

**Special Victims' Counsel**  
**Rules of Practice and Procedure**



**1 July 2013**

*The Air Force succeeds because of the professionalism and discipline of our Airmen. Sexual assault undermines that professionalism and discipline, harming not only the individuals involved, but also their unit, their mission, and our Service. When a fellow Airman is sexually assaulted, it is devastating. It destroys trust. It demoralizes families. And we're doing it to ourselves. We MUST do more to protect one another from this crime, by...strengthening our support of victims and making a culture of trust and respect a reality for everyone in our Air Force.*

- General Mark A. Welsh III, Air Force Chief of Staff, 18 November 2012

## **BACKGROUND**

Sexual assault in the military is a significant concern for the entirety of the Department of Defense. As General Welsh notes, sexual assault causes material harm to the individuals affected, units and their mission, and to the Service as a whole. Sexual assault in the military also erodes the trust placed in the Services by senior government leaders and the American people.

As part of a larger Air Force (AF) program to combat sexual assault, the JAG Corps has worked to find ways to support the goals of the AF in combating sexual assault. This document details our plan to increase support to victims of sexual assault.

On 9 November 2012, OSD/GC issued a memo addressing “Legal Assistance to Victims of Sexual Assault.” The issue examined in the memo is the scope of legal assistance that may legally be provided by judge advocates (and supported by paralegals) to the victims of sexual assault. The memo concludes that “to the extent the victim could retain the advice or representation of private counsel, [10 U.S.C.] §§ 1044 and 1565b authorizes, and certainly does not prohibit, JAGs from providing the same legal advice and representation, to the same extent.” The memo also states, “when read together, 1044 and 1565b authorize, and certainly do not preclude, legal assistance to a victim of a sexual assault in criminal contexts, including attending interviews of the victim and interfacing with military prosecutors, defense counsel and investigators.”

This memo is the direct authority necessary to allow the JAG Corps to create a Special Victims’ Counsel (SVC) Program. A manpower request has been made for additional JAG and paralegal billets to stand up a new organization, likely under the Air Force Legal Operations Agency.

The SVC Program does not increase a victim’s standing in court-martial hearings and other military justice proceedings beyond the standing victims are currently afforded under existing law and rules (e.g., evidentiary hearings under MREs 412, 513, and 514). The SVC Program will provide organic counsel from the AF JAG Corps, vice limiting victims to hiring private civilian counsel, who often lack experience in military matters and practice under the UCMJ. Victims, whether represented by SVC or civilian counsel, are not parties to a court-martial under RCM 103 and do not have the same entitlements as parties under the UCMJ.

## TJAG INTENT FOR SVC PROGRAM

The purpose of the SVC Program is to:

- Provide advice: develop victims' understanding of the investigatory and military justice processes; and
- Provide advocacy: protect the rights afforded to victims in the military justice system;
- Empower victims by removing barriers to their full participation in the military justice process.

Strengthening our support to victims in this way will result in a more robust opportunity for victims to be heard, to retain and take advantage of their rights, and enhance the military justice system while neither causing unreasonable delay nor infringing upon the rights of an accused.

### SVC PROGRAM OBJECTIVES

**1. Provide Support Through Independent Representation.** Throughout the military justice process, trial counsel (TC) represents the interests of the government, and accused members are provided military defense counsel (MDC) who defend them and represent their interests. In the past, victims in the court-martial process have not generally been represented by an attorney. While the interests of the government and victims are frequently aligned, this is not always the case. Even when interests coincide, TC are unable to provide legal representation to victims or to provide advice outside the scope of the Victim and Witness Assistance Program (VWAP). An independent SVC will have a duty to represent the interests of the victim – and only the victim. The objective is not for SVC to establish an adversarial relationship with TC or defense counsel, but to provide victims with the peace of mind of having independent representation by a licensed attorney – one eminently capable of communicating their interests throughout the military justice process.

**2. Build and Sustain Victim Resiliency.** When sexual assault victims make an unrestricted report, it is critical that they commit to cooperating with the prosecution of the alleged perpetrator. However, a sizeable population of victims in the AF elects to opt out and declines to participate in the military justice process before trial is convened (e.g., 29% or 96 victims in FY11). The reasons for this are diverse. An SVC would be obligated to zealously advocate for the client, building and sustaining resilience among sexual assault victims by helping victims to understand the investigatory and military justice processes and advocating for the victim to commanders or the court when necessary.

**3. Empower Victims.** Victims have several enumerated rights in the military justice process, but are not always aware of these rights or do not feel they have a voice to enforce these rights. An SVC will provide professional and knowledgeable counsel to victims in voicing their concerns and complaints with the process and enforcing these enumerated rights, without infringing upon the rights of the accused.

**4. Increase Level of Legal Assistance Provided to Victims.** In the 2010 AF Gallup Survey of the Prevalence/Incidence of Sexual Assault in the AF, when asked whether or not they received any type of help after the sexual assault, such as legal counseling, mental health services, or medical care, the vast majority of victims (79.5% of female victims and 92.5% of male victims) reported not receiving any of these forms of help. The AF currently provides legal assistance to victims of crime for personal civil legal matters unconnected to the court-martial process. The SVC Program is an enhancement of this service for victims of sexual assault to support them through the challenges of participating in an investigation and prosecution of the alleged perpetrator and to mitigate their sense of re-victimization by the criminal justice process.

## ***TABLE OF RULES***

The Rules in this document are transitional and subject to further revision as the AF JAG Corps experience in fielding SVC dictates.

