

taking action on any clemency or deferment request; or any appellate or post-trial review of a case.

(3) *Scope.*

(A) *Instructions.* Paragraphs (a)(1) and (2) of this rule do not prohibit general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing personnel of a command in the substantive and procedural aspects of courts-martial.

(B) *Court-martial statements.* Paragraphs (a)(1) and (2) of this rule do not prohibit statements and instructions given in open session by the military judge or counsel.

(C) *Professional supervision.* Paragraphs (a)(1) and (2) of this rule do not prohibit action by the Judge Advocate General concerned under R.C.M. 109.

(D) *Offense.* Paragraphs (a)(1) and (2) of this rule do not prohibit appropriate action against a person for an offense committed while detailed as a military judge, counsel, or member of a court-martial, or while serving as individual counsel.

(E) *General statements regarding criminal activity or offenses.* Paragraphs (a)(1) and (2) of this rule do not prohibit statements regarding criminal activity or a particular criminal offense that do not advocate a particular disposition, do not advocate a particular court-martial finding or sentence, and do not relate to a particular accused.

(b) *Communication between superiors and subordinates.*

(1) A superior convening authority or officer may generally discuss matters to consider regarding the disposition of alleged violations of the UCMJ with a subordinate convening authority or officer, and a subordinate convening authority or officer may seek advice from a superior convening authority or officer regarding the disposition of an alleged offense under the UCMJ.

(2) No superior convening authority or officer may direct a subordinate convening authority or officer to make a particular disposition in a specific case or otherwise substitute the discretion of such authority or such officer for that of the subordinate convening authority or officer.

(c) *Prohibitions concerning evaluations.*

(1) *Evaluation of member or counsel.* In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the armed forces is qualified to be advanced in grade, or in determining the assignment or transfer of a member of the armed forces, or in determining whether a member of the armed forces should be retained on active duty, no person subject to the UCMJ may:

(A) Consider or evaluate the performance of duty of any such person as a member of a court-martial; or

(B) Give a less favorable rating or evaluation of any defense counsel or special victims' counsel because of the zeal with which such counsel represented any client. As used in this rule, "special victims' counsel" are judge advocates and civilian counsel, who, in accordance with 10 U.S.C. § 1044e, are designated as Special Victims' Counsel.

(2) *Evaluation of military judge.*

(A) *General courts-martial.* Unless the general court-martial was convened by the President or the Secretary concerned, neither the convening authority nor any member of the convening authority's staff may prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge detailed to a general court-martial that relates to the performance of duty as a military judge.