



CHIEF OF THE NATIONAL GUARD BUREAU MANUAL

NGB-GC
DISTRIBUTION: A

CNGBM 0408.01
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PROFESSIONAL RESPONSIBILITY PROCEDURES FOR NATIONAL GUARD CIVILIAN ATTORNEYS

References: See Enclosure D.

1. Purpose. This manual provides procedural guidance for attorney certification and professional responsibility standards and processes for all National Guard (NG) civilian attorneys in accordance with reference a.
2. Cancellation. None.
3. Applicability. This manual applies to all Title 5 civilian attorneys employed by the NG or the National Guard Bureau (NGB) in civilian attorney (or equivalent) positions (hereinafter, "NG civilian attorneys" and "covered attorneys").
4. Procedures. In accordance with reference a, this document provides procedures for the standards of professional conduct for NG civilian attorneys and covered attorneys, process requirements for reporting and investigating allegations of attorney professional misconduct, guidelines for reporting allegations of attorney professional misconduct to licensing authorities by personnel under the professional supervision of the NGB General Counsel (NGB-GC) and guidelines for release of information pertaining to allegations of attorney professional misconduct.
 - a. NGB-GC. NGB-GC serves as a qualifying authority to evaluate the qualifications of persons recommended for appointment, transfer, reassignment, or promotion as attorneys in accordance with reference c and to approve or disapprove such actions, and prescribes the standards of professional conduct and the procedures for reporting and investigating allegations of attorney professional misconduct applicable to attorneys appointed in accordance with reference b.
 - b. NGB Professional Conduct Board (NGB PCB). The NGB PCB formulates policy; investigates (or provides for the investigation of), hears, and makes recommendations regarding allegations of professional misconduct; provides professional responsibility legal and policy advice, and recommendations to the NGB-GC on the disposition of professional responsibility matters.

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c. NGB-GC Professional Responsibility Manager (NGB-GC PRM). The NGB-GC PRM oversees administration and management of NGB-GC's Professional Responsibility Program. The NGB-GC PRM reports to the President of the NGB PCB on all professional responsibility matters, provides legal advice on professional responsibility matters and provides monthly case reports through the President of the NGB PCB to the NGB-GC.

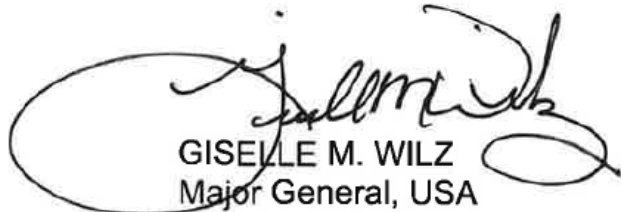
d. Supervisory Attorney. Supervisory Attorneys make reasonable efforts to ensure covered attorneys under their supervision receive training and conform to the professional responsibility rules and standards. When Supervisory Attorneys receive information that a NG civilian attorney under their jurisdiction is alleged to have violated the professional responsibility rules and standards, Supervisory Attorneys must report alleged violations to the NGB-GC through the NGB-GC PRM. Supervisory Attorneys determine the credibility of the allegations and provide written reports to the NGB-GC PRM.

e. All NG Civilian Attorneys. All covered attorneys must comply with the applicable professional responsibility rules and standards and the rules of their respective licensing jurisdictions. All NG civilian attorneys must also meet Continuing Legal Education ethics training and other professional responsibility requirements imposed by their licensing authorities to maintain an active (or equivalent) status.

5. Summary of Changes. This is the initial publication of CNGB Manual 0408.01.

6. Releasability. This manual is approved for public release; distribution is unlimited. It is available at <<https://www.ngbpmc.ng.mil/>>.

7. Effective Date. This manual is effective upon publication and must be revised, reissued, canceled, or certified as current every ten years.



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Enclosures:

- A -- National Guard Civilian Attorney Licensing and Certification
- B -- National Guard Standards of Professional Conduct and Procedures for Reporting and Investigating Allegations of Attorney Professional Misconduct
- C -- National Guard Civilian Attorney Rules for Professional Conduct
- D -- References
- GL -- Glossary

ENCLOSURE A

NATIONAL GUARD CIVILIAN ATTORNEY LICENSING AND CERTIFICATION

1. General. In accordance with Enclosure 5 of reference b, this enclosure establishes uniform civilian attorney licensing requirements for covered attorneys, and clarifies the active status requirement in Enclosure 3, paragraph 1.b. of reference b. This enclosure applies to covered attorney positions only and does not include judge advocates or Title 32 Dual Status Technician attorneys.

2. Requirement. All NG Civilian Attorneys must meet the licensing and professional responsibility standards in this section.

a. Licensing Standards. Covered attorneys and candidates for NG civilian attorney positions must have a current license to practice law from at least one State, the District of Columbia, U.S. Commonwealth, or U.S. Territory. Covered attorneys must be able to demonstrate that in at least one State or jurisdiction in which they are licensed they are permitted to engage in the active practice of law and must maintain active status in one State or jurisdiction during employment with the NG.

(1) Active status must permit the full privileges of practicing law in the jurisdiction concerned, except as described in subparagraph 2.a.(2)(c) of this enclosure. It is not sufficient that the attorney be a member in good standing. The attorney must be able to demonstrate that, in an active status, he or she is entitled to represent the Federal Government in the courts of the jurisdiction concerned in the same way an attorney in private practice in that jurisdiction would be authorized to practice law on behalf of private clients.

(a) The status “active, but not eligible to practice” or the equivalent does not meet the NG licensing standard.

(b) Being an “associate member in good standing” or a “special member in good standing” does not meet the Department of Defense (DoD) licensing standard if the status does not confer full eligibility to practice law in the jurisdiction concerned.

1. Any active status for which the attorney qualifies, including those that permit fee reductions, Continuing Legal Education exemptions, proof of malpractice insurance waivers, or waiver of pro bono requirements for attorneys who practice outside the jurisdiction, will satisfy the NG licensing standard.

2. In the event a State does not authorize active status for an attorney who does not maintain a law office or practice in that jurisdiction, the NGB-GC may waive or modify this requirement.

(2) Questions about whether a covered attorney’s licensing status meets the NG licensing standards should be submitted to the NGB-GC PRM for a determination.

(3) Proof of active status is necessary for covered attorneys and candidates for these positions to fulfill the requirements of their respective position descriptions. Failure of covered attorneys to provide satisfactory proof of active status may result in adverse personnel action under applicable regulations, up to and including removal from Federal service. A candidate for a position who fails to provide proof of active status will be disqualified from further hiring consideration.

b. Certification by Qualifying Authority. All civilian attorneys offered covered positions at NGB or in the NG must be certified by the NGB-GC after the temporary offer has been made and prior to onboarding. These attorneys will not be onboarded to covered positions if they cannot be certified. The certification process is described below.

(1) The requesting office will electronically send all attorney application packets, including the certificate of good standing, to the Senior Deputy General Counsel after the temporary offer has been made.

(2) The Senior Deputy General Counsel will review the application packet and prepare a memo for the NGB-GC's signature certifying the attorney for the position if the attorney meets the requirements for certification, or not certifying the attorney with the reasons why the attorney is not being certified.

(3) The NGB-GC signs a memorandum either certifying or not certifying the attorney.

(4) The memorandum is provided to the requesting office. If the attorney is certified, the requesting office may onboard the attorney. If the attorney is not certified, the requesting office must go through the process to revoke the offer.

c. Self-Certification. The NGB-GC PRM will oversee the collection and retention of relevant records for self-certification of the active status requirement.

