

defense counsel representing an accused in a court-martial be a member of the bar of a Federal court or of the bar of the highest court of a State. This civilian defense counsel qualification only has meaning if the attorney is a member “in good standing,” see *U.S. v. Waggoner*, 22 M.J. 692 (AFCMR 1986), and is then authorized to practice law within that jurisdiction. It is appropriate for the military judge, in each and every case, to ensure that a civilian defense counsel is qualified to represent the accused.

(3) Failure of a judge advocate to comply with the requirements of this Rule may result in professional disciplinary action as provided for in this instruction, loss of certification under Articles 26 and/or 27(b), UCMJ, adverse entries in military service records, and administrative separation under Secretary of the Navy Instruction 1920.6 (series) based on the officer’s failure to maintain professional qualifications. In the case of civil service and contracted civilian attorneys practicing under the JAG’s cognizance and supervision, failure to maintain good standing or otherwise to comply with the requirements of this Rule may result in adverse administrative action under applicable personnel regulations, including termination of employment.

(4) A covered USG attorney need only remain in good standing in one jurisdiction. If admitted to the practice of law in more than one jurisdiction, however, and any jurisdiction commences disciplinary action against or disciplines, suspends or disbars the covered USG attorney from the practice of law, the covered USG attorney must so advise the JAG.

(5) Certification by the United States Court of Appeals for the Armed Forces that a covered attorney is in good standing with that court will not satisfy the requirement of this section, since such status is normally dependent on Article 27 UCMJ certification alone.

§§ 776.72–776.75 [Reserved]

### Subpart C—Complaint Processing Procedures

#### § 776.76 Policy.

(a) It is JAG’s policy to investigate and resolve, expeditiously and fairly, all allegations of professional impropriety lodged against covered attorneys practicing under JAG cognizance and supervision.

(b) Rules Counsel approval will be obtained before conducting any preliminary inquiry or formal investigation into an alleged violation of subpart B of this part or the Code of Judicial Conduct. The Rules Counsel will notify the JAG prior to the commencement of any preliminary inquiry or investigation. The preliminary inquiry and any subsequent investigation will be conducted according to the procedures set forth in this subpart.

#### § 776.77 Related investigations and actions.

Acts or omissions by covered attorneys may constitute professional misconduct, criminal misconduct, poor performance of duty, or a combination of all three. Care must be taken to characterize appropriately the nature of a covered attorney’s conduct to determine who may and properly should take official action.

(a) Questions of legal ethics and professional misconduct by covered attorneys are within the exclusive province of JAG. Ethical or professional misconduct will not be attributed to any covered attorney in any official record without a final JAG determination, made in accordance with this part, that such misconduct has occurred.

(b) Criminal misconduct is properly addressed by the covered USG attorney’s commander through the disciplinary process provided under the UCMJ and implementing regulations, or through referral to appropriate civil authority.

(c) Poor performance of duty is properly addressed by the covered USG attorney’s reporting senior through a variety of administrative actions, including documentation in fitness reports or employee appraisals.

## Department of the Navy, DoD

## § 776.80

(d) Prior JAG approval is not required to investigate allegations of criminal conduct or poor performance of duty involving covered attorneys. 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 allegations of professional misconduct will normally be held in abeyance until any related criminal investigation or proceeding is complete. However, a pending criminal investigation or proceeding does not bar the initiation or completion of a professional misconduct investigation stemming from the same or related incidents or prevent the JAG from imposing professional disciplinary sanctions as provided for in this subpart.

### § 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 supervisory attorney) for inquiry. Such complaints are not, by themselves, cognizable under this subpart but may, if reasonably confirmed, be the basis of a formal complaint described in § 776.79 of this part.

### § 776.79 The complaint.

(a) The complaint shall:

(1) Be in writing and be signed by the complainant;

(2) State that the complainant has personal knowledge, or has otherwise received reliable information indicating, that:

(i) The covered attorney concerned is, or has been, engaged in misconduct that demonstrates a lack of integrity, that constitutes a violation of subpart B of this part or a failure to meet the ethical standards of the profession; or

(ii) The covered attorney concerned is ethically, professionally, or morally unqualified to perform his or her duties; and

(3) 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 covered attorney concerned. Supporting statements, if any, should be attached to the complaint.

(b) A complaint may be initiated by any person, including the Administrative Law Division of the Office of JAG (JAG (13)), or the Judge Advocate Research and Civil Law Branch, JA Division, HQMC (JAR).

### § 776.80 Initial screening and Rules Counsel.

(a) Complaints shall be forwarded to JAG(13) or, in cases involving Marine Corps judge advocates or civil service and contracted civilian attorneys who perform legal services under the cognizance and supervision of Director, JA Division, HQMC, to JAR.

(b) JAG(13) and JAR shall log all complaints received and will ensure that a copy is provided to the covered attorney who is the subject of the complaint.

(c) The covered attorney concerned may elect to provide an initial statement regarding the complaint for the Rules Counsel’s consideration. The covered attorney will promptly inform JAG(13) or JAR if he or she intends to submit any such statement. At this screening stage, forwarding of the complaint to the Rules Counsel will not be unduly delayed to await the covered attorney’s submission.

(d) The Rules Counsel shall initially review the complaint, and any statement submitted by the covered attorney complained of, to determine whether it complies with the requirements set forth in § 776.79 of this part.

(1) Complaints that do not comply with the requirements may be returned to the complainant for correction or completion, and resubmission to JAG(13) or JAR. If the complaint is not corrected or completed, and resubmitted within 30 days of the date of its return, the Rules Counsel may close the file without further action. JAG (13) and JAR will maintain copies of all correspondence relating to the return and resubmission of a complaint, and shall notify the covered attorney concerned if and when the Rules Counsel takes action to close the file.

(2) Complaints that comply with the requirements shall be further reviewed