Non-compliance with the SVC Rules, in and of itself, gives rise to no rights or remedies to the victim or the accused, and the Rules will be interpreted in this context.

These Rules should be read in conjunction with the Air Force Special Victims' Counsel Charter. Both the Rules and the Charter were approved on 1 July 2013 by Lieutenant General Richard C. Harding, The Judge Advocate General, United States Air Force.

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## **Rule 1. VICTIMS' ELIGIBILITY FOR SPECIAL VICTIMS' COUNSEL**

The AF provides legal assistance to eligible beneficiaries as stated in AFI 51-504, para. 1.3, to include active duty, reserve and guard members when in an active status or for mobilization and deployment related assistance, dependents and former members who are entitled to an ID card, civilian employees and contractor personnel who are deploying to or in the AOR, foreign military personnel and their dependents assigned to the United States under official orders, and unique situations.

Legal assistance is not categorically provided under AFI 51-504 to victims of crime without a military nexus (e.g., a civilian who does not fall into any of the categories above).

Currently, the AF provides legal assistance for "personal civil legal affairs" to eligible beneficiaries who are victims of crime, including sexual assault, consistent with the availability of resources, the expertise within the legal office, and the Staff Judge Advocate's (SJA) ability to manage conflicts of interest. AFI 51-504, para. 1.4.16. OSD/GC's opinion states that, "personal civil legal affairs" can include representing a victim in a criminal forum where the victim's assailant is the accused in a court-martial.

In order to be eligible for SVC, a victim of sexual assault must report (in a restricted or unrestricted 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).

### **Rule 1.1. SVC Eligibility for AF Members.**

All AF Active Duty, AF Reserve, and Air National Guard victims, who are in Title 10 status at the time of the offense, and report they are a victim of sexual assault are eligible for an SVC. In addition to the above crimes under the UCMJ, AF members who report they are a victim of sexual assault under state and federal laws criminalizing sexual assault, when the alleged perpetrator is a civilian or an unknown perpetrator, are eligible for SVC.

*Prior Service Sexual Assaults.* 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. They are eligible for legal assistance IAW AFI 51-504 and SAPR services, including both unrestricted and restricted reporting options, IAW DoDI 6495.02, para. 2.e.

### **Rule 1.2. SVC Eligibility for Adult Dependents of AF Members.**

All adult dependents of Active Duty AF members who are an eligible dependent at the time of the offense and report that they are a victim of sexual assault under the UCMJ are eligible for an SVC when an AF commander may exercise jurisdiction.

*Non-Spouse Adult Dependents.* For purposes of this rule, the non-spouse dependents, as defined in AFI 36-3026, *Identification Cards for Members of the Uniformed Services, their Eligible Family Members, and Other Eligible Personnel*, must be 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.

**Rule 1.3. *SVC Eligibility for Other Services' Members.***

All Army, Navy, Marine Corps, and Coast Guard Active Duty, Reserve, and National Guard victims, who are in Title 10 status at the time of the offense, and file an unrestricted report that they are a victim of sexual assault under the UCMJ are eligible for an SVC when an AF commander may exercise jurisdiction.

(a) *Jurisdiction.* The AF must have a possibility of obtaining jurisdiction in the case, meaning the alleged perpetrator is a member of the AF who committed the crime while in Title 10 status. SVC representation is not authorized to victims in other Services when the alleged perpetrator is a civilian or a member of another Service.

(b) *Courtesy Notification.* The SVC will provide a courtesy notification of representation to the victim's commander.

**Rule 1.4. *SVC Eligibility for Adult Dependents of Other Services' Members.***

All adult dependents of Active Duty members of other Services who are an eligible dependent at the time of the offense and file an unrestricted report that they are a victim of sexual assault under the UCMJ are eligible for an SVC when an AF commander may exercise jurisdiction.

*Non-Spouse Adult Dependents.* For purposes of this rule, the non-spouse dependents, as defined in AFI 36-3026, *Identification Cards for Members of the Uniformed Services, their Eligible Family Members, and Other Eligible Personnel*, must be 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.

**Rule 1.5. *SVC Eligibility for Other Categories of Victims.***

All remaining categories of individuals eligible for legal assistance under AFI 51-504 are eligible for SVC when they file an unrestricted report that they are a victim of sexual assault under the UCMJ and the AF may exercise jurisdiction.

(a) *Jurisdiction.* The AF must have a possibility of obtaining jurisdiction in the case, meaning the alleged perpetrator is a member of the AF who committed the crime while in Title 10 status. SVC representation is not authorized to victims in this category when the alleged perpetrator is a civilian or a member of another Service.

(b) *Minors.* Victims who are minors are not eligible for SVC.

**Rule 1.6. *Basic Military Training and Technical Training***

All entry-level status AF Active Duty, AF Reserve, and Air National Guard members who are alleged to have been involved in an unprofessional relationship (as defined by AETC policy) that involves physical contact of a sexual nature with basic military training or technical training faculty or staff are eligible for SVC.

(a) *Entry-Level Status.* As defined in AFI 36-3208, *Administrative Separation of Airmen*, Airmen are considered to be in entry-level status during the first 180 days of continuous active military service or the first 180 days of continuous active military service after a break of more than 92 days of active service.

(b) *Consent.* Airmen who meet the above criteria are eligible for SVC because it is uncertain in these circumstances whether consent is actually present.

**Rule 1.7. *Deployed Victims.***

SVC will be provided to deployed victims as reach back support.

**Rule 1.8. *Determination of Eligibility.***

The Chief Special Victims' Counsel Division, AFLOA/CLSV, has the final authority on determination of eligibility and may grant exceptions to policy on a case-by-case basis consistent with 10 U.S.C. §§ 1044 and 1565b.

