DESKBOOK

ADMINSTRATIVE AND CIVIL LAW

PROFESSIONAL RESPONSIBILITY

DECEMBER 2025

PROFESSIONAL RESPONSIBILITY

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PROFESSIONAL RESPONSIBILITY

Outline of Instruction

I. REFERENCES.

A. Primary.

1. Army Regulation 27-26, *Legal Services - Rules of Professional Conduct For Lawyers* (1 March 2025).
2. The ABA Standards for Criminal Justice.
3. The ABA Code of Judicial Conduct (2020 edition).
4. The Army Code of Judicial Conduct for Army Trial and Appellate Judges (2008 edition).

B. Secondary.

1. AR 27-1, *Legal Services - Judge Advocate Legal Service* (24 JAN 17).
2. AR 27-3, *Legal Services - The Army Legal Assistance Program* (26 MAR 2020).
3. AR 27-10, *Legal Services - Military Justice* (20 NOV 2020).
4. The Model Rules of Professional Conduct, American Bar Association (2020).

C. Web sites

1. State ethics rules: http://www.abanet.org/cpr/links.html#States
2. ABA links to Professional Conduct material: http://www.abanet.org/cpr/pubs/ethicsopinions.html

II. INTRODUCTION.

A. AR 27-26, The Rules of Professional Conduct for Lawyers

1. AR 27-26 was most recently reissued on 1 March 2025. The 2018 revision adopted the structure and rules of the ABA Model Rules of Professional Conduct; the 2025 edition certified those rules as current, incorporating only administrative updates such as formatting, paragraph numbering, and cross-references.
2. This regulation provides comprehensive rules governing the ethical conduct of Army lawyers, military and civilian, and of non-Department of Defense civilian lawyers who practice before tribunals and other proceedings under the supervision of The Judge Advocate General, and of all non-Department of Defense civilian lawyers who practice in proceedings that are under the supervision of one of the Senior Counsels.
3. The General Counsel of the Army, The Judge Advocate General of the

Army, the Command Counsel, Army Materiel Command, and the Chief Counsel, Army Corps of Engineers, are designated Senior Counsel for the organizations under their qualifying authority and/or jurisdiction.

4. An Army lawyer is a representative of clients, an officer of the legal system, an officer of the Federal Government, and a public citizen having special responsibility for the quality of justice and legal services provided to the Department of the Army and to individual clients.

III. SCOPE AND GOVERNING STANDARDS.

A. Regulatory Standards Imposed by the Army.

1. **AR 27-26, The Rules of Professional Conduct for Lawyers** [hereinafter referred to as Army PR Rules].

   a. Rules apply to:

      (1) All Regular Army judge advocates;

      (2) All U.S. Army Reserve and Army National Guard/Army National Guard of the United States judge advocates, regardless of status.

      (3) Civilian attorneys employed by Department of the Army;

      (4) Civilian attorneys appearing before courts-martial (AR 27-1, para. 7-4; AR 27-10, para. 5-8 and App. C; Glossary, Army Rules),

      (5) Local national lawyers employed overseas by the Department of the Army, and

      (6) Army legal support personnel (e.g., 27Ds, legal administrators, interns, Civilian paralegals, administrative assistants, etc.).

   b. Attorneys must adhere to both the letter and the spirit of the rule.

   c. Rules state a standard to be followed.

      (1) Provide a basis for taking action should a lawyer fail to comply or meet the standard. Does not provide a basis for civil cause of action against either the Army or an attorney.

      (2) Comments are non-binding guidance.

2. State Rules. Every lawyer subject to these Rules is also subject to rules Promulgated by his or her licensing authority or authorities. (Comment, Army Rule 8.5).

3. **AR 27-26 – Applicability to Non-Lawyers.**

   (1) Despite the name of the regulation and various provisions only referencing “lawyers,” AR 27-26 also applies to and must guide the conduct of all non-lawyer personnel of the Judge Advocate Legal Services, as well.

   (2) Non-lawyer personnel—especially 27Ds—are typically at the front line of legal issues in the Army, so organizations must emphasize that all JALS personnel are subject to these rules guiding our dual military-legal profession.

B. Conflicts Between the Applicable Rules.

1. **Army Rule 8.5** provides that if there is a conflict with state rules, the lawyer should seek assistance from his or her supervisory lawyer. If not resolved, then:

a. The Army Rules found in AR 27-26 will govern the conduct of the lawyer in the performance of the lawyer's official responsibilities. Army Rules supersede rules of licensing jurisdiction in the performance of official duties. (Comment 4).

b. The more restrictive of the two Rules will govern the conduct of Judge Advocates in the Army National Guard/Army National Guard of the United States in the performance of official duties or while in a duty status, but not if the Guard Judge Advocate is in a Title 10 status, in which case the Army Rule will govern.

c. The rules of the appropriate licensing authority will govern the conduct of the lawyer in the private practice of law unrelated to the lawyer's official responsibilities.

C. Resolving Conflicts.

1. Judge advocates should follow the most restrictive standard. If a course of conduct is permitted under one standard and mandatory under another, follow the mandatory standard.

2. Employ practical alternatives.

a. Find the client new counsel.

b. Obtain exception from state bar. *See, e.g.,* Oregon Informal Ethics Opinion 88-19, which provides that military lawyers will not be subject to discipline in Oregon as long as their conduct is not unethical under the applicable military code of ethics. NOTE: Discuss this option with your technical supervisory chain, to include the Standards of Conduct Office, if necessary.

IV. THE LAWYER-CLIENT RELATIONSHIP.

A. Scope of Representation (Army Rule 1.2).

1. A client's well-informed and lawful decisions concerning the objectives of representation are controlling on counsel. However, counsel, in consultation with their client, may decide the means by which these decisions are to be pursued. A lawyer may also limit the objectives of the representation with the client's consent.

2. Example: Representation by Defense Counsel.

a. Client decides –

(1) Choice of counsel.

(2) What plea to enter.

(3) Selection of trial forum.

(4) Whether to enter into pretrial agreement.

(5) Whether to testify.

b. Defense counsel, in consultation with client decides –

(1) What motions to make.

(2) Which court members to select.

(3) Which witnesses to call.

(4) How cross-examination will be conducted.

(5) General strategic and tactical decisions.

c. Comment to Army Rule 1.2; see also Standards for Criminal Justice 4-5.2(b)).

