

§ 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 advantages and risks involved, and the effect on the attorney-client confidentiality, and obtains each individual's consent to the mediation;

(ii) The judge advocate reasonably believes that the matter can be resolved on terms compatible with each individual's best interests, that each individual will be able to make adequately informed decisions in the matter, and that there is little risk of material prejudice to the interests of any

of the individuals if the contemplated resolution is unsuccessful; and,

(iii) The judge advocate reasonably believes that the mediation can be undertaken impartially and without improper effect on other responsibilities the judge advocate has to any of the individuals.

(2) While acting as a mediator, the judge advocate shall consult with each individual concerning the decisions to be made and the considerations relevant in making them, so that each individual can make adequately informed decisions.

(3) A judge advocate shall withdraw as a mediator if any of the individuals so requests, or if any of the conditions stated in paragraph (a) of this section is no longer satisfied. Upon withdrawal, the judge advocate shall not continue to mediate among any of the individuals in the matter that was the subject of the mediation unless each individual consents.

(b) [Reserved]

§ 776.38 Evaluation for use by third persons.

(a) *Evaluation for use by third persons.*

(1) A judge advocate may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:

(i) The judge advocate reasonably believes that making the evaluation is compatible with other aspects of the judge advocate's relationship with the client; and

(ii) The client consents after consultation.

(2) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by § 776.25.

(b) [Reserved]

§ 776.39 Meritorious claims and contentions.

A judge advocate shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, or which includes a good-faith argument for an extension, modification, or reversal of existing law. A judge advocate representing an accused in a criminal proceeding or the respondent

in an administrative proceeding that could result in incarceration, discharge from the naval service, or other adverse personnel action, may nevertheless defend the client at the proceeding to ensure that every element of the case is established.

§ 776.40 Expediting litigation.

A judge advocate shall make reasonable efforts to expedite litigation or other proceedings consistent with the interests of the client and the judge advocate's responsibilities to tribunals.

§ 776.41 Candor and obligations toward the tribunal.

(a) *Candor and obligations toward the tribunal.* (1) A judge advocate shall not knowingly:

(i) Make a false statement of material fact or law to a tribunal;

(ii) Fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(iii) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the judge advocate to be directly adverse to the position of the client and not disclosed by opposing counsel;

(iv) Offer evidence that the judge advocate knows to be false (if a judge advocate has offered material evidence and comes to know of its falsity, the judge advocate shall take reasonable remedial measures); or

(v) Disobey an order imposed by a tribunal unless done openly before the tribunal in a good-faith assertion that no valid order should exist.

(2) The duties stated in paragraph (a) of this section continue to the conclusion of the proceedings, and apply even if compliance requires disclosure of information otherwise protected by § 776.25.

(3) A judge advocate may refuse to offer evidence that the judge advocate reasonably believes is false.

(4) In an ex parte proceeding, a judge advocate shall inform the tribunal of all material facts known to the judge advocate which are necessary to enable the tribunal to make an informed decision, whether or not the facts are adverse.

(b) [Reserved]