## **Rule 2. REFERRAL PROCESS**

10 U.S.C. § 1565b requires that servicemembers and their dependents, who are victims of sexual assault, be informed of the availability of legal assistance as soon as the member or dependent seeks assistance from a Sexual Assault Response Coordinator (SARC), Sexual Assault Prevention and Response Victim Advocate (SAPR VA), the Family Advocacy Program (FAP), military criminal investigator, victim liaison, or TC.

### **Rule 2.1. *Informing Victim of Availability of SVC.***

The first individual to make contact with the victim (e.g., SARC, SAPR VA, FAP, investigator, victim liaison, or TC) will inform the victim of the availability of SVC, as an extension of legal assistance for victims, in accordance with 10 U.S.C. § 1565b, utilizing DD Form 2701, *Initial Information for Victims and Witnesses of Crime*. The contact information for the local SARC or FAP, as determined by the victim's relationship with the alleged perpetrator, will be included on the DD Form 2701.

### **Rule 2.2. *Victims May Contact SVCs Directly.***

- (a) Victims may contact SVC offices directly to request SVC representation.
- (b) *Eligibility Review.* The SVC or SVP (Special Victims' Paralegal) who initially meets with the victim will determine if the victim is eligible for the SVC Program. If the victim is not eligible, the SVC or SVP will advise the victim whether or not the victim is eligible for legal assistance. The SVC or SVP will facilitate referrals to other available resources such as the SARC, FAP, or VWAP. The appointment will be recorded as legal assistance in WeBLIONS and the victim will not be recorded as a client represented by the SVC Program.
- (c) *Legal Assistance Only.* If a victim contacts an SVC office and after meeting with the SVC indicates he or she does not wish to have an SVC detailed, the appointment will be recorded as legal assistance in WeBLIONS and the victim will not be recorded as a client represented by the SVC Program.
- (d) *Detail SVC.* If the victim requests SVC representation and is eligible for the SVC Program, the SVC or SVP will run a conflict check and detail an SVC to represent the victim. A courtesy notification will be provided to the SJAs of the victim and the alleged perpetrator when an SVC has been detailed. The victim will be recorded as a client represented by the SVC Program.
- (e) *SVCs May Not Take Restricted Reports.* IAW DoD policy, service members and military dependents may make restricted reports to the SARC and SAPR VA (and equivalent FAP personnel), or healthcare personnel. SVCs may not receive restricted reports. SVCs may facilitate a victim making a restricted report to one of these specified individuals.

### **Rule 2.3. *Victim Referral Process.***

- (a) *Request for SVC-Unrestricted Reports.* When a victim whose report is unrestricted indicates a desire to request SVC, the individual receiving this request should contact the SARC/FAP as appropriate (i.e., SARC unless the alleged perpetrator is the victim's

spouse or intimate partner). If the request is made to the legal office (e.g. through trial counsel, VWAP, or legal assistance attorney), there is no need to contact the SARC/FAP. The SARC/FAP will provide the completed SVC referral form to the installation SJA (or designee).

(b) *Legal Office Review.* The installation legal office who receives the SVC request, directly from the victim or from the SARC/FAP, will review the referral form for eligibility and add necessary information on the status of the case.

(c) *Forward to SVC Office.* SJAs or their designee will forward the SVC request to an SVC office IAW Attachment 1, copying AFLOA/CLSV at [afloa.svc@pentagon.af.mil](mailto:afloa.svc@pentagon.af.mil).

(d) *Multiple Victims.* When the SARC/FAP is making a request for multiple victims from the same case, he or she will make this known, to ensure that different SVCs are assigned to each victim.

(e) *Request for SVC-Restricted Reports.* When a victim whose report is restricted indicates a desire to request an SVC, the individual receiving this request should forward the SVC request to an SVC office IAW Attachment 1, copying AFLOA/CLSV at [afloa.svc@pentagon.af.mil](mailto:afloa.svc@pentagon.af.mil). Restricted reports do not need to go through installation legal offices.

(f) *Detail SVC within 48 Hours.* The appropriate SVC office will provide the name and contact information of the detailed SVC to the victim through the installation SJA and SARC/FAP with a goal of providing the SVC contact information to the SARC/FAP (and SJA when it is an unrestricted report) within 48 hours of the initial request. A courtesy notification will be provided to the SJAs of the victim and the alleged perpetrator when an SVC has been detailed.

(g) *SJA Responsibility.* The first SJA to receive the request for SVC is responsible for submitting the SVC referral form to their installation or regional SVC office, while copying AFLOA/CLSV at [afloa.svc@pentagon.af.mil](mailto:afloa.svc@pentagon.af.mil).

(h) *Responsibility for Detailing SVC.* All SVCs and Special Victims' Paralegals (SVPs) have detailing authority for their respective Regional and Satellite offices IAW Attachment 1. AFLOA/CLSV maintains oversight over the SVC detailing process.

(i) *Appellate Practice.* The Chief, Special Victims' Counsel Division, AFLOA/CLSV, has the authority to assign appellate SVC representation to a victim when the potential appellate issue is in the interest of the SVC Program.

#### **Rule 2.4. *Declination of SVC.***

While victims do not need to sign an acknowledgment or waiver declining SVC, the SARC/FAP may maintain an internal memo to document the declination. This document is not an indication that the victim has waived the availability of SVC and victims may change their mind and request SVC at any point.

#### **Rule 2.5. *Solicitation.***

SVCs will not solicit clients.

