

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 conduct 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 provide copies of the materials forwarded to all parties to whom the charges were sent.

(e) The Rules Counsel shall review all reports of preliminary inquiries forwarded pursuant to paragraph (d) of this section.

(1) If the Rules Counsel determines that no further action is warranted, he or she shall close the file and notify the judge advocate concerned, his or her commanding officer, and all officials previously provided copies of the complaint. This action does not prevent command authority from taking

appropriate disciplinary or administrative action.

(2) If the Rules Counsel determines that further action is warranted, he or she shall—

(i) In cases involving Marine Corps judge advocates not serving as defense counsel or attached to Navy units, request, on behalf of JAG, that the OEGCMJ appoint a disinterested judge advocate (normally senior to the concerned judge advocate and not previously involved in the case) to initiate an ethics investigation into the matter;

(ii) In all other cases, appoint, on behalf of JAG, a disinterested judge advocate (normally senior to the individual whose conduct is being investigated and not previously involved in the case) to initiate an ethics investigation; and

(iii) Notify all interested command officials.

§ 776.83 Ethics investigation.

(a) Whenever an ethics investigation is initiated, the concerned judge advocate will be so notified in writing by the Rules Counsel.

(b) The concerned judge advocate will also be provided written notice of his or her right to request a hearing before the investigating officer; to inspect all evidence gathered; to present written or oral statements or materials for consideration; to call witnesses at his or her own expense (local military witnesses should be made available at no cost); to be assisted by counsel (paragraph (c) of this section); to challenge the investigating officer for cause (such challenges must be made in writing and sent to the Rules Counsel via the challenged officer); and to waive any or all of these rights.

(c) The respondent may be represented by counsel at the hearing. Such counsel may be—

(1) A civilian attorney retained at no expense to the government; or,

(2) In the case of a military respondent, military counsel—

(i) Detailed by the cognizant naval legal service office, law center, or legal service support section; or

(ii) Requested by the respondent, if such counsel is attached to the cognizant naval legal service office, legal

service support section, law center, or to a Navy or Marine Corps activity located within 100 miles of the hearing site at the time of the scheduled hearing, and if such counsel is reasonably available as determined by the requested counsel's reporting senior in his or her sole discretion. There is no right to detailed counsel if requested counsel is unavailable.

(d) If a hearing is requested, the investigating officer will conduct it after reasonable notice to the judge advocate concerned. The hearing will not be unreasonably delayed. The hearing is not adversarial in nature and there is no right to subpoena witnesses. Rules of evidence do not apply. The concerned judge advocate or his or her counsel may question witnesses that may appear. The proceedings shall be recorded but no transcript of the hearing need be made. Evidence gathered during, or subsequent to, the preliminary inquiry and such additional evidence as may be offered by the concerned judge advocate shall be considered.

(e) After completing the hearing, the investigating officer shall prepare a summary of the evidence and forward it together with his or her recommendations to the Rules Counsel via—

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

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

(3) In cases involving Navy or Marine Corps judge advocates serving in subordinate Navy fleet or staff billets, the fleet or staff judge advocate attached to the appropriate second-echelon commander;

(4) In cases involving members of the Navy-Marine Corps Trial Judiciary, the Trial Judiciary Chief Judge;

(5) In cases involving Marine Corps judge advocates serving in defense billets, via the Marine Corps defense service chain of command;

(6) In cases involving Marine Corps judge advocates not serving in defense counsel billets or in Navy units, via the