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COMDTINST 5801.5  
09 FEBRUARY 2017

COMMANDANT INSTRUCTION 5801.5

Subj: SPECIAL VICTIMS' COUNSEL PROGRAM

1. PURPOSE. This Instruction establishes policies, procedures, and standards for the administration of the Coast Guard Special Victims' Counsel (SVC) Program.
2. ACTION. The Judge Advocate General, pursuant to 10 U.S.C. §§ 1044e and 1565b, established the SVC Program on 15 July 2013. All personnel providing services under the SVC Program shall execute their duties in accordance with this Instruction. Internet release is authorized.
3. DIRECTIVES AFFECTED. None.
4. BACKGROUND. The Coast Guard provides a wide range of services and support to victims of sexual offenses through numerous individuals, agencies, and programs, including but not limited to: unit commanders, the Sexual Assault Prevention and Response (SAPR) Program, the Coast Guard Investigative Service (CGIS), the Coast Guard's Work-life Program, the Employee Assistance Program (EAP), Family Advocacy initiatives, and Chaplains. The SVC Program offers legal support to a victim of an alleged sexual offense throughout the military justice process, often serving as the voice of the victim.
5. DISCLAIMER. This guidance is not a substitute for applicable legal requirements, nor is it a rule itself. It is intended to provide operational guidance for Coast Guard personnel and does not impose legally-binding requirements on any party outside the Coast Guard.
6. MAJOR CHANGES. None.
7. IMPACT ASSESSMENT. This policy does not impose new tasking or change existing tasking to operational commands.

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NON STANDARD DISTRIBUTION:

8. ENVIRONMENTAL ASPECT AND IMPACT CONSIDERATIONS.

- a. The development of this Instruction and the general policies contained within have been thoroughly reviewed by the originating office in conjunction with the Office of Environmental Management and are excluded under current USCG Categorical Exclusion (CE) #33 from further environmental analysis, in accordance with Section 2.B.2. and Figure 2-1 of the National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, COMDTINST M16475.1 (series). Because this Instruction contains provisions for compliance with applicable environmental mandates, Coast Guard CE #33 is appropriate.
- b. This Instruction will not have any of the following: significant cumulative impacts on the human environment; substantial controversy or substantial change to existing environmental conditions; or inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. All future specific actions resulting from the general policies in this Instruction must be individually evaluated for compliance with the National Environmental Policy Act (NEPA), Council on Environmental Policy NEPA regulations at 40 CFR Parts 1500-1508, DHS and Coast Guard NEPA policy, and compliance with all other environmental mandates.

9. DISTRIBUTION. No paper distribution will be made of this Commandant Change Notice. An electronic version will be located on the following Commandant (CG-612) web sites. Internet: <http://www.dcms.uscg.mil/directives/>, and CGPortal: <https://cg.portal.uscg.mil/library/directives/SitePages/Home.aspx>.

10. RECORDS MANAGEMENT CONSIDERATIONS. This Instruction has been evaluated for potential records management impacts. The development of this Instruction has been thoroughly reviewed during the directives clearance process, and it has been determined there are no further records scheduling requirements, in accordance with Federal Records Act, 44 U.S.C. §§ 3101 et seq., National Archives and Records Administration (NARA) requirements, and the Information and Life Cycle Management Instruction, COMDTINST M5212.12 (series). This policy does not have any significant or substantial change to existing records management requirements.

11. POLICY.

a. Special Victims' Counsel.

(1) Definitions.

(a) Special Victims' Counsel (SVC). An SVC, who may be assigned full-time or for Special Duty, is any Active Duty or Reserve Component judge advocate or civilian attorney certified by the Judge Advocate General (TJAG) or designee as an SVC and authorized or directed by appropriate authority to provide SVC services. SVCs are required to provide support to and advocate on behalf of persons who report being the victim of a sexual offense as defined in section 5.c of this Instruction.

- (b) Client. A client is an individual eligible for SVC Program services, as defined in section 5.c of this Instruction. Client may alternatively be referred to as victim herein.
  - (c) Sexual offense. For the purpose of determining eligibility for SVC services, a sexual offense as defined by state or federal law or UCMJ Articles 120, 120b, 120c, 130 or an attempt there under pursuant to Article 80.
- (2) Qualifications. All SVCs shall be certified in accordance with Article 27(b) of the Uniform Code of Military Justice (UCMJ). SVCs shall be licensed attorneys in good standing with the state bar of any state of the United States, the District of Columbia or the Commonwealth of Puerto Rico (required by Rule 1.1 of the Coast Guard Legal Rules of Professional Conduct), and shall satisfactorily complete specialized training as prescribed by Commandant (CG-LMA-A).
- (3) Role of the SVC. SVCs provide support, information, advocacy, and representation to victims of sexual offenses as defined in section 5.c of this Instruction.
- (a) SVCs provide this support regardless of whether the victim makes a restricted or unrestricted report of a sexual offense.
    - 1) Restricted Cases. SVCs are not authorized to receive an official restricted report, but may provide general information with a focus on the medical and counseling services available to assist the client in recovery and to educate the client concerning the military justice system. Communications between SVCs and the client will be confidential and covered by attorney-client privilege. In the event a client wishes to report a sexual offense, the SVC will refer the client to the servicing Sexual Assault Response Coordinator (SARC) but will not otherwise disclose the information conveyed by the client unless authorized by the client to do so.
    - 2) Unrestricted Cases. SVCs will serve their client throughout the investigative, pre-trial, trial, post trial, appellate, and administrative processes. This includes, where appropriate, direct advocacy for the client in any circumstance implicating the client's rights, goals, and interests.
  - (b) SVCs provide information and assistance regarding sexual offense reporting options, the military justice process, victim rights, victim privacy, victim privileges, victim entitlements, information on additional support providers, basic legal assistance, and when applicable collateral misconduct.
  - (c) SVCs are bound by the Coast Guard Legal Rules of Professional Responsibility and Coast Guard Rules of Practice and Procedure Before General and Special Courts-Martial, and, as applicable, other laws, regulations, and instructions, as well as the ethics rules of their state bars.
- (4) SVC Responsibilities.
- (a) Independent Judgment. Unless otherwise directed by Commandant (CG-LMA-A), SVCs shall enter into an attorney-client relationship with victims and,

accordingly, shall exercise independent professional judgment on behalf of their clients within the scope of the SVC Program. Each attorney is professionally responsible for his/her work product and for that of any SVC Program administrative or legal support staff to whom functions are delegated. The SVC will not act as a legal advisor for the Sexual Assault Response Coordinator or commanders, but shall have reasonable access to commanders at all echelons in order to fulfill their role as an SVC and represent the needs and interests of their clients.

