

Department of the Navy, DoD

§ 776.77

except that this section does not require disclosure of information otherwise protected by § 776.25.

- (2) [Reserved]
- (b) [Reserved]

§ 776.67 Judicial and legal officials.

A judge advocate shall not make a statement that the judge advocate knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, investigating officer, hearing officer, adjudicatory officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.

§ 776.68 Reporting professional misconduct.

(a) *Reporting professional misconduct.*

(1) A judge advocate having knowledge that another judge advocate has committed a violation of this subpart that raises a substantial question as to that judge advocate's honesty, trustworthiness, or fitness as a judge advocate in other respects, shall report such a violation pursuant to regulations promulgated by the Judge Advocate General.

(2) A judge advocate having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall report such a violation pursuant to regulations promulgated by the Judge Advocate General.

(3) This section does not require disclosure of information otherwise protected by § 776.25.

- (b) [Reserved]

§ 776.69 Misconduct.

(a) *Misconduct.* (1) It is professional misconduct for a judge advocate to:

- (i) Violate or attempt to violate this subpart, knowingly assist or induce another to do so, or do so through the acts of another;
- (ii) Commit a criminal act that reflects adversely on the judge advocate's honesty, trustworthiness, or fitness as a judge advocate in other respects;
- (iii) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(iv) Engage in conduct that is prejudicial to the administration of justice;

(v) State or imply an ability to influence improperly a government agency or official; or

(vi) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

- (2) [Reserved]
- (b) [Reserved]

§ 776.70 Jurisdiction.

Judge advocates shall be governed by this part.

§§ 776.71–776.75 [Reserved]

Subpart C—Complaint Processing Procedures

§ 776.76 Policy.

(a) It is JAG's policy to expeditiously and fairly investigate and resolve all allegations of professional impropriety lodged against attorneys under JAG supervision. (As used hereinafter, the term "judge advocates" refers to all attorneys under JAG supervision.)

(b) JAG approval will be obtained through the Rules Counsel before conducting any formal investigation or preliminary inquiry into an alleged violation of subpart B or the Code of Judicial Conduct. The preliminary inquiry and subsequent investigation will be conducted according to the procedures set forth in this part.

§ 776.77 Related investigations and actions.

Acts or omissions may constitute professional misconduct, criminal misconduct, or poor performance of duty. Care must be taken to distinguish among the different aspects of a judge advocate's conduct to determine who may take official action.

(a) Legal ethics and questions involving the professional misconduct of judge advocates are within the exclusive province of JAG. Ethical or professional misconduct will not be attributed to any judge advocate in any official record without a final JAG determination, made under this part, that such misconduct has occurred.

(b) Poor performance is properly addressed by the judge advocate's reporting senior through a variety of administrative actions, including fitness reports. Criminal misconduct is properly addressed by the judge advocate's commander through disciplinary action under the UCMJ or through referral to appropriate civil authority.

(c) Prior JAG approval is not required to investigate allegations of criminal conduct or poor performance of duty involving judge advocates.

(d) When, however, investigations into criminal conduct or poor performance reveal conduct that constitutes a violation of this part, or of the Code of Judicial Conduct in the case of judges, such conduct shall be reported to the Rules Counsel immediately.

(e) Inquiries into professional misconduct allegations will normally be held in abeyance until related criminal investigations are completed.

§ 776.78 Informal complaints.

Informal, anonymous, or "hot line" type complaints alleging professional misconduct must be referred to appropriate authority (such as the JAG Inspector General or the concerned commander) for appropriate inquiry. Such complaints are not, by themselves, cognizable under this part but may, if reasonably confirmed upon appropriate inquiry, be the basis of a formal complaint described in § 776.79.

§ 776.79 The complaint.

The complaint shall—

(a) Be in writing and signed by the complainant;

(b) State that the complainant has personal knowledge, or has otherwise received reliable information indicating, that:

(1) The judge advocate concerned is, or has been, engaged in misconduct that demonstrates a lack of integrity or a failure to meet the ethical standards of the profession, or both; or

(2) The judge advocate concerned is ethically, professionally, or morally unqualified to perform his or her duties; and

(c) Contain a complete, factual statement of the acts or omissions constituting the substance of the complaint, as well as a description of any at-

tempted resolution with the attorney concerned. Supporting statements, if any, should be attached to the complaint.

§ 776.80 Initial screening and Rules Counsel.

(a) The complaint shall be forwarded to the Judge Advocate General (Administrative Law Division) with a copy to the judge advocate concerned. The complaint shall be logged and then forwarded to the Rules Counsel.

(1) In cases involving Marine Corps judge advocates, the Director, Judge Advocate Division shall act as Rules Counsel.

(2) In all other cases, the Assistant Judge Advocate General (Civil Law) shall act as Rules Counsel.

(b) The Rules Counsel shall review the complaint to determine whether, if true,—

(1) It alleges ineffective assistance of counsel, or other violations of subpart B of this part, as a matter of defense in a court-martial, administrative board, or nonjudicial punishment proceeding and, if so, the Rules Counsel shall forward it to the proper appellate authority for appropriate action and return;

(2) In other cases, it establishes probable cause to believe that a violation of subpart B of this part or of the Code of Judicial Conduct has occurred.

(c) The Rules Counsel shall close the file without further action if the complaint does not establish probable cause to believe that a violation has occurred. The Rules Counsel shall notify the judge advocate concerned that the file has been closed.

§ 776.81 Charges.

(a) If the Rules Counsel determines that probable cause is established, he or she shall draft charges alleging violations of subpart B of this part or of the Code of Judicial Conduct and forward the charges, together with the original complaint and any allied papers—

(1) In cases involving Marine Corps judge advocates not serving as defense counsel or attached to Navy units, to the officer exercising general court-martial jurisdiction (OEGCMJ) over the concerned judge advocate, and request, on behalf of JAG, that the