

§§ 776.87–776.89 [Reserved]**Subpart D—Outside Part-Time Law Practice of Naval Service Attorneys****§ 776.90 Background.**

(a) A DON attorney's primary professional responsibility is to DON, and he or she is expected to devote the required level of time and effort to satisfactorily accomplish assigned duties. In addition to the obligations of an attorney engaged in the outside practice of law to comply with local bar rules governing professional responsibility and conduct, DON attorneys remain bound by subpart B of this part.

(b) Outside employment of DON personnel, both military and civilian, is limited by Executive Order 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306, and Secretary of the Navy Instruction 5370.2J, Standards of Conduct [available on request from the Office of the Judge Advocate General, Administrative Law Division, 200 Stovall Street, Alexandria, VA 22332-2400]. Additionally, section 0710 of the Manual of the Judge Advocate General prohibits active duty judge advocates and civilian attorneys under the supervision of JAG from accepting or receiving, directly or indirectly, any fee or compensation of any nature for legal services rendered to those persons eligible for legal assistance under article 0706 of the Manual of the Judge Advocate General, whether or not the service is rendered during duty hours, or is part of official duties.

(c) Additionally, DON officers and employees are prohibited by 18 U.S.C. 209 from receiving pay or allowances from any source other than the United States for the performance of any official service or duty unless specifically authorized by law. Furthermore, 18 U.S.C. 203 and 205 prohibit Federal officers and employees from personally representing or receiving, directly or indirectly, compensation for representing any other person before any Federal agency or court on matters in which the United States is a party or has an interest.

(d) These limitations are particularly significant when applied to DON attorneys who intend to engage concur-

rently in a civilian law practice. In such a situation, the potential is high for actual or apparent conflict arising from the mere opportunity to obtain clients through contacts in the course of official business. Unique conflicts or adverse appearances may also develop because of a DON attorney's special ethical responsibilities and loyalties.

§ 776.91 Definition.

Outside part-time law practice is defined as any regular provision of legal advice, counsel, assistance or representation, with or without compensation, that is not performed pursuant or incident to duties as a naval service attorney. Occasional uncompensated assistance rendered to relatives or friends is excluded from this definition. Teaching a law course as part of a program of education or training offered by an institution of higher education is not practicing law for purposes of this part.

§ 776.92 Policy.

(a) As a general rule, JAG will not approve requests to practice law part-time in association with lawyers or firms which represent clients with interests adverse to DON.

(b) JAG's approval of a particular request does not constitute DON certification of the requesting attorney's qualifications to engage in the proposed practice or DON endorsement of activities undertaken after such practice begins. Furthermore, because any outside law practice is necessarily beyond the scope of a DON attorney's official duties, the requesting attorney should consider obtaining personal malpractice insurance coverage.

§ 776.93 Action.

(a) DON attorneys to whom this enclosure applies who contemplate engaging in an outside part-time law practice must first obtain approval from JAG. Requests should be forwarded in the form provided in Judge Advocate General Instruction 5803.1A [the form is available on request from the Administrative Law Division] to the Administrative Law Division, via the attorney's chain of command. Marine Corps attorneys will also include Commandant of the Marine Corps (JAR) as a via addressee.

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(b) The requesting attorney's commanding officer may—

(1) Disapprove and return the request if he or she perceives actual or apparent conflicts of interests; or

(2) Forward the request recommending approval and providing such other information as may be relevant.

(c) JAG will review the request and advise applicants in writing of the decision, and of any conditions and limitations under which a particular practice may be undertaken. Until permission is granted, applicants will not commence any outside law practice.

§ 776.94 Revalidation.

(a) Attorneys to whom permission is given to engage in the outside part-time practice of law will notify JAG in writing, via their chain of command, within 30 days of any material change in:

(1) The nature or scope of the outside practice described in their requests, including termination; or

(2) Their DON assignment or responsibilities.

(b) Attorneys to whom permission is given to engage in the outside practice of law will annually resubmit an application to continue the practice with current information by 1 October each year.

§ 776.95 Relations with non-DON civilian counsel.

Employment of non-DON civilian counsel by an individual client alters no responsibilities of a DON attorney to that client.

(a) When civilian counsel is retained by an individual client, the DON attorney assigned to that client shall inform civilian counsel—

(1) Of the contents of this part;

(2) That subpart B of this part applies to civilian counsel practicing before military tribunals, courts, or boards as a condition of such practice; and

(3) That subpart B of this part takes precedence over other rules of professional conduct that might otherwise apply.

(b) If an individual client designates civilian counsel as chief counsel, the detailed DON attorney must defer to civilian counsel in any conflict over trial tactics. If, however, counsel have "co-counsel" status, then conflict in proposed trial tactics requires the client to be consulted to resolve the conflict.

(c) If civilian counsel has, in the opinion of the DON attorney, acted contrary to the requirements of subpart B of this part, the matter should first be discussed with civilian counsel. If not resolved between counsel, the client must be informed of the matter by the DON attorney. If, after being apprised of possible misconduct, the client approves of the questioned conduct, the judge advocate shall attempt to withdraw from the case in accordance with § 776.35. The client shall be informed of such intent to withdraw prior to action by the judge advocate.

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