- (b) Attorney Control. All client services within the SVC Program shall be provided by or under the supervision of an SVC. Client services are services that call for the professional advice and expertise of an SVC and give rise to an attorney-client relationship. Generally, any time an eligible person has a question about his or her rights or responsibilities, that individual is requesting a client service.

b. SVC Program Organizational Structure.

(1) Authority of the Judge Advocate General.

- (a) In addition to the rules and procedures set forth in this instruction, all Coast Guard Judge Advocate General (CGJAG) personnel who provide services and support through the SVC Program are subject to the supervision and regulation of the Judge Advocate General (TJAG) and the rules and procedures set forth in this Instruction.
- (b) TJAG will, in accordance with 10 U.S.C. § 1044e(e), conduct a periodic evaluation of the Program.

(2) Chain of Supervision.

- (a) Chief, Member Advocacy Division (Commandant (CG-LMA-A)). SVC Program personnel report to the Chief, Member Advocacy Division (Commandant (CG-LMA-A)) who also serves as the SVC Program Manager under the supervision of the Chief, Coast Guard Office of Member Advocacy and Legal Assistance Commandant (CG-LMA). Both report to the Deputy Judge Advocate General (DJAG) who provides continuing oversight for the SVC Program for TJAG. Commandant (CG-LMA-A) is responsible for the oversight, formal evaluation, training, and mentoring of SVC Program personnel. Special Duty SVC report to Commandant (CG-LMA-A) with respect to their SVC duties. Commandant (CG-LMA-A) promulgates policies, procedures, and standards; selects, trains, details, supervises, mentors, and evaluates SVC personnel; ensures proper support of all SVC throughout the Coast Guard; coordinates with other victims' support programs both internal and external to the Coast Guard and the Department of Defense (DoD); and inspects SVC Program operations as needed to ensure policy compliance and effective mission execution. A Deputy Program Manager, reporting to Commandant (CG-LMA-A) shall exercise operational control over the SVC West Coast Detachment and detail SVC nationwide when requested by eligible clients.

- (b) To ensure expertise, availability, flexibility, and response, the SVC Program is comprised of full-time SVC and Special Duty SVC assigned throughout the Coast Guard to other legal and non-legal billets.
- 1) Full-Time SVC. Commandant (CG-LMA-A) will be staffed by full time SVC. All full-time SVC will report directly to the Chief, Member Advocacy Division (Commandant (CG-LMA-A)). SVC personnel assigned to the SVC West Coast Detachment will report directly to the Deputy Program Manager.
  - 2) Special Duty SVC. Attorneys serving in legal and non-legal billets may be certified as an SVC if selected by Commandant (CG-LMA-A). When serving in their capacity as a Special Duty SVC, they are supervised by the Deputy Program Manager.
    - a) Legal Billets. Special Duty SVCs assigned to legal billets will not provide SVC services when they are supervised by the Staff Judge Advocate for the Convening Authority with initial disposition authority for the offenses reported by the client.
    - b) Conflicts of Interest. Special Duty SVC will take special care to ensure that no conflicts of interest based on current or former representation as described in this Instruction or the Coast Guard Legal Rules of Professional Conduct exist in their representation of the client and their assigned legal duties or other out of specialty duties. They shall ensure that they are able to exercise their own independent professional judgment in rendering SVC services free of actual or apparent influence from their chain of command. They should proactively discuss any concerns regarding potential conflicts of interests with Commandant (CG-LMA-A) or the Deputy Program Manager.
    - c) Communications. SVCs may communicate directly with Commandant (CG-LMA-A), Commandant (CG-LMA), or DJAG when necessary to adequately represent a client. Special Duty SVCs may discuss workload generally with their chain of command, but must ensure that client confidentiality is preserved.
- c. Eligibility, Notification, and Requests for SVC Services.
- (1) Eligibility for SVC services.
    - (a) Active Duty Coast Guard. All Coast Guard active duty members who report that they are a victim of a sexual offense;
    - (b) Reserve Members on Active Duty. Coast Guard Reserve members serving on active duty under Titles 10 or 14, United States Code, who report that they are a victim of a sexual offense;

- (c) SELRES and IRR Members. Coast Guard Selected Reserve (SELRES) and Individual Ready Reserve (IRR) members are eligible for SVC services if they report that they are a victim of a sexual offense which occurred while performing inactive duty training (IDT drill) or during any period, regardless of their drilling status, if the circumstances of the sexual offense have a nexus to their military service. This nexus includes, but is not limited to, travel to or from drill, liberty between drill periods, and sexual offenses committed by other members;
  - (d) Coast Guard Dependents. All dependents, as defined in 10 U.S.C. § 1044, of Coast Guard members and former members who would themselves be eligible for Coast Guard legal services are eligible for SVC services if the dependent reports he/she is the victim of a sexual offense;
  - (e) Retirees. Retired Coast Guard members and their dependants eligible for legal assistance under 10 U.S.C. §§ 1044 and 1565b are eligible for SVC services if the retiree or their dependent reports he/she is a victim of a sexual offense;
  - (f) Civilian Employees of the Coast Guard and/or Department of Homeland Security. Coast Guard and Department of Homeland Security civilian employees are eligible for SVC services as a result of a civilian employee's report that he/she is a victim of a sexual offense committed by a military member and the Coast Guard has jurisdiction to prosecute under the UCMJ; and,
  - (g) Members of Other Services. Members of other armed services who qualify for legal assistance and their dependents, who report being a victim of a sexual offense, are generally afforded SVC services by their armed service, including cases in which the Coast Guard is investigating or prosecuting the accused. In coordination with Commandant (CG-LMA-A), the Deputy Program Manager shall notify the nearest SVC/Victims' Legal Counsel (VLC) office of the victim's armed service and discuss potential assistance by the Coast Guard SVC Program. In coordination with the victim's armed service, Commandant (CG-LMA-A) will make an initial determination whether to detail a Coast Guard SVC. Representation among mixed service victims and offenders will be determined and coordinated between Commandant (CG-LMA-A) and other armed services' Program Managers.
- (2) Victims of Sexual Offenses.
- (a) For the purpose of determining eligibility for SVC services, a victim of a sexual offense is any person who reports that he or she is a victim of a sexual offense as defined by state or federal law or UCMJ Articles 120, 120b, 120c, 130 or an attempt there under pursuant to Article 80.
  - (b) A victim of a sexual offense qualifies for SVC services regardless of whether he or she made a restricted report, unrestricted report, or, potentially, no official report of suffering a sexual offense. In the instance of no report, SVC will provide only general consultative advice without forming an attorney-client relationship

unless and until the victim files an official report (restricted or unrestricted) of a sexual offense. Commandant (CG-LMA-A) should be notified of these cases.

