Office of Management, Planning and Analysis. Mr. Burch's official duties have consisted of serving as OGC's Freedom of Information Act (FOIA) Officer, National Alternative Dispute Resolution Officer, VA's Integrated Operations Center Representative, and VA's Center for Faith-Based and Neighborhood Partnerships (CFBNP) Steering Committee Representative.

Since Mr. Burch has been employed with VA, he has been actively involved with the NVVF charity and has served as the Chairman of the Board of NVVF and its President since its inception in 1992 until August 12, 2016. The NVVF is a non-profit, 501(c)(3) tax-exempt Foundation and its purposes include raising funds for the dissemination of information on veterans benefits, programs concerning research on diseases affecting Vietnam veterans, promotion of POW-MIA research, education and public awareness, grants to schools and scholarship programs for Vietnam veterans' children, and providing other forms of assistance to Vietnam veteran community activities. NVVF announced in August 2016 that it was ceasing operations.

NVVF's Annual Reports for 2014 and 2015 described its relationship with VA and CFBNP as a "major relationship," and mentioned the charity's support of VA events designed to provide outreach to veterans and their families. VA records reflected that NVVF donated more than \$13,000 to VA for various purposes since 2007, but because records for individual donations were not centralized, there was no definitive way to determine how the money was used. NVVF provided additional monetary donations in

support of veterans events discussed during CFBNP meetings. While Mr. Michael Hogan, Mr. Burch's direct supervisor since March 2016, was aware of Mr. Burch's affiliation with NVVF, he was not aware that Mr. Burch served on the CFBNP committee. Furthermore, Mr. Hogan advised Mr. Burch on multiple occasions to keep his activities with NVVF separate from his VA employment, and he received assurances from Mr. Burch, that he was keeping his VA duties separate from his NVVF activities.

After learning of CNN's inquiry, Mr. Burch again assured Mr. Hogan that he was always very careful to keep his NVVF activities separate from his VA position. Mr. Hogan gathered information of Mr. Burch's activities, including the inspection of his VA network shared drive, hard drive, and VA email. He also requested on April 12, 2016, that a VA Ethics Official speak with Mr. Burch, and officially removed him from the CFBNP committee. Upon discovering 35 files associated with NVVF in Mr. Burch's shared drive folder, Mr. Hogan referred the matter to OIG for investigation. On May 18, 2016, the day following CNN's reporting of Mr. Burch and the NVVF, VA suspended Mr. Burch's Top Secret security clearance, suspended his access to classified information.

On July 27, 2016, the Secretary of Veterans Affairs notified Mr. Burch in writing that VA would permanently terminate all interactions with NVVF. Specifically, VA was directed to no longer accept any monetary or other material contributions from NVVF; it prohibited NVVF from being involved in any official or sponsorship role of VA-led activities or special events; it prohibited NVVF or its officers from serving on any VA advisory committees; and otherwise prohibited NVVF from engaging or interacting in any VA programs, services, events, or related activities.

Results

Issue 1: Mr. Burch Engaged in Conduct Prejudicial to the Government

Federal regulations state that an employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government. 5 C.F.R. § 735.203.

VA policy states that employee conduct, on or off the job, which reflects adversely on the Federal Government as the employer, may be grounds for disciplinary action in addition to whatever penalty is prescribed by law. VA Handbook 5025, Part III, Paragraph 5(c) (April 15, 2002).

An investigation conducted by the Office of the Attorney General of the State of New York of Mr. Burch resulted in their office issuing an Assurance of Discontinuance (Assurance No. 16-171). Their investigation resulted in the following findings:

...after fundraising fees and expenses, [NVVF] received a comparatively small amount of the donations made to the organization...the fraction that actually made it to [NVVF] to help veterans was further reduced by a pattern of abuse, mismanagement and misspending of [NVVF's] revenue. Some of the worst conduct was committed by [NVVF's] own President, Burch – a Vietnam Veteran.

...Burch received a number of benefits, including a salary. However, the bulk of the Burch's compensation came from [NVVF] paying for or reimbursing Burch for nearly every expense he incurred. This included Burch's life and medical insurance, pharmaceutical and medical expenses, parking for his two private automobiles in downtown Washington, D.C., where Burch worked, telephone, fax, internet and building security services for Burch's home, legal memberships, conference fees, and subscriptions...

Burch could not justify the hundreds of thousands of dollars of [NVVF] money that he spent since at least 2010 to support his expensive lifestyle and tastes. This included using [NVVF] funds to pay for foreign and domestic travel, frequenting night clubs in the Baltimore area on a nearly weekly basis, ordering excessive and expensive food and drink at meals at the country's top restaurants and lavishing gifts (both monetary and otherwise), on women that had either no or only a tangential relationship to a veteran.

