

**JUDICIAL PROCEEDINGS PANEL
REQUEST FOR INFORMATION SET # 3**

71. What role do the following personnel have regarding retaliation complaints from a sexual assault victim: SVC, SARC, VA, VWL, MCIO, TC, EOA, IG, Case Management Group (CMG), SARB?

USA	<p>SVC: SVC will assist victims in identifying and reporting allegations of retaliation. SVC will also advocate on behalf of victims who have experienced retaliation with the chain of command to ensure an appropriate response.</p> <p>SARC/VA: If a SARC or a VA becomes aware that a sexual assault victim has a complaint of retaliation, the SARC or VA should notify the Lieutenant Colonel (O-5) level or higher commander of the victim. The Lieutenant Colonel will develop a plan to immediately address the issue and forward the plan to the SARB chair.</p> <p>VWL: VWL notify Trial Counsel or Special Victim Prosecutors if a victim makes an allegation of retaliation to ensure an appropriate investigation and response.</p> <p>MCIO: When CID initiates a sexual assault investigation, it will also initiate and conduct subsequent investigations relating to suspected threats against the sexual assault victim, including minor physical assaults and damage to property. Complainants and/or their commander should immediately notify Criminal Investigation Command whenever the victim of an unrestricted sexual assault is threatened, assaulted or suffers property damage subsequent to her/his complaint of a sexual assault.</p> <p>TC: TC will assist victims in identifying allegations of retaliation and refer allegations to law enforcement, IG, or the chain of command for investigation. Once investigations are complete, TC are also trained to evaluate evidence to determine if the retaliatory conduct meets the elements of a charge under the Uniform Code of Military Justice, regulatory violation, or other inappropriate non-criminal conduct. Trial Counsel will then advise commanders on appropriate disposition.</p> <p>EOA: Equal Opportunity Advisors do not assist victims of sexual assault.</p> <p>IG: Army IGs will normally refer a retaliation complaint to the command for investigation. If the complainant meets the requirements for statutory reprisal, the IG will forward the complaint through IG channels to DAIG for a formal review. DAIG will review the complaint and if they concur, forward the complaint to DoDIG WRI. If the complaint is missing some critical information necessary to determine if it is reprisal, DAIG will contact the IG who received the complaint or the complainant directly to obtain the missing information prior to forwarding to DoDIG.</p> <p>SARB (CMG): Per Army Directive 2015-16, during every Sexual Assault Review Board (SARB) meeting the SARB chair will ask SARB members if the victim, witnesses, bystanders (who intervened), Sexual Assault Response Coordinators, Victim Advocates, first responders or other parties to the incident have experienced any retaliation or reprisal. If any incidents are reported, the Lieutenant Colonel (O-5) level or higher commander of the victim of retaliation or reprisal will develop a plan</p>
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	<p>to immediately address the issue and forward the plan to the SARB chair. For the Army, the SARB is the equivalent of the Case Management Group.</p>
<p>USAF</p>	<p><u>SARC, VA, CMG</u>: Change 1 to 27 February 15 Memorandum - Updated Procedures Regarding Reporting and Tracking Victim Retaliation in Sexual Assault Cases, 17 March 15, provides Commanders and Sexual Assault Response Coordinators (SARC) with a formal framework to use in reporting and tracking sexual assault victim retaliation. SARCs have the primary responsibility for discussing retaliation with sexual assault victims, discussing retaliation reporting, and ensuring victims are provided with assistance in making retaliation reports. Retaliation allegations that a victim reports will be briefed at the monthly Case Management Group (CMG) meeting. The victim's commander will brief a plan to address the retaliation report. The report will remain on the CMG agenda until the victim's sexual assault case has reached final disposition or the report has been appropriately addressed according to the CMG Chair. At the installation level, the SARC, Victim Advocate (VA), or CMG may seek advice from their servicing Staff Judge Advocate (SJA). Questions of policy may be referred to AF SAPRO.</p> <p><u>SVC</u>: If a Special Victims' Counsel (SVC) becomes aware a client may have suffered retaliation, the SVC will discuss reporting options with the client. The SVC will assist the client in making a retaliation report and advise the client as to how the retaliation complaint may affect the client's sexual assault allegation that led to the original representation. SVCs also advocate directly to commanders, first sergeants, legal offices or other relevant entities as necessary in order to ensure their client's rights have been safeguarded and instances of retaliation are addressed. SVCs work with other helping agencies, to include the SARC, Family Advocacy Program, and Victim and Witness Assistance Program, to assist the client in resolving retaliation allegations. SVCs are actively involved in advising their clients both before and after CMG meetings to advise them on their reporting options for retaliation.</p> <p><u>IG</u>: The AF Inspector General (IG) analyzes all complaints received to determine the appropriate resolution strategy. Any complaints meeting the definition of reprisal will remain with the IG for further analysis. Those allegations of retaliation that do not meet the reprisal definition will be referred to the appropriate level of command for further analysis and action as required. Allegations of reprisal will be assessed to see if there is <i>prima facie</i> evidence of reprisal. If there is not, the allegations will be dismissed. If there is <i>prima facie</i> evidence of reprisal, then the allegations will be analyzed to see if a full investigation is warranted or not. If a full investigation is warranted, then one will be conducted and subsequently, a determination will be made whether or not to substantiate each claim. At the installation level, the servicing SJA provides advice to the AF IG on investigations. This structure of the IG receiving legal advice from the servicing SJA is mirrored at the Numbered Air Force (NAF), Major Command (MAJCOM), and Air Staff level.</p> <p><u>AFOSI</u>: As a Military Criminal Investigative Organization, the Air Force Office of Special Investigations (AFOSI) assesses all complaints it receives to determine if the complaint involves a felony violation of the UCMJ or other federal, local or foreign penal codes. Currently, there is no specific UCMJ punitive article for "retaliation."</p>