- (c) The report of a victim of a sexual offense is sufficient, in and of itself, to satisfy SVC Program eligibility, regardless of command, law enforcement, prosecutorial, or judicial opinion, action, or inaction.
- (3) Determining Eligibility. All final eligibility determinations will be made by Commandant (CG-LMA), or designee, after an initial review by Commandant (CG-LMA-A).
- (a) The Deputy Program Manager, or designee, shall make reasonable and necessary inquiries to ensure that the victim is eligible for SVC services. Such inquiries may include speaking with the Sexual Assault Response Coordinator, CGIS, victim advocate, the Staff Judge Advocate, and/or trial counsel regarding the facts and circumstances surrounding the report.
  - (b) A victim's report, by itself, is sufficient to qualify for SVC services, regardless of command, law enforcement, prosecutorial or judicial opinion, action or inaction. The detailed SVC shall confirm victim eligibility prior to forming an attorney-client relationship.
- (4) Waivers. Commandant (CG-LMA-A), with the approval of Commandant (CG-LMA), is authorized to make eligibility determinations and grant case-by-case exceptions to general eligibility standards when warranted for good cause and to further the goals of the SVC Program mission. Individuals who believe an exception is warranted shall contact Commandant (CG-LMA-A) for an eligibility determination. An SVC who encounters a victim not eligible for SVC services shall contact Commandant (CG-LMA-A) for approval before forming an attorney-client relationship with an otherwise ineligible victim.
- (5) Informing Victims of Availability of an SVC. No one shall discourage, inhibit, or otherwise prohibit a victim from exercising their right to consult with, and be represented by an SVC. Unless an SVC has been previously detailed, the following parties must advise victims of sexual offenses of the availability of SVC services during their initial interaction:
- (a) Sexual Assault Response Coordinators;
  - (b) Victim advocates;
  - (c) Military criminal investigators (to include CGIS);

Law Enforcement Interviews. Prior to conducting a law enforcement interview of a victim of a sexual offense, all military criminal investigators must notify the victim of their right to consult with, and be represented by an SVC.

- a) If a victim elects to exercise their right to consult with an SVC, law enforcement shall immediately suspend the interview until such time that the victim has had an opportunity to consult with an SVC.
- b) Military criminal investigators may, however, conduct a limited interview of a victim who elects an SVC where exigent circumstances exist. Such exigent circumstances include the immediate spoliation of physical evidence and to protect against imminent danger of death or serious bodily harm against the victim or others.

(d) Victim/witness Liaisons;

(e) Medical healthcare providers; and,

(f) Trial counsel.

(6) Requesting SVC Services and SVC Information.

- (a) Requests for SVC services may be made by the victim, the victim's command, CGIS, the Sexual Assault Response Coordinator, victim advocates, healthcare providers, detailed trial counsel, or the command's servicing legal office. Anyone can contact Commandant (CG-LMA-A) to obtain information about SVC services.
- (b) All requests for SVC services should be submitted to Commandant (CG-LMA-A) via [OSVC@uscg.mil](mailto:OSVC@uscg.mil), and, if possible, using a request form obtainable through the same email address. Requests should include the victim's name, rank (if applicable), location and contact information, the date(s) the sexual offense(s) occurred, whether the victim made a restricted or unrestricted report of a sexual offense, the general nature of the sexual offense, and the subject's name, rank (if applicable) and location. In exigent circumstances when Commandant (CG-LMA-A) cannot be reached immediately by email or other means, requesters can contact the Office of the Judge Advocate General through the National Command Center (202-372-2100).

(7) Detailing SVC. Commandant (CG-LMA-A) shall detail an SVC no later than 48 hours after receiving a request for eligible SVC services unless special circumstances are present. Once an SVC has been detailed, the detailed SVC will, as soon as possible, notify the Sexual Assault Response Coordinator and the servicing legal office of the name and contact information of the detailed SVC.

(8) Identifying Conflicts of Interest.

- (a) The Deputy Program Manager or designee shall screen SVC requests to identify conflicts of interest and to verify eligibility for SVC services.

- (b) Each SVC shall maintain a personal conflict log containing the names of all current and past SVC clients, investigation subjects, and witnesses with whom the SVC had contact. SVCs shall review this list for potential conflicts prior to forming an attorney-client relationship with a new client.
  - (c) All SVCs and support staff shall be trained to identify potential conflicts of interest with the basic understanding that an SVC shall not knowingly undertake to represent a client whose interest in a particular matter is materially adverse to that of a current or former client of that SVC.
- (9) Contact with victim. An SVC detailed to a victim of a sexual offense should ordinarily make initial contact with the victim within 48 hours of being detailed.
- (10) Declination of SVC Services. SVC services are optional and may be declined at any time by a victim.
- (a) An initial declination of SVC services does not permanently waive all right to SVC services. A victim may request an SVC at any time in the future.
  - (b) If charges are preferred as a result of a sexual offense, trial counsel will provide an eligible victim who does not have an SVC with an additional notification of the right to the services of an SVC.
- d. Scope of SVC Program Services and Limitation.
- (1) Scope of services. SVCs and staff shall provide support, information, advocacy, and representation to clients. The SVC may advocate a victim's interests to any participant in the military justice process, including, but not limited to, commanders, convening authorities, the Staff Judge Advocate, trial counsel, defense counsel, and, to the extent authorized by law, the military judge. SVC support includes legal services not directly related to military justice proceedings. SVCs shall exercise discretion and ensure competency when providing clients with guidance or advice on matters that are tangential in nature including, but not limited to legal assistance, the availability of medical or mental health services, and guidance regarding collateral misconduct.
  - (2) General legal advice. SVCs will provide the following types of legal advice and assistance:
    - (a) Legal consultation regarding potential criminal liability of the victim stemming from, or in relation to, the circumstances surrounding the alleged sexual offense and the victim's right to seek military defense services.
    - (b) Legal consultation regarding the Victim Witness Assistance Program (VWAP), including:

