Army Regulation 27–26

Legal Services

Rules of Professional Conduct for Lawyers

Headquarters
Department of the Army
Washington, DC
1 May 1992

Unclassified

Headquarters
Department of the Army
Washington, DC
1 May 1992

***Army Regulation 27–26**

Effective 1 June 1992

Legal Services

Rules of Professional Conduct for Lawyers

By Order of the Secretary of the Army:

GORDON R. SULLIVAN
General, United States Army
Chief of Staff

Official:

Milton H. Hamilton

MILTON H. HAMILTON
Administrative Assistant to the Secretary of the Army

History. This UPDATE printing publishes a new Army regulation.

Summary. This regulation provides comprehensive rules governing the ethical conduct of Army lawyers, military and civilian, and of non–government lawyers appearing before Army tribunals in accordance with the Manual for Courts–Martial. It establishes the Department of the Army Professional Conduct Council to provide authoritative interpretations of these rules.

Applicability.

a. This regulation applies to all judge advocates of the Active Army, the Army National Guard, and the U.S. Army Reserve, all other military personnel who are attorneys and are called upon to deliver legal services as a part of their duties, to all civilian attorneys employed by the Department of the Army to provide legal services, and to non–government attorneys who practice in proceedings governed by the Manual for Courts–Martial. It also applies to all other Army personnel, military and civilian, who perform duty in an Army legal office in support of Army lawyers.

b. Penalties for violations of imperative rules by Army lawyers include all administrative sanctions prescribed by law and regulation. Violations by non–government attorney's may result in imposition of sanctions pursuant to RCM 109, Manual for Courts–Martial. A violation by a military lawyer would not, in and of itself, be a violation of Article 92(1), Uniform Code of Military Justice, but the conduct itself may violate a punitive article of the Code, including Article 48. Nothing in this regulation precludes referral of violations to appropriate licensing authorities.

Proponent and exception authority. Not applicable

Army management control process. This regulation is not subject to the requirements of AR 11–2.

Supplementation. Supplementation of this regulation is prohibited without the prior approval of the General Counsel of the Army. Proposed supplements will be submitted to HQDA (DAJA–SC), WASH DC 20310–2200.

Interim changes. Interim changes to this regulation are not official unless they are authenticated by the Administrative Assistant to the Secretary of the Army. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. The proponent agency of this regulation is the Office of The Judge Advocate General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA (DAJA–SC), WASH DC 20310–2200, with a copy to HQDA (SAGC), WASH DC 20310–0104.

Distribution. Distribution of this publication is made in accordance with DA Form 12–09–E, block number 4066, intended for command level C for Active Army, the Army National Guard, and the U.S. Army Reserve.

Contents (Listed by paragraph and page number)

*This regulation supersedes DA Pamphlet 27–26, 31 December 1987.

1. Purpose
This regulation provides comprehensive rules governing the ethical conduct of Army lawyers, military and civilian, and, pursuant to RCM 109, Manual for Courts–Martial, of non–government lawyers appearing before Army tribunals.

2. References
Related publications are listed in appendix A.

3. Explanation of abbreviations and terms
Explanation of abbreviations and special terms (definitions within the scope of the Rules of Professional Conduct) used in this regulation are explained in the glossary.

4. Responsibilities
a. The General Counsel of the Army, The Judge Advocate General of the Army, the Chief Counsel, U.S. Army Corps of Engineers, and the Command Counsel, U.S. Army Materiel Command, will serve as senior counsel. They will be responsible for—

(1) The issuance of enforcement procedures required by appendix B, Rule 10.1(a)(1).

(2) Serving on the Department of the Army Professional Conduct Council, or appointing an appropriate designee.

(3) Ensuring general compliance with the Rules of Professional Conduct for Lawyers by personnel under their qualifying authority and/or jurisdiction.

b. Other civilian military supervisory lawyers shall make reasonable efforts to ensure that lawyers subject to their supervision are aware of and conform to these Rules of Professional Conduct for Lawyers. More specific aspects of supervisory responsibility are found in appendix B, Rule 5.1.