(1) All covered attorneys must satisfy the active status requirement of being eligible to practice fully in the jurisdiction concerned, as discussed in this enclosure. Covered attorneys shall self-certify that they are in active status with their licensing authority to the NGB-GC PRM annually between June 01 and November 30 based on Social Security number by completing the form located at:

- <<https://forms.osi.apps.mil/Pages/ResponsePage.aspx?id=D9fm-kuVEUiStgUw1vhMQ2dI9eAJfoxCg2FTjaUI3YpUM084QUdXWExOQjBHQUhBWEpMTIZOQ1JCTS4u>>.

(2) Covered attorneys with Social Security numbers ending in an odd digit must self-certify in odd numbered years; covered attorneys with Social Security numbers ending in an even digit must self-certify in even-numbered years. Certification will

include this information for each jurisdiction in which the covered attorney is licensed in Table 1 below.

(3) Each covered attorney is personally responsible for complying with this manual.

<ul style="list-style-type: none">✓ Name of attorney and contact information.✓ Date of self-certification.✓ Name of Licensing Jurisdiction.✓ License number if one is issued by the licensing authority.✓ Status of license.✓ Certification of good standing and attorney personally checked their status within the last 30 days.

Table 1. Certification Requirement Checklist

ENCLOSURE B

NATIONAL GUARD STANDARDS OF PROFESSIONAL CONDUCT AND
PROCEDURES FOR REPORTING AND INVESTIGATING ALLEGATIONS OF
ATTORNEY PROFESSIONAL MISCONDUCT

1. Overview. Pursuant to the authority of the NGB-GC and in accordance with paragraph 4 of reference b, this enclosure:

- a. Provides the standards of professional conduct for all covered attorneys.
- b. Establishes a process for reporting and investigating allegations of attorney professional misconduct.
- c. Establishes the NGB PCB.
- d. Establishes guidelines for reporting allegations of attorney professional misconduct to licensing authorities by personnel under the professional supervision of the NGB-GC.
- e. Establishes guidelines for release of information pertaining to allegations of attorney professional misconduct.
- f. Establishes a process for requesting attorney professional responsibility guidance or advisory opinions from the NGB PCB.

2. Standards of Professional Conduct. In addition to the requirements in Enclosure A of this manual, covered attorneys must also comply with all supplemental requirements that may be established by the NGB-GC in this enclosure or elsewhere. Noncompliance with any such requirements established by the licensing authority or the NGB-GC may form the basis for suspension from legal duties in the DoD.

a. Notification of Pending or Completed Disciplinary Actions. Candidates for covered attorney positions have an affirmative obligation to notify the hiring authority, before accepting an offer to fill a covered attorney position, of any pending or completed disciplinary investigation or action against them in any jurisdiction in which they are members of the bar or licensed to practice law.

(1) This includes any pending or completed disciplinary investigation or action by one of the Judge Advocates General of a Military Department or the U.S. Coast Guard or other applicable attorney qualifying authority.

(2) For covered attorney positions in the NGB-GC, the Senior Deputy General Counsel will be responsible for ensuring that all candidates for such positions are informed of this obligation as soon as practicable, but before any hiring decision. For covered attorney positions in the NGs of the 54 States, Territories, or the District of

Columbia, the State Staff Judge Advocate or designee will be responsible for ensuring that all candidates for covered attorney positions are informed of this obligation as soon as practicable, but before any hiring decision is made.

b. Reporting Investigations or Disciplinary Actions by Licensing Authorities.

Covered attorneys will report to the NGB-GC PRM, through their respective supervisory chains, upon learning or being notified that they are being investigated by any of their licensing authorities or receiving disciplinary or administrative action by their licensing authority. Such reports must be made within seven business days of learning or being notified of an investigation or disciplinary or administrative action. They must also report the outcome and other significant developments in such disciplinary investigations or actions within seven business days of being informed of such outcomes or developments. The NGB-GC PRM will notify the NGB-GC within 24 hours after receiving a report of investigation or disciplinary action.

3. NGB PCB Composition and Membership. The NGB PCB manages the professional responsibility program under this manual on behalf of the NGB-GC including formulating policy, investigating (or providing for the investigation of), hearing, and making recommendations regarding allegations of professional misconduct, providing professional responsibility legal and policy advice to the NGB-GC, and providing recommendations to the NGB-GC on disposition of professional responsibility matters. The NGB PCB will consist of three primary members and two alternate members, as described below:

a. Primary Members. Deputy General Counsel, General Law Division, who also serves as the Chair of the NGB PCB, Deputy General Counsel, Litigation and Employment Law Division, and a State Staff Judge Advocate, as determined by the NGB-GC.

b. Alternate Members. Alternate members will be appointed by the NGB-GC, as needed.

c. NGB-GC PRM. The civilian Associate General Counsel in the General Law Division responsible for Army National Guard professional responsibility will serve as the PRM.

4. Professional Conduct Responsibilities.

a. NGB-GC. The NGB-GC will:

(1) Establish supplemental professional responsibility requirements, as appropriate.

(2) Serve as the final decision authority on professional responsibility matters of attorneys subject to this policy.

(3) Designate alternate members of the NGB PCB.

(4) Appoint such other personnel as may be necessary to administer the NG civilian attorney professional conduct program.

b. NGB PCB. The NGB PCB will:

(1) Manage the professional responsibility program under this policy on behalf of the NGB-GC.

(2) Be neutral and unbiased, generally with no prior involvement in the circumstances leading to the allegation under investigation. If considering an allegation of professional misconduct by an attorney under the supervision of a primary member of the NGB PCB, an alternate member will serve in their place.

c. NGB-GC PRM. The NGB-GC PRM will:

(1) Oversee the professional responsibility policy on behalf of the NGB-GC and the NGB PCB.

(2) Maintain all records and correspondence associated with this program.

(3) Make determinations about whether a covered attorney's licensing status meets the NG licensing standards.

(4) Maintain the experience and expertise to serve as the professional responsibility subject matter expert in support of this program.

(5) Serve as the primary legal advisor to and subject matter expert for the NGB PCB, advising on matters including, but not limited to, whether an investigation should be conducted and how findings of professional misconduct should be adjudicated.

(6) Conduct legal research in support of the NGB PCB.

(7) Provide any administrative support to the NGB PCB required to manage the professional responsibility program.

(8) When directed by the Chair, the NGB PCB will appoint an attorney of appropriate grade and experience to conduct a professional conduct inquiry. The NGB-GC PRM may appoint such other personnel as will be needed to support the inquiry.

(9) Serve as the primary point of contact for communications between the NGB-GC and attorney licensing authorities.

d. Supervisory Attorney Receiving an Allegation of Professional Misconduct. A supervisory attorney receiving an allegation of professional misconduct against an attorney under their supervision will:

(1) Make an initial credibility determination in writing as to whether there is a reasonable belief that such misconduct occurred.

(2) Forward a copy of the written credibility determination to the NGB-GC PRM, along with any relevant documentation. The NGB-GC PRM will review the credibility determination. If there are concerns with the credibility determination, the NGB-GC PRM will coordinate with the supervisory attorney and the NGB PCB.

(3) Maintain the written credibility determination, along with relevant documentation, in accordance with applicable document retention standards.

(4) Where the initial credibility determination finds a reasonable belief that attorney professional misconduct occurred, forward the initial credibility determination, along with relevant documentation, to the Chair of the NGB PCB through the NGB-GC PRM. When reporting to the Office of the NGB Inspector General (NGB-IG) is required, such as when the subject of the allegation is a member of the Senior Executive Service, a copy will be provided to the Chair of the NGB PCB through the NGB-GC PRM.

(5) At the discretion of the Chair of the NGB PCB, take final action on a substantiated allegation of professional misconduct.