- 1) the rights and benefits afforded the victim;
  - 2) the role of the VWAP liaison and what privileges do or do not exist between the victim and the liaison; and,
  - 3) the nature of communication made to the liaison in comparison to communication made to an SVC or a legal assistance attorney.
- (c) Legal consultation regarding the responsibilities and support provided to the victim by the Sexual Assault Response Coordinator, a unit or installation victim advocate, or a Family Advocacy Specialist (FAS), to include any privilege that may exist between those persons and the victim.
- (d) Legal consultation regarding the potential for civil litigation against other parties (other than the United States government).
- (e) Legal consultation regarding the military justice system, including (but not limited to):
- 1) the roles and responsibilities of the trial counsel, the defense counsel, investigators, and the military judge;
  - 2) the various stages and proceedings involved in the military justice process;
  - 3) the Government's authority to compel cooperation and testimony;
  - 4) the victim's role in the military justice process, including the possibility and importance of testifying;
  - 5) the victim's rights throughout the military justice process including those enforceable pursuant to Article 6b of the UCMJ.
- (f) When necessary to protect the rights or interests of the victim, representing the victim at any proceedings in connection with the reporting, military investigation, and military prosecution of the alleged sexual offense.
- (g) Legal consultation regarding eligibility and requirements for services available from appropriate agencies or offices for emotional and mental health counseling and other medical services.
- (h) Legal consultation regarding:
- 1) personal civil legal matters with a direct connection to the sexual assault report;

- 2) any proceedings of the military justice process in which a victim can participate;
  - 3) understanding the availability of, and process of obtaining any protections offered by, civilian and military protective or restraining orders;
  - 4) understanding the eligibility and requirements for, and obtaining any available military and veteran's benefits, such as transitional compensation benefits and other state and federal victims' compensation programs;
  - 5) matters of restitution, if applicable; and
  - 6) matters of reprisal, retaliation, and/or ostracism.
- (3) Military Criminal Justice Matters. SVC scope of services, includes, but is not limited to:
- (a) Pre-Trial matters.
    - 1) Accompany client to pre-trial interviews or depositions. SVCs, upon request of their client, may accompany their client to any law enforcement, trial counsel or defense counsel interview or deposition.
    - 2) Victim statements/Documentary evidence. SVCs may assist their client in obtaining a copy of any statement made by the client to law enforcement or government counsel or copies of any documentary evidence adopted, produced, or provided by the client in association with the investigation.
    - 3) Official requests/Search authorizations. SVCs may assist their client in obtaining copies of all official requests, subpoenas, search authorizations, or search warrants issued by military authorities to any third-party custodian for documents or records in which the client maintains a privacy interest. This includes, but is not limited to, requests for the client's medical or behavioral health requests from a military treatment facility or subpoenas issued to a telecommunications carrier for a client's telephone records.
    - 4) Pre-trial investigations, confinement and restraint. SVCs may represent and advocate for the rights and interests of clients in pretrial investigations, confinement, and restraint determinations pursuant to Rules for Courts-Martial (R.C.M.) 303, 304 and 305. This includes determinations pursuant to command authority or by a military judge.
    - 5) Article 32 Preliminary Hearings. SVCs may represent and advocate for their clients' rights and interests at Article 32 preliminary hearings governed by R.C.M. 405, as necessary, and as authorized by case law. This includes proceedings where the client declines to testify or attend.

- 6) Military protective orders. SVCs may represent and advocate for their clients' rights and interests in obtaining or opposing Military Protective Orders (MPOs).
  - 7) Civilian restraining and protective orders. SVCs may provide consultation to their clients regarding obtaining civilian restraining and protective orders. SVCs may not however, represent their clients in connection with state civilian restraining or protective order proceedings.
  - 8) Immunity. SVCs may request grants of immunity from military authorities on behalf of their clients.
  - 9) Pre-trial advice. SVCs may submit matters on behalf of their client to Staff Judge Advocates for consideration as part of the pre-trial advice provided by the Staff Judge Advocate to the convening authority under R.C.M. 406.
  - 10) Victim input to Initial Disposition Authority. SVCs may submit matters on behalf of their client to the Initial Disposition Authority regarding whether the victim believes the offense alleged is a sexual offense; the victim's views as to the disposition of the case; and/or whether the victim prefers the offense be prosecuted by court-martial or in a civilian court with jurisdiction over the offense.
  - 11) Pre-trial conferences pursuant to R.C.M. 802. SVCs may participate in any R.C.M. 802 conferences held pursuant to military justice proceedings involving their client in order to ensure, among other matters, that their client's Article 6b right to reasonable, accurate, and timely notice of public hearings and right to be heard through counsel is protected.
- (b) Trial matters.
- 1) Testimony. SVCs may assist their clients in preparing for testimony and should coordinate with trial counsel.
  - 2) M.R.E. 412. SVCs may represent and advocate for their clients' rights and interests with regard to motions held pursuant to Military Rules of Evidence (M.R.E.) 412, commonly known as the "Rape Shield Law."
  - 3) M.R.E. 513 and 514. SVCs may represent and advocate for their clients' rights and interests with regard to the privileges and protections afforded by M.R.E. 513 (psychotherapist-patient privilege) and 514 (victim advocate-victim privilege).
  - 4) M.R.E. 615. SVCs may represent a client in any request by a party to exclude the victim from a court-martial in which they have a right to be present.

- 5) Sentencing. SVCs may represent and advocate for their clients' rights and interests implicated in any sentencing hearings. This may include assisting a client in preparing a victim impact statement and/or delivering an unsworn statement on behalf of a client in accordance with R.C.M. 1001A.

(c) Post-Trial matters.

