

(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

OEGCMJ appoint a judge advocate (normally the concerned officer's supervisor) to conduct a preliminary inquiry into the matter;

(2) In all other cases, to the supervisory judge advocate in the charged judge advocate's chain of command (or such other officer as JAG may designate), and direct, on behalf of JAG, the supervisory judge advocate to conduct a preliminary inquiry into the matter.

(b) The Rules Counsel shall provide a copy of the charges, complaint, and any allied papers to the judge advocate against whom the complaint is made and notify him or her that a preliminary inquiry will be conducted.

(c) The Rules Counsel shall also provide a copy of the charges to the commanding officer, or equivalent, of the judge advocate concerned if the complaint involves a judge advocate on active duty and the commanding officer is not the officer appointed to conduct the preliminary inquiry.

(d) The Rules Counsel shall also forward a copy of the charges:

(1) In cases involving Navy or Marine Corps judge advocates serving in Naval Legal Service Command units, to Commander, Naval Legal Service Command (COMNAVLEGSVCCOM);

(2) In cases involving Navy judge advocates serving in Marine Corps units, or involving Marine Corps judge advocates serving in Navy units to the Commandant of the Marine Corps (Attn: JA);

(3) In cases involving members of the Navy-Marine Corps trial judiciary, to the Trial Judiciary Chief Judge; and

(4) To the appropriate attorney discipline section if the complaint involves judge advocates certified by the Judge Advocates General/Chief Counsel of the other uniformed services.

**§ 776.82 Preliminary inquiry.**

(a) The purpose of the preliminary inquiry is to determine whether questioned conduct may constitute a violation of subpart B of this part or the Code of Judicial Conduct. The preliminary inquiry is not an "ethical investigation" that State licensing authorities might require lawyers to report.

(b) Upon receipt of the complaint and charges, the officer appointed to con-

duct the preliminary inquiry (PIO) shall promptly investigate the charges following generally the procedures set forth in the Manual of the Judge Advocate General [available from Office of the Judge Advocate General, Administrative Law Division, 200 Stovall Street, Alexandria, VA 22332-2400] for the conduct of fact-finding bodies not required to conduct a hearing. Reports of investigation by other authorities such as state bar associations may be used. The PIO should also—

(1) Identify and obtain sworn affidavits or statements from all relevant and material witnesses to the extent practicable;

(2) Identify, gather, and preserve all other relevant and material evidence;

(3) Provide the judge advocate concerned an opportunity to review all evidence, affidavits, and statements collected and a reasonable period of time (normally not exceeding 7 days) to submit a written statement or any other written material that the judge advocate wishes considered.

(c) The PIO may appoint and use such assistants as may be necessary to conduct the preliminary inquiry.

(d) The PIO shall personally review the results of the preliminary inquiry to determine whether, by a preponderance of the evidence, a violation of subpart B of this part or of the Code of Judicial Conduct, has occurred, and shall take one of the following actions:

(1) If the PIO determines that no violation has occurred or that the violation is minor or technical in nature and warrants only corrective counseling, then he or she shall forward (via the OEGCMJ in appropriate Marine Corps cases) the results of the preliminary inquiry to the Rules Counsel together with his or her recommendation that the file be closed, providing copies to all parties to whom the charges were previously sent.

(2) If the PIO determines by a preponderance of the evidence that a violation did occur, and that corrective action other than counseling may be warranted, he or she shall forward (via the OEGCMJ in appropriate Marine Corps cases) the results of the preliminary inquiry to the Rules Counsel together with all related materials and his or her recommendations. The PIO will