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CDC Policy Memo 2.2

From: Chief Defense Counsel of the Marine Corps
To: Distribution List

Subj: ETHICAL OBLIGATIONS OF DEFENSE SUPPORT PERSONNEL

Ref: (a) JAGINST 5803.1 (series)

Encl: (1) Statement of Understanding for Defense Support Personnel
(2) Rule 5.3: Responsibilities Regarding Non-Attorney Assistants

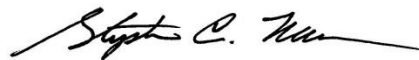
1. Purpose. To ensure that all support personnel serving under the supervisory control of Marine defense counsel understand and comply with the ethics standards and procedures as prescribed by reference (a). Defense support personnel include all Marines (except judge advocates), civilian employees, and interns assigned to a defense office.

2. Discussion. In the increasingly complex and fast-paced world of litigation, Marine defense counsel rely heavily on the support and services of defense support personnel who perform a wide array of tasks and who must fully understand the ethical implications of their billets. Although defense support personnel are not governed by the reference, their supervisory attorneys have specific responsibilities regarding their training, understanding, and compliance with applicable ethics standards that are illustrated in enclosure (1). The reference specifically requires supervising attorneys to "make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the covered attorney." Rule 5.3a(1) and (2). Under certain circumstances, the covered attorney might even be responsible for the conduct of non-judge advocate personnel under his supervision if he orders the conduct, or fails to take remedial action when the consequences of the conduct can be avoided or mitigated. See Rule 5.3a(3). A copy of Rule 5.3 in its entirety is provided at enclosure (2).

Subj: ETHICAL OBLIGATIONS OF DEFENSE SUPPORT PERSONEL

3. Policy. Within two working days of the publication of this policy memo, defense support personnel will be re-briefed by their supervisory attorney regarding their ethical obligations. If they have not already done so, together they will each sign the Statement of Understanding (SOU) provided at enclosure (1). All newly assigned defense support personnel will be briefed by their supervisory attorney and sign the SOU within two days of reporting to a defense office. Until the SOU is executed, defense support personnel shall not have any access to attorney-client confidential matters or attorney-work product. The original SOU will be maintained by the supervisory attorney and a copy will be provided to the defense support personnel for continued reference throughout their tour in the defense office. An electronic version will be uploaded into a designated file on your Regional Defense Counsel's office within the Defense Counsel of the Marine Corps SharePoint site. Supervisory attorneys shall re-read and re-execute the SOU with their subordinates at least annually.

4. Conclusion. CDC Policy Memo 1-11 is hereby cancelled. This CDC Policy Memo is effective immediately.



STEPHEN C. NEWMAN

Distribution List:

SJA to CMC
Legal Chief of the Marine Corps
All Marine Corps SJAs
LSSS OICs
LSST OICs
All members of the DSO
NMCTJ Code 52, OJAG

**STATEMENT OF UNDERSTANDING
ETHICAL OBLIGATIONS OF DEFENSE SUPPORT PERSONNEL
WITHIN THE MARINE CORPS DEFENSE SERVICES ORGANIZATION**

Welcome Aboard. You have been chosen to serve in the Marine Corps Defense Services Organization where each of us is committed to ensuring that our fellow Marines and Sailors receive the utmost legal support by a highly proficient and dedicated team of professionals. As we discussed earlier today, we are committed to the rule of law and we are bound to adhere to the strictest ethical standards. The following Statement of Understanding (SOU) highlights the point we discussed.

1. **Identity of the supervisory attorney and head of the office.** All personnel should know the attorney who supervises their work, to whom they should go for instructions or if problems arise. All personnel should know the reporting chain for their branch and to whom they should go if problems develop that cannot be resolved by their immediate supervisory attorney.

My billet title is: _____.

I reported aboard on (date): _____.

My supervisory attorney is: _____.

The Regional Defense Counsel is: _____.

The Chief Defense Counsel of the Marine Corps is: _____.

2. **Clear identification of role.** Always identify yourself as a legal services specialist, law student, intern, or civilian employee who works for (name of supervisory attorney), in the Marine Corps Defense Services Organization. If you believe the other person is confused about your role, you must clarify the matter immediately.
3. **Honesty.** Attorneys and personnel under their supervision have a strict obligation not to engage in misrepresentation or deception on behalf of their clients. Under absolutely no circumstances should you lie or deceive anyone about anything, particularly work-related matters.
4. **Authority and advice.** Some legal work can only be performed by an attorney. For example, you cannot appear in court or take a deposition. However, your supervisory attorney may delegate to you other types of work, so long as you are properly supervised.
 - a. You are not authorized to send letters on your own or to meet with clients or any attorney unless so directed by your supervisory attorney.
 - b. You are not authorized to give legal advice of any kind.
 - c. When authorized by your supervisory attorney, you may convey the attorney's advice either orally or in writing.

