

PROFESSIONAL RESPONSIBILITY

Confidentiality

Executive Summary. You have requested an ethics advisory opinion regarding what professional responsibility requirements are triggered when a paralegal assigned to the base legal office overhears government trial counsel discussing how to respond to a defense motion and that paralegal later testifies as a factual witness for the defense on the same motion. Based on the facts provided, potential violations include Air Force Rules of Professional Conduct (AFRPC) 1.6, *Confidentiality of Information*, and AFRPC 8.4, *Misconduct*.

Facts. Senior trial counsel and trial counsel were working in a private office located inside the base legal office. A paralegal that worked in close proximity to their office overheard the counsel discussing trial tactics, including how the government may or may not respond to a defense motion regarding undue command influence. The paralegal later testified for the defense as a factual witness on the motion.

Law. The AFRPC apply to all military and civilian lawyers, paralegals, and nonlawyer assistants in the Judge Advocate Generals Corps.

The applicable part of Rule 1.6, Confidentiality of Information, states the following:

- (a) A lawyer shall not reveal information relating to the representation of a client unless the client consents after consultation, except for disclosures that are implicitly authorized in order to carry out the representation.

The applicable part of Rule 8.4, Misconduct, states the following:

It is unprofessional conduct for a lawyer to: ... (d) engage in conduct that is prejudicial to the administration of justice.

Analysis.

Although the AFRPC apply to all military and civilian members of the JAGC, not every rule specifically states that it applies to the conduct of lawyers, paralegals, and nonlawyer assistants. Individual rules state that they apply to lawyers' conduct, but the introduction to the AFRPC is clear that the rules apply uniformly to all AFJAGC members. Therefore, the term "lawyer" in each rule should be read as "all military and civilian members of the AFJAGC."

In the case you presented, the paralegal was assigned to the base legal office, and as part of the law firm she had an obligation to keep all client information confidential. If the paralegal disclosed information she overheard from trial counsel discussions, she violated AFRPC 1.6, *Confidentiality of Information*.

To violate rule 8.4 (d), Misconduct, a AFJAGC employee must engage in conduct that is improper, have a direct bearing on the judicial process in connection with an identifiable case or tribunal, and potentially impact the process to a serious and adverse degree.¹ In this case, if the paralegal disclosed the information she overheard to the defense counsel, that was an improper disclosure. The disclosure appears to have had a direct bearing on the judicial process because the paralegal was called as a defense

¹ *In Re Mason*, 736 A. 2d 1019, citing *In Re Hopkins*, 677 A. 2d

witness to testify on the motion. Additionally, the disclosure had the potential to impact the process to a serious and adverse degree because it provided the defense with trial tactics discussed by trial counsel.

Conclusion. If the paralegal disclosed confidential information to the defense, she violated AFRPC 1.6, *Confidentiality of Information*, and possibly AFRPC 8.4 (d), *Misconduct*.

OpJAGAF 2014/11 9 September 2014