### **Rule 3. ROLES AND RESPONSIBILITIES**

The AF and Department of Defense provide a wide range of services and support to victims of sexual assault through a variety of personnel, agencies and programs, including commanders, the Sexual Assault Prevention and Response Program, Surgeon General, Airman & Family Readiness Center, AF Office of Special Investigations (AFOSI), Security Forces Office of Investigation (SFOI), Chaplains, FAP, and the Judge Advocate General's Corps. While each of these agencies provides distinct and critical support and services to victims, there is also overlap in certain roles and responsibilities, requiring coordination in providing multi-disciplinary support to victims.

It is important to note that while there is overlap in the objectives of the SVC Program and the Victim and Witness Assistance Program (VWAP), the SVC Program does not supplant or augment VWAP, but is a separate program altogether. VWAP implements the Victim and Witness Protection Act, 42 U.S.C. §§ 10601-10605, the Crime Victims' Rights Act, 18 U.S.C. § 3771, DoD Directive 1030.01, *Victim and Witness Assistance*, DoD Instruction 1030.2, *Victim and Witness Assistance Procedure*, and AFI 51-201, *Administration of Military Justice*, Chapter 7. One of the objectives of VWAP is to foster cooperation of victims and witnesses within the military criminal justice system. While one of the objectives of the SVC Program is to build and sustain victim resiliency throughout the military justice process, there may be times when an SVC advises a victim that cooperation with the system is not in his or her best interests, or regardless of SVC's advice, a victim declines to cooperate and the SVC executes the victim's choices. Another objective of VWAP is to ensure best efforts are made to afford to victims of crime certain enumerated rights. In representing victims, SVC will advocate for these rights, strengthening VWAP.

#### **Rule 3.1. *Representation of Victim is SVC's Primary Duty.***

SVC representation of victims is the SVC's primary duty for the duration of representation.

#### **Rule 3.2. *Scope of Representation Letter.***

During the SVC's initial meeting with the victim (either over the phone or in person), the SVC will review the scope of representation letter with the victim, and the victim will sign the letter, acknowledging the scope of the attorney-client relationship.

#### **Rule 3.3. *Duration of SVC-Client Relationship.***

Once an SVC is detailed, that SVC remains the counsel for the victim for all matters relating to the sexual assault, unless released by the victim.

- (a) *Transfer of Counsel.* Transfer of counsel due to deployments, expedited transfers, and other unique circumstances will be made through AFLOA/CLSV, with consent of the victim.
- (b) *Termination of SVC-Client Relationship.* In general, the SVC-client relationship will terminate when case disposition is complete. For courts-martial, case disposition is considered complete at action or earlier termination of charges.

(c) *Declination or Termination of Representation.* An SVC may decline or terminate representation only IAW AF Rule of Professional Conduct 1.16, the scope of representation letter, and after consultation with AFLOA/CLSV.

**Rule 3.4. *Functional Relationship with SARC and FAP.***

The SARC serves as the installation's single point of contact for integrating and coordinating sexual assault victim care services IAW AFI 36-6001, *Sexual Assault Prevention and Response Program*. The FAP fulfills this role for sexual assault victims who are in a domestic or intimate partner relationship. Services may begin at the initial report of sexual assault. As discussed above, the SARC or FAP will notify the installation SJA (or designee) when a victim requests an SVC.

(a) *Notify SARC/FAP of Representation.* Once an attorney-client relationship is formed, SVCs will inform the SARC/FAP of this representation, with the client's permission. This notice is intended to make SARCs and FAP aware that the victim is represented by legal counsel in order to facilitate multi-disciplinary support for the victim.

(b) *Delineation of Responsibilities.* IAW AFI 36-6001, the SARC coordinates victim care services, to include medical care and counseling services, and the FAP fulfills this role for domestic or intimate partner sexual assault victims. In support of the SARC/FAP, SVCs should advise victims of the services available. SVCs may advocate to the responsible agencies when these services are either not being provided, or are not being provided in the manner intended.

(c) *Legal Advisor.* The SJA and base legal office remains the legal advisor for the SARC and commanders.

**Rule 3.5. *Functional Relationship with VWAP.***

VWAP, through the SJA, VWAP Coordinator, and victim liaison, ensures that victims are afforded certain enumerated rights under federal law, such as consultation with TC and notification of all court-martial proceedings. These rights are listed in AFI 51-201, Chapter 7.

(a) *Victim Liaison.* Under VWAP, a victim liaison is assigned to each victim. Along with the SJA and TC, the victim liaison is the SVC's point of contact in the legal office for obtaining case updates and communicating questions and concerns from the victim.

(b) *No Cause of Action.* While SVC may advocate for a victim's rights under federal law, there is no cause of action or defense in favor of any person arising out of a failure of the AF to comply with VWAP.

(c) *No Change to VWAP.* Establishment of the SVC Program does not necessitate any change to the scope of VWAP.

#### **Rule 4. SCOPE OF REPRESENTATION – ADVOCACY TO MILITARY JUSTICE ACTORS AND AIR FORCE AND DEPARTMENT OF DEFENSE AGENCIES**

The OSD/GC memo states that 10 U.S.C. §§ 1044 and 1565b “authorize, and certainly do not preclude, legal assistance to a victim of a sexual assault in criminal contexts, including attending interviews of the victim and interfacing with military prosecutors, defense counsel, and investigators.” The memo clearly envisions that SVC may represent sexual assault victims throughout the military justice process and advocate their interests to all actors within the system.