- 1) SVCs may represent and advocate for their clients' rights and interests during post-trial matters, including assisting clients with exercising their rights to submit matters to the Convening Authority in accordance with Art. 60, UCMJ and R.C.M. 1107.
- 2) SVCs may advocate for, and assist their client with, requesting the return of any of their personal property retained as evidence in connection with an incident of sexual assault. *See* 10 U.S.C. § 939.
- 3) SVCs may ensure that their client's post-trial interests and rights under the VWAP are articulated effectively and understood by the client, specifically including advisement related to the Victim/Witness Certification and Election Concerning Prisoner Status pursuant to 42 U.S.C. §10607 et seq.

(d) Other military justice matters. SVCs may advocate on behalf of a client by petitioning a service Court of Criminal Appeals for a writ of mandamus to require the pre-trial hearing officer (PHO) or Court-Martial to comply with the UCMJ related to matters impacting a client's Article 6b rights, including but not limited to matters involving M.R.E 412, relating to the admission of evidence regarding a victim's sexual background, M.R.E. 513 relating to the psychotherapist-patient privilege and M.R.E. 514 relating to the victim-advocate privilege.

- (4) Article 6b issues. SVCs may represent and advocate for their clients' rights and interests arising under Article 6b of the UCMJ. Article 6b rights are implicated at all stages of military justice proceedings, from investigation through any appeals. Accordingly, SVCs may seek to preserve and enforce their client's Article 6b rights at each stage of a military justice or administrative proceeding.
- (5) Advocacy for counseling and treatment. SVCs may assist clients in obtaining counseling and/or treatment. Ordinarily, SVCs should refer clients to the Sexual Assault Response Coordinator to coordinate counseling or treatment.
- (6) Medical Evaluation Boards. SVCs may provide consultative advice and guidance regarding the Medical Evaluation Board (MEB) and Physical Disability Evaluation System (PDES) processes.
  - (a) SVCs may also advocate on behalf of a victim in connection with a decision on whether or not to initiate an MEB when the MEB has a nexus to the reported sexual offense. This may include advocating on behalf of the client to the victim's command, Coast Guard Health Safety and Work Life (HSWL)

personnel, members of the Personnel Service Center (PSC) and medical personnel.

- (b) SVCs may also assist the victim with requesting copies of medical (including mental health) records and redacting sensitive information pertaining to a sexual offense for use in a future or ongoing MEB, particularly in cases involving restricted reports. In the case of Formal Physical Evaluation Board (FPEB), SVCs shall refer the victim to a qualified PDES counsel for appropriate representation.
- (7) Collateral misconduct. Some victims may be suspected of collateral misconduct associated with their report of a sexual offense. Collateral misconduct is misconduct that the victim may have committed prior to, during, or following the reported sexual offense, with a connection to the sexual offense, including but not limited to, underage drinking, adultery, fraternization, obstruction of justice or violating liberty policy.
- (a) If, through communications with the client or otherwise, the SVC or client believes that the client may have committed collateral misconduct, or may be suspected of collateral misconduct, the SVC may provide limited legal advice and assistance regarding the misconduct, to include general guidance and assistance regarding matters under Article 15 of the UCMJ (non-judicial punishment /NJP), administrative separation (ADSEP), or board of inquiry (BOI) proceedings. However, when the client is facing NJP, ADSEP, or other administrative action, the SVC should consult with the nearest U.S. Navy Defense Service Office (DSO) or Coast Guard Office of Member Advocacy and Legal Assistance, Defense Services Division (CG-LMA-D). The SVC shall consult with the nearest DSO or Commandant (CG-LMA-D) if the client has been or is reasonably expected to be charged at courts-martial.
  - (b) SVCs may explain the potential consequences of the alleged collateral misconduct and what, if any, disciplinary action could be taken against the client.
  - (c) With the client's permission, the SVC may also advocate to military authorities on the client's behalf regarding alleged collateral misconduct.
- (8) Other administrative proceedings. Some victims may receive notice that they are being processed for administrative separation for some reason other than collateral misconduct (e.g., non compliance with weight standards, unsuitability). In such circumstances, SVCs may provide legal consultation regarding the administrative separation process, possible outcomes, the victim's rights in connection with this process, and the possible effects of an administrative discharge on the victim's veteran's benefits. SVCs may also assist victims not entitled to a board by providing advice and assistance in drafting a response to an administrative separation notice. If a victim is entitled to an administrative separation board, the

victim shall be referred to Commandant (CG-LMA-D) for consultation and/or representation in those proceedings.

- (9) Personnel Records Review Board/Coast Guard Discharge Review Board/ Board of Correction of Military Records. SVCs may assist clients in disputing certain adverse information contained within their Coast Guard records or in disputing an adverse discharge when either the information or circumstances surrounding the discharge have a nexus to the report, investigation, or ultimate disposition of their allegation of a sexual offense. Such an example may include striking a negative page 7 stemming from imposition of nonjudicial punishment under Article 15, UCMJ, for an inappropriate relationship between the victim and the accused from the client's permanent Personnel Data Record (PDR).
  - (10) Expedited Transfers. SVCs may assist with, and advocate for, an expedited permanent change of station on behalf of their client, particularly in instances where the victim's support system is elsewhere and where the victim fears for his or her safety by remaining in the same AOR as the perpetrator.
  - (11) Personal civil legal affairs. SVCs may provide basic legal assistance consultation to victims regarding matters directly connected to a reported sexual offense. This may include general advice regarding simple landlord-tenant matters and the availability of, and process for, obtaining veterans' benefits. The SVC shall also refer their client to a military legal assistance attorney for legal assistance support related to more substantive matters, including but not limited to, estate planning, family law, powers of attorney, consumer law, or complex landlord/tenant matters.
  - (12) Interaction with civilian authorities. SVCs may accompany clients to civilian court hearings, but may not represent clients in civilian courts or civilian criminal proceedings. SVCs may attend civilian hearings in the appropriate uniform or civilian attire and should be sensitive and cognizant of local court processes and rules. SVCs should take no action which might be construed as representing the victim in civilian matters. If there is a joint military and civilian investigation, the SVC may assist the victim in obtaining the status of the investigation and attend the victim's interview by civilian law enforcement. Victims may obtain civilian counsel at their own expense to represent them with civilian authorities and SVCs may assist a client with pursuing state or local pro bono legal resources. SVCs should consult with Commandant (CG-LMA-A) before attempting to attend proceedings or participate in investigations conducted in a foreign country.
  - (13) Discretion to limit services. Where an SVC believes he or she is unable to provide adequate representation to an eligible client, or desires to provide representation beyond what is authorized in this Instruction, the SVC shall contact Commandant (CG-LMA-A) for further guidance.
- e. SVC Client Relationships and Conflicts of Interest.
- (1) Forming and Terminating Attorney-Client Relationships.