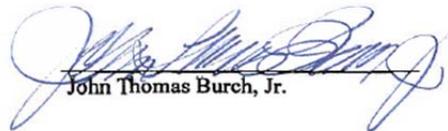
Mr. Burch agreed with the findings of the Office of the Attorney General of the State of New York. In addition to other obligations, he agreed to pay \$100,000 to the New York Department of Law, repay \$5,331.24 to [NVVF], and execute a letter of apology to the people of New York, in particular, "the Veterans of the Vietnam War." Below is Mr. Burch's letter of apology:

I was founder, President and Chairman of the Board of the National Vietnam Veterans Foundation. This letter is my apology to the millions of individuals that donated to the National Vietnam Veterans Foundation, which also solicited money using the name the American Veterans Support Foundation. As donors, you put your trust in me to make sure that your donations helped veterans, not to pay professional fundraisers and finance my personal entertainment pursuits. You sent in millions of checks – \$10.00, \$15.00 and \$25.00 at a time. That is real money from real people who sacrificed those amounts so that a veteran would have a meal, be able to call home or have a place to sleep for at least one night. Those checks added up, and in 2014 we had a record year for donations reaching nearly \$9 million. About 90% of your money went to our fundraisers; that is unacceptable. Much of the rest was not spent in the manner that we described when we solicited money from you.

This letter is also my apology to the people that we used as a prop in order for our fundraisers to collect money – the veterans of the Vietnam War. These veterans are one of the most overlooked and underappreciated group of veterans in United States' history. My actions as President only added another insult to these heroes. As a Vietnam Veteran, I should have known better.

As a Vietnam Veteran and as a human being I am ashamed of my actions. The National Vietnam Veterans Foundation has shut down, I have agreed never again to handle charitable funds, and I am repaying what I can to the New York Attorney General. I know that I can never repair the damage my organization has inflicted on donor confidence, but I urge you to continue supporting our veterans, and the worthy charities out there who are assisting them. Mine, however, was not one of them.

Dated: Alexandria, Virginia
November 2, 2016



John Thomas Burch, Jr.

Issue 2: Mr. Burch Misused His VA Position

An employee is prohibited from using his public office for his own private gain, for the endorsement of any product, service or enterprise, or for the private gain of friends, relatives, or persons with whom the employee is affiliated in a nongovernmental capacity, including nonprofit organizations of which the employee is an officer or member, and persons with whom the employee has or seeks employment or business relations. 5 C.F.R. § 2635.702.

To ensure that the performance of his official duties does not give rise to an appearance of use of public office for private gain or of giving preferential treatment, an employee whose duties would affect the financial interests of a friend, relative or person with whom he is affiliated in a nongovernmental capacity shall comply with any applicable requirements of 5 C.F.R. § 2635.502. 5 C.F.R. § 2635.702(d).

Where an employee knows that a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interest of a member of his household, or knows that a person with whom he has a covered relationship is or represents a party to such matter, and where the employee determines that the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality in the matter, the employee should not participate in the matter

unless he has informed the agency designee of the appearance problem and received authorization from the agency designee. 5 C.F.R. § 2635.502(a).

Mr. Burch's official duties included serving on VA committees as an OGC representative, including the CFBNP committee. The CFBNP committee's official website states that its mission is to "develop partnerships with, provide relevant information to, and expand participation of faith-based, nonprofit, and community/neighborhood organizations in VA programs in order to better serve the needs of Veterans, their families, survivors, caregivers, and other beneficiaries." According to Rev. E. Terri LaVelle, Director of the CFBNP, the committee is comprised of only VA employees, including various representatives from the three VA administrations and staff from various VA program offices. Rev. LaVelle indicated that the committee met three to four times per year in order to keep the internal VA stakeholders, representatives and program offices, up to date on what CFBNP was doing, whether there were opportunities for her office, and to collaborate on outreach events.

VA records reflected that Mr. Burch was involved with CFBNP as early as 2006. Although [REDACTED], OGC's former Director of the Homeland Security and Operations Division, previously served as the OGC representative for this committee until he left VA on an interagency 1-year detail prior to his retirement in May 2015, records reflected that Mr. Burch regularly attended these committee meetings on behalf of [REDACTED]. [REDACTED] indicated that Mr. Burch was not responsible to provide legal advice but was to act as a liaison between the committee and OGC by receiving legal inquiries, providing any inquiries to the appropriate law group within OGC, and relaying the legal opinion back to the committee.