The SVC Program does not increase a victim’s standing in court-martial hearings and other military justice proceedings beyond the standing victims are currently afforded under existing law and rules (e.g., evidentiary hearings under MREs 412, 513, and 514). While MREs 412, 513 and 514 do not discuss an SVC’s role in these evidentiary hearings, the MREs do allow for victims to “be heard.” For the purposes of these three MREs and future MREs or RCMs giving victims the right to be heard in military justice proceedings, SVCs or civilian victims’ counsel may be allowed to speak on their clients’ behalf, as permitted by the presiding military judge.

TC and the accused’s MDC need to obtain consent from SVC prior to communicating with represented victims under AF Rule of Professional Conduct 4.2, which states that “in representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.”

##### **Rule 4.1. Advocacy During Military Justice Process**

SVC may advocate a victim’s interests to any actor in the military justice process, including, but not limited to, commanders, convening authorities, the SJA, TC, the accused’s MDC, and, to the extent authorized by the MCM, military judges. This includes matters in which the government is required to consult with the victim under federal law and areas delineated in the SVC Charter.

(a) *Victims’ Right to Consultation.* IAW AFI 51-201, para. 7.12.12, the government will consult with victims and obtain their views concerning:

- i. Decisions not to prefer charges;
- ii. Dismissal of charges;
- iii. Pretrial restraint or confinement, particularly an accused’s possible release from any pretrial restraint or confinement;
- iv. Pretrial agreement negotiations, including PTA terms;
- v. Plea negotiations;
- vi. Discharge or resignation in lieu of trial by court-martial; and
- vii. Scheduling of judicial proceedings where the victim is required or entitled to attend.

(b) *Victims’ Right to Notification of all Court-Martial Proceedings.* IAW AFI 51-201, para. 7.12.8, the government will provide the victim with the earliest possible notice of:

- i. The status of the investigation of the crime, to the extent it will not interfere with the investigation and is appropriate;

- ii. The accused's pretrial status and any subsequent change in that status, including, but not limited to, the accused being placed in pretrial confinement, being released from pretrial confinement, or escaping from pretrial confinement;
  - iii. Preferral and referral of charges or a decision not to pursue prosecution;
  - iv. A pretrial confinement hearing and/or Article 32 investigation;
  - v. Notification of the scheduling, including changes and delays, of each court-martial proceeding the victim is entitled to or required to attend;
  - vi. The acceptance of a guilty plea or announcement of findings; and
  - vii. The sentence imposed, including the date on which the accused becomes eligible for release from confinement, or parole, if applicable.
- (c) *Communication with TC.* SVC will communicate his or her schedule to TC, which TC will consider when scheduling Article 32 hearings, docketing courts-martial, and other military justice proceedings where the victim's presence is required IAW the victim's desire for the SVC to be present.

#### **Rule 4.2. Notice of Representation**

Once an attorney-client relationship is formed, SVCs will serve the SJA, TC, DC, AFOSI, SFOI, the victim's commander, and the SARC/FAP with a copy of the representation letter, with the client's consent, in cases where victim has made an unrestricted report. For restricted reports, SVCs will only provide the notice of representation to the SARC/FAP, with the client's consent.

*Enhanced Communication.* Once a notice of representation letter is served on an office, the SVC will discuss with the office (e.g., TC) the matters about which the SVC's client may be contacted directly, without first going through the SVC.

#### **Rule 4.3. SVC Attendance at Interviews.**

SVCs are permitted to attend all interviews of the victim with investigators, TC, and DC. At all interviews, SVCs should ensure that the interviewer has an additional party present to reduce the likelihood that the SVC may be called later as a witness.

#### **Rule 4.4. Notification to Central Docketing Office of SVC Representation.**

When a victim is represented by an SVC, TC or the base Chief of Military Justice will notify the Central Docketing Office (CDO) of the SVC's name. This notice will be in writing and submitted prior to the docketing conference using the standard template that provides the CDO notice of referral and identification of counsel.

#### **Rule 4.5. Entering an Appearance with Military Judge.**

When a military judge is detailed to a case, SVC will enter an appearance, notifying the judge of their representation of a witness in the case.

#### **Rule 4.6. Standing under the UCMJ.**

Victims, whether represented by SVC or civilian counsel, are not parties to a court-martial under RCM 103 and do not have the same entitlements as litigation parties under the UCMJ.

*UCMJ Proceedings.* MREs 412, 513, and 514 afford victims a reasonable opportunity to attend these evidentiary hearings and be heard. SVCs may represent victims in these and other UCMJ proceedings where victims are afforded standing, as permitted by the presiding military judge, and may obtain copies of motions and other relevant information necessary in order for the victim's opportunity to be heard to be meaningful.

**Rule 4.7. *Advocacy to AF and Department of Defense Agencies.***

SVCs may advocate a victim's interests to agencies and offices within the AF and Department of Defense where there is a nexus to the client's status as a victim, consistent with the SVC Charter.

**Rule 4.8. *SVC Notification to Third Parties.***

SVCs will ensure that third parties understand that the victim is their client, and not the AF.

**Rule 4.9. *Access to Information.***

SVCs have a right to records which is no greater than their client's rights. SVCs should consult with victims and advise them that other information may be obtained with the victim's consent that may assist the SVC in representing the victim. The victim's right to notifications of other information is discussed above in Rule 4.1(b).