(6) When an allegation of a violation of professional conduct rules is made in a complaint or other filing as part of an adversarial proceeding, the Chair of the NGB PCB may wait until the proceedings have been concluded before directing any inquiry or other NGB PCB action.

e. Investigating Officer (IO). An IO appointed to investigate allegation(s) of professional misconduct will:

(1) Be an attorney, senior in grade or step to the attorney who is the subject of the investigation.

(2) Be neutral and unbiased, with generally no prior substantive knowledge of the allegations or circumstances leading to the allegation under investigation. If mission permits, the IO will be from an organization different and separate from that of the attorney alleged to have committed professional misconduct.

(3) Complete a thorough and impartial investigation, which includes collecting evidence, writing a comprehensive report of investigation, and answering and addressing all issues raised in the appointment memorandum.

(4) Focus on the investigation as their primary duty until complete, unless otherwise directed by the appointment memorandum.

f. Attorney Subject of Professional Misconduct Allegation. An attorney who is subject to this policy and is the subject of a professional misconduct allegation will:

(1) Comply with the reporting requirements of their licensing authority or authorities, including self-reporting of substantiated allegations.

(2) Comply and cooperate with the investigation to the extent that doing so does not interfere with their rights under this manual or any other applicable law, regulation, or policy.

5. Procedures for Reporting and Investigating Allegations of Professional Misconduct.

a. Reporting Allegations of Professional Misconduct.

(1) Allegations of professional misconduct against an attorney may be reported to any attorney in that attorney's chain of supervision. Nothing in this policy is intended to prohibit reporting of professional misconduct allegations directly to any supervisory attorney in the chain of supervision of the attorney whose conduct is in question, directly to the Chair of the NGB PCB; NGB-GC; or NGB-IG or State IG, nor to licensing authorities when it is required (consistent with paragraph 7.a. of this enclosure). Allegations forwarded to the NGB-GC or the Chair of the NGB PCB, must be in writing.

(2) Allegations arising from complaints to the NGB-IG that are referred for action to the NGB-GC will be forwarded to the NGB-GC PRM who will provide appropriate notifications of actions to NGB-IG, consistent with the procedures in reference c. Allegations received by the NGB-GC PRM or the NGB-GC from the NGB-IG may be referred to the applicable supervisory attorney for credibility determination in accordance with this manual.

(3) In the absence of any additional information and subject to the standards and procedures set forth in reference c, when an allegation is received from NGB-IG without any supporting documentation, and the referral indicates that the NGB-IG's inquiry did not substantiate conduct alleged by a complainant, the referral to a supervisory attorney is not required, and the NGB-GC PRM may determine that no action is required.

b. Investigating Credible Allegations of Attorney Professional Misconduct. The process described in this enclosure will be used for investigating and adjudicating attorney professional misconduct allegations but may be modified in writing by the Chair of the NGB PCB at their discretion, for the situation and based on mission requirements. If process modifications are made, the NGB PCB will ensure that the attorney whose conduct is in question is provided the due process otherwise afforded by this manual. Investigations arising from cases referred by the NGB-IG for action must also comply with the quality standards in accordance with reference d.

(1) Initial Credibility Determination.

(a) As discussed in paragraph 5d of this enclosure, the first step after an allegation of attorney professional misconduct is received is a supervisory review of that allegation. A supervisory attorney who makes the initial credibility determination that there is a reasonable belief that a violation of a professional responsibility rule occurred will forward this determination, and any relevant documents or information, to the NGB-GC PRM. A supervisory attorney may conduct or direct such fact-finding as may be required to make this initial credibility determination.

(b) The NGB-GC PRM will present this determination, along with their recommendation on the disposition or further action, to the Chair of the NGB PCB.

(c) The Chair of the NGB PCB, who may consult with the NGB PCB if they deem necessary, will determine whether to close the matter or refer it for further inquiry.

(d) If the Chair of the NGB PCB determines additional investigation is necessary, the NGB-GC PRM will appoint in writing an IO to investigate. The NGB-GC PRM may also designate an attorney to serve as legal advisor to the IO. The Chair of the NGB PCB may determine the attorney to be designated by the NGB-GC PRM as the IO, consistent with the IO qualifications in this Instruction.

(e) Once an IO is appointed and as soon as practicable, the NGB-GC PRM will notify the attorney whose conduct is in question of the initiation of an investigation. The notification will be in writing and may be accomplished using Government e-mail.

(f) If the initial credibility determination reveals information that is required by law or NGB policy to be referred to the NGB-IG, then the NGB-GC PRM will notify the NGB-IG of this before convening an investigation or providing notice to the subject of the allegation.

(2) Investigation.

(a) The purpose of an investigation is to develop the facts and circumstances surrounding allegations of attorney professional misconduct so that the NGB-GC can determine whether professional misconduct occurred and take appropriate action.

(b) The IO will consult with their legal advisor, as appointed by NGB-GC PRM, before commencing the investigation, and as necessary throughout the investigative process. The NGB-GC PRM may serve as the legal advisor to the IO.

(c) The IO will conduct a thorough and complete investigation and provide a report of investigation that contains facts, analyses, findings, and recommendations in writing to the NGB-GC PRM. Prior to interviewing the witnesses, the IO must verify the

witness identity and place the witness under oath. If possible, the IO should obtain a signed Privacy Act Waiver from the witness.

(d) An NGB or NG civilian employee's commander or supervisor can direct the witness to testify during duty hours. An NGB or NG civilian employee has a duty to testify and can only refuse to answer questions that may incriminate them. NGB and NG civilian employees may be entitled to additional rights advisement (for example, Kalkines, Garrity, and Weingarten cases) prior to interviews.

(e) The IO will use a "clear and convincing evidence" standard of proof in reaching findings from the facts developed.

(f) The NGB-GC PRM will review the report of investigation for completeness and legal sufficiency and determine whether additional investigation is necessary. If additional investigation is necessary, the IO will continue the investigation until it is deemed complete by the NGB-GC PRM.

(3) Unsubstantiated Allegations.

(a) If an allegation of professional misconduct is unsubstantiated, the NGB-GC PRM will forward the report of investigation, along with their own recommendations, to the Chair of the NGB PCB.

(b) The Chair of the NGB PCB may close the matter or direct further investigation or action.

(c) If the Chair of the NGB PCB determines that an allegation of professional misconduct is unsubstantiated, the NGB-GC PRM will inform the subject of the investigation in writing that the allegation was unsubstantiated and that no further action will be taken by the NGB-GC. The notification may be accomplished using Government e-mail.

(d) The subject of the investigation may request the completed report of investigation under reference e or reference f.

(e) The NGB-GC PRM will inform the complainant, in writing, that a review of their allegation is complete. Where the complaint was received from the NGB-IG, this notification will be made to the NGB-IG, rather than to the complainant directly.

(4) Substantiated Allegations.

(a) If an allegation of professional misconduct is substantiated, the NGB-GC PRM will notify the subject in writing of the findings and provide them a copy of the report of investigation, consistent with applicable laws, regulations, and policies governing information disclosure, including law and policy on release of NGB-IG

investigations, DoD investigations and information about complainants. The notification may be accomplished using Government e-mail.

(b) The notification will advise the subject that:

1. They have 14 calendar days from the date of receipt to respond in writing to the findings.

2. They may request a reasonable extension of time to respond for good cause.

3. The subject's failure to provide a timely response constitutes a waiver of opportunity to respond.

(c) The NGB-GC PRM may approve the first request for an extension, up to an additional 30 calendar days. The Chair of the NGB PCB may approve additional requests for extensions.

(d) The NGB- GC PRM will review the subject's response and forward the completed report of investigation, along with their written recommendation on the disposition to Chair of the NGB PCB.