3. A lawyer should assume responsibility for technical and legal tactical issues.

4. A lawyer shall not counsel a client to engage in conduct the lawyer knows is criminal. (Army Rule 1.2(d))

B. The Army as the Client (Army Rule 1.13).

1. A judge advocate or other Army lawyer represents the Army acting through its authorized officials (e.g. commanders).

2. The lawyer-client relationship exists between the lawyer and the Army.

3. Regulations may authorize representation of individual clients. For example, legal assistance attorneys and defense counsel are authorized to represent individual clients, not the Army. See AR 27-1, para. 2-1 and AR 27-3.

4. If not authorized to form an attorney-client relationship with the client, an Army lawyer *must* advise the individual that no such relationship exists between them. (Army Rule 1.13(a)(2)).

5. While an attorney may be permitted by law or regulation to form an attorney- client relationship, situations may arise in which doing so may lead to a conflict. Army attorneys should exercise considerable discretion in handling the personal legal problems of Army officials, and receiving client confidences, when the Army attorney is not assigned to a client service organization such as Legal Assistance or Trial Defense Service.

6. Actions Adverse to the Army: If an official of the Army (e.g., a commander) is engaged in action, intends to act, or refuses to act in a matter related to the representation that is a violation of a legal obligation to the Army, adverse to the legal interests or obligations of the Army, or a violation of law that reasonably might be imputed to the Army the lawyer shall—

a. Proceed as is reasonably necessary in the best interest of the Army.

b. In determining how to proceed, the lawyer shall evaluate the following:

(1) The seriousness of the violation and its consequences.

(2) The scope and nature of the lawyer's representation.

(3) The responsibility in the Army and the apparent motivation of the person involved.

(4) The policies of the Army concerning such matters, and any other relevant considerations.

7. Any measures taken by the lawyer shall be designed to minimize disruption or prejudice to the interests of the Army and the risk of revealing information relating to the representation to persons outside the Army. Such measures may include:

a. Asking the official to reconsider.

b. Advising the official to get a separate legal opinion.

c. Advising the official that his or her personal legal interests are at risk and he or she should consult counsel.

d. Advising the official that counsel is ethically bound to serve Army interests and must discuss the matter with supervisory lawyers.

e. Referring the matter to or seeking guidance from higher authority in the technical chain of supervision.

8. If unsuccessful, the lawyer may terminate representation with respect to the matter in question.

C. Competence (Army Rule 1.1).

1. Competence requires legal knowledge, skill, thoroughness, and preparation to the extent reasonably necessary for the representation.

(1) The required proficiency is that generally afforded to clients by other lawyers in similar matters.

(2) Supervisor makes the initial determination as to competence for a particular assignment.

(3) *United States v. Hanson*, 24 M.J. 377 (C.M.A. 1987). Judge believed defense counsel incompetent; properly appointed another detailed counsel without severing existing attorney-client relationship.

(4) *United States v. Weathersby,* 48 M.J. 668 (Army Ct. Crim. App. 1998) and *United States v. Murphy,* 50 M.J. 4 (C.A.A.F. 1998). Lack of defense sentencing case.

(5) *United States v. Denedo,* 2010 CCA LEXIS 27 (UNPUBLISHED) (N.M.Ct.Crim.App.). A civilian defense counsel's bad advice on collateral consequences of guilty plea with regards to immigration issues did not render plea involuntary.

(6) *Padilla v. Kentucky*, 130 S.Ct. 1473 (2010). Padilla is a U.S. permanent resident of forty years who served in the U.S. military during Vietnam. He was charged with felony drug trafficking, among

other things. He asked his attorney if a guilty plea would impact his immigration status, and his attorney told him he "did not have to worry about immigration status since he has been in the country so long." Padilla's attorney's advice was incorrect and but for his appeal that he pled guilty in reliance on his attorney's advice, he would have been deported. While the Supreme Court did not decide the ultimate issue of whether there was prejudice in this case, they did grant a new entitlement under the Sixth Amendment that Justice Scalia in his dissent terms a "Padilla warning" that now requires that where the law "is truly clear," as the court found in this case, "the duty to give correct advice is equally clear." *See also: United States v. Vargaspuentes,* 70 M.J. 501 (A.C.C.A. 2011) addressing the need to properly advise in an immigration case. Because the court resolved the case on other grounds, it did not substantively address counsel's duty to investigate when a Soldier's birthplace is listed as outside the U.S. on the ERB, but noted the point in passing.

(7) *United States v. Larson,* 66 M.J. 212 (C.A.A.F. 2008). A defense counsel may concede guilt on lesser charges to gain credibility on the main charge despite an accused's NG plea.

(8) Psychotherapist-patient privilege. *United States v. Paaluhi*, 54 M.J. 181 (C.A.A.F. 2000). Trial Defense Counsel erroneously interpreted possible psychotherapist-patient privilege in the military. The CAAF reversed lower court's judgment and set-aside appellant's conviction and sentence, because defense counsel rendered ineffective assistance in improperly evaluating military privilege law. The resulting confession secured Paaluhi's conviction. Without his confession there might have been reasonable doubt as to his guilt.

2. A lawyer can provide adequate representation in a wholly novel field through necessary study or consultation with a lawyer of established competence in the field in question.

3. If a lawyer becomes involved in representing a client whose needs exceed either the lawyer's competence or authority to act, the lawyer should refer the matter to another lawyer.

4. Lawyers may give advice and assistance even if they do not have skill ordinarily required if referral or consultation with another lawyer is impractical, however, assistance should be limited to that reasonably necessary in the circumstances.

5. A lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education, and comply with all continuing legal education requirements.

6. In light of TJAG SENDS 42 07 and ABA Formal Opinion 512, this duty expressly includes understanding the capabilities and limitations of generative artificial intelligence (GenAI). Competence requires that Army lawyers evaluate whether the use of GenAI tools is appropriate for a

given task, ensure outputs are accurate and reliable, and avoid overreliance on unverified AI generated content.