## **Rule 5. SCOPE OF REPRESENTATION – COLLATERAL MISCONDUCT**

An investigation into the facts and circumstances surrounding a sexual assault may produce evidence that the victim engaged in misconduct. Covered collateral misconduct is misconduct that is committed by a victim of a sexual assault that has a direct nexus to the sexual assault. Typical examples of collateral misconduct include underage drinking, adultery, fraternization, and violations of regulations or orders, such as General Order 1 or curfews.

The OSD/GC memo states that “criminal proceedings against the perpetrator of a sexual assault can be said to involve the ‘personal civil legal affairs’ of the victim, who faces no criminal liability.” The OSD/GC memo addresses the issue of whether 10 U.S.C. §§ 1044 and 1565b prohibits representational legal assistance. The OSD/GC memo does not address whether the scope of SVC may include collateral misconduct. Although such representation may not be provided under these statutes, TJAG has the authority under Article 27, UCMJ, to authorize SVC to provide defense services.

### **Rule 5.1. Covered Collateral Misconduct.**

Collateral misconduct is misconduct that is committed by a victim of a sexual assault while on Active Duty or a Reserve or Guard member in Title 10 status that has a direct nexus to the sexual assault.

- (a) *Eligible Victims.* Only victims that are members of the AF are eligible for representation for collateral misconduct. Victims that are members of other Services may seek representation IAW their Service’s MDC programs.
- (b) *MDC Charter.* Counsel for collateral misconduct prosecuted under the UCMJ will be provided within the scope of the MDC Charter.
- (c) *Civilian Victims.* Representation for collateral misconduct is generally not authorized for civilian victims, except for the limited exception provided in the MDC Charter.

### **Rule 5.2. Referral of Victim to MDC.**

When the SVC becomes aware that the victim has allegedly committed collateral misconduct, the SVC will notify the victim that a MDC will be appointed to represent the victim in the event that administrative action, nonjudicial punishment, administrative discharge, and/or the court-martial process is initiated.

- (a) *Victim Notification.* The SVC will inform the victim of the availability of MDC. The SVC will inform the victim that he or she will not initially serve as the victim’s sole or lead counsel for purposes of collateral misconduct.
- (b) *Victim Referral.* In the event that qualifying action is initiated or the victim indicates a desire to meet with MDC, the SVC will contact the servicing Senior Defense Counsel (SDC) or AFLOA/JAJD and provide the victim with the name and contact information for the detailed MDC.

**Rule 5.3. *SVCs May Support MDC for Collateral Misconduct.***

MDC will serve as lead counsel for collateral misconduct committed by the victim. With the victim's consent, SVC may represent victims as secondary counsel for covered collateral misconduct.

(a) *MDC as Lead Counsel.* The MDC will serve as the lead counsel for purposes of matters related to the victim's collateral misconduct, unless victim chooses sole representation by an SVC under Rule 5.3(c) below. For example, the MDC will take the lead in advising the victim on UCMJ proceedings, administrative actions, and making testimonial immunity requests to the government.

(b) *Coordination of Representation.* MDC and SVC will work together to fully inform the victim of courses of action and possible outcomes based on the victim's choices. By definition, the collateral misconduct committed by the victim is intertwined with the sexual assault allegation for which the victim is likely the primary witness in the government's investigation and prosecution. Depending on the case, the victim's primary concern may vary from investigation and prosecution of the accused to mitigating negative consequences from his or her own collateral misconduct. MDC and SVC will provide counsel to the victim regarding collateral misconduct and possible outcomes, make uniform recommendations to the victim, and represent the victim regarding collateral misconduct in accordance with the victim's choices.

(c) *The victim may choose representation by the SVC in lieu of an MDC.*

**Rule 5.4. *Notice of Representation for Misconduct***

When an SVC is representing a victim for collateral misconduct, the SVC will serve the SJA, TC, DC, AFOSI, SFOI, and the victim's commander with a notification that the SVC is also serving as a defense counsel. Such notification may be included in the initial notice of representation under Rule 4.2 or in a subsequent notice.

**Rule 5.5. *SVC Oversight for Collateral Misconduct.***

Oversight of SVC for purposes of collateral misconduct will be provided by AFLOA/JAJD, through an SDC.

## **Rule 6. SCOPE OF REPRESENTATION – ADVOCACY TO CIVILIAN PROSECUTORS AND AGENCIES**

Representation in civilian court is not authorized under this program. In addition, most SVCs will be precluded from representing victims in civilian courts by state licensing requirements.

SVCs may have the opportunity to advocate to local prosecutors and civilian agencies. For instance, when a crime is committed off base and the alleged perpetrator is subject to the UCMJ, both the AF and civilian prosecuting agency will have jurisdiction. AF policy is to maximize jurisdiction over military members whenever possible. However, there may be instances where charges are brought by civilian authorities instead of the AF. It is appropriate to allow SVC to advocate their client's interests to civilian prosecutors.

SVC may provide assistance to a victim with respect to state and federal victim compensation and restitution programs.

AFI 51-504, para. 1.6.4, states that when contacting third parties, legal assistance attorneys must avoid creating the impression that they represent the AF interests in resolving the client's concerns or that the AF has an interest in the outcome of the matter.

### **Rule 6.1. *SVC Advocacy Off Base.***

SVC may generally advocate a victim's interests off base to civilian prosecutors, law enforcement agencies, and other civilian and government agencies.

*Department of Veterans Affairs.* SVC may not advocate a victim's interests to the Department of Veterans Affairs or represent a victim in the disability evaluation system. SVC's representation in VA matters is limited to providing advice in the scope of traditional legal assistance.

**Rule 6.2. *SVC Precluded from Representing Victims in Civilian Courts.*** As a matter of policy, SVCs are precluded from representing victims in civilian courts. SVCs will explain this limitation to the scope of representation to their client.