Email records reflected that during the early years of Mr. Burch's participation on the committee, there were a few occasions when he appropriately acted as the liaison between the committee and OGC for purposes of rendering legal advice. However, based on Mr. Burch's own admissions, the testimony of witnesses who served on this committee, and audio recordings of committee meeting discussions, it was evident that Mr. Burch also began representing NVVF during these meetings as early as 2012. For example, Rev. LaVelle informed us that there were occasions when Mr. Burch was at a committee meeting and told members that his foundation, NVVF, could help support an event by providing money for refreshments, and the amount donated was usually around \$500. [REDACTED], Deputy Director, CFBNP, told us, and other committee members confirmed, that Mr. Burch provided financial support for various veterans events discussed during committee meetings. Mr. Burch admitted that he offered NVVF financial support to these veterans' events. However, Mr. Burch advised that when he spoke on behalf of NVVF, he was always careful to tell the committee he was speaking as the President of NVVF, not in his capacity as a VA attorney.

When asked during his OIG interview if he was ever concerned that his involvement with NVVF and this committee could appear to a reasonable person to be a conflict of interest, Mr. Burch replied, “Yes.” He further explained:

I never saw anything develop as an actual conflict of interest but I recognized there could be a perception of that and I discussed it with Mr. Hogan. And also I got an ethics opinion that I hadn't done anything improper, but it would be better for OGC to get somebody else to represent OGC on that committee...Nothing ever came back as a complaint or where, where it looked--appeared to be any actual conflict, but the, the appearance that I'm wearing potentially two hats.¹

Mr. Burch further indicated during his OIG interview that the committee usually discussed different events that VA and other local groups were trying to put together. Mr. Burch stated:

They had no money. They wanted to have a lunch for the veterans, you know, where they come in so they can get them hotdogs and chips, have some food. They had no money for that. And, uh, seeing that, I told them that setting apart from my duties as Office of General Counsel, I headed this non-profit and there was money available through my non-profit to fund as a non-profit these events. And they were usually events in the \$500 an event type range. Um, I did tell them that it's not my General Counsel's hat, this is a private hat.

When Mr. Burch provided monetary donations to these veterans outreach events, he was permitted to provide NVVF guidebooks for distribution, and he delivered brief remarks as the NVVF President during a few of these events. The NVVF guidebooks Mr. Burch provided primarily included information to assist veterans. The guidebooks stated:

This booklet is brought to you as a veterans benefit project of the National Vietnam Veterans Foundation and intended to provide quick reference to agencies and organizations which exist to help veterans and their families.

At times, many veterans feel lost and alone, without any idea where to go or call for help. This booklet is designed to offer simple, clear explanations of what help and benefits are available to veterans and where to go to get it. Today, the Department of Veterans Affairs (VA) as well as each state provides care, counseling and help to veterans and their families. Often,

¹ As discussed later in this report, the OIG is not aware of any ethics opinion received by Mr. Burch prior to the CNN inquiry.

this assistance is simply a telephone call away. This Guide will direct the veteran where to go or where to call for the help he or she needs.

All veterans need to understand that they are not alone and that a vast community of help and support exists to support them. Use this Guide to better understand all of the resources available for each and every veteran.

However, the inside front cover of the guidebook contained the following language soliciting donations to NVVF. The below image was from the inside front cover of the guidebook:



**J. Thomas Birch, Jr.,
President**

The **NATIONAL VIETNAM VETERANS FOUNDATION, Inc.**, was established for the purpose of assisting American military veterans and their families. Since its creation in 1992, the Foundation has expanded its goals and now include various programs and projects designed to serve all veterans of every military branch and period of service from World War II to the current conflicts in Iraq and Afghanistan. Special emphasis is placed upon serving veterans who are disabled, unemployed or homeless. The Foundation is a veterans created and veterans operated charitable organization dedicated to the betterment of our military veterans, their families and communities. The National Vietnam Veterans Foundation is non-profit and tax exempt under section 501 (C)(3) of the Internal Revenue Code.

Some of the Foundation's works includes special personal care kits to hospitalized veterans, blankets, warm jackets, hats and gloves for homeless veterans, participation in supporting food pantries for homeless and low income veterans with families, a national toll free veterans referral hot-line and the publication and free distribution of This National Veterans Guide.

For additional information on how you can help us help veterans, please contact us at nvvf.org or call us at 800-366-1319

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In addition to recruiting and appointing [REDACTED] to serve as the NVVF Deputy Director for Veterans Outreach, our investigation developed information that [REDACTED] received financial assistance from Mr. Burch and NVVF. [REDACTED] informed us that in late 2011 and early 2012, he solicited and received financial assistance of over \$2,500 from Mr. Burch and NVVF to pay personal bills and debts. In addition to providing [REDACTED] with financial assistance from NVVF, Mr. Burch also provided another

CFBNP committee member with monetary gifts from NVVF totaling \$2,000 to assist her in paying personal bills and debts.