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Instead, retaliation may be the motive for committing a variety of UCMJ offenses, such as damage to property, assault, or unlawful communication of a threat. If an allegation involves a criminal matter falling outside of AFOSI's own mission area or jurisdiction, AFOSI refers the matter to the appropriate law enforcement agency (e.g., AF Security Forces; federal, state or local law enforcement agency; foreign law enforcement agency). In cases where AFOSI and another law enforcement agency both have an interest in the matter, the status of the subject (not the victim) and the location of the offense generally determines which agency will lead the investigation. For non-criminal matters, AFOSI refers the matter to command officials (e.g., installation IG, unit commander) for further action. AFI 51-201, Section 13P, provides details on the relationship between each installation legal office and AFOSI detachment.

TC/VWAP: The installation Victim and Witness Assistance Program (VWAP) is responsible for informing victims that they should immediately report any intimidation, harassment, or similar conduct to military or civilian authorities. AFI 51-201, *Administration of Military Justice*, para. 7.12.8. The VWAP and trial counsel are also responsible for ensuring the victim is reasonably protected from the accused under Article 6b, UCMJ and will inform victims of the availability of military protective orders and civilian restraining orders. AFI 51-201, para. 7.12.8.1. The VWAP and trial counsel will also ensure that victims and witnesses are able to wait to testify in an area that is separate from the accused or defense witnesses. AFI 51-201, para. 7.15.1.4. If a victim indicated to the VWAP or trial counsel that he or she had experienced a retaliation incident, the legal office personnel would be responsible for ensuring the retaliation allegation was referred to the appropriate entity (e.g. AFOSI, AF IG, commander) for investigation.

SARB: The AF does not use SARBs.

EO: The Equal Opportunity (EO) office addresses allegations of unlawful discrimination on the basis of race, color, national origin, sex, religion, or sexual harassment for military members and allegations of unlawful discrimination on the basis of race, color, religion, sex, national origin, age (40 and older), disability, genetic information, sexual harassment, or retaliation for opposing discrimination or for participating in the complaint process for DoD civilians. AFI 36-2706, paras. 3.14, 4.2. If the victim's allegation includes reprisal, the EO office will refer the victim to the installation IG. AFI 36-2706, para. 3.40. If the victim's allegation does not fall within the scope of the EO program, the EO office will refer the victim to another helping agency (e.g. SARC, SVC) to assist the victim in making a retaliation report. The installation EO office may seek advice from their servicing SJA.

References:

- AFI 90-301, *Inspector General Complaints Resolution*, 6 June 2012, http://static.e-publishing.af.mil/production/1/saf_ig/publication/afi90-301/afi90-301.pdf
- AFI 51-201, *Administration of Military Justice*, 6 June 2013, <http://static.e->

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	<p>publishing.af.mil/production/1/af_ja/publication/afi51-201/afi51-201.pdf</p> <p>- AFI 36-2706, <i>Equal Opportunity Program Military and Civilian</i>, 5 October 2010, http://static.e-publishing.af.mil/production/1/af_a1/publication/afi36-2706/afi36-2706_ic-1.pdf</p> <p>ATTACHMENT: Attachment 70, Change 1 to 27 February 15 Memorandum - Updated Procedures Regarding Reporting and Tracking Victim Retaliation in Sexual Assault Cases, 17 March 15.</p>
USN	<ul style="list-style-type: none"> • Depending on the nature of the complaint, NAVINSGEN will investigate or refer Hotline complaints regarding retaliation from sexual assault victims. Retaliation that falls within the protection of 10 U.S.C. 1034 (Military Whistleblower Protection), will be investigated by NAVINSGEN Military Whistleblower Reprisal (MWBR) Branch and Echelon II IG offices under the supervision of the NAVINSGEN MWBR Branch. Cases investigated as potential 10 U.S.C. 1034 violations are specifically related to <u>professional retaliation</u> – allegations of a responsible management official taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication. • In accordance with SECNAVINST 5370.7D, Military Whistleblower Protection, allegations of <u>ostracism and maltreatment</u> shall be referred to the appropriate command for action except in those circumstances where IGs, in their discretion, determine the allegations should be handled by an IG. • The Sexual Assault Case Management Group (SACMG) is required to regularly assess, and refer for appropriate corrective action, all reports from a victim, witness or first responder of retaliation, ostracism, maltreatment, or reprisal in conjunction with a report of sexual assault. Upon notification of retaliation, COs are required to follow procedures for reporting and investigation in accordance with SECNAVINST 5370.7D. Available at http://doni.daps.dla.mil/Directives/05000%20General%20Management%20Security%20and%20Safety%20Services/05-300%20Manpower%20Personnel%20Support/5370.7D.pdf. • If an allegation of reprisal, or any other allegations of criminal activity against the victim (threats, minor physical assaults, damage to property, etc.) is <u>identified during a NCIS sexual assault investigation</u>, NCIS shall initiate a separate investigation. For all other instances, NCIS will open a formal investigation or refer the matter to either NAVINSGEN or the victim’s command. • Navy VLC play a direct role in advising and assisting victims in understanding and exercising retaliation complaint options when a victim has retained a VLC and a complaint is desired. To date, Navy VLC have assisted victims in utilizing Article 1150, U.S. Navy Regulations and Article 138, UCMJ to make complaints. However, Navy VLC report that the vast majority of “retaliation” issues observed in the course of their support for victims have