**Rule 6.3. *SVC Notification to Third Parties.*** SVCs will ensure that third parties understand that the victim is their client, and not the AF.

## **Rule 7. SCOPE OF REPRESENTATION – INTERACTION WITH MEDIA**

A lawyer, who is participating or has participated in the investigation or litigation of a matter, shall not make an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if the lawyer knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter. AF Rule of Professional Conduct 3.6. Although SVCs are not a “party” under this Rule, SVCs will comply as a matter of policy.

MDC should not make or authorize the making of an extrajudicial statement that a reasonable person would expect to be disseminated by means of public communication if defense counsel knows or reasonably should know that it will have a substantial likelihood of prejudicing a criminal proceeding. AF Standards for Criminal Justice 4-1.3. This Standard is expanded upon in AF Standards for Criminal Justice 8-1.1. This standard will also apply to SVCs.

A lawyer may make a statement that a reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer’s client. A statement made shall be limited to such information as is necessary to mitigate or correct information that is the subject of recent publicity. AF Rule of Professional Conduct 3.6. This Rule will enable SVC to defend a client’s interests in the media.

AF Rule of Professional Conduct 3.6 outlines other statements lawyers may make to the media, including stating the claim, offense or defense involved, the scheduling or results of any step in the process, and information contained in the public record.

### **Rule 7.1. *Advocacy to Media.***

SVCs may advocate a victim’s interests to the media consistent with the AF Rules of Professional Conduct, AF Standards for Criminal Justice, the Uniform Rules of Practice before AF Courts-Martial, and the SVC’s governing state rules of professional conduct.

### **Rule 7.2. *Trial Publicity.***

As a matter of policy, the restrictions on trial publicity in Rule 3.6 of the AF Rules of Professional Conduct apply to SVC.

## **Rule 8. TRAINING AND CERTIFICATION REQUIREMENTS**

All AF JAGs are licensed and competent to practice law and receive specialized instruction on the specific areas of law in which they practice. The AF Rules of Professional Conduct apply to all military and civilian lawyers and paralegals, to include SVCs and SVPs. AF JAGs follow AF Rules of Professional Conduct, Rule 1.1, to “provide competent representation...using legal knowledge, skill, thoroughness, and preparation reasonably necessary for representation.”

### **Rule 8.1. *Trial Counsel Certification Required.***

Only JAGs who are certified as trial counsel under Article 27(b), UCMJ, are authorized to serve as SVC.

### **Rule 8.2. *SVC Training Course Required.***

JAGs and paralegals who are selected to serve as SVCs and SVPs must successfully complete a TJAG-approved SVC course as soon as practicable.

### **Rule 8.3. *SVCs are Non-Deployable.***

SVCs will be in a non-deployable (enabler) status while serving as SVC.

## **Rule 9. INDEPENDENT COMMAND AND REPORTING STRUCTURE**

18 U.S.C. § 205(a) prohibits an attorney from acting against the United States “other than in the proper discharge of his official duties.” As such, like military defense counsel, SVC would not be acting in violation of 18 U.S.C. 205 because they have been detailed to represent victims within a defined scope. Those defined duties are the SVC’s official duty. Additionally, AF senior leadership has determined that it is in the AF’s best interest to provide sexual assault victims with legal representation; therefore, 18 U.S.C. § 205(a) would not be violated when an SVC performs his/her primary function as directed by the AF TJAG.

### **Rule 9.1. *Professional Oversight of SVCs.***

Installation level SJAs will provide professional oversight of part-time SVCs while performing non-SVC duties.

### **Rule 9.2. *Functional and Policy Oversight of SVC Program.***

Functional and policy oversight of SVCs will be provided by AFLOA/CLSV.

(a) *Detailing Responsibility.* AFLOA/CLSV has oversight over the detailing process. In general, SVC Regional and Satellite offices will detail SVCs to victims who request an SVC IAW Attachment 1 and internal AFLOA/CLSV guidance.

(b) *Oversight of SVCs for SVC Duties.* AFLOA/CLSV will provide professional oversight of SVCs while performing SVC duties.

(c) *Oversight of SVCs for Collateral Misconduct.* AFLOA/JAJD will provide professional oversight of SVCs while performing duties for purposes of collateral misconduct.

(d) *Tracking System.* A tracking system will be used to track SVCs and their workload.

### **Rule 9.3. *SVC Communication with SJAs.***

Part-time SVCs will communicate their workload and schedule pertaining to SVC matters to their installation SJAs without violating attorney-client confidences. Additional discussions about the representation will comply with Rule 1.6 of the AF Rules of Professional Conduct.

### **Rule 9.4. *Office Space.***

Installation SJAs that host SVCs (usually the installation where the alleged perpetrator’s court-martial will be convened) will work with their installation commanders to provide appropriate office space for the SVC to meet with victims and fulfill their duties outside of the base legal office.

### **Rule 9.5. *Funding.***

Until requested funding is provided in FY14, centralized funding through an AFLOA fund cite will be used to pay associated travel and other costs using a code that will allow for tracking and future reimbursement sought from Sexual Assault Prevention and Response funds.

