

**§ 776.30 Successive government and private employment.**

(a) *Successive government and private employment.* (1) Except as the law or regulations may otherwise expressly permit, a former judge advocate shall not represent a private client in connection with a matter in which the judge advocate participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation. If a former judge advocate in a firm with which that judge advocate is associated knows that the firm or anyone associated with the firm is undertaking or continuing representation in such a matter:

(i) The disqualified former judge advocate must ensure that he or she is screened from any participation in the matter and is apportioned no part of the fee or any other benefit therefrom; and,

(ii) Must provide written notice promptly to the appropriate government agency to enable it to ascertain compliance with the provisions of this section.

(2) Except as the law or regulations may otherwise expressly permit, a former judge advocate who has information known to be confidential government information about a person which was acquired when the former judge advocate was a public officer may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. The former judge advocate may continue association with the firm only if the disqualified judge advocate is screened from any participation in the matter and is apportioned no part of the fee or any other benefit therefrom.

(3) Except as the law or regulations may otherwise expressly permit, a judge advocate shall not:

(i) Participate in a matter in which the judge advocate participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the judge advocate's stead in the matter; or,

(ii) Negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the judge advocate is participating personally and substantially.

(4) As used in this section, the term "matter" includes:

(i) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest or other particular matter involving a specific party or parties; and,

(ii) Any other matter covered by the conflict of interest rules of the appropriate government agency.

(5) As used in this section, the term "confidential governmental information" means information which has been obtained under governmental authority and which, at the time this section is applied, the government is prohibited by law or regulations from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

(b) [Reserved]

**§ 776.31 Former judge or arbitrator.**

(a) *Former judge or arbitrator.* (1) Except as stated in paragraph (a)(3) of this section, a judge advocate shall not represent anyone in connection with a matter in which the judge advocate participated personally and substantially as a judge or other adjudicative officer, arbitrator, or law clerk to such a person, unless all parties to the proceeding consent after disclosure.

(2) A judge advocate shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the judge advocate is participating personally and substantially as a judge or other adjudicative officer. A judge advocate serving as law clerk to a judge, other adjudicative officer, or arbitrator may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the judge advocate has notified the judge, other adjudicative officer, or arbitrator.

(3) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

(b) [Reserved]

**§ 776.32 Department of the Navy as client.**

(a) *Department of the Navy as client.*

(1) Except when representing an individual client pursuant to paragraph (a)(6) of this section, a judge advocate for the naval service represents the Department of the Navy (or the Executive agency to which assigned) acting through its authorized officials. These officials include the heads of organizational elements within the naval service, such as the commanders of fleets, divisions, ships and other heads of activities. When a judge advocate for the naval service is assigned to such an organizational element and designated to provide legal services to the head of the organization, a lawyer-client relationship exists between the judge advocate and the Department of the Navy as represented by the head of the organization as to matters within the scope of the official business of the organization. The head of the organization may not invoke the lawyer-client privilege or the rule of confidentiality for the head of the organization's own benefit but may invoke either for the benefit of the Department of the Navy. In invoking either the lawyer-client privilege or lawyer-client confidentiality on behalf of the Department of the Navy, the head of the organization is subject to being overruled by higher authority.

(2) If a judge advocate knows that an officer, employee, or other member associated with the organizational client is engaged in action, intends to act or refuses to act in a matter related to the representation that is either adverse to the legal interests or obligations of the Department of the Navy or a violation of law which reasonably might be imputed to the Department, the judge advocate shall proceed as is reasonably necessary in the best interest of the naval service. In determining how to proceed, the judge advocate shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the judge advocate's representation, the re-

sponsibility in the naval service and the apparent motivation of the person involved, the policies of the naval service concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize prejudice to the interests of the naval service and the risk of revealing information relating to the representation to persons outside the service. Such measures shall include among others:

(i) Advising the head of the organization that his or her personal legal interests are at risk and that he or she should consult counsel as there may exist a conflict of interests for the judge advocate, and the judge advocate's responsibility is to the organization;

(ii) Asking for reconsideration of the matter by the acting official;

(iii) Advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the naval service; or,

(iv) Referring the matter to, or seeking guidance from, higher authority in the technical chain-of-command including, if warranted by the seriousness of the matter, referral to the staff judge advocate assigned to the staff of the acting official's next superior in the technical chain-of-command.

(3) If, despite the judge advocate's efforts pursuant to paragraph (a)(2) of this section, the highest authority that can act concerning the matter insists upon action or refuses to act, in clear violation of law, the judge advocate may terminate representation with respect to the matter in question. In no event shall the lawyer participate or assist in the illegal activity.

(4) In dealing with the officers, employees, or members of the naval service a judge advocate shall explain the identity of the client when it is apparent that the naval service's interests are adverse to those of the officer's, employee's, or member's.

(5) A judge advocate representing the naval service may also represent any of its officers, employees, or members, subject to the provisions of § 776.26 and other applicable authority. If the Department of the Navy's consent to dual representation is required by § 776.26,