D. Diligence (Army Rule 1.3).

1. Lawyers must act with reasonable diligence and promptness in representing a client.

a. *United States v. Gibson*, 51 M.J. 198 (C.A.A.F. 1999). Civilian defense counsel found ineffective where the CDC failed to pursue leads contained in the CID report that was provided by the trial counsel. The accused was charged with rape and adultery. The undeveloped information in the CID report included summarized interviews with teachers and students at the 15 year old victim's school, that she may have alleged rape to distract school officials from her behavior, that she had a record of exaggerating her sexual experience, that she related conflicting versions of the alleged rape, and that she did not enjoy a good reputation for truthfulness.

b. *Porter v. McCollum*, 130 S. Ct. 447, 454 (2009). Attorney required to perform adequate background investigation and present evidence in sentencing even if client not helpful. Defendant's status as a veteran and his struggles with posttraumatic stress disorder and subsequent substance abuse, as well as his impaired mental capacity and abusive childhood is highly relevant mitigation evidence.

c. *United States v. Boone*, 42 M.J. 308 (Army Ct. Crim. App. 1996), *rev'd* 49 M.J. 187 (1998). In cases where the client has retained civilian defense counsel, military defense counsel must not be lulled into inactivity and complete deference to their civilian counterparts; military defense counsel are not relieved of professional or ethical obligations to the client.

d. *United States v. Sorbera*, 43 M.J. 818 (A.F. Ct. Crim. App. 1996). Civilian defense counsel whose advice to accused led to an additional charge provided incompetent pretrial representation.

e. Post-trial submissions. *United States v. Johnston*, 51 M.J. 227 (C.A.A.F. 1999). The record of trial was returned to the convening authority for a new recommendation and action. The new post-trial recommendation was served on the accused's defense counsel, who was then a civilian. Substitute counsel was not appointed. The new recommendation was not served on the accused, nor did the defense counsel contact the accused. No matters were submitted by the accused or counsel. The court found the accused was not represented at a critical point in the proceedings against him in violation of Article 27 (b).

f. *United States v. Fordyce*, 69 M.J. 501 (Army Ct. Crim. App. 2010). DC neglected to advise on waiver and Post Trial and Appellate Rights (PTAR) form did not cover it. The court has found this to be an ongoing problem and their "patience is at a limit." There was

also question whether client consulted on clemency submissions. Court highly encourages an accused co-sign R.C.M. 1105 and 1106 submissions, as well as putting it on the record the client has fully been advised of the post-trial submission process. Court did not find counsel ineffective but found error in the post-trial handling of the case because the court was not convinced the appellant was "afforded a full opportunity to present matters to the convening authority." Consequently, the court set aside the action and returned it for a new one.

g. Qualifications of Counsel. *United States v. Williams*, 51 M.J. 592 (N.M.Ct.Crim.App. 1999). Appellant contended that his civilian defense counsel was ineffective *per se* because he was on "inactive status" with respect to his admissions to practice law in three states. The Navy- Marine Court disagreed and found nothing in R.C.M. 502(d)(3)(A) requiring the practitioner to be able to practice in the home state. 51 M.J. at 597. Counsel had submitted to the trial court various related documents to include one affirming that he was a "lawyer in good standing" in the state of Iowa. *See also U.S. v. Morris*, 54 MJ 898 (N.M.Ct.Crim.App. 2001). DC's inactive status with his state bar does not make him per se ineffective or deprive the appellant of the right to counsel; *U.S. v. Steele*, 53 M.J. 274 (2000). CDC's inactive status with his state bar does not make him per se ineffective or deprive the appellant of the right to counsel.

h. Notification of requirement to register. *United States v. Miller*, 63 M.J. 452 (C.A.A.F. 2006). Appellant averred that he was never told that pleading to an offense of possessing child pornography would require him to register as a TX sex offender. His failure to register led him to be incarcerated in TX. The court failed to find IAC for failure to inform the accused. The court did specify for cases tried after November 2006 that counsel must notify accused that any qualifying offense under DODI 1325.7 (sex + violence or minority) requires sex offender registration.

2. Lawyers must consult with clients as often as necessary.

3. A lawyer should carry through to conclusion all matters undertaken for a client.

E. The Lawyer as Advisor.

1. As advisor, a lawyer provides a client with an informed understanding of the client's legal rights and obligations and explains their practical implications. A lawyer may refer to moral, economic, social, and political factors when rendering advice to clients (Army Rule 2.1).

(1) Purely technical legal advice may sometimes be inadequate.

(2) NOT a moral advisor as such. Discuss how other factors

influence the way the law will be applied.

2. Lawyers must exercise independent judgment when advising a client (Army Rule 5.4).

(1) Rule explicitly allows for individual representation when detailed or assigned.

(2) Unfettered loyalty & professional independence to the same extent as lawyers in private practice when assigned individual client.

F. Communication (Army Rule 1.4).

1. Lawyers have a duty to keep clients reasonably informed about the status of a matter and to comply with client requests for information.

2. Lawyers also must explain matters to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

3. A lawyer's fundamental obligations of communication and competence are not diminished when a client's ability to receive information from or convey information to a lawyer is impeded because the lawyer and the client do not share a common language.

(1) Under such circumstances, a lawyer may be obligated to take measures appropriate to the client's situation to ensure that those duties are properly discharged.

(2) When reasonably necessary, a lawyer should arrange for communications to take place through an impartial interpreter or translator capable of comprehending and accurately explaining the legal concepts involved, and who will assent to and abide by the lawyer's duty of confidentiality (See ABA Formal Opinion 500, Language Access in the Client-Lawyer Relationship, 6 October 2021).

4. When GenAI tools are used in the representation, counsel should inform clients as appropriate, particularly if AI materially contributes to legal analysis or drafting. ABA Formal Opinion 512 emphasizes that informed client consent may be required when AI use implicates confidentiality, costs, or substantive decision making.

G. Confidentiality (Army Rule 1.6).

1. General rule. A lawyer shall not reveal any information relating to the representation of a client.

(1) Applies to all sources of information, not just that which comes from the client.

(2) Applies to information obtained prior to formation of attorney-client relationship.

(3) The duty of confidentiality continues after the lawyer-client relationship has terminated.

(4) The duty also applies to Army legal support personnel.

2. Exceptions to confidentiality.

(1) A client may consent to disclosure of confidences (Army Rule 1.6(a)).

(2) Disclosure may be impliedly authorized to carry out the representation (Army Rule 1.6(a)). (See, *e.g. United States v. Province*, 45 M.J. 359 (C.A.A.F. 1997).

(3) Disclosure is permitted to establish a claim or defense in a controversy with a client (Army Rule 1.6(b)).

(4) Intention to commit a crime.

(1) Army Rule 1.6(b) mandates disclosure of information a lawyer reasonably believes necessary to prevent a client from committing a crime which is likely to:

(a) result in imminent death or substantial bodily harm, or

(b) significantly impair the readiness or capability of a military unit, vessel, aircraft, or weapon system.

(2) There is no authority for revealing information of other potential offenses or past crimes under the Army Rules.

(a) Example: Revealing Whereabouts of a Fugitive.

(b) ABA Formal Opinion 84-349 (1984) (withdrawing formal opinions 155 and 156, which stated that defense counsel must reveal client whereabouts -- new rule is defense counsel does not disclose).

(5) Compare to Mil. R. Evid. 502 - Lawyer-Client Privilege.

(1) Protects against disclosure of privileged communication between attorney and client.

