

Outline – 2026 CAAF CLE – Professional Responsibility Block 1

“Legal Ethics & Artificial Intelligence in Our Dual Profession”

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I. Introduction

- Overview of the dual profession: military officer + attorney.
- Purpose of the block: explore how PR rules apply uniquely in military criminal appellate practice and how emerging technologies—especially AI—intersect with those duties.
- Learning objectives (from slides):
 - **The Why:** Reflect on why PR rules exist.
 - **The What:** Identify key PR rules relevant to appellate practice.
 - **The How:** Apply rules to realistic scenarios.

II. Background of Professional Responsibility Rules

A. Historical Development

- Evolution from the 1887 Alabama Code → 1908 ABA Canons → 1969 Model Code → 1983 ABA Model Rules.

B. Purpose of PR Rules

1. **Protect the client** – clients cannot reliably judge attorney performance.
2. **Protect the profession** – maintain public trust in a profession essential to the rule of law.
3. **Promote ethical conduct** – rules are a *floor*, not a ceiling.
 - “These Rules simply provide a framework for the ethical practice of law.” (AR 27-26, para. 7.d.(2))

C. The Spirit of Military PR Rules

- Emphasis on moral judgment, conscience, and peer approbation.
 - “Many difficult issues... must be resolved through the exercise of sensitive professional and moral judgment.” (AR 27-26, para. 6b)

III. Applicability & Structure of Military PR Rules

A. Applicability

- AR 27-26 governs all Army lawyers and nonlawyer legal personnel.
 - Includes paralegals, legal administrators, interns, and civilian support staff.

B. Structure of Service Rules

- Army, Air Force, Navy/USMC each adopt modified versions of ABA MRPC.
- Key structural components:
 - Client-lawyer relationship
 - Counselor
 - Advocate
 - Transactions with others
 - Responsibilities of supervisory/subordinate lawyers
 - Discipline & reporting obligations

IV. The Role of CAAF Practitioners in Upholding PR

A. Unique Pressures

- Balancing justice, command expectations, victim concerns, and public scrutiny.

B. Convergence of Interests

- CAAF practitioners sit at the intersection of:
 - Statutory/regulatory justice
 - Military priorities
 - Long-term institutional interests
 - Public expectations

C. Distinctive Appellate PR Challenges

- Grostefon issues
- IAC investigations within a small JAG community
- Post-trial delay
- Discovery failures surfacing on appeal

V. Top PR Rules & Principles for CAAF Practice

1. Competence & Diligence

- **Rule 1.1** – specialized appellate competence required.
 - Cal. Rules of Professional Conduct (hereinafter “Cal. RPC”), rule 1.1
- **Rule 1.3** – diligence despite caseloads and administrative delays.
 - Cal. RPC, rule 1.3

2. Confidentiality

- **Rule 1.6** – enduring duty, even after representation ends.
 - Cal. RPC, rule 1.3

3. Meritorious Claims

- **Rule 3.1** – prohibition on frivolous claims.
 - **Cal. RPC, rule 3.1**
- Modified by **Grostefon** obligations.

4. Prosecutorial Duties

- **Rule 3.8** – heightened disclosure obligations.
 - **Cal. RPC, rule 3.8**

5. Leadership & Supervision

- **Rules 5.1–5.3** – supervisory duties, subordinate responsibilities, and oversight of nonlawyers.
 - **Cal. RPC, rule 5.1–5.3**

6. Reporting Misconduct

- **Rule 8.3** – mandatory reporting of substantial PR violations.
 - **Cal. RPC, rule 8.3**
- TJAG Policy Memo 22-01: self-reporting + technical chain reporting requirements.

VI. Emerging PR Concern: Artificial Intelligence in Legal Practice

A. Why AI Matters Now

- Rapid adoption across DoD and legal profession.
- DoD Task Force Lima; Army DJAG Policy Memo 26-01.

B. ABA Formal Opinion 512 (2024)

Key ethical duties when using generative AI:

- Competence
- Confidentiality
- Diligence & communication
- Candor to the tribunal
- Supervision of nonlawyers/agents

*See also, The State Bar of California Standing Committee on Professional Responsibility and Conduct, **Practical Guidance for the Use of Generative Artificial Intelligence in the Practice of Law (2023)**.*

C. Risks & Rewards

- **Rewards:** summarization, drafting, research, e-discovery.
- **Risks:** hallucinations, bias, data security, overreliance.

D. Army DJAG Policy Memo 26-01

- Mandatory human review
- No CUI/PII/PHI in unauthorized tools
- Supervisory responsibility
- Duty to understand capabilities & limitations

VII. Hypothetical Scenarios (for class discussion)

Vignette 1: Grostefon vs. Frivolous Claims

- Tension between MRPC 3.1 and client-directed issues.

Vignette 2: IAC Claim Against a Well-Connected TDC

- Conflict of interest under MRPC 1.7(a)(2).

Vignette 3: Undisclosed Lab Report Found on Appeal

- MRPC 3.8(d) disclosure obligations
- MRPC 3.3 candor
- MRPC 5.2 subordinate lawyer responsibilities

VIII. Key Takeaways

- Uphold integrity of the military justice system.
- Seek guidance—PR is a team sport.
- Remember the “north star”: justice.

IX. Conclusion & Questions