5. Exception
Only the Secretary of the Army or the General Counsel, as his designee, may grant an exception to the provisions of this regulation. The granting of an exception is in the sole discretion of the Secretary or his designee, and the granting of an exception in one case is not precedent for a later request. A request for an exception will be submitted through the requesting attorney's legal supervisory chain, except that a request by a non–government attorney subject to RCM 109, Manual for Courts–Martial, will be submitted through the Chief, U.S. Army Trial Defense Service.

6. Preamble: A Lawyer's Responsibilities
a. A lawyer is a representative of clients, an officer of the legal system, and a public citizen having special responsibility for the quality of justice.

b. As a representative of clients, a lawyer performs various functions. As advisor, a lawyer provides a client with informed understanding of the client's rights and obligations and explains their practical implications. As advocate, a lawyer zealously asserts the client's position under the law and the ethical rules of the adversary system. As negotiator, a lawyer seeks results advantageous to the client but consistent with requirements of honest dealing with others. As intermediary between clients, a lawyer seeks to reconcile their divergent interests as an advisor and, to a limited extent, as a spokesperson for each client. A lawyer acts as evaluator by examining a client's legal affairs and reporting about them to the client or to others.

c. In all professional functions a lawyer should be competent, prompt, diligent, and honest. A lawyer should maintain communication with a client concerning the representation. A lawyer should keep in confidence information relating to representation of a client, except so far as disclosure is required or permitted by these Rules of Professional Conduct or other law.

d. A lawyer's conduct should conform to the requirements of the law, both in professional service to clients and in the lawyer's personal affairs. A lawyer should use the law's procedures only for their lawfully intended purposes and not to harass or intimidate others. A lawyer should demonstrate respect for the legal system and for those who serve it, including judges, other lawyers, and public officials. While it is a lawyer's duty, when necessary, to challenge the rectitude of official action, it is also a lawyer's duty to uphold legal process.

e. As a public citizen, a lawyer should seek improvement of the law, the administration of justice and the quality of service rendered by the legal profession. As a member of a learned profession, a lawyer should cultivate knowledge of the law beyond its use for clients, employ that knowledge in reform of the law and work to strengthen legal education.

f. Many of a lawyer's professional responsibilities are prescribed in these Rules of Professional Conduct, as well as in substantive and procedural law. However, a lawyer is also guided by personal conscience and the approbation of professional peers. A lawyer should strive to attain the highest level of skill, to improve the law and the legal profession, to exemplify the legal profession's ideals of public service, and to respect the truth–finding role of the courts.

g. A lawyer's responsibilities as a representative of clients, an officer of the legal system and a public citizen are usually harmonious. Thus, when an opposing party is well represented, a lawyer can be a zealous advocate on behalf of a client and justice will be served. So also, a lawyer can be sure that preserving client confidence ordinarily serves the public interest because people are more likely to seek legal advice, and thereby heed their legal obligations, when they know their communications will be private.

h. In the nature of legal practice, however, conflicting responsibilities are encountered. Mostly all difficult ethical problems arise from conflict among a lawyer's responsibilities to clients, to the law and the legal system and to the lawyer's own interest in remaining an upright person. These Rules of Professional Conduct prescribe guidance for resolving such conflicts. Within the framework of these Rules many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying these Rules.

7. Purpose of the Rules
a. These Rules of Professional Conduct are intended to govern the ethical conduct of lawyers as defined in these Rules. These Rules are intended to be used in conjunction with law which controls the practice of lawyers. Such law includes but is not limited to the Uniform Code of Military Justice and Army regulations (ARs), including AR 27–1 and AR 27–10. The definitive interpretation, implementation, and enforcement of these Rules are the exclusive province of the authorities listed in appendix B, Rule 9.1.

b. While the American Bar Association (ABA) Model Rules of Professional Conduct were the basis of these rules, changes to some of the ABA Rules and associated Comment were required to ensure that these Rules met the needs of Army practice. In addition, some ABA Rules were omitted. Rules on public interest, for example, were omitted because judge advocates and lawyers employed by the Army already serve the public interest and need no further inducement for such service. Reasons for the changes include but are not limited to:

(1) An ABA Rule's inapplicability to Army practice.