(2) Does not protect against other disclosures (*e.g.*, information gained from sources other than the client).

(3) More narrow than Rule 1.6 (*e.g.*, no restriction to just future crimes).

3. Responding to Online Criticism.

(1) Lawyers can be targets of online criticism and negative reviews. The Model Rule of Professional Conduct 1.6(a) prohibits lawyers from disclosing information relating to any client's representation or information that could reasonably lead to the discovery of confidential information by another.

(2) A negative online review, because of its informal nature, is not a "controversy between the lawyer and the client" within the meaning of Rule 1.6(b)(5), and therefore does not allow disclosure of confidential information relating to a client's matter (See ABA Formal Opinion 496, Responding to Online

Criticism, 3 January 2021.)

(3) Lawyers who are the subject of online criticism should consider the following measures to avoid disclosing information relating to any client's representation, or information that could reasonably lead to the discovery of confidential information by others-

(1) request that the website or search engine host remove the information.

(2) ignore the negative post or review.

(3) post an invitation to contact the lawyer privately to resolve the matter.

(4) indicate that professional considerations preclude a response.

(5) respond directly to a client or former client who has posted criticism of the lawyer online but refrain from disclosing information relating to that client's representation online.

4. TJAG SENDS 42 07 underscores that Army lawyers may not conduct official business on unauthorized GenAI platforms. Uploading client information into unapproved AI systems risks violating Rule 1.6. ABA Formal Opinion 512 likewise cautions that lawyers must ensure AI vendors provide adequate safeguards for client data. Supervisory lawyers must verify that only approved, Army authorized platforms are used.

H. Terminating the Relationship. (Army Rule 1.16)

1. Notwithstanding any other provision of the rule, a lawyer shall continue the representation when ordered to do so by a tribunal or other competent authority.

2. A lawyer SHALL seek withdrawal (or not commence representation) if -

(1) the representation will violate the rules

(2) the lawyer's physical or mental condition materially impairs her ability to represent the client; OR

(3) the lawyer is dismissed by the client.

3. A lawyer MAY seek withdrawal if it can be accomplished without material adverse impact to the client's interests OR -

(1) the client persists in a course of action which the lawyer reasonably believes to be criminal or fraudulent;

(2) the client has used the lawyer's services to perpetrate a crime or a fraud;

(3) the client persists in pursuing an objective which the lawyer considers repugnant or imprudent;

(4) the representation has been rendered unreasonably difficult by

the client or, in the case of a non-government lawyer, the representation will result in an unreasonable financial burden on the lawyer OR

(5) other good cause for withdrawal exists.

4. A lawyer must take reasonable steps to protect a client's interests upon termination of the relationship (Army Rule 1.16).

5. Steps should include giving notice to the client, allowing time for employment of other counsel, and surrendering all papers and property.

6. *United States v. Spriggs*, 52 M.J. 235 (C.A.A.F. 2000). TDS counsel represented Spriggs at a prior court-martial resulting in an acquittal. After additional charges were preferred, including perjury charges from his first court-martial, appellant made an IMC request for his first DC. DC had left active duty. The CAAF ruled that release of the TDS counsel from active duty constituted good cause for severance of the attorney-client relationship. Additionally, appellant did not establish that there was an ongoing attorney-client relationship. *But see United States v. Hutchins*, 69 M.J. 282 (C.A.A.F. 2011). Court faulted the judge for not establishing reason for DC withdraw prior to DC resigning from military service after being part of the trial defense team for a year. The court found there was not a knowing release and allowing the DC to EAS (ETS in the Army) because he had completed his commitment did not constitute "good cause." Unlike NMCCA, however, CAAF was unwilling to presume prejudice and did not set aside the findings or approved sentence. CAAF has further opined, in the matter of Frank D. Wuterich, Appellant CCA 200800183, that in the event of a termination, particularly where there is a conflict involved, the military judge should ensure there is a verbatim transcript that reflects the facts, nature, type, and source of the conflict.

I. Fees and Self-Referral (Army Rule 1.5).

1. A lawyer shall not accept a gratuity, salary, fee, or other compensation from a client for services performed as an officer of the U.S. Army.

2. A lawyer shall not receive compensation for making a referral of a client to a private practitioner.

3. A legal assistance attorney shall not receive any actual or constructive compensation or benefit for referring to a private-practitioner (including himself) a matter the lawyer first became involved with in a military legal assistance capacity. Comment to Army Rule 1.5; <u>see also</u> AR 27-3, para. 8-5d & d(1).

a. Does not subsequently prohibit a reserve component lawyer from representing military personnel or dependents in a private capacity so long as the representation does not concern the "same general matter" that the attorney provided legal assistance on. AR 27-3, para. 8-5d(2) & (3) "Same general matter" means

(1) One or more types of cases within any one of the ten categories of legal assistance; OR

(2) Which arises out of the same factual situation or course of events.

b. Prohibits lawyer from using official position to solicit or obtain clients for private practice.

J. Conflicts of Interest (Army Rules 1.7, 1.8 & 1.9).

1. General Rule (Army Rule 1.7(a)): a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

   a. The representation of one client will be directly adverse to another client; or

   b. There is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer. Example: Defense counsel materially limited by loyalty to Army. *United States v. Bryant*, 35 M.J. 739 (A.C.M.R. 1992).

2. If a concurrent conflict of interest exists, a lawyer may still represent a client if all of the following factors are met (Army Rule 1.7(b)):

   a. the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

   b. the representation is not prohibited by law or regulation;

   c. the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

   d. each affected client gives informed consent, confirmed in writing.

   e. If a conflict develops after representation has been undertaken, the attorney must seek to withdraw, unless informed consent is obtained from the client in accordance with Army Rule 1.7(b). The Army Rules adopt an objective approach. Relevant factors in determining whether multiple representation should be undertaken include:

      (1) duration and intimacy of the lawyer's relationship with the clients involved,

      (2) the functions being performed by the lawyer,

      (3) likelihood that disagreement will arise, and

      (4) likely prejudice to the client from the conflict.

   f. Potential conflicts in legal assistance:

      (1) Estate planning.

      (2) Debtor-creditor and seller-purchaser. *Compare Atlantic Richfield Co. v. Sybert*, 456 A.2d 20 (1983) (no conflict) *with Hill v. Okay Construction Co*., 252 N.W. 2d 107 (1977) (conflict).

      (3) Domestic relations. *Coulson v. Coulson*, 448 N.E.2d 809 (1983); *State ex rel. Okla. Bar Ass'n v. Blackburn*, 1991 OK 35, 812 P.2d 379.

g. Potential conflict in criminal practice -- representing multiple accused.