By Mr. Burch's own admission, his participation in CFBNP committee meetings may have created the perception of a conflict of interest. While Mr. Burch initially maintained that he received an ethics opinion permitting him to serve on this committee, he later admitted that he did not receive such an opinion prior to CNN's inquiry. As a matter of fact, Mr. Burch never sought this advice until Mr. Hogan required him to meet with an ethics official after CNN's inquiry and the ethics official advised Mr. Burch to no longer serve on the committee.

Mr. Burch admitted during his OIG interview that the CFBNP committee meetings provided him a platform to find credible veterans events for which to donate. He said:

So what I got out of it is I was raising money to help with events like this. And I wanted credible ways to use it for good events. And these events were well-planned because they had the churches involved, they had manpower. They usually had city officials involved. So I knew—and then they had the way to get the veterans in. I don't have a staff to get the rural veterans in. They had the ability to get the veterans in. So all I had to do was write a check and every once in a while they would want me to set up a table, which I would have other people do, I didn't work the table, where they would give out, uh--we had a handbook on how to get veterans benefits. It had been approved by the VA and so we could do those. It gave me a way to reach out and carry out the mission of my foundation because I didn't have the manpower to set up these events.

Our investigation found that Mr. Burch not only elevated the status and exposure of NVVF by his participation on the CFBNP committee, but he also personally enriched himself. Specifically, a review of NVVF meeting minutes and other reports revealed that Mr. Burch's efforts in partnering with VA for various veterans outreach events were seen as important considerations that were reflected in his compensation from NVVF. For example:

- An NVVF 2011 Audit Information Report, contained in NVVF's Corporate Book, reflected that the "Foundation has partnered with the U.S. Department of Veterans Affairs as a co-sponsor of various VA events designed to provide out-reach to veterans and their families regarding unemployment, homelessness and related issues."
- Minutes for an NVVF Special Meeting, June 2, 2012, reflected that Mr. Burch asked the Board to approve NVVF paying him an annual salary of \$30,000, and it was approved, effective June 1, 2012.

- Minutes for an NVVF Annual Meeting, April 5, 2013, reflected that Mr. Burch asked the Board to increase his yearly compensation, and the Board agreed to increase it to \$50,000 effective January 1, 2013. They also gave him “a bonus of \$22,000 in recognition that the actual paid salary for 2012 had been inadequate.” Mr. Burch gave a report on services provided to veterans, and “noted that the Foundation had co-sponsored several events in the fall of 2012 with the United States Department of Veterans’ Affairs.”
- Minutes for another NVVF Annual Meeting, June 19, 2013, reflected that Mr. Burch “noted that the Foundation had co-sponsored several events in the fall of 2012 with the United States Department of Veterans’ Affairs.”
- Minutes for an NVVF Regular Meeting, November 8, 2013, reflected that NVVF approved increasing Mr. Burch’s salary to \$60,000 per year, effective January 1, 2014. The minutes also reflected that Mr. Burch reported, in addition to other financial assistance, “The Foundation had co-sponsored several events in the fall of 2013 with the United States Department of Veterans’ Affairs.”
- Minutes for an NVVF Annual Meeting, March 26, 2014, reflected that Mr. Burch reported on services provided to veterans, and “noted that the Foundation had co-sponsored several events in the fall of 2013 with the United States Department of Veterans’ Affairs.
- Minutes for an NVVF Special Meeting, July 2, 2014, Mr. Burch reported on services provided to veterans, and “noted that the Foundation had co-sponsored a number of events in the fall of 2013 and in 2014 with the United States Department of Veterans’ Affairs.”
- The 2014 NVVF Annual Report reflected that “Two of the major partnerships that allow the NVVF to reach out to even more homeless Veterans are with the U.S. Department of Veterans Affairs Faith-Based and Neighborhood Partnerships program and the National Association of Concerned Veterans.”
- Minutes for an NVVF Special Meeting, November 9, 2014, reflected that NVVF approved increasing Mr. Burch’s salary to \$70,000 per year, plus a \$5,000 bonus, effective January 1, 2015.
- Minutes for an NVVF Annual Meeting, January 16, 2015, reflected that Mr. Burch reported on co-sponsorship of events with VA. Mr. Burch reported on services provided to veterans, and minutes reflected that Mr. Burch “noted that the Foundation had financially supported food pantry and job fair events with

the United States Department of Veterans' Affairs through their Center for Faith-based and Neighborhood Partnerships.

