

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]

(b) [Reserved]

**§ 776.47 Advocate in nonadjudicative proceedings.**

A judge advocate representing a client before a legislative or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of § 776.41, § 776.42, and § 776.43.

**§ 776.48 Truthfulness in statements to others.**

(a) *Truthfulness in statements to others.* In the course of representing a client a judge advocate shall not knowingly:

- (1) Make a false statement of material fact or law to a third person; or
- (2) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by § 776.25.

(b) [Reserved]

**§ 776.49 Communication with person represented by counsel.**

In representing a client, a judge advocate shall not communicate about the subject of the representation with a party the judge advocate knows to be represented by another judge advocate in the matter, unless the judge advocate has the consent of the other judge advocate or is authorized by law to do so.

**§ 776.50 Dealing with an unrepresented person.**

When dealing on behalf of a client with a person who is not represented by counsel, a judge advocate shall not state or imply that the judge advocate is disinterested. When the judge advocate knows or reasonably should know that the unrepresented person misunderstands the judge advocate's role in the matter, the judge advocate shall make reasonable efforts to correct the misunderstanding.

**§ 776.51 Respect for rights of third persons.**

In representing a client, a judge advocate shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining

evidence that violate the legal rights of such a person.

**§ 776.52 Responsibilities of the Judge Advocate General and supervisory judge advocates.**

(a) *Responsibilities of the Judge Advocate General and supervisory judge advocates.* (1) The Judge Advocate General and supervisory judge advocates shall make reasonable efforts to ensure that all judge advocates conform to this subpart.

(2) A judge advocate having direct supervisory authority over another judge advocate shall make reasonable efforts to ensure that the other judge advocate conforms to this subpart.

(3) A supervisory judge advocate shall be responsible for another subordinate judge advocate's violation of this subpart if:

(i) The supervisory judge advocate orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(ii) The supervisory judge advocate has direct supervisory authority over the other judge advocate and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(4) A supervisory judge advocate is responsible for ensuring that the subordinate judge advocate is properly trained and is competent to perform the duties to which the subordinate judge advocate is assigned.

(b) [Reserved]

**§ 776.53 Responsibilities of a subordinate judge advocate.**

(a) *Responsibilities of a subordinate judge advocate.* (1) A judge advocate is bound by this subpart notwithstanding that the judge advocate acted at the direction of another person.

(2) In recognition of a judge advocate's unique dual role as a commissioned officer and lawyer, subordinate judge advocates shall obey lawful directives and regulations of supervisory judge advocates when not inconsistent with this subpart or the duty of a judge advocate to exercise independent professional judgment as to the best interest of an individual client.