(1) Ordinarily a lawyer should refuse to act for more than one of several co-defendants. *See* Standards for Criminal Justice 4-3.5(b).

(2) Consult AR 27-10 and USATDS SOP for procedures on handling a co-accused situation. Generally:

(a) C o-accused will initially be contacted by separate defense counsel.

(b) Co-accused may submit request for the same individual military counsel.

(c) Chief, USATDS decides whether to grant the request. No request will be granted unless each co-accused has signed a statement reflecting informed consent to multiple representation and it is clearly shown that a conflict of interest is not likely to develop.

3. Business transactions. Generally, a lawyer shall not enter into a business transaction with a client (Army Rule 1.8(a)).

4. Former client. A lawyer who has represented a former client shall not thereafter represent another person in the same matter or use information to the disadvantage of a former client (Army Rule 1.9).

a. After termination of a client-lawyer relationship, a lawyer has certain continuing duties with respect to confidentiality and conflicts of interest.

b. Matters are "substantially related" for purposes of this Rule if they involve the same transaction or legal dispute or if there otherwise is substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client's position in the subsequent matter.

K. Imputed Disqualification (Army Rule 1.10).

1. Lawyers working in the same military law office are not automatically disqualified from representing clients with conflicting interests. A functional analysis is required (Army Rule 1.10. Compare ABA Model Rule 1.10.)

2. Army policy may discourage representation of both parties in certain instances, e.g. AR 27-3, para. 8-7. (Attorneys who share office space, non-lawyer assistants, and other legal resources are prohibited from providing legal assistance to both parties involved in a legal dispute.)

V. THE LAWYER AS AN ADVOCATE.

A. Disclosure of Adverse Legal Authority (Army Rule 3.3).

1. A lawyer shall not knowingly fail to disclose to the tribunal, legal authority in the controlling jurisdiction, known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.

2. A lawyer who represents a client in an adjudicative proceeding and who knows

that a person intends to engage, is engaging, or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

B. Disruption of the Tribunal (Army Rule 3.5(d)).

C. Expressing Personal Opinion at Trial (Army Rule 3.4(e)).

D. Trial Publicity (Army Rule 3.6).

1. A lawyer shall not make public statements that will have a substantial likelihood of prejudicing a proceeding. *See Gentile v. Nevada State Bar*, 111 S. Ct. 2720 (1991).

2. Other publicity considerations.

   a. TJAG Memorandum on Relations with News Media - OSJA attorneys must get approval from their SJA before any information is released to the media.

   b. USATDS SOP - Defense counsel must consult with their Regional Defense Counsel and the Office of the Chief, TDS, prior to release. The ultimate decision to release information rests with the defense counsel, however.

3. Information that is releasable is listed at Rule 3.6(b).

E. *Ex Parte* Discussions with Military Judge and Panel Members (Army Rule 3.5).

1. A lawyer shall not communicate *ex parte* with a judge or juror except as permitted by law. *See United States v. Copening*, 34 M.J. 28 (C.M.A. 1992); *United States v. Hamilton*, 41 M.J. 22 (C.M.A. 1994).

2. It is unprofessional conduct for a prosecutor to engage in unauthorized *ex parte* discussions with or submission of material to a judge relating to a particular case that is or may come before the judge (Standards for Criminal Justice 3-3.3).

F. Prosecutorial Disclosure (Army Rule 3.8(d)).

1. A lawyer prosecuting a criminal case shall make timely disclosure to the defense of all evidence or information known to the lawyer that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense all unprivileged mitigation information known to the lawyer.

2. This is commonly referred to as “Brady” material and failure to turn it over is a “Brady Violation” after the case *Brady v. Maryland*, 373 U.S. 83 (1963).

G. Handling Evidence or Contraband (Army Rule 3.4(a)).

1. If a lawyer receives contraband, the lawyer has no legal right to possess it and must always surrender it to lawful authorities.

2. If the client informs the lawyer of the existence of the evidence but does not relinquish possession.

   a. Lawyer should inform the client of the lawyer's legal and

ethical obligations regarding the evidence.

b. Lawyer should refrain from either taking possession or advising the client what to do regarding the evidence.

3. If the lawyer receives the evidence or contraband.

a. A lawyer shall not --

(1) Unlawfully obstruct another party's access to evidence

(2) Unlawfully alter, destroy or conceal a document or other material having potential evidentiary value or

(3) Assist another person to do so.

b. A lawyer who receives an item of physical evidence implicating the client in criminal conduct shall disclose the location of or shall deliver that item to proper authorities when required by law or court order (Comment, Army Rule 3.4(a)). *United States v. Rhea*, 33 M.J. 413 (C.M.A. 1991) (defense counsel have a duty to surrender evidence which implicates their clients to prosecution). But see also *United States v. Province*, 45 M.J. 359 (1997) (no duty where Government has equal access to evidence).

c. If a lawyer receives stolen property, the lawyer must surrender it to the owner or lawful authority to avoid violating the law (Comment, Army Rule 3.4).

d. Concealment, destruction, alteration, etc. could be a violation of UCMJ art. 134, Obstruction of Justice.

4. If the lawyer discloses the location of or delivers an item of physical evidence to proper authorities, it should be done in a way designed to protect the client's interests, including -

a. Client's identity.

b. Client's words concerning the item.

c. Client's privilege against self-incrimination.

d. Other confidential information.

5. Advice on handling evidence or contraband:

a. Do not accept the item!!

b. Advise the client of the consequences of continued possession and voluntary turn-in. Do not advise the client of what to do regarding the evidence. Also advise the client of the lawyer's obligations regarding the evidence.

c. If possession cannot be avoided, turn it over to the proper authorities.

(1) Do not dispose of it or conceal it.

(2) Do not destroy or alter the evidentiary quality.

(3) Upon turn-in, refuse to disclose client identity and circumstances of your possession to the extent permitted by applicable case law.

H. Client Perjury (Army Rule 3.3; ABA Formal Opinion 87-353 (1987)).

1. A lawyer who knows that his client intends to testify falsely must/should:

   a. Must advise the client not to do so and explain the consequences of doing so, including the lawyer's duty to disclose.

   b. May attempt to withdraw (if the lawyer's efforts to dissuade the client from testifying falsely are unsuccessful).

   c. Limit examination to truthful areas.

   d. If not possible, must disclose to the tribunal the client's intention to commit perjury.

   e. A lawyer who knows that the client has already testified falsely must:

      (1) Persuade the client to rectify it.