Of note, Mr. Hogan and other VA officials were not aware that Mr. Burch was receiving a salary from NVVF. Mr. Hogan told us that Mr. Burch's position did not require him to file a Confidential Financial Disclosure Report (OGE 450). These facts taken together demonstrate that Mr. Burch used his official position for private gain, in violation of 5 C.F.R. § 2635.702.

Issue 3: Mr. Burch Misused Government Resources

An employee has a duty to protect and conserve Government property and shall not use such property, or allow its use, for other than authorized purposes. "Government property" includes any form of real or personal property in which the Government has an ownership, leasehold, or other property interest as well as any right or other intangible interest that is purchased with Government funds, including the services of contractor personnel. The term includes office supplies, telephone and other telecommunications equipment and services, the Government mails, automated data processing capabilities, printing and reproduction facilities, Government records, and Government vehicles. "Authorized purposes" are those purposes for which Government property is made available to members of the public or those purposes authorized in accordance with law or regulation. 5 C.F.R. § 2635.704.

VA employees are permitted limited use of Government office equipment for personal needs; however, they are prohibited from using Government office equipment, including information technology and the internet if such use is for commercial purposes or in support of "for profit" activities, other outside or business activity (e.g. consulting for pay, sale or administration of business transactions, sale of goods or services), or for engaging in any outside fund-raising activity, endorsing any product or service, or engaging in any prohibited partisan political activity. VA Directive 6001, Section 2, Paragraphs (a);(b);(c)(7);(c)(8).

An employee is prohibited from using or permitting the use of his Government position or title or any authority associated with his public office in a manner that could reasonably be construed to imply that his agency or the Government sanctions or endorses his personal activities or those of another. 5 C.F.R. § 2635.702(b).

It is the responsibility of employees to ensure that they are not giving the false impression that they are acting in an official capacity when they are using Government office equipment for non-Government purposes. If there is an expectation that such person use could be interpreted to represent an agency, then an adequate disclaimer must be used. VA Directive 6001, Section 2, Paragraph (e).

Mr. Burch acknowledged he thoroughly read VA Directive 6001. VA Talent Management System (TMS) training records reflected that Mr. Burch took VA's Privacy and Information Security Awareness and Rules of Behavior Training on 10 separate occasions, with the most recent being January 13, 2016. The records also reflected that he took Annual Government Ethics Training on three occasions, most recently on August 13, 2015. When reminded that the training and the National Rules of Behavior he signed referenced VA policy restricting the use of Government office equipment prohibiting any use of the equipment at any time if it was in support of outside business activities, fundraising and outside employment, and that he was an attorney experienced at reading rules and regulations, Mr. Burch said during his OIG interview:

I respectfully disagree with you. First, on the privacy training itself, it doesn't go into that kind of detail...what I consider de minimis. Only thing I recall, they -- I really don't think they do much about going into it at all...I recall there was something...I think they used the word consequential use is permitted because they didn't want to have people hung up. And don't forget we're really talking about six or seven documents over a period of four or five years. And I just don't feel like the rules apply to that. Now, on the regulation, I don't have that in front of me, but I did study it and I felt that I was complying with the regulation.

In his first OIG interview, Mr. Burch acknowledged that he used his VA-issued computer, printer, and copy machine in support of his NVVF business activities, but he said that he only used this equipment during his off-duty time, which he believed was allowable by VA policy. He further said:

I was not aware that you couldn't do one of these de minimis things like make a copy of something strictly in your off-duty time...I did not feel that I used any of that equipment in support of activities, um, relating to the [NVVF]...This is the only thing at all that I ever did with any of that government [equipment]. That's it...I didn't write letters. I didn't make phone calls. I didn't do all that other stuff...I do not feel when I read that regulation that there was any prohibition to doing what I did there, and I wasn't aware that it was a strict thing that you could only do it during lunchtime. As a practical matter, that's what I did...I made a copy of something here or there. You know, I might have done, you know, on my regular work time...I felt that was allowable. I didn't recall any -- because I try to be very careful about this...the only thing I did, as I've told you, didn't use the phone, didn't do this, didn't do any of these other things. I told you the only thing that I felt that it fit within the de minimis rule.

