

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]

§ 776.42 Fairness to opposing party and counsel.

(a) *Fairness to opposing party and counsel.* (1) A judge advocate shall not:

(i) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value; a judge advocate shall not counsel or assist another person to do any such act;

(ii) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(iii) In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(iv) In trial, allude to any matter that the judge advocate does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or

(v) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(A) The person is a relative, an employee, or other agent of a client; and

(B) The judge advocate reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

(2) [Reserved]

(b) [Reserved]

§ 776.43 Impartiality and decorum of the tribunal.

(a) *Impartiality and decorum the tribunal.* (1) A judge advocate shall not:

(i) Seek to influence a judge, court member, member of a tribunal, prospective court member or member of a tribunal, or other official by means prohibited by law or regulation;

(ii) Communicate ex parte with such a person except as permitted by law or regulation; or

(iii) Engage in conduct intended to disrupt a tribunal.

(2) [Reserved]

(b) [Reserved]

§ 776.44 Extra-tribunal statements.

(a) *Extra-tribunal statements.* (1) A judge advocate shall not make an extrajudicial statement about any person or case pending investigation or adverse administrative or disciplinary proceedings that a reasonable person would expect to be disseminated by means of public communication if the judge advocate knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding or an official review process thereof.

(2) A statement referred to in paragraph (a) of this section ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter or any other proceeding that could result in incarceration, discharge from the naval service, or other adverse personnel action, and the statement relates to:

(i) The character, credibility, reputation, or criminal record of a party, suspect in a criminal investigation, or witness, or the identity of a witness, or the expected testimony of a party or witness;

(ii) The possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by an accused or suspect or that person's refusal or failure to make a statement;

(iii) The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;