

## PROFESSIONAL RESPONSIBILITY

### Conflict of Interest

Executive Summary. You have requested an ethics advisory opinion regarding what professional responsibility requirements are triggered when a base-level paralegal and a defense paralegal date, get married or otherwise engage in a close, personal relationship.

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 1.7, *Conflict of Interest: General Rule*, states the following:

- (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyers own interests, unless:
  - (1) The lawyer reasonably believes the representation will not be adversely affected; and
  - (2) The client consents after consultation.

Analysis.

Although the AFRPC apply to all military and civilian members of the JAG Corps, 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 JAGC."

The AFRPC is directly adapted from the *American Bar Association (ABA) Model Rules of Professional Conduct* and counsel are encouraged to consult them for guidance and assistance in placing the *Rules* in context.<sup>1</sup> The following is an excerpt from the Seventh Edition of the *Annotated Rules of Professional Conduct* for Rule 1.7, Conflict of Interest: Current Clients.

[11] When lawyers representing clients in the same matter or substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed

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<sup>1</sup> AFRPC, Atch 1, p. 3

consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated.

When a base-level paralegal and a defense paralegal have a close, personal relationship there is a potential that client confidences may be revealed or perceived to be revealed. It is also possible that the personal relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence of the relationship at the initiation of the personal relationship or the representation.

Conclusion. In accordance with Rule 5.1, *Responsibilities of a Supervisory Lawyer*, each paralegal should discuss the potential conflict with his or her supervisory lawyer. The supervisory lawyer must determine if the paralegal's relationship with another paralegal will materially limit the paralegal's ability to represent the client. In accordance with AFRPC 1.7 (b), *Conflict of Interest: General Rule*, if the supervisory lawyer reasonably believes representation will not be adversely affected, the client must provide informed consent before the paralegal undertakes or continues representation.

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