The next day, Mr. Burch requested to go back on the record to correct his sworn testimony. While still under oath, he clarified that he tried to work on NVVF matters by

coming in early, staying late, at lunch, or while on breaks, but admitted there were times when he worked on NVVF matters during his duty hours. He said:

I mean, I'm not typing up minutes of a meeting or something like that. But, you know, one of these simple things...if you look at going back on it that either you'll see that, or maybe like it might be 8:05, where I came in [at 7:45]...got things going that I normally do, and check my email. And then I would do the two envelopes or whatever I had...however, um, there's no question I did it at times that was regular office time. But, uh, don't lose the fact, please don't lose the fact that many times, because there's time and dates with this, that I did it either before or after, or more particularly, within about five minutes of either coming or going. I usually don't leave here before 5:35, even though my shift ends at 5:30. So sometimes you might see like 5:25 or something like that. I want to get myself that benefit of a doubt I can out of all of this. Also, the entries...that you have on my documents, you know, they go back to 2002...it's not like it was all done in one year, you know, type of thing.

Mr. Burch declined, through his counsel, OIG's request for a follow up interview.

Our review of Mr. Burch's VA-assigned office telephone, personal cellular telephone, and VA time and attendance records reflected more than Mr. Burch's claim of minimal personal use. Over a 23-month period between September 2014 to August 2016, on 254 separate workdays, and while on-duty, Mr. Burch participated in 1,187 telephone calls and 533 text messages, averaging 6.77 telephone calls and text messages per day, with 17 different persons or entities with which he had an NVVF business relationship. The persons or entities included NVVF's officers, employees, accountants, bookkeepers, and others with whom Mr. Burch transacted NVVF business which we identified from information found in email messages, Mr. Burch's telephone listings, NVVF consultant agreements, and other NVVF correspondence. Of the 1,187 telephone calls, 540 of these telephone calls lasted 1 minute or longer, suggesting that a conversation took place. Over the course of the time period outlined above, Mr. Burch spent a total of 45 hours and 29 minutes of his duty hours on these telephone calls.

Telephone records further reflected an additional 329 calls and 13 text messages during VA duty hours between Mr. Burch and seven other identified persons or entities that were unrelated to VA, but which we could not connect to NVVF business. Of the 329 calls that we determined were personal in nature, based on audio-recorded voice messages left by these individuals for Mr. Burch, 127 of these calls lasted 1 minute or longer and reflected that Mr. Burch spent a total of 11 hours and 4 minutes of his duty hours on these calls. With regard to Mr. Burch's text messages and emails, we were unable to determine the amount of official time he used preparing for or engaging in

follow up actions related to these communications, as well as reading, writing, and/or sending these messages.

In addition to telephone calls, we found 864 email messages, dated between September 2009 and May 2016, in which Mr. Burch used his VA-assigned email account to communicate with NVVF officers, employees, telemarketing fundraisers, accountants, bookkeepers, and other business associates. In many of these emails, Mr. Burch used his VA OGC signature block, including his official title without a disclaimer as required by VA policy. In some of the emails, Mr. Burch also provided his VA office telephone number to NVVF related individuals for use in contacting him. For example, in an April 2013 email to a known NVVF associate, Mr. Burch told the associate that it was okay to use his VA email address, and his personal email should be used for “real personal stuff such as photographs.” In an April 2016 email, 2 days after Mr. Burch learned of the CNN inquiry and of OGC Management’s internal inquiry into his NVVF activities, Mr. Burch told an NVVF associate to stop using his VA email address and to use his personal email.

The following are examples of Mr. Burch’s use of his VA email for NVVF activities. At times, he signed the emails as the President of NVVF, and at times, he signed them with his VA OGC signature block, which contained his name, VA OGC title, VA address and VA telephone number.

- In a November 24, 2015, email, Mr. Burch, using his VA email account, sent an NVVF associate a copy of an NVVF document and said, “Attached is a proposed set of Foundation Board Minutes which in part pertain to [Name]...Please give me any suggested edits or comments.” The next day, he, again using his VA email account, sent an edited version of the document to the same associate and said, “Attached is an updated version of the paragraph we discussed.”
- On November 23, 2015, an NVVF associate sent to Mr. Burch, at his VA email address, a form requiring his signature. About 3 hours later, Mr. Burch sent the hand-signed form back to the associate from his VA email account.
- In an August 26, 2015, email, NVVF’s accountant asked Mr. Burch, at his VA email address, “Do you want me to use the DC address on the tax return?” Mr. Burch replied, “No. The new DC address is only for public perception.” This email contained Mr. Burch’s VA OGC signature block.
- On May 1, 2015, Mr. Burch sent, using his VA email account, NVVF documents to an NVVF associate, and said, “Attached for your information is the Auto agreement with my edits. I have signed it, had the Power of Attorney notarized with extra copies, and FedExed the agreement to...for his signature.”

