

§ 776.3 Policy.

(a) DON judge advocates and civilian attorneys to whom this part applies shall maintain the highest standards of professional ethical conduct. Loyalty and fidelity to the United States, to the law, to clients both institutional and individual, and to the rules and principles of professional ethical conduct set forth in subpart B of this part must come before private gain or personal interest.

(b) Subpart B and related procedures set forth herein concern matters solely under the purview of JAG. Whether conduct or failure to act constitutes a violation of the duties imposed by this part is a matter within the sole discretion of JAG or officials authorized to act for JAG. The subpart B rules are not substitutes for, and do not take the place of, other rules and standards governing DON personnel such as the Government rules of ethical conduct, the Code of Conduct, the Uniform Code of Military Justice, and the general precepts of ethical conduct to which all officers of the Navy and Marine Corps are expected to adhere. Similarly, action taken pursuant to this part is not supplanted or barred by, and does not supplant or bar, the following action from being taken by authorized officials, even if the underlying misconduct is the same—

(1) Punitive or disciplinary action under the UCMJ; or

(2) Administrative action under the Manual For Courts-Martial or U.S. Navy Regulations, 1990, or under other applicable authority.

§ 776.4 Attorney-client relationships.

(a) The executive agency to which assigned (DON in most cases) is the client served by each DON civilian attorney or judge advocate unless detailed to represent another client by competent authority. Specific guidelines are contained in § 776.32.

(b) DON judge advocates and civilian attorneys will not establish attorney-client relationships with any individual unless detailed, assigned, or otherwise authorized to do so by competent authority.

(c) Employment of non-DON civilian counsel by an individual client does not alter the responsibilities of a DON

judge advocate or civilian attorney to that client. Specific guidance is set forth in § 776.95.

§ 776.5 Judicial conduct.

To the extent that it does not conflict with statutes, subpart B of this part, or regulations of the sort mentioned in § 776.3(b), the American Bar Association's Code of Judicial Conduct applies to all military and appellate judges and to all judge advocates and other attorneys performing judicial functions under JAG supervision within the Department of the Navy.

§ 776.6 Conflict.

To the extent that a conflict exists between subpart B of this part and the rules of other jurisdictions that regulate the professional conduct of attorneys, subpart B of this part will govern the conduct of attorneys engaged in legal functions under JAG supervision.

§ 776.7 Reporting requirements.

Individuals subject to this part shall promptly report to the Rules Counsel (see § 776.9) discipline by another jurisdiction upon himself, herself, or another individual subject to this part.

§ 776.8 Professional Responsibility Committee.

(a) *Composition.* This standing committee will consist of the Assistant Judge Advocate General (AJAG) for Military Justice; the Principal Deputy Assistant Judge Advocate General (PDAJAG) (Operations & Management); the Chief Judge, Navy-Marine Corps Trial Judiciary; and in cases involving Marine Corps judge advocates, the Deputy Director, Judge Advocate Division, HQMC; and such other personnel as JAG from time-to-time may appoint. A majority of the members constitutes a quorum. The Chairman of the Committee shall be PDAJAG (Operations & Management). The Chairman may excuse members disqualified for cause, illness, or exigencies of military service, and may request JAG to appoint additional or alternative members on a temporary or permanent basis.

(b) *Purpose.* (1) When requested by JAG or by the Rules Counsel, the Committee will provide formal advisory

opinions to JAG regarding application of subpart B of this part to individual or hypothetical cases.

(2) On its own motion, the Committee may also issue formal advisory opinions on ethical issues of importance to the DON legal community.

(3) Upon written request, the Committee will also provide formal advisory opinions to individuals subject to this part about the propriety of proposed courses of action under subpart B of this part. If such requests are predicated upon full disclosure of all relevant facts, and if the Committee advises that the proposed course of conduct is not violative of subpart B of this part, then no adverse action under this part may be taken against an individual who acts consistent with the Committee's advice.

(4) The Committee Chairman will forward copies of all opinions issued by the Committee to the Rules Counsel.

§ 776.9 Rules Counsel.

Appointed by JAG to act as a special assistant for the administration of subpart B of this part, the Rules Counsel derives authority from JAG and, with respect to administrative matters under this part, has "by direction" authority. The Rules Counsel shall cause opinions issued by the Professional Responsibility Committee of general interest to the DON legal community to be published in summarized, non-personal form in suitable publications. Unless another officer is appointed by JAG to act in individual cases, the following officers shall act as Rules Counsel—

(a) In cases involving Marine Corps judge advocates, Director, Judge Advocate Division; and

(b) In all other cases, Assistant Judge Advocate General (Civil Law).

§ 776.10 Informal ethics advice.

(a) *Advisors.* Judge advocates may seek informal ethics advice either from the OJAG officers named below or from their supervisory judge advocates in the field. Within the Office of the JAG, the following officials are designated to respond to informal, oral inquiries concerning this part in the areas of practice indicated—

(1) Head, Military Affairs/Personnel Law Branch, Administrative Law Division: administrative boards and related matters;

(2) Deputy Director, Criminal Law Division: military justice matters;

(3) Deputy Director, Legal Assistance Division: legal assistance matters; and

(4) Head, Standards of Conduct/Government Ethics Branch, Administrative Law Division: all others.

(b) *Informal advice.* Informal ethics advice will not be provided by OJAG advisors concerning matters currently in litigation.

(c) *Written advice.* A request for informal advice does not relieve the requestor of the obligation to comply with subpart B of this part. Although DON judge advocates and civilian attorneys are encouraged to seek advice when in doubt as to their responsibilities, they remain personally responsible for their professional conduct. If, however, a subordinate judge advocate acts in accordance with a supervisory judge advocate's written and reasonable resolution of an arguable question, then no adverse action under this part may be taken against the subordinate judge advocate. JAG is not bound by unwritten advice or by advice provided by nonsupervisors.

§ 776.11 Outside part-time practice of law.

A DON attorney's primary professional responsibility is to the executive agency to which assigned, and he or she is expected to devote the required amount of effort and time to satisfactorily accomplish assigned duties. The outside practice of law, therefore, must be carefully monitored. Attorneys to whom this section applies who wish to engage in the part-time, outside practice of law must first obtain permission from JAG. Details are contained in Subpart D of this part.

§ 776.12 Maintenance of files.

Ethics complaint records and outside, part-time law practice request files shall be maintained by the Administrative Law Division, Office of the Judge Advocate General.

(a) Files shall be labeled with the name of the individual against whom complaints are made, or who request