- (a) Forming the attorney-client relationship. Once an SVC is detailed by Commandant (CG-LMA-A), the SVC will be authorized to form an attorney-client relationship with the victim unless Commandant (CG-LMA-A) has explicitly limited services to advice only. The SVC may form an attorney-client relationship and provide SVC services once he or she receives a verbal acknowledgement from the victim that he or she desires SVC representation. When the attorney-client relationship is formed, the SVC will discuss, at a minimum, the topics and contents addressed in the Scope of Representation Letter. Exigent circumstances may require that the SVC form an attorney-client relationship with the victim prior to being formally detailed. In such circumstances, an SVC may enter into an attorney-client relationship with an eligible victim before being officially detailed if the SVC reasonably believes that the circumstances require such action.
- (b) Consultations. SVCs may provide initial consultations with a victim but shall take care to ensure that the victim understands that the consultation does not form an attorney-client relationship. At the outset, SVCs shall ensure that the victim understands the limits of confidentiality and privilege during a consultation.
- (c) Terminating the attorney-client relationship. Once an SVC is appointed, that SVC remains the counsel for the victim for all matters relating to the sexual assault, as outlined in section 5.d, unless or until one or more of the following events occurs:
- 1) The client consents to the release of the SVC from further representation;
  - 2) When there is no further administrative or criminal action pending in the case;
    - a) For courts-martial, the end of SVC representation will be conclusion of the appellate review process.
    - b) For non-judicial punishment under Article 15, UCMJ, case disposition is complete upon the completion of any imposed punishments or the resolution of any appeal, whichever is later.
    - c) For administrative actions, case disposition differs depending on the type of administrative action.
      - (1) In cases of administrative separations, case disposition is considered complete when the separation authority takes final action.
      - (2) For letters of reprimand, case disposition is considered complete once filing determination is complete.
      - (3) For other administrative actions, case disposition is generally complete once the approval authority has taken final action after any procedural due process requirements are complete.

- d) If a decision is made to take no action on the case, the SVC will consult with the client and ensure the client's legal needs have been met and then terminate representation.
  - 3) The SVC resigns, separates from the Coast Guard, or retires; or
  - 4) The SVC withdraws from representation in accordance with this Instruction (*See* section 5.f.3) and after consulting with Commandant (CG-LMA-A).
- (2) Duration of the Attorney-Client Relationship. Attorney-client relationships within the SVC Program are status-based, and may extend for as long as a client is eligible and feels the need for legal services. SVCs should continue to provide legal services related to the client's sexual assault/offense consistent with this Instruction as long as those services are reasonably needed by the client. This may include legal support during the appellate process. Whether or not the attorney-client relationship has ended, the attorney and office support personnel shall protect all confidential and privileged client information from disclosure.
- (3) Notice of Termination of Representation. SVCs will provide written notice of termination of the attorney-client relationship to the client. Notice should contain contact information for the SVC Program in case the victim has any further questions or concerns. Once the attorney-client relationship is terminated, the SVC is required to maintain attorney-client confidentiality and professional responsibilities to the client. If a client has become unreachable or unavailable through normal means of contact, the SVC shall make best efforts to notify the client of the termination of the relationship by using all reasonable communication means available including e-mail, telephone and notification delivered through the U.S. Postal Service.
- (4) Conflicts of Interest. An SVC shall not knowingly undertake to represent a client whose interest in a particular matter is the same or is substantially related to and/or materially adverse to that of a current or former client. For SVC Program purposes, this may occur when both an offender and purported victim counter-claim they were sexually assaulted by the other. When representation of a current/prospective client is determined to be a direct conflict, the excluded party will be referred to another SVC in consultation with Commandant (CG-LMA-A). Under no circumstances shall one SVC represent opposing parties in the same matter.
- f. Case or Client Transfer.
- (1) Transfer of case at client's request. Clients may request a transfer of their case from one SVC to another. Requests for transfer will be discussed and decided by SVC Program leadership and will be considered where transfer will not cause conflicts of interest or material challenges in representing the victim.
- (a) When a transfer occurs, the initial SVC shall make contact with the new SVC, provide him or her a copy of the victim's case file, and advise the new SVC of

any pending hearing dates, case deadlines, or other key issues impacting representation of the victim.

- (b) Additionally, the outgoing SVC shall notify the client of the name and contact information for the incoming SVC and advise the client that the new attorney will be contacting them.
- (c) The incoming SVC will promptly establish communications within 24-hours after the client was advised of the identity of the in-coming SVC.
- (2) Discharge of Client. When a client is discharged from military service, if an attorney-client relationship formed while the member was eligible for services and matters related to the investigation and or prosecution of the case remain, SVC Program representation will continue without interruption. The SVC will follow the standard case termination procedures upon conclusion of representation.
- (3) Withdrawal Prior to Conclusion of Proceedings. If an SVC must withdraw from or otherwise terminate representation of a client, the SVC shall discuss the possibility of withdrawal with Commandant (CG-LMA-A) who, after consultation with Commandant (CG-LMA), will serve as the final approval authority.

g. Minor and Diminished Capacity Victims.

(1) Definitions.

- (a) Victim of a sexual offense. A person who alleges he or she suffered direct emotional or physical harm, or is reported by another to have suffered such harm, as a result of the commission of a sexual offense as defined by state or federal law or UCMJ Articles 120, 120b, 120c, 130 or 80 (an attempt to commit such offenses).
- (b) Diminished capacity. A person whose capacity to make adequately considered decisions in connection with their representation is diminished, whether because of minority, mental impairment, or for some other reason.
- (c) Minor. A person under the age of 18 years.
- (d) Guardian. A person appointed to act as a general guardian over the person and their affairs by a competent family or dependency state court of law, also known as a "conservator," "custodian" or "curator."
- (e) Guardian ad litem. A person appointed by a state civil or criminal court to represent the legal interests of a minor or person with diminished capacity in a particular cause before the court.
- (f) Article 6b Designee. A person appointed by a military judge or other designated

authority in accordance with UCMJ 806b to assume and enforce the victims' Article 6b rights under said section.

