

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 or mitigates the offense, and, in connection with sentencing, disclose to the defense all unprivileged mitigating information known to the judge advocate, except when the judge advocate is relieved of this responsibility by a protective order or regulation; and

(v) Exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the judge advocate in a criminal case from making an extrajudicial statement that the trial counsel would be prohibited from making under § 776.44.

(2) [Reserved]