(e) The Chair of the NGB PCB may convene the NGB PCB. The NGB PCB may meet in person, by phone, or through video teleconferences or other virtual platforms or review material and make recommendations by e-mail, at the discretion of the Chair of the NGB PCB. The NGB PCB may determine that:

1. The allegations are not substantiated and close the case.

2. Further investigation is necessary and return the case to the NGB-GC PRM with additional instructions.

3. Findings are supported and/or make substitutions for findings, as supported by the evidence.

4. Final action by the subject's supervisory attorney is appropriate and return it to them for action.

5. Action by the NGB-GC is appropriate and forward to them for action.

6. Other action, as the NGB PCB deems appropriate, is warranted.

(f) If the NGB PCB determines an allegation of professional misconduct to be substantiated and recommends action by the NGB-GC, the report of investigation, along with the PCB's recommendation on the disposition, will be forwarded to the NGB-GC for final action.

(g) Any action taken by the NGB-GC will be deemed final and is not subject to requests for reconsideration or appeal, unless an applicable law, regulation, directive, or policy provides for such additional redress.

(h) Once the NGB-GC takes final action, the NGB-GC PRM will inform the subject of the investigation in writing of the action taken or to be taken. The notification may be accomplished using Government e-mail. Where the complainant was referred to the NGB-GC by the NGB-IG for information, the NGB-GC PRM will also notify the NGB-IG of the final action that the NGB-GC takes.

(i) The NGB-GC PRM will inform the complainant in writing that review of their allegation(s) is complete. If the complaint was referred to the NGB-GC by the DoD-IG, NGB-IG, or the Service IGs for action, this notification will be made to the NGB-IG rather than to the complainant directly.

6. Release of Information to Attorney Licensing Authorities.

a. Reporting Suspected Professional Misconduct by Another Attorney to Licensing Authorities. Before reporting to a covered attorney's licensing authority any alleged or suspected professional responsibility violation by that attorney, any member of the NG must first consult with the NGB-GC PRM. This manual is not intended to preclude reporting of professional misconduct to licensing authorities when it is required, but to ensure that the NGB-GC is informed of such misconduct.

b. Reporting Substantiated Allegations of Professional Misconduct to Licensing Authorities. Substantiated allegations professional misconduct may be reported to licensing authorities subject to the procedures below. The NGB-GC may determine that the seriousness of a substantiated allegation of professional misconduct warrants notification to the subject's licensing authority. If such action is warranted, the NGB-GC PRM will prepare any documents or findings for release, as appropriate. Typically, an initial release to a licensing authority will include the report of investigation or NGB PCB's findings. However, the content of the report to a licensing authority will be determined at the discretion of the NGB-GC and may be redacted in accordance with applicable instructions and directives on release of information outside the DoD.

7. Release of Any Documentation Outside NG. The NGB-GC and the Chair of the NGB PCB retain the sole authority within the NG to release any agency records for professional misconduct matters to any organization outside the NG, including attorney licensing authorities.

ENCLOSURE C

NATIONAL GUARD CIVILIAN ATTORNEY RULES FOR PROFESSIONAL CONDUCT

“Rule 1.0 Terminology.”

a. “Covered attorney” denotes any Title 5 civilian attorneys employed by the NGB or the NG in civilian attorney (or equivalent) positions. This includes attorneys detailed or assigned as special victims counsel for individual clients and attorneys detailed or assigned to provide legal assistance to individual clients. The term “attorney” is synonymous with “lawyer.”

b. “Belief” or “believes” denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

c. “Confirmed in writing,” when used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (h) for the definition of “informed consent.” If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

d. “Consult” or “consultation” denotes a communication of information reasonably sufficient to permit the client or the recipient of such communication to appreciate the significance of the matter in question.

e. “Firm” or “law firm” denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

f. “Fraud” or “fraudulent” denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

g. “General Counsel” as used in these Rules denotes the NGB General Counsel.

h. “Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the pro-posed course of conduct.

i. “Knowingly,” “known,” or “knows” denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

j. “Law” as used in these Rules denotes statutes, case law, judicial precedents, regulations, directives, instructions, and orders.

k. "Other adjudicative officer" denotes a person detailed to serve as a member (including a sole member) of a board or court of inquiry convened to determine facts and make recommendations.

l. "Partner" denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

m. "Professional disciplinary proceeding" denotes all types of administrative proceedings (including investigations and inquiries) convened in accordance with applicable law to inquire into allegations of violations of these Rules of Professional Conduct, and those proceedings convened pursuant to the disciplinary body.

n. "Reasonable" or "reasonably" when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

o. "Reasonable belief" or "reasonably believes" when used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

p. "Reasonably should know" when used in reference to a lawyer denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

q. "Screened" denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

r. "Senior Counsel" denotes the NGB General Counsel.

s. "Substantial" when used in reference to degree or extent denotes a material matter of clear and weighty importance.

t. "Supervisory lawyer" denotes a lawyer within an office or organization with authority over or responsibility for the direction, coordination, evaluation, or assignment of responsibilities and work of subordinate lawyers and nonlawyer assistants (for example, paralegals).

u. "Tribunal" denotes a court, an Article 32, Uniform Code of Military Justice investigation, administrative separation boards or hearings, boards of inquiry, disability evaluation proceedings, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

v. "Writing" or "written" denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photocopying, photography, audio or video recording, and electronic communications. A "signed" writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

Rule 1.1 Competence. A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

Rule 1.2 Scope of Representation and Allocation of Authority between Client and Lawyer.

a. Formation of client-lawyer relationships by covered attorneys with, and representation of, clients (whether the NG or the NGB as client or individual clients) is permissible only when the lawyer is authorized to do so by competent authority. Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by the client's well-informed and lawful decisions concerning case objectives, choice of counsel, forum, pleas, whether to testify, and settlements.

b. A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

c. A lawyer may limit the scope of the representation if the client consents after consultation, or as required by law, regulation, or policy and communicated to the client. Generally, the subject-matter scope of a covered attorney's representation will be consistent with the terms of the assignment to perform specific representational or advisory duties. A lawyer shall inform clients at the earliest opportunity of any limitations on representation and professional responsibilities of the lawyer towards the client.

d. A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal and moral consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning, or application of the law.

Rule 1.3 Diligence. A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4 Communication.

a. A lawyer shall:

(1) Promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in rule 1.0(h), is required by these Rules.

(2) Reasonably consult with the client about the means by which the client's objectives are to be accomplished.

(3) Keep the client reasonably informed about the status of the matter.

(4) Promptly comply with reasonable requests from the client for information.

(5) Consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

b. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.5 Fees. A covered attorney shall not receive outside compensation for work performed as part of their official government duties.

Rule 1.6 Confidentiality of Information.

a. A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is required by paragraph (b).

b. A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) To prevent reasonably certain death or substantial bodily harm, or substantial impairment of national security or the readiness or capability of a military unit, vessel, aircraft, or weapons system.

(2) To prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used the lawyer's services.

(3) To prevent, mitigate or rectify substantial injury to the financial interest or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services.

(4) To secure legal advice about the lawyer's compliance with these Rules.

(5) To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

(6) To comply with other law or a court order.

(7) To detect and resolve conflicts of interest arising from the covered attorney's change of duty position, assignment, or employment within the NG or the NG NGB, or arising from the non-government lawyer's change of employment or from changes in the composition or ownership of a firm, but only if the revealed information would not compromise the attorney-client privilege or otherwise prejudice the client.

Rule 1.7 Conflict of Interest: Current Clients.

a. Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if the representation of one client will be directly adverse to another client, or 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.

b. Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client.

(2) The representation is not prohibited by law or regulation.

(3) 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.

(4) Each affected client gives informed consent, confirmed in writing.

Rule 1.8 Conflict of Interest: Current Clients: Specific Rules.

a. Covered attorneys shall adhere strictly to current DoD ethics regulations. Additionally, a lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client unless:

(1) The transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client.