      (2) Disclose the perjury if unsuccessful.

   f. A lawyer "knows" that a client intends to testify falsely if the accused has admitted facts to the lawyer which establish guilt and the lawyer's independent investigation establishes that the admissions are true, but the accused insists on testifying (Comment, Army Rule 3.3).

2. *United States v. Baker*, 65 MJ 691 (C.A.A.F. 2007). Provides additional nonbinding guidance on how defense counsel and military trial judges should handle issues of client perjury at trial. Counsel should:

   a. Conduct an investigation into all evidence prior to taking any action with regard to the alleged perjury.

   b. Ethical obligations only exist if you have a “firm factual basis” to conclude that client has committed perjury.

   c. Review potential consequences with client.

   d. Request an on the record ex-parte discussion with the Military Judge to notify the military judge that the client will testify in narrative form without benefit of counsel *without* expressing why.

   e. Refrain from using the perjured testimony in any way (i.e. in argument, cross or direct of other witnesses.)

I. Witness Perjury (Army Rule 3.3).

1. Avoiding the use of perjured testimony.

   a. When evidence that a lawyer <u>knows</u> to be false is provided by a person who is not the client, the lawyer <u>must</u> refuse to offer it regardless of the client's wishes (Army Rule 3.3).

   b. "A lawyer <u>may</u> refuse to offer evidence that the lawyer <u>reasonably</u> <u>believes</u> is false." (Army Rule 3.3(c)).

2. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures (Army Rule 3.3(a)(3)). This obligation ends at the conclusion of the proceeding. (Comment—*Duration of Obligation*).

J. Prosecutorial Conduct.

1. The duty of the prosecutor is to seek justice, not merely to convict. ABA Standard 3-1.2b.

   a. A lawyer prosecuting a criminal case shall recommend to the convening authority that any charge or specification not supported by probable cause be withdrawn. Military Rule 3.8(a).

   b. A prosecutor should not intentionally avoid pursuit of evidence because he believes it will damage the prosecution's case or aid the accused. ABA Standard 3-5.4(g).

   c. Trial counsel should report to the convening authority any substantial irregularity in the convening orders, charges, or allied papers . . . bring to the attention of the convening authority any case in which trial counsel finds trial inadvisable for lack of evidence or other reasons (R.C.M. 502(d)(6) (Discussion)).

2. Examination of Witnesses in Court. ABA Standard 3-6.7.

   a. Fair and objective cross-examination is permitted.

   b. Unnecessary intimidation and humiliation of witness on cross- examination is prohibited.

   c. If the prosecutor *knows* that the witness is truthful, cross-examination may not be used to discredit or undermine the truth.

3. It is unprofessional conduct for a prosecutor knowingly to make false statements or representations in the course of plea discussions. ABA Standard 3-5.6(e).

4. A prosecutor may argue to the jury all reasonable inferences from the evidence in the record, but it is unprofessional conduct for the prosecutor intentionally to misstate the evidence or mislead the jury as to the inferences it may draw. Rule 3.4(e); ABA Standard 3-6.8(a).

5. It is unprofessional conduct for the prosecutor to express his or her personal belief or opinion as to the truth or falsity of any testimony or evidence or the guilt of the defendant. Rule 3.4(e); ABA Standard 3-6.8(b). *See also United States v. Koch*, No. ARMY 20160107, 2018 CCA LEXIS 34 (A. Ct. Crim. App. Jan. 29, 2018).

6. Prosecutors should not:

   a. Make arguments calculated to inflame the passions or prejudices of the jury. ABA Standard 3-6.8c. *United States v. Diffoot*, 54 M.J. 149 (2000). Comments made by the trial counsel during closing argument regarding accused's ethnicity and urging a conviction based on guilt by association amounted to plain error and

materially prejudiced appellant's substantial rights.

b. Make arguments that would divert the jury from its duty to decide the case on the evidence. ABA Standard 3-6.8(c)(also prohibits arguments which inject issues broader than guilt or innocence of accused under controlling law, or makes predictions of the consequences of the court members' findings).

United States v. Baer, 53 M.J. 235 (C.A.A.F. 2000). The CAAF held that golden rule arguments asking the members to put themselves in the victim's place are improper and impermissible in the military justice system. However, they did recognize the validity of an argument asking the members to imagine the victim's fear, pain, terror and anguish. When improper argument is made, it must be looked at in context to determine whether it substantially impacted on the right of the accused to a fair and impartial trial. The CAAF held no such impact here and affirmed the case.

c. Ask the defendant during cross-examination to comment on the truthfulness of other witnesses.

United States v. Harrison, 585 F.3d 1155 (9th Cir. 2009), where the SAUSA asked the defendant to comment on the truthfulness of the MP's he allegedly assaulted.

d. Threaten Criminal Prosecution.

See United States v. Edmond, 63 M.J. 343 (C.A.A.F. 2006) where a trial counsel threatened a civilian witness (former Soldier) with prosecution by the SAUSA if he testified and then had the SAUSA reiterate the threat of prosecution.

There is no parallel provision in the Army Rules (or ABA Model Rules). Threatening or filing criminal charges may, however, violate more narrow provisions of Rules 3.1, 3.3, 3.4, 3.5, 3.8, 4.4, 8.4(b), or 8.4(e).

7. Prosecutors may refer to or argue facts outside the record only if the facts are matters of common public knowledge based on ordinary human experience. ABA Standard 3-6.9.

8. Vindictive Prosecution

To support a claim of vindictive prosecution, one must show that (1) "others similarly situated" were not charged; (2) "he has been singled out for prosecution"; and (3) "his 'selection . . . for prosecution' was 'invidious or in bad faith, *i.e.*, based on such impermissible considerations such as race, religion, or the desire to prevent his exercise of constitutional rights.'" Failure to show any of the three prongs of the test must result in the failure of a claim of vindictive prosecution. Because the burden to establish a claim of vindictive prosecution falls on the moving party, challenging a case on grounds of vindictive prosecution can be difficult. See *Unites States v. Martinez*, 2009 WL 1508451 (A.F. Ct. Crim. App. 2009). Air Force Captain alleged that he had "identified problems with operating procedures, equipment and standard of care," which he claimed

irritated the SJA, convening authority, the Article 32 IO, the judge, TC, DC, "and a myriad of others."

K. Lawyer as a Witness (Army Rule 3.7).

1. A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness except where:

   a. The testimony relates to an uncontested issue;

   b. The testimony relates to the nature and quality of legal services rendered in the case; or

   c. Disqualification of the lawyer would work a substantial hardship on the client.

2. Defense counsel should avoid the prospect of having to testify personally about the content of a witness interview. Standards for Criminal Justice 4-4.3(f).

