

Outline of Victims' Appellate Rights Issues

Section 547 of FY17 NDAA (Senate Version) [hereinafter Section 547] proposes amendments to Article 6b, UCMJ, that would: (1) allow victims to file appellate pleadings as a “real party in interest” when the government or defense files appellate pleadings and when the victim’s rights under Mil. R. Evid. 412, 513, or 514 are implicated; and (2) require notice to victims of “any appellate matters, including post-trial review.”

I. Victim Privacy Interests During Appellate Counsel Review of Record of Trial

A. Victims' Concerns

Under R.C.M. 1103A, appellate government and defense counsel are authorized to review the entire record of trial, including sealed materials. Special Victims' Counsel and Victims' Legal Counsel [collectively SVCs] expressed concern to the JPP that sealed materials, such as mental health records reviewed *in camera* by the judge and sealed under Mil. R. Evid. 513, are regularly being reviewed on appeal.

B. Relevant Provisions from Section 547

Section 547 states that “[i]f counsel for the accused or the Government files appellate pleadings under [Articles 66 or 67, UCMJ], the victim of an offense . . . may file pleadings as a real party in interest when the victim’s rights under [Mil. R. Evid. 412, 513, and 514] are implicated.”

C. Discussion Questions

- 1) Are current rules, practices, and procedures regarding appellate counsel access to sealed materials sufficient to protect a victim’s privacy interests?
- 2) What would be the ideal mechanism to address victim privacy concerns with respect to appellate counsel review of the record of trial without impeding on due process rights of the accused?

II. Victim Participation at the Appellate Stage (Direct Appeal)

A. Victims' Concerns

SVCs expressed concern that they have no standing to file pleadings on direct appeal. If a victim prevails at trial and his/her mental health records are not disclosed to counsel, appellate defense counsel may argue that the military judge erred by not admitting the mental health records at trial. The victim, however, would not have any standing to file pleadings in response to the appellate defense counsel.

B. Relevant Provisions from Section 547

Section 547 states that “[i]f counsel for the accused or the Government files appellate pleadings under [Articles 66 or 67, UCMJ], the victim of an offense . . . may file pleadings as a real party in interest when the victim’s rights under [Mil. R. Evid. 412, 513, and 514] are implicated.”

C. Discussion Questions

- 1) Should a victim be granted standing to file appellate pleadings as a “real party in interest”? What does this term mean and what would this entail?
- 2) Would granting victims standing to file appellate pleadings as a real party in interest implicate any due process considerations for the accused?
- 3) Should victims be allowed to file pleadings at the appellate stage in other forms (for example, amicus briefs or motions to intervene)?
- 4) The proposed amendments appear to treat the privacy interests underlying Mil. R. Evid. 412, 513, and 514 equally with respect to the need for victim standing to file appellate pleadings in response to government and defense appellate pleadings. Is this the correct approach?
- 5) Should victims be treated differently from other witnesses seeking to protect privacy interests under Mil. R. Evid. 412, 513, and 514?

III. Victims’ Right to Appeal Interlocutory Rulings to the Court of Appeals for the Armed Forces

A. Victims’ Concerns

SVCs expressed concern that victims do not have the ability to appeal to the Court of Appeals for the Armed Forces (CAAF) if the CCA denies their petition for a writ of mandamus. *See EV v. United States & Martinez*, 75 M.J. 331 (C.A.A.F 2016).

B. Relevant Provisions from Section 547

Section 547 states that “[i]f counsel for the accused or the Government files appellate pleadings under [Articles 66 or 67, UCMJ], the victim of an offense . . . may file pleadings as a real party in interest when the victim’s rights under [Mil. R. Evid. 412, 513, and 514] are implicated.”

C. Discussion Questions

- 1) Should victims be permitted to appeal adverse interlocutory rulings by the CCA to CAAF? If so, does Section 547 provide for this right?

IV. Victim Notice at Appellate Stage

A. Victims’ Concerns

SVCs expressed concerns that victims are often not aware when their cases are reviewed at the appellate level and/or when major events occur at the appellate stage.

B. Relevant Provisions from Section 547

Section 547 would amend Article 6b, UCMJ, to entitle victims to notice of “any appellate matters, including post-trial review, relating to the offense.”

C. Discussion Questions

- 1) If victims should receive notice of appellate matters, how should this be accomplished?