(2) The client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction.

(3) The client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

b. A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.

c. A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grand-child, parent, grandparent, or other relative or individual with whom the lawyer or the client maintains a close, familial relationship.

d. Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

e. A lawyer shall not provide any financial assistance to a client or otherwise serve in a financial or proprietary fiduciary or bailment relationship with a client, unless otherwise specifically authorized by competent authority.

f. A non-government civilian lawyer representing individuals in any matter for which NGB-GC is charged with supervising the provision of legal services shall not accept compensation for representing a client from one other than the client unless:

(1) The client gives informed consent.

(2) There is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship.

(3) Information relating to representation of a client is protected as required by Rule 1.6.

g. A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty pleas, unless each client gives informed consent, in a writing signed by the client. The lawyer's disclosure shall include the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

h. A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client.

i. A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them and that such relationship predates the commencement of the client-lawyer relationship.

j. A lawyer related to another lawyer as parent, child, sibling, or spouse shall not represent a client in a matter directly adverse to a person whom the lawyer knows is represented by the other lawyer, unless each client gives informed consent after consultation regarding the relationship.

Rule 1.9 Duties to Former Clients.

a. A lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client gives informed consent, confirmed in writing.

b. A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client—

(1) Whose interests are materially adverse to that person.

(2) About whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the matter; unless the former client gives informed consent, confirmed in writing.

c. A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) Use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known.

(2) Reveal information relating to the representation except as these Rules would permit or require with respect to a client.

Rule 1.10 Imputation of Conflicts of Interest: General Rule.

a. NG civilian attorneys working in the same NGB, State or other military law office are not automatically disqualified from representing a client because any of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9.

b. When a covered attorney has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) The matter is the same or substantially related to that in which the formerly associated lawyer represented the client.

(2) Any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

c. A disqualification prescribed by this Rule may be waived by the affected client under the conditions stated in Rule 1.7.

d. The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

Rule 1.11 Special Conflicts of Interest for Former and Current Government Officers and Employees.

a. Except as law or regulations may otherwise expressly permit, a lawyer who has formerly served as a public officer or employee of the government:

(1) Is subject to Rule 1.9(c).

(2) Shall not otherwise represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

b. When a lawyer is disqualified from representation under paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter unless:

(1) The disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(2) Written notice is promptly given to the appropriate government agency to enable it to ascertain compliance with the provisions of this Rule.

c. Except as law or regulations may otherwise expressly permit, a lawyer having information that the lawyer knows is confidential government information about a person acquired when the lawyer was a public officer or employee, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. As used in this Rule, the term “confidential government information” means information that has been obtained under governmental authority and which, at the time this Rule is applied, the government is prohibited by law or regulations from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public. A firm with which that lawyer is associated may undertake or continue representation in the matter only if the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

d. Except as law or regulations may otherwise expressly permit, a lawyer currently serving as a public officer or employee:

(1) Is subject to Rules 1.7 and 1.9.

(2) Shall not:

(a) Participate in a matter in which the lawyer participated personally and substantially while in private practice or non-governmental employment, unless the appropriate government agency gives its informed consent, confirmed in writing.

(b) Negotiate for private employment with any person who is involved as a party or as lawyer for a party in a matter in which the lawyer is participating personally and substantially.

e. As used in this Rule, the term “matter” includes:

(1) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties.

(2) Any other matter covered by the conflict-of-interest rules of the DoD, or other appropriate Government agency.

Rule 1.12 Former Judge, Arbitrator, Mediator, or Other Third-Party Neutral.

a. Except as stated in paragraph (d), a lawyer shall not represent anyone in connection with a matter in which the lawyer participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person or as an arbitrator, mediator, or other third-party neutral, unless all parties to the proceeding give informed consent, confirmed in writing.

b. A lawyer shall not negotiate for employment with any person who is involved as a party or as a lawyer for a party in a matter in which the lawyer is participating personally and substantially as a judge or other adjudicative officer or as an arbitrator, mediator, or other third-party neutral.

c. If a lawyer is disqualified by paragraph (a), no lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in the matter unless:

(1) The disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom.

(2) Written notice is promptly given to the parties and any appropriate tribunal to enable them to ascertain compliance with the provisions of this Rule.

d. An arbitrator selected as a partisan of a party in a multimember arbitration panel is not prohibited from subsequently representing that party.

Rule 1.13 Organization as Client.

a. Except when representing an individual client pursuant to paragraphs (g) and (h) below, a covered attorney (or a lawyer retained by the NG) represents the NG or the NGB (or the executive agency to which assigned) acting through its authorized officials. These officials include the heads of organizational elements within the NG or the NGB, such as The Adjutants General, and the commanders of divisions and brigades for the NG, and Chief of the National Guard Bureau, Vice Chief of the National Guard Bureau, Director of the Army National Guard, and Director of the Air National Guard for the NGB.

(1) When a covered attorney is assigned to or employed by such an organizational element and designated to provide legal services to the head of the organization, including his or her subordinate commanders or staff, the client-lawyer relationship exists between the lawyer and the organization, as represented by the head of the organization as to matters within the scope of the official business of the organization.

(a) The head of the organization may not invoke the attorney-client privilege or the rule of client-lawyer confidentiality for the head of the organization's own personal benefit but may invoke either for the benefit of the organization. In so invoking either the attorney-client privilege or client-lawyer confidentiality on behalf of the organization, the head of the organization is subject to being overruled by higher appropriate authority in the NGB or the DoD.

(b) Similarly, the head of the organization may not waive the attorney-client privilege or the rule of client-lawyer confidentiality for the head of the organization's own personal benefit but may waive either for the benefit of the organization. In so waiving either the attorney-client privilege or client-lawyer confidentiality on behalf of the organization, the head of the organization is subject to being overruled by higher appropriate authority in the NGB or the DoD.

(2) A covered attorney shall not form a client-lawyer relationship or represent a client other than the NG or NGB unless specifically assigned or authorized to do so by a competent authority of the organization. Unless so authorized, the NG civilian attorney will advise the individual that there is no client-lawyer relationship between them.

b. If a covered attorney knows that an officer, employee, or member of, or other person associated with, the NG or the NGB 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 NG or the NGB, adverse to the legal interests or obligations of the NG or the NGB, or a violation of law that reasonably might be imputed to the NG or the NGB, then the lawyer shall proceed as is reasonably necessary in the best interests of the NG or the NGB. In determining how to proceed, the lawyer shall give due

consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the NG or the NGB and the apparent motivation of the person involved, the policies of the NG or the NGB concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize disruption or prejudice to the interests of the NG or the NGB and the risk of revealing information relating to the representation to persons outside the NG or the NGB. Such measures may include:

- (1) Asking for reconsideration of the matter by the acting official.
 - (2) Advising that a separate legal opinion on the matter be sought for presentation to appropriate authority.
 - (3) Advising the acting official that the lawyer is ethically obligated to preserve the interests of the organization and, as a result, must consider discussing the matter with supervisory lawyers within the NG's Office of the Staff Judge Advocate or the NGB-GC, or at a higher level within the NGB or DoD.
 - (4) Referring the matter to, or seeking guidance from, higher authority in the technical chain of supervision, including, if warranted by the seriousness of the matter, referral to the supervisory lawyer assigned to the staff of the acting official's next superior in the chain of command.
 - (5) Advising the acting official, or others who can act on behalf of the organization, up to and including the head of the organization, that his or her personal legal interests are at risk and that he or she should consult counsel as there may exist a conflict of interest for the lawyer and the lawyer's responsibility is to the organization.
- c. If, despite the lawyer's efforts in accordance with paragraph (b), the highest authority that can act concerning the matter insists upon or fails to address in a timely and appropriate manner an action, or a refusal to act, that is clearly a violation of a legal obligation to the NG or the NGB, adverse to the legal interests or obligations of the NG or the NGB, or a violation of law, the lawyer may consult with senior NG or the NGB lawyers at the same or higher levels of command, advise them of the lawyer's concerns, and discuss available alternatives to avoid any violation of legal interests or obligations, or of the law, by the NG or the NGB. The lawyer may also terminate representation with respect to the matter in question. In no event shall the lawyer participate or assist in the illegal activity.
- d. A lawyer who, pursuant to paragraph(c), terminates representation with respect to the matter in question shall report any such termination of representation to the lawyer's supervisory lawyer or the lawyer representing the next superior in the chain of command.
- e. In dealing with the NG's or the NGB's officers, employees, or members, or other persons associated with the organization, a lawyer shall explain that the organization is the client when the lawyer knows or reasonably should know that the organization's

interests are adverse to those of the officers, employees, members, or other persons with whom the lawyer is dealing.

f. A covered attorney may also represent any of its officers, employees, or members acting on behalf of the NG or the NGB, subject to the provisions of Rule 1.7, these rules for professional conduct, and other applicable authority. If the NG's or the NGB's consent to such dual representation is required by Rule 1.7, the consent shall be given by an appropriate official of the NG or the NGB other than the individual who is to be represented.

g. A covered attorney who has been duly assigned to represent an individual who is subject to criminal or disciplinary action or administrative proceedings, or to provide civil legal assistance to an individual, has, for those purposes, a client-lawyer relationship with that individual.

Rule 1.14 Client With Diminished Capacity.

a. When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment, or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

b. When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial, or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a Guardian Ad Litem, conservator, or guardian.

c. Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

Rule 1.15 Safekeeping Property.

a. Covered attorneys will hold the property of clients or third persons that is in a lawyer's possession in connection with a representation only when doing so is necessary to further the representation of the client. When it is necessary for a lawyer to hold property, the lawyer must exercise the care of a fiduciary. Such property shall be clearly labeled or otherwise identified, kept separate from the lawyer's own personal property and from government property, and appropriately safeguarded. The lawyer should promptly return property to the client or third person when its retention by the lawyer is no longer necessary to further the representation of the client. When property of a client or third person is admitted into evidence or otherwise included in the record of an administrative or criminal proceeding, the lawyer should take reasonable action to ensure its prompt return to the client or third person.

b. Upon receiving property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law, regulation, or policy or by agreement with the client, a lawyer shall promptly deliver to the client or third person any property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

c. When in the course of representation, a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

Rule 1.16 Declining or Terminating Representation.

a. Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall seek to withdraw from the representation of a client if:

(1) The representation will result in violation of these Rules of Professional Conduct or other law or regulation.

(2) The lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client.

(3) The lawyer is discharged by the client.

b. Except as stated in paragraph (c), a lawyer may seek to withdraw from representing a client if:

(1) Withdrawal can be accomplished without material adverse effect on the interests of the client.

(2) The client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent.

(3) The client has used the lawyer's services to perpetrate a crime or fraud.

(4) The client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement.

(5) The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will seek to withdraw unless the obligation is fulfilled.

(6) 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

(7) Other good cause for withdrawal exists.

c. A lawyer must comply with applicable law or regulation requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal or other competent authority, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

d. Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for assignment or employment of other counsel, surrendering papers and property to which the client is entitled and, where a non-government lawyer provided representation, refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by law or regulation.

Rule 1.17 Not Used.

Rule 1.18 Duties to Prospective Client.

a. A person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter is a prospective client.

b. Even when no client-lawyer relationship ensues, a lawyer who has learned information from a prospective client shall not use or reveal that information, except as Rule 1.9 would permit with respect to information of a former client.

c. A lawyer subject to paragraph (b) shall not represent a client with interests materially adverse to those of a prospective client in the same or a substantially related matter if the lawyer received information from the prospective client that could be significantly harmful to that person in the matter, except as provided in paragraph (d).

d. When the lawyer has received disqualifying information as defined in paragraph (c), representation is permissible if:

(1) Both the affected client and the prospective client have given informed consent, confirmed in writing.

(2) The lawyer who received the information took reasonable measures to avoid exposure to more disqualifying information than was reasonably necessary to determine whether to represent the prospective client.

(a) The disqualified lawyer is timely screened from any participation in the matter and, in the case of a non-government lawyer, is also apportioned no part of the fee therefrom.

(b) Written notice is promptly given to the prospective client.

Rule 2.1 Advisor. In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

Rule 2.2 Not Used.

Rule 2.3 Evaluation for Use by Third Persons.

a. A lawyer may provide an evaluation of a matter affecting a client for the use of someone other than the client if the lawyer reasonably believes that making the evaluation is compatible with other aspects of the lawyer's relationship with the client.

b. When the lawyer knows or reasonably should know that the evaluation is likely to affect the client's interests materially and adversely, the lawyer shall not provide the evaluation unless the client gives informed consent, confirmed in writing.

c. Except as disclosure is required or authorized in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by Rule 1.6.

Rule 2.4 Lawyer Serving as Third-Party Neutral.

a. A lawyer serves as a third-party neutral when the lawyer assists two or more persons who are not clients of the lawyer to reach a resolution of a dispute or other matter that has arisen between them. Service as a third-party neutral may include service as an arbitrator, a mediator, or in such other capacity as will enable the lawyer to assist the parties to resolve the matter.

b. A lawyer serving as a third-party neutral shall inform unrepresented parties that the lawyer is not representing them. When the lawyer knows or reasonably should know that a party does not understand the lawyer's role in the matter, the lawyer shall explain the difference between the lawyer's role as a third-party neutral and a lawyer's role as one who represents a client.

Rule 3.1 Meritorious Claims and Contentions. A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the accused in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, discharge from military service, or other adverse personnel action, may nevertheless so defend the proceeding as to require that every element of the case be established. A lawyer does not violate this rule by raising issues in good faith reliance upon court precedent.

Rule 3.2 Expediting Litigation. A lawyer shall make reasonable efforts to expedite litigation and other proceedings consistent with the interests of the client.

Rule 3.3 Candor Toward the Tribunal.

a. A lawyer shall not knowingly:

(1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

(2) 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.

(3) Offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of an accused in a criminal matter, that the lawyer reasonably believes is false.

(4) Disobey an order imposed by a tribunal unless done openly before the tribunal in a good faith assertion that no valid order should exist.

b. 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.

c. The duties stated in paragraphs (a) and (b) of this rule continue to the conclusion of the proceeding and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

d. In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

Rule 3.4 Fairness to Opposing Party and Counsel. A lawyer shall not:

a. Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to act by:

b. Falsify evidence, counsel, or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law.

c. Knowingly disobey an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.

d. In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party.

e. In trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused.

f. Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(1) The person is a relative or an employee or other agent of a client.

(2) The lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

Rule 3.5 Impartiality and Decorum of the Tribunal. A lawyer shall not:

a. Seek to influence a judge, court or board or tribunal member, prospective court or board or tribunal member, or other official by means prohibited by law.

b. Communicate ex parte with a judge, court or board or tribunal member, prospective court or board or tribunal member, or other official during the proceeding unless authorized to do so by law, regulation, or court order.

c. Communicate with a court or board or tribunal member, or prospective court or board or tribunal member, after discharge of the court, board, or tribunal if:

(1) The communication is prohibited by law, regulation, or court order.

(2) Such member or prospective member has made known to the lawyer a desire not to communicate.

(3) The communication involves misrepresentation, coercion, duress, or harassment.

d. Engage in conduct intended to disrupt a court, board, or tribunal.