VI. OBLIGATIONS TO THIRD PARTIES.

A. Truthfulness in Statements to Others.

1. A lawyer shall not make a false statement of law or fact to third parties (Army Rule 4.1(a)).

   a. Knowledge of falsity generally required.

   b. Misrepresentations can occur if a lawyer affirms a false statement of another person.

2. A lawyer may not fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act, unless disclosure is prohibited by Rule 1.6 (Army Rule 4.1(b)).

3. A lawyer also has an obligation to disclose prior misstatements.

B. Respect for the Rights of Third Parties (Army Rule 4.4).

1. A lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third party or use methods of obtaining evidence that violate the rights of third parties (Army Rule 4.4).

2. A lawyer who receives a document or electronically stored information relating to the representation of the lawyer's client and knows or reasonably should know that the document or electronically stored information was inadvertently sent shall promptly notify the sender (Army Rule 4.4(b)).

C. Communications with Opposing Parties.

1. A lawyer shall not discuss a case with another party who is represented by an attorney (Army Rule 4.2).

   a. A lawyer may not accomplish communication indirectly through an agent or encourage clients to contact opposing parties. Trial counsel, following on the heels of military defense counsel, barged into a meeting between civilian defense counsel and accused. Trial counsel proceeded to tell the accused that his civilian lawyer had not interviewed witnesses and was ineffective. This was inappropriate contact with the accused. *United States v. Meek*, 44 M.J. 1 (C.A.A.F.1996).

   b. Communication with a party concerning matters outside the representation is permissible.

   c. A lawyer may communicate with the commander of an opposing party even if the party is represented by counsel.

2. A lawyer is not precluded from communicating with an unrepresented party (Army Rule 4.3).

   a. Lawyers may not state or imply that they are disinterested.

   b. If the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding.

   c. Lawyers should refrain from giving advice to unrepresented persons (Comment to Army Rule 4.3).

D. Threatening Criminal Prosecution.

1. Under ABA Code DR 7-105, lawyers could not present, participate in presenting, or threaten to present criminal charges "solely to gain an advantage in a civil matter." *See United States v. Edmond*, 63 M.J. 343 (C.A.A.F. 2006) where a trial counsel threatened a civilian witness (former Soldier) with prosecution by the SAUSA if he testified and then had the SAUSA reiterate the threat of prosecution

2. There is no parallel provision in the Army Rules (or ABA Model

Rules). Threatening or filing criminal charges may, however, violate more narrow provisions of Rules 3.1, 3.3, 3.4, 3.5, 3.8, 4.4, 8.4(b), or 8.4(e).

VII. DUTIES OF SUBORDINATES AND SUPERVISORS.

A. Responsibilities of Supervisory Attorneys (Army Rule 5.1).

1. Supervisors must make reasonable efforts to ensure subordinates comply with Rules (Army Rule 5.1). Includes nonlawyers under supervision (Army Rule 5.3).

2. A supervisor assumes imputed responsibility for acts of subordinates if:

   a. The lawyer orders or ratifies a subordinate's violation, or

   b. The lawyer knows of and fails to take remedial action to avoid or mitigate the consequences of a violation.

3. Supervisory attorneys must also ensure that all personnel under their authority use only approved GenAI platforms and that they are trained on the ethical implications of AI use. TJAG SENDS 42 07 directs that supervisory lawyers are accountable for ensuring compliance with Army policy and AR 27 26 when AI tools are employed.

B. Responsibilities of Subordinate Attorneys (Army Rule 5.2).

1. A subordinate is bound by the Rules of Professional Conduct even if he or she acts at the direction of another.

2. Subordinate attorneys may rely on ethical judgment of a supervisor if the issue is subject to question. If the ethical question can be answered only one way, the subordinate must comply with the Rules.

   a. When lawyers in a supervisor-subordinate relationship encounter a matter involving professional judgment as to ethical duty, the supervisor may assume responsibility for making the judgment. Otherwise a consistent course of action or position could not be taken.

   b. If the question can reasonably be answered only one way, the duty of both lawyers is clear and they are equally responsible for fulfilling it.

3. Subordinate attorneys remain personally responsible for ensuring that their use of GenAI complies with confidentiality, competence, and candor obligations. Reliance on a supervisor’s direction does not excuse improper use of unauthorized AI platforms.

VIII. PROFESSIONAL RESPONSIBILITY COMPLAINTS.

A. Professional Misconduct (Army Rule 8.4).

1. It is professional misconduct for a lawyer to violate or attempt to violate these rules, to do so through the acts of others, or to knowingly assist another in violating the rules.

2. A lawyer is professionally answerable for criminal acts that indicate lack of a characteristic relevant to the practice of law. Examples include offenses involving violence, dishonesty, breach of trust, or interference with justice.

3. A lawyer also commits professional misconduct by engaging in conduct

(even if not criminal) involving dishonesty, fraud, deceit, or misrepresentation, or that is prejudicial to the administration of justice.

4. Improper use of GenAI—such as entering client data into unauthorized systems, failing to verify AI generated legal content, or misrepresenting AI outputs as original legal work—may constitute professional misconduct under Rule 8.4. Both TJAG SENDS 42 07 and ABA Formal Opinion 512 emphasize that ethical accountability rests with the lawyer, not the technology.

B. Professional misconduct distinguished from personal misconduct.

1. Cases normally in the scope of AR 27-1.

a. Dishonesty – false claims, shoplifting, obtaining false official orders, firearms violations, stalking, or illegal surveillance.

b. Sexual misconduct – Bigamy, sexual relationships involving a conflict of interest, sexual crimes.

c. Insulting Behavior – Mismanaging by uttering insulting ethnic or sexual comments, displaying offensive visual material or by inappropriate touching of subordinates, clients, witnesses, or staff workers.

d. Dealing with Subordinates – Mismanaging by having personal business transactions with subordinates or imposing on subordinates for personal favors.

2. Cases normally not in scope of AR 27-1.

a. Discretionary Administrative Action – OERs, NCOERs, award recommendations, pass, or leave actions.

b. Personal misconduct or questionable sexual activity (including adultery) unless it involves mismanagement or is a criminal act that reflects on fitness to practice law (i.e. having sex with a married client).

c. DWIs or minor traffic offenses.

d. Insulting Behavior – rudeness and name-calling unless directed toward judges or investigating officers or as listed in C.1.c., above.

e. Conduct is being investigated as criminal misconduct, punishable under the UCMJ.

C. Reporting Misconduct (Army Rule 8.3).

1. A lawyer with knowledge of a violation of a Rule of Professional Conduct that raises a substantial question as to the lawyer's honesty, trustworthiness, or fitness as a lawyer, must report the violation.