## ATTACHMENT 1

The following base legal offices should contact the SVC office located on their base to request an SVC:

SVC Regional and Satellite Office	SVCs and SVPs*
JB Andrews	Capt Dustin Kouba TSgt Alan Salmones
Cannon	Capt Seth Dilworth
Dover	Capt Benjamin DeYoung
Dyess	Capt Tyler Hiipakka
JB Elmendorf-Richardson	Capt Jennifer Lake MSgt Laurie Holman
Fairchild	Capt Sarabeth Moore
Hurlburt	Capt Eric Selke Capt Luke Spencer TSgt Brian Meeker
Kadena	Capt Chad Evans SSgt Larra Stewart
Keesler	Capt Aaron Buzawa
JBSA-Lackland	Capt Aaron Kirk TSgt Isabel Brooks
RAF Lakenheath	Capt Micah Smith TSgt Tiana Martel
Little Rock	Capt Lauren Rosenblatt
Moody	Capt Kristen Beck
JB McGuire-Dix-Lakehurst	Capt Natasha Clay
Nellis	Capt Ryan Richter TSgt Vanessa Pichon
Offutt	Capt Michael O'Brien
Peterson	Capt Lorraine Sult TSgt Kristy Smart
Ramstein	Capt Kelly Adams Capt Maribel Jarzabek TSgt Jacmaily Gibbs
Scott	Capt Amanda Snipes
Travis	Capt Jed Wangsgard SSgt Jennifer Bingham
Vandenberg	Capt Meghan McCauley
Yokota	Capt Brad Mumford

**\*Note: Future changes to assigned SVCs/SVPs will be available in Roster under AFLOA/CLSV.**

The following base legal offices should contact their SVC regional office as listed below to request an SVC:

Base Legal Office	SVC Regional Office	SVCs In Region
Arnold JB Anacostia-Bolling JB Charleston Ft Meade Hanscom JB Langley-Eustice Niagara Falls Pope Seymour-Johnson Shaw Rome Labs Westover	<b>JB Andrews</b> Capt Dustin Kouba TSgt Alan Salmones <a href="mailto:afloa.svc.andrews@pentagon.af.mil">afloa.svc.andrews@pentagon.af.mil</a>	Capt Dustin Kouba (Andrews) Capt Natasha Clay (McGuire) Capt Benjamin DeYoung (Dover)
Eielson JB Lewis-McChord JB Pearl Harbor-Hickam	<b>JB Elmendorf-Richardson</b> Capt Jennifer Lake MSgt Laurie Holman <a href="mailto:afloa.svc.jber@us.af.mil">afloa.svc.jber@us.af.mil</a>	Capt Jennifer Lake (Elmendorf)
Barksdale Columbus Dobbins Duke Field Eglin Homestead MacDill Maxwell Patrick Robins Tyndall	<b>Hurlburt</b> Capt Eric Selke Capt Luke Spencer TSgt Brian Meeker <a href="mailto:afloa.svc.hurlburt@hurlburt.af.mil">afloa.svc.hurlburt@hurlburt.af.mil</a>	Capt Eric Selke (Hurlburt) Capt Luke Spencer (Hurlburt) Capt Kristen Beck (Moody)
Andersen Kunsan Misawa Osan	<b>Kadena</b> Capt Chad Evans SSgt Larra Stewart <a href="mailto:afloa.svc.kadena@us.af.mil">afloa.svc.kadena@us.af.mil</a>	Capt Chad Evans (Kadena) Capt Brad Mumford (Yokota)
Altus Goodfellow (POM-Travis) Laughlin McConnell NAS JRB Ft Worth JBSA-Randolph JBSA-Ft Sam Houston Sheppard Tinker Vance	<b>JBSA-Lackland</b> Capt Aaron Kirk TSgt Isabel Brooks	Capt Aaron Kirk (Lackland) Capt Tyler Hiipakka (Dyess) Capt Aaron Buzawa (Keesler) Capt Lauren Rosenblatt (Little Rock)

Whiteman		
RAF Alconbury RAF Croughton Lajes Field RAF Menwith Hill RAF Mildenhall Stavanger	<b>RAF Lakenheath</b> Capt Micah Smith TSgt Tiana Martel <a href="mailto:afloa.svc.lakenheath@us.af.mil">afloa.svc.lakenheath@us.af.mil</a>	Capt Micah Smith (Lakenheath)
Davis-Monthan Edwards Holloman Kirtland Los Angeles Luke March	<b>Nellis</b> Capt Ryan Richter TSgt Vanessa Pichon <a href="mailto:afloa.svc.nellis@nellis.af.mil">afloa.svc.nellis@nellis.af.mil</a>	Capt Ryan Richter (Nellis) Capt Seth Dilworth (Cannon)
Buckley Ellsworth FE Warren Grand Forks Grissom Malmstrom Minneapolis-St Paul Minot Schriever USAFA Wright-Patterson	<b>Peterson</b> Capt Lorraine Sult TSgt Kristy Smart <a href="mailto:afloa.svc.peterson@us.af.mil">afloa.svc.peterson@us.af.mil</a>	Capt Lorraine Sult (Peterson) Capt Amanda Snipes (Scott) Capt Michael O'Brien (Offutt)
Al Udeid AEWs Aviano Geilenkirchen Incirlik Spangdahlem	<b>Ramstein</b> Capt Kelly Adams Capt Maribel Jarzabek TSgt Jacmaily Gibbs <a href="mailto:afloa.svc.ramstein@us.af.mil">afloa.svc.ramstein@us.af.mil</a>	Capt Kelly Adams (Ramstein) Capt Maribel Jarzabek (Ramstein)
Beale Hill Mountain Home Presidio of Monterey	<b>Travis</b> Capt Jed Wangsgard SSgt Jennifer Bingham	Capt Jed Wangsgard (Travis) Capt Meghan McCauley (Vandenberg) Capt Sarabeth Moore (Fairchild)