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	<p>consisted of lower-level, “peer-to-peer”, social ostracism which have generally been successfully resolved via VLC engagement with the victim’s chain of command.</p> <ul style="list-style-type: none"> • Trial counsel provide all victims and witnesses of sexual assaults with Victim Witness Assistance Program (VWAP) notifications, which includes information on retaliation. All VWAP resources and instructions for the DoD and Navy are located at this website: http://www.public.navy.mil/bupers-npc/support/vwap/Pages/default.aspx • VAs and SARCs advise victims on available legal assistance through the VLC, and can advise regarding the various reporting options available to victims.
<p>USMC</p>	<p>VLC. VLC provide legal advice and counseling to victims, including discussing options to file complaints of retaliation, and assisting to prepare such complaints. In cases of either social or professional retaliation, VLC are able to assist victims with allegations of retaliation by communicating with the command to seek resolution. When this effort fails, VLC can assist the victim by filing an appropriate complaint as listed above in response to Question #69.</p> <p>SARC/VA. SARCs and SAPR VA/UVAs refer service members with a retaliation complaint to their command and/or the IG.</p> <p>VWL. None</p> <p>MCIO. See the USN response for information regarding NCIS.</p> <p>IGMC. The role of the IGMC regarding any retaliation complaint applies to all service members, not only to victims of sexual assault. The IGMC established specific procedures necessary for conducting professional retaliation (reprisal) investigations, as published in SECNAVINST 5370.7D. Upon determining sufficient evidence, the IGMC will promptly investigate allegations of retaliation. Additionally, the IGMC is available to take retaliation complaints through the hotline, task them to commands via CIG (if the command is the more appropriate investigative avenue, such for social retaliation complaints), and track completion information.</p> <p>TC. Trial counsel must ensure notification of victims of their rights under Article 6b. Also, TCs must notify eligible victims of their right to VLC. Finally, TCs will review allegations of retaliation when received by commands through requests for legal services, and make appropriate recommendations regarding form and disposition of charges, if any.</p> <p>EOA. MEO will refer any Marine who wishes to file a reprisal complaint to their servicing IG office. EOAs do not provide advice and guidance regarding reprisal.</p> <p>CMG. Per Secretary of Defense Memorandum dated 3 December 2014, Installation commanders who serve as CMG Chairs will regularly assess, and refer for appropriate corrective action, all reports from a victim, witness, or first responder of</p>

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	<p>retaliation, ostracism, maltreatment, or reprisal in conjunction with a report of sexual assault.</p> <p>A new section was added to Change 2 of DoDI 6495.02 (pending publication): “At every CMG meeting, the CMG Chair will ask the CMG members if the victim, witnesses, bystanders (who intervened), SARCs and SAPR VA/UVAs, responders, or other parties to the incident have experienced any incidents of coercion, retaliation, ostracism, maltreatment, or reprisals. If any incidents are reported, the commander concerned will develop a plan to immediately address the issue and will forward the plan to the CMG Chair. The coercion, retaliation, ostracism, maltreatment, or reprisal incident will remain on the CMG agenda for status updates, until the victim's case is closed or until the coercion, retaliation, ostracism, maltreatment, or reprisal incident has been appropriately addressed.”</p> <p>IGMC. IGMC is typically not a first responder for sexual assault victims, but the IGMC and CIG accept and process all requests for assistance and/or investigations in accordance with SECNAVINST 5370.7D and will assist anyone who comes to the IG to file a retaliation complaint. The IGMC is responsible for conducting all inquiries in an independent, unbiased, and professional manner and will ensure all complaints to the IG are addressed.</p>
USCG	<p>A victim that experiences retaliation or a witness to retaliation can report such incidents to a Coast Guard SARC, VA, or SVC using existing channels for victim support. The SVC, VA, or SVC may then communicate with CGIS or the trial counsel, if assigned, to ask that the matter be investigated. If a report is received by DHS IG and that organization believes CGIS is in the best position to investigate the complaint, DHS IG will refer the matter to CGIS directly.</p>