

Subpart D—Outside Part-Time Law Practice of Naval Service Attorneys

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AUTHORITY: 10 U.S.C. 826, 827; Manual for Courts-Martial, United States, 1984; Secretary of the Navy Instruction 5430.27A, Responsibility of the Judge Advocate General for Supervision of Certain Legal Services; U.S. Navy Regulations, 1990.

SOURCE: 59 FR 45214, Sept. 1, 1994, unless otherwise noted.

Subpart A—General, Preamble and Premises**§ 776.1 Purpose.**

In furtherance of the authority citations [which, if not found in local libraries, are available from the Office of the Judge Advocate General (Administrative Law Division), 200 Stovall Street, Alexandria, VA 22332-2400], which require the Judge Advocate General (JAG) to supervise the performance of legal services under his cognizance throughout the Department of the Navy (DON), this part is promulgated—

(a) To establish Rules of Professional Conduct for DON civilian and military attorneys practicing under the supervision of JAG;

(b) To promulgate procedures for receiving, processing, and taking action on complaints of professional misconduct made against attorneys practicing under the supervision of JAG, or certified by JAG under articles 26(b) or 27(b) of the Uniform Code of Military Justice (UCMJ) (10 U.S.C. 826(b), 827(b)); and

(c) To prescribe limitations on, and procedures for, processing requests to engage in the part-time outside practice of law by DON judge advocates or civilian attorneys under the supervision of JAG.

§ 776.2 Applicability.

(a) This part defines the professional ethical obligations of, and applies to:

- (1) Attorneys;

(i) Certified by JAG under the provisions of article 27(b), UCMJ, 10 U.S.C. 827(b);

(ii) Designated by JAG as legal assistance attorneys;

(iii) Who practice within DON and who are certified under article 27(b), UCMJ, 10 U.S.C. 827(b), or who are designated as a legal assistance attorney by the Judge Advocate General/Chief Counsel of another armed force, or both; and

(2) Who are not certified in accordance with article 27(b), UCMJ, 10 U.S.C. 827(b), or designated as a legal assistance attorney, but who practice under the supervision of JAG.

(3) Military trial and appellate judges who practice or perform legal services under the cognizance of JAG.

(4) Reserve judge advocates of the Navy or Marine Corps on active duty, extended active duty, active duty for training, inactive duty for training, or when performing duties subject to the supervision of JAG. Subpart D of this part, however, does not apply to Reserve judge advocates unless they serve on active duty for more than 30 consecutive days.

(5) DON civilian counsel practicing under the supervision of JAG.

(6) Civilian counsel representing individual members of the naval service in any matter for which JAG is charged with supervising the provision of legal services including, but not limited to, courts-martial, administrative boards, and disability evaluation proceedings. Subpart D of this part, however, does not apply to such counsel.

(b) Although subpart B of this part does not apply to nonlawyers, the rules in that subpart do define the type of ethical conduct that the public and the military community have a right to expect not only of lawyers but also of their nonlawyer employees and associates in all matters pertaining to professional conduct. Accordingly, subpart B shall serve as models of ethical conduct for the following personnel when involved with the delivery of legal services under the purview of JAG—

- (1) Navy legalmen and Marine Corps legal administrative officers and legal service specialists;
- (2) Limited duty officers (law);
- (3) Legal interns; and

(4) Civilian support personnel including paralegals, legal secretaries, legal technicians, secretaries, court-reporters, and others holding similar positions. Attorneys who supervise non-lawyer employees are responsible for their ethical conduct to the extent provided for in § 776.54.

§ 776.3 Policy.

(a) DON judge advocates and civilian attorneys to whom this part applies shall maintain the highest standards of professional ethical conduct. Loyalty and fidelity to the United States, to the law, to clients both institutional and individual, and to the rules and principles of professional ethical conduct set forth in subpart B of this part must come before private gain or personal interest.

(b) Subpart B and related procedures set forth herein concern matters solely under the purview of JAG. Whether conduct or failure to act constitutes a violation of the duties imposed by this part is a matter within the sole discretion of JAG or officials authorized to act for JAG. The subpart B rules are not substitutes for, and do not take the place of, other rules and standards governing DON personnel such as the Government rules of ethical conduct, the Code of Conduct, the Uniform Code of Military Justice, and the general precepts of ethical conduct to which all officers of the Navy and Marine Corps are expected to adhere. Similarly, action taken pursuant to this part is not supplanted or barred by, and does not supplant or bar, the following action from being taken by authorized officials, even if the underlying misconduct is the same—

(1) Punitive or disciplinary action under the UCMJ; or

(2) Administrative action under the Manual For Courts-Martial or U.S. Navy Regulations, 1990, or under other applicable authority.

§ 776.4 Attorney-client relationships.

(a) The executive agency to which assigned (DON in most cases) is the client served by each DON civilian attorney or judge advocate unless detailed to represent another client by competent authority. Specific guidelines are contained in § 776.32.

(b) DON judge advocates and civilian attorneys will not establish attorney-client relationships with any individual unless detailed, assigned, or otherwise authorized to do so by competent authority.

(c) Employment of non-DON civilian counsel by an individual client does not alter the responsibilities of a DON judge advocate or civilian attorney to that client. Specific guidance is set forth in § 776.95.

§ 776.5 Judicial conduct.

To the extent that it does not conflict with statutes, subpart B of this part, or regulations of the sort mentioned in § 776.3(b), the American Bar Association's Code of Judicial Conduct applies to all military and appellate judges and to all judge advocates and other attorneys performing judicial functions under JAG supervision within the Department of the Navy.

§ 776.6 Conflict.

To the extent that a conflict exists between subpart B of this part and the rules of other jurisdictions that regulate the professional conduct of attorneys, subpart B of this part will govern the conduct of attorneys engaged in legal functions under JAG supervision.

§ 776.7 Reporting requirements.

Individuals subject to this part shall promptly report to the Rules Council (see § 776.9) discipline by another jurisdiction upon himself, herself, or another individual subject to this part.

§ 776.8 Professional Responsibility Committee.

(a) *Composition.* This standing committee will consist of the Assistant Judge Advocate General (AJAG) for Military Justice; the Principal Deputy Assistant Judge Advocate General (PDAJAG) (Operations & Management); the Chief Judge, Navy-Marine Corps Trial Judiciary; and in cases involving Marine Corps judge advocates, the Deputy Director, Judge Advocate Division, HQMC; and such other personnel as JAG from time-to-time may appoint. A majority of the members constitutes a quorum. The Chairman of