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Judge Advocate General of the Navy Has Authority To Enforce Professional Responsibility Rules on Civilian Lawyers Practicing in Navy Courts Martial

By Captain Samuel F. Wright, JAGC, USN (Ret.)

12.0—Military criminal justice

***Partington v. Houck*¹, 2013 U.S. App. LEXIS 14884 (D.C. Cir. July 23, 2013).**

Earle Arthur Partington is a retired Army judge advocate. As a civilian lawyer, he frequently represents service members in courts martial. In 2006, he represented Stewart Toles, a Navy petty officer charged with sexual harassment, video voyeurism, and other serious charges. After Toles was convicted, Partington represented him in his appeal to the Navy-Marine Corps Court of Criminal Appeals (NMCCA).

The NMCCA found itself “troubled by [Partington’s] wholly unsupported allegations of error.” The court believed that Partington has intentionally misrepresented facts about what happened at the court martial. The NMCCA directed its clerk to send a copy of its decision to the Judge Advocate General of the Navy and to the Navy’s “Rules Counsel” for attorney discipline matters. In accordance with published rules, the Office of the Rules Counsel conducted an investigation and found probable cause to proceed against Partington. The Office conducted a hearing and invited Partington to appear, but he chose not to appear, asserting that the Office’s rules and procedures did not accord him due process of law, as required by the 5th Amendment of the United States Constitution.

After the hearing, the Judge Advocate General of the Navy (Admiral Houck) notified Partington by certified mail that he was indefinitely suspended from acting as retained civilian counsel in Navy and Marine Corps courts martial. The Judge Advocate General also notified other lawyer-licensing authorities of the action that had been taken against Partington. As a result, the Court of Appeals for the Armed Forces and at least one state jurisdiction where Partington was licensed took action.

¹ Vice Admiral James W. Houck was the Judge Advocate General of the Navy at the time Partington filed this lawsuit in the United States District Court for the District of Columbia. About a year ago, Admiral Houck retired and Vice Admiral Nanette DeRenzi became the Judge Advocate General of the Navy. Because this was a suit against Admiral Houck in his capacity as the Judge Advocate General of the Navy, and not a lawsuit against James W. Houck personally, the DeRenzi name should have been substituted for the Houck name in the caption of this case. It is unclear why this did not happen.

Partington brought this lawsuit in the United States District Court for the District of Columbia, contending that the Judge Advocate General of the Navy had no statutory authority to impose discipline on civilian lawyers (like Partington) appearing at Navy and Marine Corps courts martial. Partington also contended that the procedures utilized in this attorney discipline proceeding violated the Due Process Clause of the 5th Amendment and also the Administrative Procedures Act (APA).

The District Court held that the Judge Advocate General did indeed have proper authority to discipline civilian lawyers for serious violations of the lawyer ethics rules in courts martial, and that the disciplinary procedures were consistent with the 5th Amendment and the APA. The Court of Appeals affirmed the District Court on both issues.

We will keep the readers informed if there are any further developments in this interesting case.