



## **AIR FORCE SPECIAL VICTIMS' COUNSEL CHARTER**

**PURPOSE:** This Charter, in conjunction with the Special Victims' Counsel Rules of Practice and Procedure, defines the types of services Air Force Special Victims' Counsel (SVC) are responsible for providing and to whom they may be provided.

**BACKGROUND:** This charter defines SVC responsibilities and services, as authorized under 10 U.S.C. §§ 1044 and 1565b. 10 U.S.C. § 1565b states: "a member of the armed forces, or a dependent of a member, who is a victim of a sexual assault may be provided...[l]egal assistance by military or civilian legal assistance counsel pursuant to section 1044 of this title." On 9 November 2012, OSD/GC issued an information memo addressing "Legal Assistance to Victims of Sexual Assault" (VC Memo). The memo concludes that "in a military justice sexual assault prosecution, to the extent the victim could retain the advice or representation of private counsel, §§ 1044 and 1565b authorizes, and certainly does not prohibit, JAGs from providing the same legal advice and representation, to the same extent." Authority to act as a military defense counsel (MDC) is derived from 10 U.S.C. § 47.

### **PART A – FUNDAMENTAL PRINCIPLES**

1. An SVC's primary responsibility is to his or her client. Constrained only by ethical limits, SVCs are authorized by law to enter into attorney-client relationships and to oppose the government of the United States as appropriate, in order to promote the individual interests of the clients they represent without regard to how their actions might otherwise affect the Air Force as an institution.
2. All SVCs are bound by applicable Air Force Instructions and Manuals, the Air Force Rules of Professional Conduct, the Air Force Standards for Criminal Justice, the Air Force Standards for Civility in Professional Conduct, and the Uniform Rules of Practice before Air Force Courts-Martial. Depending on the circumstances, they may also be bound by other laws, regulations, and instructions as well as the ethics rules of their state bars.
3. All SVCs, while serving in that capacity, are supervised professionally by AFLOA/CLSV, and for purposes of covered collateral misconduct, AFLOA/JAJD. For the purposes of SVC representation, SVCs operate independently from the command and supervision chains that govern the Air Force units and locations that SVCs support.
4. It is essential to the proper operation of this program that all clients receive effective and timely services.

### **PART B – SVC SERVICES**

**1. *Priorities.*** An SVC's legal representation of a victim takes precedence over all other required services. SVC must ensure that all necessary resources are applied to handling these matters. In view of the importance of providing appropriate and effective victims' counsel services to all eligible clients who have requested such services, SVCs must immediately report to

AFLOA/CLSV any anticipated shortfall in their ability to provide any services and coordinate with AFLOA/CLSV before declining or terminating representation.

**2. Categories of Services Provided by SVCs.**

**a. Advocacy to Military Justice Actors and Air Force and Department of Defense Agencies**

<b>Representation Offered to Victim</b>	<b>Governing Authority</b>
Civil Legal Matters (may include traditional legal assistance)	AFI 51-504, para. 1.4.16 OSD/GC Memo, “Legal Assistance to Victims of Sexual Assault,” 9 Nov 12
General and Special Courts-Martial	UCMJ
Article 32 Pretrial Investigations	Article 32, UCMJ
Pretrial Confinement Hearings	RCM 305
Summary Courts-Martial	AFI 51-201 RCM 1301
Depositions	RCM 702
Courts of Inquiry	Article 135, UCMJ AFI 51-201
Post Trial – Matters Submitted to the Convening Authority	RCM 1107
Clemency and Parole Boards	DoDI 1325.7
Investigations	Includes all investigations, inquiries, etc., in which the client is a victim
Article 138, UCMJ	AFI 51-904 (Note: This AFI does not provide a right to military counsel, but assistance shall be provided on a time-available basis)
Notaries and Administrative Oaths	AFI 51-504

**b. Advocacy to Civilian Agencies**

<b>Representation Offered to Victim</b>	<b>Governing Authority</b>
United States Civilian Criminal Jurisdiction Advice	AFI 51-504, para. 1.4.16 OSD/GC Memo, “Legal Assistance to Victims of Sexual Assault,” 9 Nov 12
Foreign Criminal Jurisdiction Advice	AFI 51-703, para. 7
Civil Legal Matters	OSD/GC Memo, “Legal Assistance to Victims of Sexual Assault,” 9 Nov 12 AFI 51-504, para. 1.4.16

**3. Covered Collateral Misconduct, when the Client’s Status is “Subject.”** Covered collateral misconduct is misconduct that is committed by a victim of a sexual assault that has a direct nexus to the sexual assault. When collateral misconduct arises, an SVC will continue to represent the victim for categories of services listed above, and may also represent the victim for

covered collateral misconduct IAW the SVC Rules of Practice and Procedure, with the victim's consent.

