

## PROFESSIONAL RESPONSIBILITY

### Confidentiality

Executive Summary. During a recent Article 6, Part 1 inspection, you were informed that casual status lieutenants assisted with military justice cases. Although the lieutenants do not have specialized legal training, the legal office utilized them in the military justice section. At times, the lieutenants assisted with witness interviews and later testified at trial. The office lacked any written documentation the lieutenants had been briefed on the Air Force Rules of Professional Conduct (AFRPC) or specifically Rule 1.6, *Confidentiality*. As a result, you requested an advisory opinion regarding the confidentiality requirements of casual status Air Force personnel working in a legal office.

Law. The applicable part of Rule 5.1, *Responsibilities of a Supervisory Lawyer* states:

With respect to a paralegal or other nonlawyer employed or retained by, associated with, or supervised by a lawyer:

- (a) The senior Air Force lawyer in an office shall make reasonable efforts to ensure that the office has in effect measures giving reasonable assurance that the conduct of all subordinate lawyers and nonlawyers is compatible with their professional obligations;
- (b) A lawyer having direct supervisory authority over a nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.

The applicable part of Rule 1.6 (a), *Confidentiality of Information*, states the following:

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

Analysis.

Although employed by the Air Force, casual status personnel are similar to legal service volunteers and should meet the same requirements outlined in AFI 51-110, *Professional Responsibility Program*, para 11, *Use of Legal Service Volunteers*. Casual status personnel may perform paralegal-type functions or provide other legal services if acting under the direction, supervision, and control of an Air Force military or civilian attorney. Applying the standards of AFI 51-110, para. 11.2, casual status personnel must be briefed on, understand, and comply with the same confidentiality requirements applicable to all members of the legal office staff. They must also sign a confidentiality agreement. Additionally, casual status personnel must be briefed on, understand, and comply with the rules and standards set forth in AFI 51-110, Attachment 2, *Air Force Rules of Professional Conduct*, AFI 51-110, Attachment 3, *Air Force Standards for Civility in Professional Conduct*, and AFI 51-201, Attachment 3, *Air Force Standards for Criminal Justice*.

Conclusion. Casual status personnel working in the legal office should be treated as legal service volunteers.

OpJAGAF 2014/10 9 September 2014