- (2) Applicability. These rules apply to the legal representation of minors and persons with diminished capacity. All SVCs shall adhere to these rules in the formation of any attorney-client relationship with minor or diminished capacity victims of a sexual offense.
- (3) Representation. The victim of the sexual offense is the SVC's client at all times. The SVC has an ethical obligation to advocate for the client's expressed interests.
- (4) Minor/Diminished Capacity Client Intake. All minor and diminished capacity clients should, at a minimum, be personally contacted and interviewed by an SVC to determine the client's wishes and assess the client's well being and capacity to direct their legal representation.
  - (a) It is critical for the SVC to observe the client and the client's interactions with others (parent(s), guardian, the attorney, FAP personnel, counselors, law enforcement, etc.) and assess the severity of the injuries, the client's general health and condition, and the client's mental acuity and ability to listen, understand, reason and make decisions.
  - (b) SVCs should personally meet and communicate with any client old enough or capable of communicating on one or more occasions to allow the SVC to assess the client's capacity to direct the SVC's representation.
- (5) Determining whether a minor or diminished capacity victim has considered judgment and the capacity to direct the representation. Determining whether a minor or diminished capacity client has the considered judgment and the capacity to direct representation is of paramount importance.
  - (a) To determine whether the client has considered judgment and the capacity to direct their legal representation, SVCs should focus on the client's decision-making process, rather than the client's actual decision. SVCs should determine whether the client understands the risks and benefits of the client's legal position and whether the client can reasonably communicate their wishes.
  - (b) SVCs should consider the following non-exhaustive list of factors when determining whether a client has considered judgment and sufficient capacity to direct the representation:
    - 1) the client's chronological and intellectual age;
    - 2) the client's developmental stage;

- 3) the client's cognitive ability;
  - 4) the client's socialization;
  - 5) the client's emotional and mental development;
  - 6) client's ability to communicate with the SVC;
  - 7) the client's ability to articulate reasons for a legal position; and,
  - 8) the client's relevant and available personal records such as reports from social workers, psychiatrists, psychologists, school reports/records and other reports relating to the client's capacity or intellectual development.
- (c) In making a determination regarding considered judgment, SVCs may seek guidance from professionals, family members, school officials, and other concerned persons. SVCs should also determine if any evaluations are needed and advocate for them when appropriate.
- (d) When determining whether a minor or diminished capacity client possesses considered judgment and capacity to direct some, any, or all aspects of SVC representation, SVC shall remain cognizant of the guidance contained in Rule 1.14, Coast Guard Legal Rules of Professional Conduct.
- (e) A minor or diminished capacity client's inability to provide considered judgment or a lack of capacity to direct the SVC on one or more matters during the course of the victim's representation does not automatically mean that the victim is unable or lacks the capacity to direct the SVC on other matters. Accordingly, SVCs should carefully consider whether the minor or diminished capacity client possesses the considered judgment and capacity to direct any aspect of the SVC's representation vice a lack of capacity to direct all aspects of the representation.
- (f) The SVC should inquire thoroughly into all circumstances that a careful and competent person in the client's position should consider in determining the client's best decision regarding the issue in question. After consultation with the client, and as necessary with the client's parent(s) or guardian (if there appears to be no conflict with the client), FAP or other mental health counselors or therapists, and SVC Program leadership, the SVC shall advocate on the particular issue that the SVC determines to be the best decision for the client under the circumstances. In such an instance, the client shall continue to direct the SVC in all other areas where the client maintains sufficient capacity and considered judgment.
- (g) SVCs should exercise reasoned judgment, considering Rule 1.14 of the Coast Guard Legal Rules of Professional Conduct, to determine if the minor or diminished capacity client should be permitted to direct a particular matter on his

or her own accord.

- (6) When the SVC determines that the client has the considered judgment and capacity to direct the representation. The SVC shall explain and have the client execute the Scope of Representation Letter. Both the client and the SVC should retain a copy of the signed letter. SVCs should seek a non-offending parent or guardian's signature as an acknowledgement on the letter and retain a copy of that acknowledgement in the client case file.  
If the SVC is unable to secure the non-offending parent or guardian's signature, the SVC should note the date and to who(m) the acknowledgment was offered on the letter and retain a copy in the client file.

- (7) When the SVC determines the client does not possess the considered judgment and capacity to direct any aspect of the SVC's representation.

- (a) The SVC shall consult with the client's non-offending parent or guardian to determine if they desire to retain the SVC to provide victim services for the client.
- (b) If the non-offending parent or guardian desires to retain the SVC, the SVC shall explain and have the non-offending parent or guardian execute the Scope of Representation Letter.
- (c) The scope letter provided will plainly explain that while the non-offending parent or guardian is authorizing the representation, the minor or diminished capacity victim is the client in all instances; and while the parent or guardian may be consulted along with other persons by the SVC, the minor or diminished capacity victim remains the client and the parent/guardian does not direct the legal representation.
- (d) While the SVC may seek input from the non-offending parent or guardian, final legal decisions rest with the SVC. The only person other than the client who may direct SVC legal services for minor or diminished capacity victims is a court appointed legal guardian as defined above.
- (e) The non-offending parent or guardian who retained the SVC for the minor or diminished capacity victim should be provided and retain a copy of the signed Scope of Representation Letter, as should the SVC.

- (8) When an Article 6b representative has been appointed. Once an Article 6b representative has been appointed to promote and preserve the Article 6b rights of a minor or diminished capacity victim, SVCs may cooperate with that agent to enforce those 6b rights, subject to any necessary confidentiality, consent, and representation requirements.

h. Operation Policies for Special Victims' Counsel.

- (1) Case management and tracking. SVCs and support staff shall utilize Law Manager

or other matter management system identified by Commandant (CG-LMA-A) to record SVC Program services in order to accurately capture the time dedicated to each client. Additionally, SVCs shall ensure that significant events related to the execution of their duties as SVC in a given case are adequately captured and memorialized in the case file for purposes of continuity and accountability. Attorney work product however, will remain privileged and confidential.