(2) The need for guidance tailored to Army practice.

(3) Differences in approach to the resolution of specific ethical issues for Army lawyers.

c. These Rules of Professional Conduct are rules of reason.They should be interpreted with reference to the purposes of legal representation and of the law itself. Some of these Rules are imperatives, cast in the terms "shall" or"shall not." These define proper conduct for purposes of professional discipline. Others, generally cast in the term"may," are permissive and define areas under these Rules in which the lawyer has professional discretion. No disciplinary action should be taken when the lawyer chooses not to act within the bounds of such discretion. Other Rules define the nature of relationships between the lawyer and others. These Rules are thus partly obligatory and disciplinary and partly constitutive and descriptive in that they define a lawyer's professional role.Many of the Comments use the term "should." Comments do not add obligations to these

Rules but provide guidance for practicing in compliance with these Rules.

d. These Rules presuppose a larger legal context shaping the lawyer's role. That context includes statutes and court rules relating to matters of licensure, laws defining specific obligations of lawyers and substantive and procedural law in general. Compliance with these Rules, as with all law in an open society, depends primarily upon understanding and voluntary compliance, secondarily upon reinforcement by peer and public opinion and finally, when necessary, upon enforcement through disciplinary proceedings. These Rules do not, however, exhaust the moral and ethical considerations that should inform a lawyer, for no worthwhile human activity can be completely defined by legal rules. These Rules simply provide a framework for the ethical practice of law.

e. Furthermore, for purposes of determining the lawyer's authority and responsibility, principles of substantive law external to these Rules may determine whether a client–lawyer relationship exists.

f. Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process. These Rules presuppose that disciplinary assessment of a lawyer's conduct will be made on the basis of the facts and circumstances as they existed at the time of the conduct in question and in recognition of the fact that a lawyer often has to act upon uncertain or incomplete evidence of the situation. Moreover, these Rules presuppose that whether or not discipline should be imposed for a violation, and severity of a sanction, depend on all the circumstances, such as the willingness and seriousness of the violation, extenuating factors, and whether there have been previous violations.

g. Violation of a Rule should not give rise to a private cause of action nor should it create a presumption that a legal duty has been breached. These Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through the disciplinary authority of the senior counsel concerned or of the attorney's chain of command or supervision. They are not designed to be a basis for civil liability. Furthermore, the purpose of these Rules can be subverted when invoked by opposing parties as procedural weapons. The fact that a Rule is a just basis for a lawyer's self assessment, or for sanctioning a lawyer under the administration of a disciplinary authority, does not imply that an antagonist in a collateral proceeding or transaction has standing to seek enforcement of the Rule. Accordingly, nothing in these Rules should be deemed to augment any substantive legal duty of lawyers or the extra disciplinary consequences of violating such duty.

h. Moreover, these Rules are not intended to govern or affect judicial application of either the attorney–client or work product privilege. Those privileges were developed to promote compliance with law and fairness in litigation. In reliance on the attorney–client privilege, clients are entitled to expect that communications within the scope of the privilege will be protected against compelled disclosure. The attorney–client privilege is that of the client and not of the lawyer. The fact that in exceptional situations the lawyer under these Rules is required or permitted to disclose a client confidence does not vitiate the proposition that, as a general matter, the client has a reasonable expectation that information relating to the client will not be voluntarily disclosed and that disclosure of such information may be compelled only in accordance with recognized exceptions to the attorney–client and work product privileges.

i. The lawyer's exercise of discretion not to disclose information under appendix B, Rule 1.6(b) should not be subject to reexamination. Permitting such reexamination would be incompatible with the general policy of promoting compliance with law through assurances that communications will be protected against disclosure.

j. This and the preceding paragraph provide general orientation. The Comment accompanying each Rule explains and illustrates the meaning and purpose of the Rule. The comments are intended as guides to interpretation, but the text of each Rule is authoritative.