

opinions to JAG regarding application of subpart B of this part to individual or hypothetical cases.

(2) On its own motion, the Committee may also issue formal advisory opinions on ethical issues of importance to the DON legal community.

(3) Upon written request, the Committee will also provide formal advisory opinions to individuals subject to this part about the propriety of proposed courses of action under subpart B of this part. If such requests are predicated upon full disclosure of all relevant facts, and if the Committee advises that the proposed course of conduct is not violative of subpart B of this part, then no adverse action under this part may be taken against an individual who acts consistent with the Committee's advice.

(4) The Committee Chairman will forward copies of all opinions issued by the Committee to the Rules Counsel.

#### § 776.9 Rules Counsel.

Appointed by JAG to act as a special assistant for the administration of subpart B of this part, the Rules Counsel derives authority from JAG and, with respect to administrative matters under this part, has "by direction" authority. The Rules Counsel shall cause opinions issued by the Professional Responsibility Committee of general interest to the DON legal community to be published in summarized, non-personal form in suitable publications. Unless another officer is appointed by JAG to act in individual cases, the following officers shall act as Rules Counsel—

(a) In cases involving Marine Corps judge advocates, Director, Judge Advocate Division; and

(b) In all other cases, Assistant Judge Advocate General (Civil Law).

#### § 776.10 Informal ethics advice.

(a) *Advisors.* Judge advocates may seek informal ethics advice either from the OJAG officers named below or from their supervisory judge advocates in the field. Within the Office of the JAG, the following officials are designated to respond to informal, oral inquiries concerning this part in the areas of practice indicated—

(1) Head, Military Affairs/Personnel Law Branch, Administrative Law Division: administrative boards and related matters;

(2) Deputy Director, Criminal Law Division: military justice matters;

(3) Deputy Director, Legal Assistance Division: legal assistance matters; and

(4) Head, Standards of Conduct/Government Ethics Branch, Administrative Law Division: all others.

(b) *Informal advice.* Informal ethics advice will not be provided by OJAG advisors concerning matters currently in litigation.

(c) *Written advice.* A request for informal advice does not relieve the requestor of the obligation to comply with subpart B of this part. Although DON judge advocates and civilian attorneys are encouraged to seek advice when in doubt as to their responsibilities, they remain personally responsible for their professional conduct. If, however, a subordinate judge advocate acts in accordance with a supervisory judge advocate's written and reasonable resolution of an arguable question, then no adverse action under this part may be taken against the subordinate judge advocate. JAG is not bound by unwritten advice or by advice provided by nonsupervisors.

#### § 776.11 Outside part-time practice of law.

A DON attorney's primary professional responsibility is to the executive agency to which assigned, and he or she is expected to devote the required amount of effort and time to satisfactorily accomplish assigned duties. The outside practice of law, therefore, must be carefully monitored. Attorneys to whom this section applies who wish to engage in the part-time, outside practice of law must first obtain permission from JAG. Details are contained in Subpart D of this part.

#### § 776.12 Maintenance of files.

Ethics complaint records and outside, part-time law practice request files shall be maintained by the Administrative Law Division, Office of the Judge Advocate General.

(a) Files shall be labeled with the name of the individual against whom complaints are made, or who request

permission to engage in the part-time outside practice of law, and will contain the request, complaint, reports of investigation, related correspondence, and allied papers.

(b) Requests for access to such records should be referred to DAJAG (Administrative Law Division), Office of the Judge Advocate General, 200 Stovall Street, Alexandria, Virginia 22332-2400.

(c) Local command files regarding complaints will not be maintained. Commanding officers and other supervisory personnel may, however, maintain their own personal files but must not share their contents with others.

**§ 776.13 Preamble.**

(a) *Rules of Professional Conduct.* (1) A judge advocate in the naval service is a representative of clients, an officer of the legal system, a commissioned officer, and a public citizen who has a special responsibility for the quality of justice and legal services provided to the Department of the Navy and to individual clients. The Rules of Professional Conduct set out in subpart B of this part govern the ethical conduct of naval judge advocates practicing under the Uniform Code of Military Justice, the Manual for Courts-Martial, 10 U.S.C. 1044 (Legal Assistance), other laws of the United States, and regulations of the Department of the Navy.

(2) The rules in subpart B of this part are specifically addressed to the conduct of judge advocates but apply to all other lawyers who practice under the supervision of the Judge Advocate General of the Navy. (Use of the term “judge advocate” in subpart B applies to all lawyers unless otherwise indicated.)

(b) [Reserved]

**§ 776.14 Premises.**

(a) The rules in subpart B of this part are based on the premises that follow. The interpretation of subpart B of this part should flow from their common meaning and the comments. To the extent that any ambiguity or conflict exists, subpart B of this part should be interpreted consistent with this hierarchy of premises.

(1) Judge advocates must obey the law and military regulations, and counsel clients to do so.

(2) Ethical rules must be followed.

(3) Ethical rules should be consistent with law. If law and ethics conflict, the law prevails unless an ethical rule is constitutionally based.

(4) A judge advocate must protect the legal rights and interests of clients, organizational and individual.

(5) The military criminal justice system is a truth-finding process consistent with constitutional law.

(6) A judge advocate must be honest and truthful in all dealings.

(7) A judge advocate shall not derive personal gain, other than from the U.S. Government, from the performance of official duties.

(8) A judge advocate shall maintain the integrity of the legal and military professions.

(b) [Reserved]

**Subpart B—Rules**

**§ 776.20 Competence.**

(a) *Competence.* A judge advocate shall provide competent, diligent, and prompt representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and expeditious preparation reasonably necessary for representation. Initial determinations as to competence of a judge advocate for a particular assignment shall be made by a supervising judge advocate before case or issue assignments; however, assigned judge advocates may consult with supervisors concerning competence in a particular case.

(b) [Reserved]

**§ 776.21 Establishment and scope of representation.**

(a) *Establishment and scope of representation.* (1) Formation of attorney-client relationships by judge advocates with, and representation of, clients is permissible only when the judge advocate is authorized to do so by competent authority.

(2) The subject matter scope of a judge advocate’s representation will be