- (2) Communications.
  - (a) Professional consultations. Unless a client has expressly requested that information remain confidential to a particular attorney or attorneys, or in cases where another attorney has an actual or apparent conflict of interest, SVCs may communicate on matters of substantive law as well as procedural law amongst themselves and with their SVC Program chain of command regarding the execution of their duties. *See Rule 1.6 of the Coast Guard Legal Rules of Professional Conduct.* SVCs are advised not to reveal the identity of the client to fellow counsel, unless required to do so for professional assistance and guidance.
  - (b) Client requests for restricted information sharing. In any situation where a client requests limited information sharing, the servicing SVC shall take all appropriate measures to shield client confidences and privileged information. Further, any information provided to third parties with the consent of the client will be provided in accordance with in order to protect the privacy interests of the client.
- (3) Respecting an ongoing SVC attorney-client relationship. An ongoing SVC attorney-client relationship shall be respected. Former clients who return with a new question concerning the same or substantially the same legal matter for which they were previously represented, should be provided with the same SVC, resources permitting, following an official request by the requesting party. Understanding the transient nature of Coast Guard billets and missions, whenever it is necessary to transfer responsibility for an ongoing case to another SVC (e.g., when a SVC transfers on Permanent Change of Station orders or is released from active duty), the client shall be notified, a termination letter executed and the departing and oncoming attorneys shall conduct a positive case/file hand off.
- (4) Provision of remote services. Although in-person advice and consultation are the preferred means of client interaction, given the geographic range of clients, SVC Program services may be provided to clients via remote means, to include use of VTC, email, or telephone or text messages on official work devices to meet mission requirements. However, no SVC Program services shall be performed without first verifying client eligibility as set forth in this Instruction. Additionally, SVCs shall take all measures necessary to preserve the confidentiality of client communications when contacting clients via remote means. A victim's right to have SVC in-person attendance at any law enforcement interview shall be respected to the fullest extent possible. Clients however, may agree to SVC participation via telephonic means, and the SVC should encourage alternative methods for appearance in those

instances where geographic or time constraints are at play.

- (5) SVC Program records and files. An SVC's personal case files consist of the servicing attorney's private and confidential case records. These files contain personal information about clients and their legal matters. This information is private, privileged, and confidential under federal law and applicable rules of professional conduct. An SVC's personal case files may contain photocopies of original documents provided to the attorney by the client; attorney notes made during client consultations; research memoranda; and a wide variety of other documents pertaining to the handling of the case and the case outcome. SVCs shall take all steps necessary to protect SVC personal case files, client confidences and privileged information to include securing all case files in locked drawers and behind locked doors or in secured electronic folders.
  - (a) Access to SVC personal case files and information regarding consultation is normally restricted to the servicing attorney, support staff under the supervision of that attorney and, upon request, the supervisors of that attorney. Access by supervisors may be denied when disclosure would implicate a conflict of interest or violate applicable rules of professional conduct.
  - (b) Files containing attorney-client privilege or attorney work product will remain confidential, private and restricted from third party access, including other Coast Guard personnel and or law enforcement absent an express order from a competent judicial authority mandating disclosure.
  - (c) Upon closing a case or terminating representation of a client, all papers and property belonging to the client, or to which the client is entitled, will be promptly returned to the client. SVCs may retain copies of papers relating to the representation in the SVC's personal case file. These files shall be retained electronically in the possession of the detailed SVC in accordance with their applicable bar rules.
- (6) Data collection. SVCs shall ensure all records and client information filed and tracked complies with all federal and Coast Guard regulations regarding the protection of private data and personally identifying information.
  - (a) SVC Program Survey. An accurate assessment of SVC Program services requires thoughtful client feedback. Voluntary client input not only helps to gauge the effectiveness of support to individual clients but also informs overall program and process improvements. All SVC Program personnel shall seek client participation in the SVC Program Victim Satisfaction survey upon conclusion of representation and the link to the survey shall be included in the End of Representation Letter or via alternative communication means. Client participation is anonymous and voluntary.
  - (b) Data Calls. Consistent with their state and Coast Guard ethical duties, full time

and Special Duty SVC shall provide requested data to Commandant (CG-LMA-A) in a timely manner. Commandant (CG-LMA-A) shall ensure that information pertaining to victim representation, including all confidential attorney-client information, is not disclosed to individuals outside of Commandant (CG-LMA-A).

i. Training.

- (1) Policy. Effective SVC Program representation requires specialized victim awareness and support training in addition to matters addressed under the normal CGJAG military justice curriculum. SVCs must attend Special Victims' Counsel training executed by one of the military services prior to official certification as an SVC. When such a course is not immediately available to reporting SVCs, they shall work directly and in conjunction with local certified practicing SVC for immediate and comprehensive on-the-job training until their attendance at an official certification course is completed. Additionally, in order to learn USCG victim-specific policies and to ensure up-to-date understanding of recent changes in the law, SVCs must attend bi-annual training conducted or endorsed by Commandant (CG-LMA).
- (2) Training objectives. SVCs should, at a minimum, be exposed to academic course work and practical exercises addressing the legal, psychological, emotional, and administrative challenges facing victims of sexual offenses. Coursework concerning the neurobiology of sexual offense victims and specialized training regarding the evaluation and representation of minor victims is also encouraged. Additionally, pursuant to the requirements in the 2016 National Defense Authorization Act (NDAA), SVCs must receive instruction on the Freedom of Information Act (FOIA), the complaint process for the DHS Inspector General's office, the USCG's complaint process concerning allegations of violations of the Equal Employment Opportunity Act, and the USCG's criminal appellate and writ process.
- (3) Additional victim-focused training. SVCs should seek additional training and education in all matters related to effective representation of victims of a sexual offense. SVCs are encouraged to locate and attend military and civilian training that will best prepare them to understand, engage, and effectively advocate for all such eligible victims. SVCs shall contact Commandant (CG-LMA-A) for authorization and travel funding to complete additional training.
- (4) Continuing Education. Throughout the course of their assignment as an SVC, SVCs shall take every opportunity available to continue their education in this dynamic and constantly evolving field and are encouraged to seek out additional training to augment the mandatory training outlined above.

12. FORMS/ REPORTS. None.
13. REQUEST FOR CHANGES. Units and individuals may recommend changes via the chain of command to: [hq-smb-directives@uscg.mil](mailto:hq-smb-directives@uscg.mil).

STEVEN J. ANDERSEN /s/  
Rear Admiral  
Judge Advocate General