Rule 3.6 Tribunal Publicity.

a. A lawyer who is participating or has participated in the investigation or litigation of a matter, including adverse administrative or disciplinary proceedings, shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter or an official review process thereof. An extrajudicial statement ordinarily is likely to have such an effect

when it refers to a civil matter triable to a jury, a criminal matter (including before a military tribunal or commission), or any other proceeding that could result in incarceration, discharge from the military, or other adverse personnel action, and that statement relates to:

(1) The character, credibility, reputation, or criminal record of a party, suspect in a criminal investigation, victim, or witness, or the identity of a victim or witness, or the expected testimony of a party, suspect, victim, or witness

(2) The possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by an accused or suspect or that person's refusal or failure to make a statement.

(3) The performance or results of any examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented.

(4) Any opinion as to the guilt or innocence of an accused or suspect in a criminal case or proceeding that could result in incarceration, discharge from the military, or other adverse personnel action.

(5) Information the lawyer knows or reasonably should know is likely to be inadmissible as evidence before a tribunal and would, if disclosed, create a substantial risk of prejudicing an impartial proceeding.

(6) The fact that an accused has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the accused is presumed innocent until and unless proven guilty.

(7) The credibility, reputation, motives, or character of civilian or military officials of the NG and DoD. This does not preclude the lawyer from commenting on such matters in a representational capacity.

b. Notwithstanding paragraph (a), a lawyer, including a lawyer involved in the investigation or litigation of a matter, may state without elaboration:

(1) The general nature of the claim, offense, or defense involved and, except when prohibited by law, regulation, or policy, the identity of the persons involved.

(2) Information contained in a public record.

(3) That an investigation of a matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law, regulation, or policy, the identity of the persons involved.

(4) The scheduling or result of any step-in litigation.

(5) A request for assistance in obtaining evidence and information necessary thereto.

(6) A warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest.

(7) In a criminal case, in addition to subparagraphs (1) through (6):

(a) The identity, duty station, occupation, and family status of the accused.

(b) If the accused has not been apprehended, information necessary to aid in apprehension of that person.

(c) The fact, time, and place of apprehension.

(d) The identity of investigating and apprehending officers or agencies and the length of the investigation.

c. No lawyer associated in a firm or government agency, including the NG and the NGB, subject to paragraph (a) shall make a statement prohibited by paragraph (a).

d. The protection and release of information in matters pertaining to the NG or the NGB in accordance with reference e and reference f, in addition to those governing protection of national defense information. In addition, other laws and regulations may further restrict the information that can be released or the source from which it is to be released.

Rule 3.7 Lawyer as Witness.

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

(1) The testimony relates to an uncontested issue.

(2) The testimony relates to the nature and value of legal services rendered in the case; or

(3) Disqualification of the lawyer would work substantial hardship on the client.

b. A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or Rule 1.9.

Rule 3.8 Special Responsibilities of a Trial Counsel and Other Covered Attorney. A Trial Counsel in a criminal case shall:

a. Recommend to the convening authority that any charge or specification not supported by probable cause be withdrawn.

b. Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel.

c. Not seek to obtain from an unrepresented accused a waiver of important pretrial rights.

d. Make timely disclosure to the defense of all evidence or information known to the Trial Counsel that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense all unprivileged mitigating information known to the Trial Counsel, except when the Trial Counsel is relieved of this responsibility by a protective order or regulation.

e. Except for statements that are necessary to inform the public of the nature and extent of the Trial Counsel's actions and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused and exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the Trial Counsel in a criminal case from making an extrajudicial statement that the Trial Counsel would be prohibited from making under Rule 3.6 or this Rule:

f. When a Trial Counsel or other lawyer learns of new, credible, and material evidence or information creating a reasonable likelihood that a convicted accused did not commit an offense of which the accused was convicted at court-martial, the Trial Counsel or other lawyer shall process that evidence as follows:

(1) Promptly disclose that evidence to an appropriate court or authority.

(2) If the conviction was obtained in the trial counsel's jurisdiction.

(a) Promptly disclose that evidence to the accused unless a court authorizes delay.

(b) Undertake further investigation, or make reasonable efforts to cause an investigation, to determine whether the accused was convicted of an offense that the accused did not commit.

g. When a Trial Counsel or other covered attorney knows of clear and convincing evidence establishing that an accused was convicted of an offense that the accused did not commit, trial counsel shall seek to remedy the conviction.

Rule 3.9 Advocate in Non-adjudicative Proceedings. A lawyer representing a client before a legislative body or administrative agency in a non-adjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of Rules 3.3(a) through (c), 3.4(a) through (c), and 3.5.

Rule 4.1 Truthfulness in Statements to Others. In the course of representing a client a lawyer shall not knowingly:

- a. Make a false statement of material fact or law to a third person.
- b. Fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client unless disclosure is prohibited by Rule 1.6.

Rule 4.2 Communication with Person Represented by Counsel. In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

Rule 4.3 Dealing with Unrepresented Person. In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When 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. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Rule 4.4 Respect for Rights of Third Persons.

a. In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

b. 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.

Rule 5.1 Responsibilities of Senior Counsel and Supervisory Lawyers.

a. The NGB General Counsel shall make reasonable efforts to ensure that the NG and the NGB has in effect measures giving reasonable assurance that covered attorneys conform to these Rules.

b. A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules.

c. A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if:

(1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

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

d. A supervisory NG lawyer is responsible for making appropriate efforts to ensure that a subordinate lawyer is properly trained and is competent to perform the duties to which a subordinate lawyer is assigned.

Rule 5.2 Responsibilities of a Subordinate Lawyer.

a. A lawyer is bound by the Rules notwithstanding that the lawyer acted at the direction of another person.

b. A subordinate lawyer does not violate the Rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

Rule 5.3 Responsibilities Regarding Nonlawyer Assistants. With respect to a nonlawyer acting under the authority, supervision, or direction of a lawyer:

a. The senior supervisory lawyer in a legal office shall make reasonable efforts to ensure that the office has in effect measures giving reasonable assurance that the conduct of nonlawyers is compatible with the professional obligations of the lawyer.

b. A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.

c. A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:

(1) The lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved.

(2) The lawyer 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.

Rule 5.4 Professional Independence of a Lawyer.

a. Notwithstanding a covered attorney's status as a Federal employee subject generally to the authority of superiors, a NG civilian lawyer detailed or assigned to represent an individual member or employee of the NG or the NGB 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. The exercise of professional judgment in accordance with paragraphs (a) above shall not, standing alone, be a basis for an adverse evaluation or other prejudicial action by the covered attorney's superior.

Rule 5.5 Unauthorized Practice of Law.

a. A lawyer shall not:

(1) Practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, except as authorized by an appropriate military department.

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

(3) Engage in the practice of law outside the NG and the NGB without receiving prior and proper written authorization from the NGB General Counsel.

b. A nonlawyer assistant shall not practice law and shall comply with the applicable legal authorities governing the nonlawyer assistant's responsibilities under these Rules and this regulation.

Rule 5.6 Restrictions on Right to Practice [Omitted].

Rule 5.7 Responsibilities Regarding Non-Law and Law-Related Duties. A NG civilian attorney shall also be subject to these Rules of Professional Conduct with respect to non-law but official, and law-related but official, duties performed as a covered attorney.

Rule 6.1 Pro Bono Public Service [Omitted].

Rule 6.2 Accepting Appointments [Omitted].

Rule 6.3 Membership in Legal Services Organization [Omitted].

Rule 6.4 Law Reform Activities Affecting Client Interests [Omitted].

Rule 6.5 Nonprofit and Court-Annexed Limited Legal Services Programs [Omitted].

