

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 OEGCMJ over the concerned judge advocate; and

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

(f) A copy of the report shall be provided to the concerned judge advocate and to all authorities previously provided copies of the charges who are not via addressees.

(g) The Rules Counsel shall review the report and either forward it to JAG together with his or her recommendations or return it, via the appropriate chain, to the investigating officer for further inquiry into specified areas.

#### § 776.84 Action by JAG.

(a) JAG is not bound by the Rules Counsel's or investigating officer's recommendations, but will base his action on the record as a whole.

(b) JAG may, but is not required to, refer any case to the Professional Responsibility Committee for an advisory opinion on interpretation of the rules in subpart B of this part or their application to the facts of a particular case.

(c) Upon receipt of the investigation, and any requested advisory opinion, JAG will take such action, as JAG considers appropriate in JAG's sole discretion. JAG may, for example—

(1) Return the report for further inquiry into specified areas;

(2) If JAG considers the allegations to be unfounded, or that no further action is warranted, JAG will direct the Rules Counsel to make the appropriate file entries and to notify all interested parties accordingly;

(3) If JAG considers the allegations to be supported by clear and convincing evidence, JAG may take appropriate corrective action including, but not limited to:

(i) Limiting the concerned judge advocate to practice under direct supervision of a superior judge advocate;

(ii) Limiting the concerned judge advocate to practicing in certain areas or forbidding him or her from practicing in certain areas;

(iii) Suspending or revoking the concerned judge advocate's authority to provide legal assistance;

(iv) If JAG finds that the misconduct so adversely affects the judge advocate's continuing ability to practice law in the naval service that certification under article 27(b), UCMJ, 10 U.S.C. 827(b), should be suspended, JAG may direct such certification to be suspended for a prescribed period;

(v) If JAG finds that the misconduct so prejudices the reputation of the judge advocate community, the administration of military justice, the practice of law under the cognizance of JAG, or the armed services as a whole, that certification under article 27(b), UCMJ, 10 U.S.C. 827(b), is no longer appropriate, JAG may direct such certification to be removed; or

(vi) In the case of a judge, if JAG finds that the misconduct so prejudices the reputation of military trial and appellate judges that certification under article 26(b), UCMJ, 10 U.S.C. 826(b), is no longer appropriate, direct such certification to be removed; and

(vii) Direct the Rules Counsel to contact appropriate authorities such as the Chief of Naval Personnel or the Commandant of the Marine Corps so that pertinent entries in appropriate DON records may be made; to make entries in and to close the file; to notify the individual concerned as well as any officials previously provided copies of the complaint; and notify appropriate tribunals and authorities of any action taken to suspend, decertify, or limit the practice of an attorney as counsel before courts-martial or the Navy-Marine Corps Court of Military Review, administrative boards, or as a legal assistance attorney.