

(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,

the consent shall be given by an appropriate official of the Department of the Navy other than the individual who is to be represented.

(6) A judge advocate who has been duly assigned to represent an individual who is subject to disciplinary action or administrative proceedings, or to provide legal assistance to an individual, has, for those purposes, an attorney-client relationship with that individual.

(b) [Reserved]

§ 776.33 Client under a disability.

(a) *Client under a disability.* (1) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the judge advocate shall, as far as reasonably possible, maintain a normal attorney-client relationship with the client.

(2) A judge advocate may seek the appointment of a guardian or take other protective action with respect to a client only when the judge advocate reasonably believes that the client cannot adequately act in the client's own interest.

(b) [Reserved]

§ 776.34 Safekeeping property.

Judge advocates shall not normally hold or safeguard property of a client or third persons in connection with representational duties under § 776.27(a)(1)(iii).

§ 776.35 Declining or terminating representation.

(a) *Declining or terminating representation.* (1) Except as stated in paragraph (a)(3) of this section, a judge advocate shall not represent a client or, when representation has commenced, shall seek to withdraw from the representation of a client, if:

(i) The representation will result in violation of this subpart B or other law or regulation;

(ii) The judge advocate's physical or mental condition materially impairs his or her ability to represent the client; or

(iii) The judge advocate is dismissed by the client.

(2) Except as stated in paragraph (a)(3) of this section, a judge advocate may seek to withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(i) The client persists in a course of action involving the judge advocate's services that the judge advocate reasonably believes is criminal or fraudulent;

(ii) The client has used the judge advocate's services to perpetrate a crime or fraud;

(iii) The client insists upon pursuing an objective that the judge advocate considers repugnant or imprudent; or,

(iv) Other good cause for withdrawal exists.

(3) When ordered to do so by a tribunal or other competent authority, a judge advocate shall continue representation notwithstanding good cause for terminating the representation.

(4) Upon termination of representation, a judge advocate shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for assignment or employment of other counsel and surrendering papers and property to which the client is entitled and, if a civilian lawyer is involved, refunding any advance payment of fee that has not been earned. The judge advocate may retain papers relating to the client to the extent permitted by law.

(b) [Reserved]

§ 776.36 Advisor.

In representing a client, a judge advocate shall exercise independent professional judgment and render candid advice. In rendering advice, a judge advocate should refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

§ 776.37 Mediation.

(a) *Mediation.* (1) A judge advocate may act as a mediator between individuals or clients if:

(i) The judge advocate consults with each individual concerning the implications of the mediation, including the