- In an August 27, 2014, email, Mr. Burch replied to the NVVF accountant, using his VA email account, and said, “To the best of my knowledge, we do no fund raising in Oregon.” This email contained Mr. Burch’s VA OGC signature block.
- In a May 2, 2014, email, Mr. Burch replied to a recipient of NVVF money, using his VA email account, and said, “[Name]: I have a check for you. Do you want to pick it up today or have me mail it?” This email contained Mr. Burch’s VA OGC signature block.
- On April 15, 2013, Mr. Burch emailed the NVVF accountant, and said, “[Name], FL deposits for July-Dec were \$224,375.96.” This email contained Mr. Burch’s VA OGC signature block.
- In a June 21, 2012, email to a bank representative, Mr. Burch, using his VA email account asked to arrange a meeting with a bank officer, signing the email as the President, National Vietnam Veterans Foundation, Inc., listing his VA-assigned telephone number. About 30 minutes later, Mr. Burch sent another message to the bank representative, except this email contained his VA OGC signature block.

In addition to NVVF related emails and telephone calls, a review of Mr. Burch’s VA assigned computer and network shared-drive revealed 49 documents that were NVVF related and 18 that were otherwise personal in nature. NVVF related documents included NVVF’s policies, Board meeting minutes, audit schedules, speeches, resumes, and consultant agreements. Although Mr. Burch claimed some of these documents were used in support of a presentation VA asked him to provide on setting up non-profit organizations, Mr. Hogan indicated that he did not recall approving the use of NVVF related exhibits for that presentation.

While three of Mr. Burch’s direct reports stated they never observed Mr. Burch conducting NVVF business in the OGC office, one direct report to Mr. Burch [REDACTED] informed us that he observed Mr. Burch conducting NVVF related business “all the time,” mostly by making or receiving phone calls that he believed were NVVF related. This witness also told us that Mr. Burch hired an OGC intern, [REDACTED], supposedly to assist with OGC FOIA requests, but [REDACTED] worked with Mr. Burch primarily on NVVF related matters that included mailing letters, arranging Mr. Burch’s NVVF travel, and talking to people on the telephone. As part of her OGC internship, this witness said that [REDACTED] also worked in OGC’s Human Resources Office and that when she completed that work, she returned to assist Mr. Burch with NVVF matters. This witness further said that [REDACTED] came to Mr. Burch’s office “just about every day” and they talked for “15, 20 minutes to a couple of hours a day.” He said that when [REDACTED] first got to Mr. Burch’s office, he overheard them initially talking about NVVF business, until they closed the door and he could no longer hear their discussions.

We confirmed that ██████ worked in OGC as an unpaid intern from about June 2014 until March 2015 and email records reflected that Mr. Burch arranged for her internship, which was ultimately approved by Mr. Hogan. Records further reflected that during her OGC internship, Mr. Burch paid ██████ on a contract basis to perform NVVF duties as the Assistant to the President, and he later employed her, commencing on October 1, 2014, on a full-time basis as NVVF’s Executive Director and paying her a salary of \$36,000 annually. ██████’s full-time NVVF employment began about five months prior to her OGC internship ending. We did not uncover any information indicating that Mr. Hogan or other VA officials were aware of ██████’s eventual NVVF affiliation. They became aware of her NVVF affiliation after the CNN inquiry when they looked at the NVVF website and saw her name listed as NVVF’s Executive Director.

During our interview of ██████, we asked her whether she conducted NVVF tasks while working as an intern at the VA, which she denied. ██████ recalled that on occasion, Mr. Burch would pass along NVVF assignments to her during their lunch break, but advised that she and Mr. Burch only briefly talked about NVVF matters during VA working hours.

When we asked ██████ about his interactions with Mr. Burch in his office, he told us that he and Mr. Burch occasionally talked about NVVF matters in Mr. Burch’s office, but he denied that their conversations lasted for up to 2 hours. He said their discussions usually took only 5 minutes, and they were typically about NVVF monetary donations that Mr. Burch had previously mentioned during a CFBNP Steering Committee meeting.

While VA policy permits limited personal use of Government equipment for personal needs, Mr. Burch’s use did not fall into this category. Rather, Mr. Burch’s use was related to his outside business and fundraising activity with NVVF. Any use for these purposes, however limited, is strictly prohibited by VA policy. Based on the telephone, email, and computer evidence described above, we found that Mr. Burch violated 5 C.F.R. § 2635.704 and VA Directive 6001 by misusing Government property.

