

[REDACTED]

From: WHS Pentagon EM Mailbox Judicial Panel
Sent: Wednesday, January 14, 2015 2:22 PM
To: WHS Pentagon EM Mailbox Judicial Panel
Subject: FW: SVC rules
Attachments: victim rules.docx
Signed By: [REDACTED]

-----Original Message-----

From: Don Christensen [REDACTED]
Sent: Monday, January 05, 2015 3:40 PM
To: [REDACTED]
Cc: Miranda Petersen
Subject: Re: SVC rules

[REDACTED]

I have attached our proposed amendments to the RCMs. This covers the three SVC/victim issues of discovery, standing and appeals. Please let me know if you have any questions.

Thank you and happy New Year.

Don

Rule 701. Discovery

(i) Disclosure by the trial counsel to victims. The trial counsel shall provide as soon as practicable the following to any victim named in any specification –

(1) The charges and specifications related to any offense allegedly committed against a victim. Any motions filed by either the trial counsel or defense counsel at a court-martial unless otherwise protected. All statements by the accused related to any charge or specification allegedly committed by the accused against a victim. Any statement by a victim in the possession of the government.

(2) The relevant portions of any report of investigation in the possession of the government. Any pretrial advice in which a staff judge advocate recommends any specification or charge related to the victim not be referred to a court-martial. The pretrial advice must be provided to the victim prior to the convening authority acting on the charges and specifications.

(j) Definition of victim. For the purposes of subsection (i), a victim is defined as a person who –

(1) is alleged to have suffered a direct physical, emotional, or pecuniary harm as a result of the matters set forth in a charge or specification being considered; and

(2) is named in one of the specifications.

Rule 905. Motions generally

(l) Right of victim to be heard. To the extent that a victim as defined by RCM 701(j) has a right to be heard through counsel, it will be to the same degree as for a party contained in RCM 905 (h). A victim has a right to be heard through counsel on rulings concerning MRE 412, 513, 514 and 615. A military judge shall ensure that in such matters a victim's counsel will be provided the same opportunity to file written motions, present oral argument and have an evidentiary hearing as a party does.

Rule 908(a) Appeal by a named victim

(1) If the victim of an offense as defined by RCM 701(j) believes that a ruling during an Article 32 hearing or a court-martial violates the victim's rights afforded by a section (article) or rule specified in paragraph (2), the victim may file an interlocutory appeal of such ruling by petitioning the Court of Criminal Appeals for an order to require the judge advocate conducting such preliminary hearing, or the court-martial, as the case may be, to comply with the section (article) or rule, as applicable. The Court of Criminal Appeals shall provide a de novo review of the question or questions raised. A single judge or panel of judges shall take up and decide the petition within 72 hours after the petition is filed.

(2) Paragraph (1) applies with respect to the following:

(A) Any order to submit to deposition in which the victim will be available to testify at court-martial.

(B) Military Rule of Evidence 412, relating to the admission of evidence regarding a victim's sexual background.

(C) Military Rule of Evidence 513, relating to the psychotherapist-patient privilege.

(D) Military Rule of Evidence 514, relating to the victim advocate-victim privilege.

(E) Military Rule of Evidence 615, relating to the exclusion of witnesses.

(3) The proceedings of a preliminary hearing (Article 32), or a court-martial, may not be stayed or subject to a continuance of more than five days for purposes of enforcing this subsection. If the Court of Criminal Appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.