**4. Referral Services.** If an SVC determines that a person seeking representation needs any of the services listed below, the member should be referred to the office of primary responsibility and/or to the applicable DoD or AF instruction. If the SVC already has an attorney-client relationship with the member, then the SVC must use discretion in determining how to proceed.

An SVC should not assist a member in preparing IG complaints, Military Equal Opportunity Complaints, Congressional Complaints, or similar matters. However, if an SVC is already representing a client, the SVC may advise the client that these and similar avenues exist for addressing a complaint. Further, the SVC may review a client's IG, Congressional, or similar complaint for the purpose of assuring that the contents of the complaint do not jeopardize the client's rights or position with respect to the matter that led to the original representation. When doing so, the SVC will advise the client that the review is for that limited purpose. An SVC may submit a FOIA/Privacy Act request for his or her client in the furtherance of a representation on a matter within the category of services provided.

<b>Referral Service</b>	<b>Governing Authority</b>
Board of Correction of Military Records (Representation is prohibited; however, the client may be advised of procedures.)	AFI 36-2603, para. 3.7
Civilian Criminal Matters, where the victim is the subject (Except to explain rights)	AFI 51-504, para. 1.7.1
Claims	AFI 51-501
Discharge Review Board (Representation is prohibited; however, the client may be advised of procedures.)	DoDI 1332.28, E3.2.4
MEO Complaints	AFI 36-2706
IG Complaints	AFI 90-301
OPR and EPR Corrections	AFI 36-2401 (MPF)
Pay Problems	DFAS-DE (AFM 177-108) (AFM 177-373)
Other Official Problems (within jurisdiction of other staff agencies)	AFI 51-504
FOIA/Privacy Act Requests	DoD 5400.7-R, AFI 33-332, Ch. 4
Formal Physical Evaluation Boards, Medical Evaluation Boards	AFI 36-3212 and AFI 44-157

**PART C – CATEGORIES OF CLIENTS AND SOURCES OF SPECIAL VICTIMS’  
COUNSEL SERVICES**

1. This chart serves only as a general guide. SVCs should consult with AFLOA/CLSV if they have any questions about representation of a particular member.
2. Reserve personnel do not have to be on active duty status when they are consulting with their SVC.

<b>Victim Status</b>	<b>Perpetrator Status</b>	<b>Representation Related to Status as a Victim</b>	<b>Covered Collateral Misconduct – Administrative Action, Administrative Separation, and UCMJ Proceedings</b>
Active Duty AF	Military	SVC	MDC (SVC in support)
	Civilian	SVC	MDC (SVC in support)
Active Duty, other Services	AF	SVC	No
	Other Services or Civilian	No	No
AF Reserve members (active at time of the offense)	Military	SVC	MDC (SVC in support) See Note 4
	Civilian	SVC	MDC (SVC in support) See Note 4
Air National Guard, Title 10 (Federal) status	Military	SVC	MDC (SVC in support) See Note 5
	Civilian	SVC	MDC (SVC in support) See Note 5
Air National Guard, Title 32 (State) status	Military	No	No
	Civilian	No	No
Reserve and National Guard members from other Services	AF	SVC	No
	Other Services or Civilian	No	No
Retired members	AF	SVC	MDC See Note 6
	Other Services or Civilian	No	No
Adult dependents of	AF	SVC See Note 2	N/A