2. Minor or inadvertent violations need not be reported.

3. Disclosure of information protected under Rule 1.6 is not required.

4. There is no requirement to confront a violator.

5. Army system implemented in AR 27-1.

   a. Allegations are reviewed by several supervisory JAs up to and including DJAG before a formal preliminary screening inquiry (PSI) is ordered.

   b. Increased due process protections for the accused attorney.

   c. Designed to protect the interests of both the Army and the attorney.

   d. OTJAG determines whether to report violation to state bar.

D. Self-Reporting Requirement (AR 27-1).

1. AR 27-1, para 11-10a. A JA is required to self-report to OTJAG (Professional Responsibility Branch) when he or she is first notified that he or she is being investigated by his or her licensing authority under circumstances that could result in being disciplined as an attorney or a judge.

2. If a JA claimed they had never been notified as his or her defense for not self- reporting, TJAG could still, at his discretion, decide that he has lost faith and trust in the JA and could then discipline the JA IAW his authority under Art 27(b) and RCM 109(a) of the UCMJ and under 10 USC 3037.

DI. Advisory Opinions (AR 27-1, para. 11-7d).

1. Requests should be forwarded through technical channels to the Executive, OTJAG.

2. Opinions will be rendered only for important issues of general applicability to the JAG Corps.

DII. Determining Ineffective Assistance of Counsel (IAC).

1. The Supreme Court has recognized that simply providing counsel is insufficient to meet the burden imposed by the Sixth Amdt. Of the U.S. Constitution. "That a person who happens to be a lawyer is present at trial alongside the accused, however, is not enough to satisfy the constitutional command. An accused is entitled to be assisted by an attorney… who plays the role necessary to ensure that the trial is fair." *Strickland v. Washington*, 466 U.S. 668, 685 (1984). The test for determining whether counsel's conduct has fallen below the acceptable line is measured in a two-part test. First the court looks at whether counsel's performance was deficient, compared to what is expected of reasonably competent counsel, without the benefit of hindsight, and using the standards in place at the time, and then examining whether appellant was harmed by the deficiency, assuming there was one. If either prong of the test fails, then the court will not find IAC.

2. On 19 January 2011, the Supreme Court released two cases, *Harrington v. Richter* and *Premo v. Moore*, using this analysis in examining whether defense counsel was deficient for not calling a blood spatter expert or failing to attempt to suppress an admission before entering into a guilty plea.

IX. CONCLUSION.

This professional responsibility deskbook serves as the essential guide for all Judge Advocate Legal Services (JALS) personnel in upholding the highest standards of ethical conduct.

Rooted in the Army Rules of Professional Conduct for Lawyers (AR 27-26), this guide outlines the rigorous demands placed upon Army legal personnel as representatives of clients, officers of the legal system, officers of the Federal Government, and public citizens.

The foundation of Army legal practice rests on our Four Constants: Principled Counsel; Mastery of the Law; Servant Leadership; and Stewardship. Our Army PR Rules are expressed throughout these constants.

The revisions incorporated here reflect the continuing evolution of military legal practice, emphasizing two critical areas:

1. Technological Responsibility in the Age of GenAI

The introduction of guidance on Generative Artificial Intelligence (GenAI) fundamentally shifts the duty of competence. Army legal personnel must understand GenAI's limitations and capabilities, ensuring that:

- Confidentiality is protected by prohibiting the upload of client confidences or identifying information into unapproved AI systems, maintaining the use of Army-approved platforms for official business only.

- Candor toward the tribunal is maintained by verifying outputs and never submitting "hallucinated case law".

- Supervisory attorneys (Rule 5.1) actively ensure all subordinates comply with authorized usage and receive mandatory annual PR training on GenAI. Accountability remains with the individual JALS personnel, as improper use may constitute professional misconduct (Rule 8.4).

2. Expanded Scope of Ethical Accountability

The 2025 version of AR 27-26 definitively broadens the application of the Rules, affirming that Army lawyers are subject to the professional conduct standards even when performing non-law but official, and law-related but official, duties (Rule 5.7).

In confronting the complex ethical challenges inherent in serving both the Army (as the organizational client) and individual clients, Army legal personnel must continuously apply judgment, and consult with supervisory lawyers (Rule 5.1).

Ultimately, the goal defined in the Preamble of AR 27-26 remains constant: to fulfill the vital role in the preservation of society by demonstrating respect for the legal system and dedicating oneself to the quality of justice and legal services provided.

Appendix: Generative Artificial Intelligence (GenAI) and Professional Responsibility

This appendix consolidates Army and ABA guidance on the ethical implications of using Generative Artificial Intelligence (GenAI) in military legal practice. It supplements the rule-by-rule discussions in this Deskbook and should be read in conjunction with AR 27-26 (2025), TJAG SENDS 42-07 (21 Nov 2024), and ABA Formal Opinion 512 (July 2024).

- **Competence (Rule 1.1):** Lawyers must understand GenAI's capabilities and risks; verify outputs.
- **Communication (Rule 1.4):** Inform clients when AI materially contributes; obtain consent if confidentiality or substantive rights are implicated.
- **Confidentiality (Rule 1.6):**
    - Only Army-approved platforms may be used. For example, users may input CUI materials only into those platforms that have been approved for and accordingly marked with the appropriate data impact level.
    - Nevertheless, ensuring proper government information practices (applicable to all Federal employees) is only one part of the analysis.
    - JALS personnel also must **NOT** upload materials that may constitute client confidences (e.g., PII or other information that could reasonably identify their individual client or their specific unit, if in a command legal support/advisory role).
- **Candor (Rules 3.1 & 3.3):** Verify accuracy; do not submit hallucinated case law. Additionally, if one who is subject to the Army PR rules has reason to believe evidence has been fabricated using an AI tool, they have a duty to not introduce such evidence (and potentially to disclose the fabrication to the tribunal, IAW Rules 3.1 and 3.3).
- **Supervision (Rules 5.1 & 5.2):** Supervisors ensure training and compliance; it is often the most junior JAs and 27Ds who come into formations having grown up with AI tools. Although subordinates remain personally responsible for their own violation of the Army PR rules, supervisors must discuss limitations of AI use (such as those outlined in this Appendix) with their subordinates.
- **Misconduct (Rule 8.4):** Improper AI use may constitute misconduct; accountability rests with the JALS personnel.
- **Training:** Beginning FY 2025, all JALS personnel are required to receive annual PR training on GenAI use (*see* TJAG SENDS 42-07).

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