Rule 7.1 Communications Concerning a Lawyer's Services.

a. A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law or omits a fact necessary to make the statement not materially misleading when considered as a whole.

b. A covered attorney may engage in communications as provided under this Rule only if:

(1) The lawyer complies with the rules of the lawyer's state and other licensing authorities regarding such communications.

(2) The lawyer adheres strictly to the DoD Joint Ethics Regulation and other statutes and ethics regulations that apply to NG civilian attorneys, which may impose more stringent standards depending on the circumstances.

Rule 7.2 Advertising [Omitted].

Rule 7.3 Solicitation of Clients [Omitted].

Rule 7.4 Communication of Fields of Practice and Specialization [Omitted].

Rule 7.5 NG Letterhead. A NG civilian attorney shall not use official NG or the NGB letterhead when communicating in a private capacity.

Rule 7.6 Political Contributions to Obtain Government Legal Engagements or Appointments by Judges [Omitted].

Rule 8.1 Bar Admission and Disciplinary Matters. An applicant for bar admission or an attorney involved in any disciplinary matter, and who is employed by or assigned to NG or the NGB as a covered attorney, certified by the NGB General Counsel or his or her designee, or qualified as a civilian lawyer by the NGB General Counsel shall not:

a. Knowingly make a false statement of material fact.

b. Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

Rule 8.2 Judicial and Legal Officials. A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, investigating officer, hearing officer, adjudicatory officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.

Rule 8.3 Reporting Professional Misconduct.

a. A lawyer who knows that another lawyer has committed a violation of these Rules that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

b. A lawyer who knows that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall inform the appropriate authority.

c. This Rule does not require disclosure of information otherwise protected by Rule 1.6.

d. This Rule does not affect any reporting requirements a lawyer may have under other rules of professional conduct to which the lawyer is subject.

Rule 8.4 Misconduct. It is professional misconduct for a lawyer to:

a. Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

b. Commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects.

c. Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.

d. Engage in conduct that is prejudicial to the administration of justice.

e. State or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

f. Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

Rule 8.5 Jurisdiction. Pursuant to the authority of the NGB General Counsel under reference b, these Rules apply to covered attorneys.

Rule 9.1 Interpretation [Omitted].

Rule 9.2 [Not Used].

Rule 10.1 Enforcement.

a. The NGB General Counsel will:

(1) Establish procedures for reporting, processing, investigating, and taking appropriate action on allegations of violations of these Rules by lawyers under their qualifying authority or jurisdiction.

(2) Notify the General Counsel of the DoD immediately upon learning of an allegation of a violation of these Rules by any general officer or Senior Executive Service member under their jurisdiction or working in their organization.

b. Any allegation of a violation of these Rules by a lawyer while assigned to other offices within the DoD, will be reported to the NGB General Counsel and the General Counsel of the DoD.

(1) The NGB General Counsel will conduct an inquiry into such allegations as he/she deems necessary in accordance with this enclosure.

(2) Upon completion of his/her inquiry, the NGB General Counsel will take appropriate action with respect to NG civilian attorneys from his or her office.

c. Any person having knowledge of an apparent violation of these Rules by the NGB General Counsel should notify the General Counsel of the DoD of the alleged violation.

Rule 10.2 [Not Used].”

ENCLOSURE D

REFERENCES

- a. Chief of the National Guard Bureau (CNGB) Instruction 0408.01, 21 December 2022, "Personnel Actions Involving Civilian Attorneys"
- b. CNGB Instruction 0400.00, 29 November 2022, "Office of the National Guard Bureau General Counsel"
- c. Department of Defense (DoD) Instruction 1442.02, 30 September 2010, "Personnel Actions Involving Civilian Attorneys," Incorporating Change 1, 13 April 2023
- d. DoD Instruction 7050.01, 17 October 2017, "DoD Hotline Program"
- e. Title 5 United States Code (U.S.C.) Section 522, "Freedom of Information Act"
- f. Title 5 U.S.C. § 522a, "Privacy Act"

GLOSSARY

PART I. ACRONYMS

DoD	Department of Defense
IO	Investigating Officer
NG	National Guard
NGB	National Guard Bureau
NGB-IG	National Guard Bureau Inspector General
NGB-GC	National Guard Bureau General Counsel
NGB-GC PRM	National Guard Bureau Professional Responsibility Manager
NGB PCB	National Guard Bureau Professional Conduct Board

PART II. DEFINITIONS

Ad litem -- For the suit; for purposes of the suit; pending the suit.

Attorney -- Synonymous with lawyer.

Belief or believes -- Denotes that the person involved actually supposed the fact in question to be true. A person's belief may be inferred from circumstances.

Confirmed in writing -- When used in reference to the informed consent of a person, denotes informed consent that is given in writing by the person or a writing that a lawyer promptly transmits to the person confirming an oral informed consent. See paragraph (h) for the definition of "informed consent." If it is not feasible to obtain or transmit the writing at the time the person gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter.

Consult or consultation -- Denotes a communication of information reasonably sufficient to permit the client or the recipient of such communication to appreciate the significance of the matter in question.

Covered Attorney -- All Title 5 civilian attorneys employed by the National Guard Bureau or the National Guard in civilian attorney (or equivalent) positions. This includes attorneys detailed or assigned as special victims counsel for individual clients and attorneys detailed or assigned to provide legal assistance to individual clients. This does not include judge advocates and Title 32 Dual Status Technician attorneys.

Ex parte -- Done for, on behalf of, or on the application of, one party only.

Firm or law firm -- Denotes a lawyer or lawyers in a law partnership, professional corporation, sole proprietorship, or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization.

Fraud or fraudulent -- Denotes conduct that is fraudulent under the substantive or procedural law of the applicable jurisdiction and has a purpose to deceive.

Informed consent -- Denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of and reasonably available alternatives to the pro-posed course of conduct.

Investigating Officer -- A person appointed to conduct an investigation.

Knowingly, known, or knows -- Denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances.

Law -- Used in Rules of Law to denote statutes, case law, judicial precedents, regulations, directives, instructions, and orders.

Law firm -- See Firm.

Lawyer -- A person qualified to practice law in their jurisdiction.

National Guard -- The National Guards of the States, Territories, and the District of Columbia.

National Guard Bureau -- A joint activity of the Department of Defense.

Other Adjudicative Officer -- Denotes a person detailed to serve as a member (including a sole member) of a board or court of inquiry convened to determine facts and make recommendations.

Partner-- Denotes a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.

Professional Disciplinary Proceeding -- Denotes all types of administrative proceedings (including investigations and inquiries) convened in accordance with applicable law to inquire into allegations of violations of these Rules of Professional Conduct, and those proceedings convened pursuant to the disciplinary body.

Reasonable or reasonably -- When used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer.

Reasonable belief or reasonably believes -- When used in reference to a lawyer denotes that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.

Reasonably should know -- When used in reference to a lawyer, this denotes that a lawyer of reasonable prudence and competence would ascertain the matter in question.

Screened -- Denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law.

Senior Counsel -- Denotes the National Guard Bureau General Counsel.

Substantiated -- when used in reference to degree or extent denotes a material matter of clear and weighty importance.

Supervisory Lawyer -- Denotes a lawyer within an office or organization with authority over or responsibility for the direction, coordination, evaluation, or assignment of responsibilities and work of subordinate lawyers and nonlawyer assistants (for example, paralegals).

Tribunal -- Denotes a court, an Article 32, Uniform Code of Military Justice investigation, administrative separation boards or hearings, boards of inquiry, disability evaluation proceedings, an arbitrator in a binding arbitration proceeding, or a legislative body, administrative agency, or other body acting in an adjudicative capacity. A legislative body, administrative agency, or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

Writing or Written -- Denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photocopying, photography, audio or video recording, and electronic communications. A "signed" writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.