Active Duty members	Other Services or Civilian	No	N/A
Former members and adult dependents of former members who are entitled to an identification card	AF	SVC	N/A
	Other Services or Civilian	No	N/A
Minor dependents of members and former members	AF	No	N/A
	Other Services of Civilian	No	N/A
DoD civilian employees – deployed	AF	SVC	N/A
	Other Services or Civilian	No	N/A
DoD civilian employees and adult dependents assigned OCONUS	Air Force	SVC	N/A
	Other Services or Civilian	No	N/A
Civilian contractor personnel – deployed	AF	SVC	N/A
	Other Services or Civilian	No	N/A
Foreign military personnel and adult dependents assigned to the United States	AF	SVC	N/A
	Other Services or Civilian	No	N/A
Public Health Service Officers	AF	SVC	No
	Other Services or Civilian	No	No
Civilians (no DoD connection)	AF	No See Note 7	N/A
	Other Services or Civilian	No See Note 7	N/A

**Note 1.** Provide SVC to all active duty, AF Reserve, and Air National Guard victims who meet two criteria: 1) report they are a victim of sexual assault under the UCMJ, including rape, sexual assault and other unwanted sexual contact that is aggravated, abusive, or wrongful (including unwanted and inappropriate sexual contact), forcible sodomy, and attempts to commit these offenses, which are crimes in violation of Articles 120, 125, and 80, respectively (including previous versions of UCMJ, Article 120); and 2) are eligible for legal assistance under AFI 51-504. This means that an SVC will be provided where any military commander may exercise jurisdiction (i.e., the perpetrator is a member of the AF, Army, Navy, Marine Corps, or Coast Guard). The victim must have been in status at the time of the offense to be eligible for an SVC. AF members who are on active duty, but were victims of sexual assault prior to enlistment or commissioning are not eligible for the SVC Program. An SVC will also be provided in a more limited scope when a civilian is the perpetrator or there is an unknown perpetrator.

**Note 2.** Provide SVC to all adult dependents of Active Duty members who meet three criteria: 1) report they are a victim of sexual assault under the UCMJ, including rape, sexual assault and other unwanted sexual contact that is aggravated, abusive, or wrongful (including unwanted and inappropriate sexual contact), forcible sodomy, and attempts to commit these offenses, which are crimes in violation of Articles 120, 125, and 80, respectively (including previous versions of UCMJ, Article 120); 2) were eligible for legal assistance under AFI 51-504 at the time of the offense and the time that an SVC request is made; and 3) an AF commander may exercise jurisdiction. Non-spouse adult dependent is defined as unmarried between the ages of 18 and 20, a full time student between the ages of 18 and 22, or an incapacitated child over the age of 21. Dependents of other services' members are only eligible if they file an unrestricted report.

**Note 3.** Provide an SVC to all other victims (excluding minor victims) who meet three criteria: 1) file an unrestricted report that they are a victim of sexual assault under the UCMJ, including rape, sexual assault and other unwanted sexual contact that is aggravated, abusive, or wrongful (including unwanted and inappropriate sexual contact), forcible sodomy, and attempts to commit these offenses, which are crimes in violation of Articles 120, 125, and 80, respectively (including previous versions of UCMJ, Article 120); 2) are eligible for legal assistance under AFI 51-504 at the time of the offense and the time that an SVC request is made; and 3) an AF commander may exercise jurisdiction.

**Note 4.** MDC support will be provided to Air Reserve Component members for Title 10 matters that fall within the scope of this Charter and the MDC Charter.

**Note 5.** Air National Guard (ANG) personnel on Title 10 status may be subject to discharge from the Air Force. However, the discharge action may not affect that member's state status, warranting a separate procedure to discharge that person from the state's National Guard. See AFI 36-3208, para 1.6, and AFI 36-3207; see also AFI 36-3209. An MDC is advised to consult with the ANG Staff Judge Advocate defense representative prior to representing a client facing discharge who is on active duty pursuant to Title 10.

**Note 6.** AF Retirees may be represented by MDC and SVC for collateral misconduct if all of the following requirements are met: 1) the matter for which the retiree desires representation is related to a matter with a direct nexus to the sexual assault for which the retiree was represented by a defense counsel while the retiree was on active duty; 2) the service to be provided is not otherwise prohibited by the Charter; and 3) JAJD coordination and approval before the MDC or SVC consults with the member requesting representation.

**Note 7.** An SVC will not be provided to civilian victims without any connection to DoD IAW legal assistance eligibility categories in AFI 51-504.

**Approved on 1 July 2013 by Lieutenant General Richard C. Harding, The Judge Advocate General, United States Air Force.**