

**JUDICIAL PROCEEDINGS PANEL  
REQUEST FOR INFORMATION SET # 6**

**148. Services: What issues have SVCs raised and/or filed motions during:**

**a. discovery and pre-trial hearings?**

<b>USA</b>	Special Victims' Counsel have filed motions for continuances, reconsideration, MRE 412, 513, 514, and 615, the right to be present at all proceedings, and remote live testimony for child victims. They have also raised several issues concerning Article 6b rights, to include the right to be heard, the right to be protected from the accused, and the right to confer with counsel.
<b>USAF</b>	SVCs regularly request documents, motions and exhibits during the discovery process. As soon as practicable, SVCs file motions asserting their clients M.R.E. 412, 501, 503, 513, and 514 privileges and Article 6b rights. They respond to motions regarding these same issues. SVCs may file an extraordinary writ when the military judge makes a decision that is adverse to their client's positions and the client supports filing a writ, which may delay the case.
<b>USN</b>	The following issues were raised during discovery and/or at pre-trial hearings by VLC in FY15. The number after each issue denotes the number of times each issue was raised:  Military Rule of Evidence (MRE) 412 = 47 MRE 413 = 1 MRE 513 = 27 MRE 514 = 3 MRE 615 = 3 Privacy Issues involving school and counselor records = 3 Opposing Request for Continuance = 1 Lack of Notice/Privacy Concerns in response to Motions to Compel Discovery = 1 Opposing Unusual Discovery Requests = 2 Timeliness of Art. 32 hearing = 1 Opposing Defense Request to Depose Victim = 3 Requesting Victim Advocate Travel = 1
<b>USMC</b>	VLC raise issues in the following forms: - Continuance requests to allow clients to exercise their rights through counsel when the counsel has a scheduling conflict. - Requests for discovery and motions to compel discovery - Motions requesting that the Court protect a victim's UCMJ Article 6b rights - Motions under MRE 412, 513, and 514 to stop the admission of evidence. - Responses to requests or motions to search a victim's phone or to compel production of the victim's cell phone records. - Responses to defense requests or motions to depose the victim.
<b>USCG</b>	SVCs file whatever motions are necessary to preserve the rights' of their clients. This includes motions involving Article 6(b), MRE 412, MRE 501, MRE 503, MRE 513, MRE 514, and MRE 615. SVCs respond to motions regarding these same issues and file extraordinary writs when necessary.

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REQUEST FOR INFORMATION SET # 6**

**b. during the court-martial?**

<b>USA</b>	Army SVC have objected on the grounds of MRE 412, 513, 514, and 615, and have raised several concerns about Article 6b rights.
<b>USAF</b>	Air Force SVCs remain vigilant throughout the trial to guard against inadmissible evidence involving their client that is erroneously admitted; they advocate against improper admission of records or testimony. SVCs may file an extraordinary writ when the military judge makes a decision that is adverse to their client's positions and the client supports taking that action. SVCs advocate for the proper application of M.R.E. 615 when their client wants to remain in the courtroom to hear the proceeding. Even prior to the R.C.M. 1001 rule change, SVCs successfully argued for their client to give a victim impact statement during sentencing proceedings.
<b>USN</b>	During court-martial, VLC raised the following issues:  MRE 412 = 10 MRE 513 = 8 MRE 514 = 1 MRE 610 = 1 MRE 615 = 6 Nature and Scope of Victim's MRE 514 privilege = 1 Motion for Consideration of Victim Impact Statement = 1 Requesting victim testimony be allowed at sentencing on accused misconduct after sexual offense charges dropped = 1 Right to be Present for Proceedings = 2 Closing Courtroom = 1 Position of DC/Accused in Courtroom = 1
<b>USMC</b>	During a court-martial, a VLC raises issues by making oral objections and argument based upon MRE 412, 513 and 514.
<b>USCG</b>	See answer to a. above. Recently, an SVC requested a stay of proceedings in order to file a writ with the Coast Guard Court of Criminal Appeals regarding the judge's ruling on a MRE 513 motion.

**c. during the appellate process?**

<b>USA</b>	Army SVC have filed six writs of mandamus and one amicus brief in an appeal to the Court of Criminal Appeals. The writs of mandamus involved an SVC's right to receive notice of proceedings, MRE 513 and 514 issues, and whether a witness must submit to deposition if reasonably available at trial. The case involving the first amicus brief filed by an SVC held that the act of a Doctor's pressing a stethoscope to a victim's breasts may constitute a "sexual contact" as defined in Article 120 (g)(2).
<b>USAF</b>	Air Force SVCs have filed amicus briefs pertaining to victim issues of due process and the right to be heard by appellate courts. The briefs have challenged incorrect applications of law, particularly with regard to M.R.E. 513. Participation in post-trial appeals is a rapidly growing practice area for the SVC Program, although there is no explicit statutory authority for victims to participate in post-trial appeals. Currently, the Air Force Court of Criminal Appeals (AFCCA) Rules for Practice do not include a specific rule requiring a victim to receive notice or an opportunity to be heard in any portion of the appellate review process. AFLOA/CLSV has proposed a rule change to

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REQUEST FOR INFORMATION SET # 6**

	AFCCA in order to obtain notice on behalf of named victims. The rule changes are currently pending public comment and final decision by the Chief Judge of AFCCA. Even without a specific rule, SVCs continue representation beyond trial and are representing clients on appeal until the case is final as defined by R.C.M. 1209. SVCs have filed motions to compel and motions to intervene so that clients can receive notice and participate in appellate review. To date, none of the motions has been granted.
<b>USN</b>	Appellate issues raised by VLC:  MRE 513 as interlocutory issue = 1 Filed Victim Input with Appellate Government requesting case be certified to CAAF = 1 Filed objection to Convening Authority improperly considering clemency letter attacking victim's daughter = 1
<b>USMC</b>	A Marine VLC has not yet raised any post-trial issues on appeal.
<b>USCG</b>	So far, CG SVC have not filed any motions during the appellate process but would, as necessary, file any motion necessary to preserve their clients' interests.