

(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;

(iv) Any opinion as to the guilt or innocence of an accused or suspect in a criminal case or other proceeding that could result in incarceration, discharge from the naval service, or other adverse personnel action;

(v) Information the judge advocate knows or reasonably should know is likely to be inadmissible as evidence before a tribunal and would, if disclosed, create a substantial risk of materially prejudicing an impartial proceeding;

(vi) The fact that an accused has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the accused is presumed innocent until and unless proven guilty; or

(vii) The credibility, reputation, motives, or character of civilian or military officials of the Department of Defense.

(3) Notwithstanding paragraphs (a)(1) and (a)(2) (i) through (v) of this section, a judge advocate involved in the investigation or litigation of a matter may state without elaboration:

(i) The general nature of the claim or defense;

(ii) The information contained in a public record;

(iii) That an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, the identity of the persons involved;

(iv) The scheduling or result of any step in litigation;

(v) A request for assistance in obtaining evidence and information necessary thereto;

(vi) A warning of danger concerning the behavior of the person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(vii) In a criminal case:

(A) The identity, duty station, occupation, and family status of the accused;

(B) If the accused has not been apprehended, information necessary to aid in apprehension of that person;

(C) The fact, time, and place of apprehension; and

(D) The identity of investigating and apprehending officers or agencies and the length of the investigation.

(4) The protection and release of information in matters pertaining to the Department of the Navy is governed by such statutes as the Freedom of Information Act and the Privacy Act, in addition to those governing protection of national defense information. In addition, other laws and regulations may further restrict the information that can be released or the source from which it is to be released.

(b) [Reserved]

#### § 776.45 Judge advocate as witness.

(a) *Judge advocate as witness.* (1) A judge advocate shall not act as advocate at a trial in which the judge advocate is likely to be a necessary witness except when:

(i) The testimony relates to an uncontested issue;

(ii) The testimony relates to the nature and quality of legal services rendered in the case; or

(iii) Disqualification of the judge advocate would work substantial hardship on the client.

(2) A judge advocate may act as advocate in a trial in which another judge advocate or lawyer in the judge advocate's office is likely to be called as a witness, unless precluded from doing so by § 776.26 or § 776.28.

(b) [Reserved]

#### § 776.46 Special responsibilities of a trial counsel.

(a) *Special responsibilities of a trial counsel.* (1) A trial counsel shall:

(i) Recommend to the convening authority that any charge or specification not warranted by the evidence be withdrawn;

(ii) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(iii) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights;

(iv) Make timely disclosure to the defense of all evidence or information known to the judge advocate that tends to negate the guilt of the accused