Conclusion

The evidence developed during the course of the investigation indicated that Mr. Burch engaged in conduct prejudicial to the Government. Mr. Burch also used his official VA position for private gain by using his membership on the CFBNP committee to identify and participate in various veteran events in which he dispersed the NVVF guidebooks that included a solicitation for donations. Participation in these events also elevated the stature and exposure of NVVF, which were seen as important considerations that were reflected in his NVVF compensation. Furthermore, the evidence reflected that Mr. Burch misused Government resources and official time by participating in a significant number of NVVF related telephone calls, NVVF related text messages, and sending NVVF related emails during on-duty hours.

Mr. Burch is an attorney for VA with ethical and professional obligations. Additionally, evidence developed by the OIG and shared with the Office of the Attorney General of the State of New York, contributed to Mr. Burch admitting he breached his fiduciary duties to NVVF, and he used NVVF funds for his personal benefit. As an attorney and supervisor with the VA OGC, Mr. Burch is expected to adhere to a higher standard of conduct, both on-duty and off, and put the interest of the VA and veterans first. However, his behavior, as described in this report, only served to tarnish the reputation of VA and diminish the trust of veterans. His actions were indeed prejudicial to the United States Government.

Recommendation 1: We recommend that VA’s General Counsel confer with the Office of Human Resources to determine the appropriate administrative action to take, if any, against Mr. Burch.

Recommendation 2: We recommend that VA’s General Counsel conduct a review of the CFBNP Steering Committee charter, membership, and activities, to determine whether members of the committee have engaged in a conflict of interest, or created the appearance of one, through the members’ association with non-Governmental Organizations, as defined in VA Directive 0008, or otherwise, and take the appropriate corrective action.

Recommendation 3: We recommend that VA’s General Counsel extend the “covered positions” requirement for filing of Confidential Financial Disclosure Reports under 5 C.F.R. § 2634.904(a) to all attorneys employed by VA.

Comments

VA’s General Counsel was responsive. Her comments are in Appendix A. We will follow up to ensure that recommendations are fully implemented.



QUENTIN G. AUCOIN
Assistant Inspector General for
Investigations

VA General Counsel Comments

**Department of
Veterans Affairs**

Memorandum

Date: November 10, 2016

From: VA General Counsel

Subject: **Administrative Investigation – Conduct Prejudicial to the Government and Misuse of Position in the VA Office of General Counsel, Washington, DC**

To: Inspector General

Recommendation 1: Concur. After reviewing the evidence provided by the OIG in this report, the VA General Counsel immediately initiated the process for Mr. Burch’s removal from federal service.

Recommendation 2: Concur.

Recommendation 3: Concur in principle: VA’s General Counsel will consult with the U.S. Office of Government Ethics to determine whether the covered positions requirement for filing of Confidential Financial Disclosure Reports by Office of General Counsel attorneys should be expanded to provide greater visibility with regards to potential conflicts of interest and will take any appropriate action based on that consultation.

VA General Counsel's Comments to Office of Inspector General's Report

The following VA General Counsel's comments are submitted in response to the recommendations in the Office of Inspector General's Report:

OIG Recommendations

Recommendation 1: We recommend that VA's General Counsel confer with the Office of Human Resources to determine the appropriate administrative action to take, if any, against Mr. Burch.

Comments: Concur. After reviewing the evidence provided by the OIG in this report, the VA General Counsel immediately initiated the process for Mr. Burch's removal from federal service.

Recommendation 2: We recommend that VA's General Counsel conduct a review of the CFBNP Steering Committee charter, membership, and activities, to determine whether members of the committee have engaged in a conflict of interest, or created the appearance of one, through the members' association with non-Governmental Organizations, as defined in VA Directive 0008, or otherwise, and take the appropriate corrective action.

Comments: Concur.

Recommendation 3: We recommend that VA's General Counsel extend the "covered positions" requirement for filing of Confidential Financial Disclosure Reports under 5 C.F.R. § 2634.904(a) to all attorneys employed by VA.

Comments: Concur in principle: VA’s General Counsel will consult with the U.S. Office of Government Ethics to determine whether the covered positions requirement for filing of Confidential Financial Disclosure Reports by Office of General Counsel attorneys should be expanded to provide greater visibility with regards to potential conflicts of interest and will take any appropriate action based on that consultation.

OIG Contact and Staff Acknowledgments

OIG Contact	For more information about this report, please contact the Office of Inspector General at (202) 461-4720.
Acknowledgments	Linda Fournier, Director Debbie Crawford, Director Alexander Carlisle, Deputy Director Charles Millard, Senior Investigator Domingo Alvarez Scott Eastman Sarah Glass Jason James Jacob Lay Dao Pham Leanne Shelly Ashley Shingler Michael Smith Robert Warren

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