- i. Normally, advice should be conveyed in writing. If you are conveying advice in writing, give the supervisory attorney a copy of the document before it is sent (this includes electronic mail).
 - ii. If you are conveying advice orally, make a memorandum of advice conveyed and confirm the accuracy of the advice with your supervisory attorney.
 - iii. If questions arise about any advice you may have communicated on behalf of the supervisory attorney, inform the supervisory attorney immediately and follow his/her instructions.
5. **Confidentiality**. The Rules of Professional Conduct state that all information relating to representation of a client is subject to a duty of confidentiality. This includes the fact that a client has met with an attorney or been present during walk-in counselings. You may not discuss cases or client matters outside the office with your spouse, parents, friends or anyone else, either in formal or informal settings unless authorized by the client's defense counsel. This includes anyone in the client's chain of command, the SJA, the trial counsel, or an investigator. You should be respectful and reply that you cannot discuss the matter and refer questions to your supervisory attorney. You should also inform your supervisory attorney of all such contacts and comments.
6. **Conflicts of Interest**. When your supervisory attorney takes on a new client, he/she will determine whether the case creates a conflict of interest with a current or former client or other case within the branch. Occasionally, you might have a conflict based on a prior billet or prior knowledge of the case or client; you might have a personal, professional or financial interest in a case or client. Immediately disclose this information to your supervisory attorney.
7. **Conflict Cases**. Attorneys and their representatives may not communicate in any way with an opposing party who is represented by counsel. Often, there will be "conflict cases" where attorneys within the same Defense Office will represent clients whose interests are adverse to each other. For example, if Cpl Jones and Cpl Butler are suspected of the same or connected offenses, it may be in one or both of their interest to agree to be a witness against the other. You may not disclose any information regarding Cpl Jones' case to Cpl Butler or his attorney and vice versa. Any correspondence regarding conflict cases must be protected from inadvertent disclosure to the opposing party.
8. **Contact with opposing counsel (Military Justice Officer, Trial Counsel and their support personnell, counsel on conflict cases)**. On occasion, trial counsel or their representatives may contact you for information or documents relating to a case in which you are involved. Before revealing any information or providing any documents to opposing counsel, inform your supervisory attorney of the request and await his/her instruction.
9. **Gifts from Clients**. You cannot accept a money or gifts from a client or their families. If the client or the client's family gives you a gift, such as a restaurant or store gift card, plaque, or some other item, you need to inform your supervisory attorney immediately and ask for guidance.

10. **Client's access to case files.** Occasionally, a client will request a copy of the case file, which might include matters that should not be disclosed to him/her (such as certain victim-witness information or attorney work product). Before granting the client access, even just to look at the file, inform the supervisory attorney and await his/her instructions.

11. **Mistakes or problems.** Everyone makes a mistake on occasion. If you make a mistake or if a problem arises, immediately discuss the matter with your supervisory attorney. Cover-up or delay in dealing with a problem is almost always worse than the problem itself. Remember: bad news never gets better with time.

12. **Misconduct by attorneys or other personnel in the office.** We adhere to the highest standards of professional behavior. We expect and we hope that you will never face an issue of misconduct by a supervisor, by another attorney or by anyone else associated with the office. If you do face such a situation, report your concern to your supervising attorney . If your supervising attorney is involved in the matter, then contact your next level supervising attorney [name: _____], the Regional Defense Counsel, or the Chief Defense Counsel of the Marine Corps. Misconduct includes, but is not limited to, the following: improper handling of confidential matters, sexual harassment, hazing and other forms of abuse, substance abuse, malpractice, any issue regarding a lack of integrity, and/or a violation of duties to courts.

I have read this SOU regarding my ethical obligations and I have discussed its contents with my supervisory attorney. I agree to adhere to its terms. Violation of the terms of this statement could subject me to adverse administrative measures or disciplinary action. I understand and agree that this SOU will be maintained with the office file and a copy uploaded onto the Defense Counsel of the Marine Corps SharePoint site.

Signature: _____
 Printed Name: _____
 Grade: _____ Billet: _____
 Date: _____

SUPERVISORY ATTORNEY'S ACKNOWLEDGEMENT

I have discussed the contents of this SOU with _____ and I am satisfied that he/she understands his/her ethical obligations and procedures. I will continue to supervise him/her regarding these matters and provide follow-on training as appropriate. The original of this SOU will be maintained in the office files; a copy will be provided to him/her; and, a copy will be uploaded onto the Regional Defense Counsel's office within the Defense Counsel of the Marine Corps SharePoint site.

Signature: _____
 Printed name: _____
 Grade: _____ Billet: _____
 Date: _____

3. RULE 5.3 RESPONSIBILITIES REGARDING NON-ATTORNEY ASSISTANTS

a. 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 these Rules if engaged in by a covered attorney if:

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

(b) 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. COMMENT. Covered attorneys generally supervise assistants in their practice, including paralegals, secretaries, clerks, investigators, law student interns, and others. Such assistants act for the covered attorney in rendition of the covered attorney's professional services. A covered attorney should give such assistants appropriate instruction and supervision concerning the ethical aspects of their performance, particularly regarding the obligation not to disclose information relating to representation of the client, and should be responsible for their work product. The measures employed in supervising non-attorneys should take account of the fact that they do not have legal training and are not subject to professional discipline.

c. CROSS REFERENCES

- (1) Rule 1.6 Confidentiality of Information
- (2) Rule 3.8 Special Responsibilities of a Trial Counsel and Other Government Counsel
- (3) Rule 4.1 Truthfulness in Statements to Others
- (4) Rule 4.4 Respect for Rights of Third Persons
- (5) Rule 5.5 Unauthorized Practice of Law

4. RULE 5.4 PROFESSIONAL INDEPENDENCE OF A COVERED USG ATTORNEY

a. 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 Department of the Navy 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.

b. 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 Department of the Navy 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.

c. The exercise of professional judgment in accordance with paragraphs a or b above shall not, standing alone, be a basis for an adverse evaluation or other prejudicial action.

d. COMMENT

(1) This Rule 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,