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(2) A covered attorney having direct supervisory authority over another covered attorney shall make reasonable efforts to ensure that the other attorney conforms to this part.

(3) A supervisory attorney shall be responsible for another subordinate covered attorney's violation of this part if:

(i) The supervisory attorney orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(ii) The supervisory attorney has direct supervisory authority over the other attorney and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(4) A supervisory attorney is responsible for ensuring that the subordinate covered attorney is properly trained, is competent to perform the duties and has all appropriate credentials, including security clearances, to perform the duties to which the subordinate covered attorney is assigned.

(b) [Reserved]

[65 FR 15060, Mar. 21, 2000, as amended at 66 FR 70165, Nov. 21, 2002]

§ 776.54 Responsibilities of a subordinate attorney.

(a) *Responsibilities of a subordinate attorney:* (1) A covered attorney is bound by this part notwithstanding that the covered attorney acted at the direction of another person.

(2) In recognition of the judge advocate's unique dual role as a commissioned officer and attorney, subordinate judge advocates shall obey lawful directives and regulations of supervisory attorneys when not inconsistent with this part or the duty of a judge advocate to exercise independent professional judgment as to the best interest of an individual client.

(3) A subordinate covered attorney does not violate this part if that covered attorney acts in accordance with a supervisory attorney's written and reasonable resolution of an arguable question of professional duty. See § 776.10.

(b) [Reserved]

§ 776.55 Responsibilities regarding non-attorney assistants.

(a) *Responsibilities regarding non-attorney assistants.* With respect to a non-attorney acting under the authority, supervision, or direction of a covered attorney:

(1) The senior supervisory attorney in an office shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of a covered attorney;

(2) A covered attorney having direct supervisory authority over the non-attorney shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of a covered attorney; and

(3) A covered attorney shall be responsible for conduct of such a person that would be a violation of this part if engaged in by a covered attorney if:

(i) The covered attorney orders or, with the knowledge of the specific conduct, explicitly or impliedly ratifies the conduct involved; or

(ii) The covered attorney has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(b) [Reserved]

§ 776.56 Professional independence of a covered USG attorney.

(a) *Professional independence of a covered USG attorney.* (1) Notwithstanding a judge advocate's status as a commissioned officer subject, generally, to the authority of superiors, a judge advocate detailed or assigned to represent an individual member or employee of the DON is expected to exercise unfettered loyalty and professional independence during the representation consistent with these Rules and remains ultimately responsible for acting in the best interest of the individual client.

(2) Notwithstanding a civilian USG attorney's status as a Federal employee subject, generally, to the authority of superiors, a civilian USG attorney detailed or assigned to represent an individual member or employee of the DON is expected to exercise unfettered loyalty and professional independence during the representation

consistent with these Rules and remains ultimately responsible for acting in the best interest of the individual client.

(3) The exercise of professional judgment in accordance with paragraphs (a)(1) and (a)(2) of this section shall not, standing alone, be a basis for an adverse evaluation or other prejudicial action.

(b)(1) This section recognizes that a judge advocate is a military officer required by law to obey the lawful orders of superior officers. It also recognizes the similar status of a civilian USG attorney. Nevertheless, the practice of law requires the exercise of judgment solely for the benefit of the client and free of compromising influences and loyalties. Thus, when a covered USG attorney is assigned to represent an individual client, neither the attorney's personal interests, the interests of other clients, nor the interests of third persons should affect loyalty to the individual client.

(2) Not all direction given to a subordinate covered attorney is an attempt to influence improperly the covered attorney's professional judgment. Each situation must be evaluated by the facts and circumstances, giving due consideration to the subordinate's training, experience, and skill. A covered attorney subjected to outside pressures should make full disclosure of them to the client. If the covered attorney or the client believes the effectiveness of the representation has been or will be impaired thereby, the covered attorney should take proper steps to withdraw from representation of the client.

(3) Additionally, a judge advocate has a responsibility to report any instances of unlawful command influence. See R.C.M. 104, MCM, 1998.

§ 776.57 Unauthorized practice of law.

(a) *Unauthorized practice of law.* A covered USG attorney shall not:

(1) Except as authorized by an appropriate military department, practice law in a jurisdiction where doing so is prohibited by the regulations of the legal profession in that jurisdiction; or

(2) Assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) Limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. A covered USG attorney's performance of legal duties pursuant to a military department's authorization, however, is considered a Federal function and not subject to regulation by the states. Thus, a covered USG attorney may perform legal assistance duties even though the covered attorney is not licensed to practice in the jurisdiction within which the covered attorney's duty station is located. Paragraph (a)(2) of this section does not prohibit a covered USG attorney from using the services of non-attorneys and delegating functions to them, so long as the covered attorney supervises the delegated work and retains responsibility for it. See § 776.55 of this part. Likewise, it does not prohibit covered USG attorneys from providing professional advice and instruction to non-attorneys whose employment requires knowledge of law; for example, claims adjusters, social workers, accountants and persons employed in Government agencies. In addition, a covered USG attorney may counsel individuals who wish to proceed pro se or non-attorneys authorized by law or regulation to appear and represent themselves or others before military proceedings.

§§ 776.58–776.65 [Reserved]

§ 776.66 Bar admission and disciplinary matters.

(a) *Bar admission and disciplinary matters.* A covered attorney, in connection with any application for bar admission, appointment as a judge advocate, employment as a civilian USG attorney, certification by the JAG or his designee, or in connection with any disciplinary matter, shall not:

(1) Knowingly make a false statement of fact; or

(2) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority,