

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

150. (Update to JPP RFI 27) DoD and Services: Please address the following concerns of retaliation or adverse consequences for serving as an SVC. Please note the JPP’s use of the term “Retaliation” refers to social retaliation or reprisal/professional retaliation.

a. Have any SVCs in your Service filed a complaint (with the IG, BCMR, JAG Corps, or any other channel) expressing concern that they experienced retaliation or suffered adverse personal or professional consequences due to their service as an SVC? If so, how many such complaints were filed in FY 14, 15, and FY16 (to date).

DoD	DoDI 6495.02 and DoDD 6495.01 prohibit retaliation against SVCs/VLCs and first responders and anyone who reports a sexual assault. Additionally, the DoD Safehelpline provides information and a means to report retaliation through the Safehelpline which then is sent to the appropriate office for appropriate action. Also, DoDD 7056, “Military Whistleblower Protection” provides that military members are free to make protected communications, without fear of reprisal. Section 1709 of NDAA for FY 2014 required the department to develop a retaliation strategy pertaining to allegations of retaliation for reporting a criminal offense, which we understand is in development. Also, section 1714 of the NDAA expanded the Inspector General’s authority under 10 USC 1034, relating to prohibited retaliatory personnel actions. Section 544 of the National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92 (2015), requires the amendment of Rule for Courts-Martial 104 “to provide that the prohibitions concerning evaluations established by that Rule shall apply to the giving of a less favorable rating or evaluation to any member of the Armed Forces serving as a Special Victims’ Counsel because of the zeal with which such counsel represented a victim.” The Department has prepared a proposal to adopt such an amendment, a draft of which was published in the Federal Register. 80 Fed. Reg. 63204 (2015).
USA	To date, the program has not received any reports of retaliation or adverse career impact from any Active Duty or Reserve Judge Advocates.
USAF	No Air Force SVC has filed a complaint expressing concern that the SVC had experienced retaliation because of their SVC service. To date, one former SVC indicated that her involuntary separation under a force shaping program was retaliation. This same SVC claimed that she had experienced retaliation when she responded to inquiries by AFLOA/CLSV about her professional and ethical conduct. However, the SVC has not yet filed a formal IG, BCMR, EO, or Congressional complaint.
USN	No VLC have filed complaints since the program’s inception with the IG, BCNR, JAG Corps or via any other channel expressing concern that they experienced retaliation or suffered adverse personal or professional consequences due to their service as a VLC. In the 27 months since the program’s inception, VLC have been highly successful in career progression and promotion, including selection to JAGC Career Status and selection for promotion. Eight due course officers (e.g., first time in zone) appeared before FY16 promotion boards from paygrade O-4 to O-6. Seven of eight officers were selected for promotion to their next paygrade.
USMC	No VLC have filed a retaliation complaint. ²
USCG	No.

² No VLC have filed a complaint about retaliation based upon their service as a VLC. VLC report that Commanders and Judge Advocates appear to respect the mission of the VLC to protect the rights of victims.

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b. Is there a policy that protects SVCs from retaliation or adverse career impact related to their SVC service?

DoD	DoDI 6495.02 and DoDD 6495.01 prohibit retaliation against SVCs/VLCs and first responders and anyone who reports a sexual assault. Additionally, the DoD Safehelpline provides information and a means to report retaliation through the Safehelpline which then is sent to the appropriate office for appropriate action. Also, DoDD 7056, “Military Whistleblower Protection” provides that military members are free to make protected communications, without fear of reprisal. Section 1709 of NDAA for FY 2014 required the department to develop a retaliation strategy pertaining to allegations of retaliation for reporting a criminal offense, which we understand is in development. Also, section 1714 of the NDAA expanded the Inspector General’s authority under 10 USC 1034, relating to prohibited retaliatory personnel actions. Section 544 of the National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92 (2015), requires the amendment of Rule for Courts-Martial 104 “to provide that the prohibitions concerning evaluations established by that Rule shall apply to the giving of a less favorable rating or evaluation to any member of the Armed Forces serving as a Special Victims’ Counsel because of the zeal with which such counsel represented a victim.” The Department has prepared a proposal to adopt such an amendment, a draft of which was published in the Federal Register. 80 Fed. Reg. 63204 (2015).
USA	See response to 150d below and enclosure 1, SVC Additional SVC Establishment Documents. The SVC Handbook also refers SVC to their Chief of Legal Assistance in the event they perceive retaliation, and TJAG’s Policy Memo 14-01, Special Victims’ Counsel, reminds SJAs that SVC have an ethical obligation to advocate for their clients even when it is not in the best interest of the government.
USAF	SVCs are protected from retaliation or adverse professional consequences for performance of official SVC duties because of the availability of complaint and redress avenues, including the IG. In addition, because SVCs serve in a separate chain of command from the operational chain at an installation, retaliation or adverse professional consequences are less likely to be a factor.
USN	Yes. The Navy VLCP is led by an active duty O-6 Chief of Staff (COS) who reports directly to CNLSC. The COS is the reporting senior for all VLC and administrative support personnel within the program. VLC are ranked only against each other, outside the chain-of-command of the victim, convening authorities, the accused, and independent of both TC and DC.
USMC	Yes. The inherent purpose of the VLCO having an independent chain of supervisory attorneys is to encourage zealous representation and reduce the possibility of retaliation.
USCG	There is no such policy.

c. What guidance is provided to an SVC if they believe they experience retaliation either while an SVC or after serving as an SVC?

DoD	DoDI 6495.02 and DoDD 6495.01 prohibit retaliation against SVCs/VLCs and first responders and anyone who reports a sexual assault. Additionally, the DoD Safehelpline provides information and a means to report retaliation through the Safehelpline which then is sent to the appropriate office for appropriate action. Also, DoDD 7056, “Military Whistleblower Protection” provides that military members are free to make protected communications, without fear of reprisal. Section 1709 of NDAA for FY
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	<p>2014 required the department to develop a retaliation strategy pertaining to allegations of retaliation for reporting a criminal offense, which we understand is in development. Also, section 1714 of the NDAA expanded the Inspector General’s authority under 10 USC 1034, relating to prohibited retaliatory personnel actions. Section 544 of the National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92 (2015), requires the amendment of Rule for Courts-Martial 104 “to provide that the prohibitions concerning evaluations established by that Rule shall apply to the giving of a less favorable rating or evaluation to any member of the Armed Forces serving as a Special Victims’ Counsel because of the zeal with which such counsel represented a victim.” The Department has prepared a proposal to adopt such an amendment, a draft of which was published in the Federal Register. 80 Fed. Reg. 63204 (2015).</p>
USA	<p>See response to 150b above and enclosures 1 and 2, Additional SVC Establishment Documents and SVC Training.</p> <p>ENCLSOURES:</p> <ol style="list-style-type: none"> 1. SVC Handbook, 3rd Edition 2. SVC Training Courses
USAF	<p>SVCs are trained and encouraged to inform their supervisory chain and AFLOA/CLSV if they believe retaliation is occurring or has occurred. Additionally, SVCs are protected from retaliation or adverse professional consequences for performance of official SVC duties because of the availability of complaint and redress avenues, including the IG.</p>
USN	<p>Navy, VLC and JAG Corps leadership consistently convey the importance of the VLC Program, sending the message that VLC are performing a critical duty. The VLCP COS has addressed retaliation against VLC and requested to be informed should any counsel feel they are being retaliated against for doing their job. As the reporting senior, if a VLC felt their Fitness Report was retaliatory in nature for doing their job, counsel would be expected to inform their chain of command and attempt to resolve the issue at the lowest level. If after serving as VLC and attempting to resolve a complaint at the lowest level, a VLC felt retaliated against, they would follow established complaint methods such as filing an Article 138 Complaint of Wrong, an IG Complaint or a Congressional Inquiry.</p>
USMC	<p>There is no separate guidance that addresses VLC retaliation.³</p>
USCG	<p>Currently, there is no formal guidance provided to SVCs. Since SVCs have a separate chain of command, they receive performance reports from the SVC Program Manager and not from an installation level commander. Additionally, their offices are separate from other offices on base so it is unlikely an SVC would suffer social retaliation. However, if any member of the Coast Guard believes they have been retaliated against, that member can file a retaliation claim or a hostile work environment claim with the USCG Civil Rights office or, if they believe their rating is low, they can appeal those marks to the next level supervisor.</p>

³ The same policies for filing complaints available to all service members are available to VLC, who are the experts on how to engage those methods. Such policies will be articulated in the forthcoming USMC VLC Manual and may currently be found in SECNAVINST 5730.7D.

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d. How will FY16 NDAA § 544, which prohibits giving less favorable ratings or evaluations to an SVC/VLC because of the “zeal” with which they represented a client, be implemented by the Services?

DoD	<p>DoDI 6495.02 and DoDD 6495.01 prohibit retaliation against SVCs/VLCs and first responders and anyone who reports a sexual assault. Additionally, the DoD Safehelpline provides information and a means to report retaliation through the Safehelpline which then is sent to the appropriate office for appropriate action. Also, DoDD 7056, “Military Whistleblower Protection” provides that military members are free to make protected communications, without fear of reprisal. Section 1709 of NDAA for FY 2014 required the department to develop a retaliation strategy pertaining to allegations of retaliation for reporting a criminal offense, which we understand is in development. Also, section 1714 of the NDAA expanded the Inspector General’s authority under 10 USC 1034, relating to prohibited retaliatory personnel actions. Section 544 of the National Defense Authorization Act for Fiscal Year 2016, Pub. L. No. 114-92 (2015), requires the amendment of Rule for Courts-Martial 104 “to provide that the prohibitions concerning evaluations established by that Rule shall apply to the giving of a less favorable rating or evaluation to any member of the Armed Forces serving as a Special Victims’ Counsel because of the zeal with which such counsel represented a victim.” The Department has prepared a proposal to adopt such an amendment, a draft of which was published in the Federal Register. 80 Fed. Reg. 63204 (2015).</p>
USA	<p>Proposed changes to RCM 104, Unlawful Command Influence, will be implemented by Executive Order and will add SVC to the framework which prohibits giving less favorable ratings or evaluations because of the “zeal” with which they represented a client to defense counsel.</p> <p>ENCLOSURES:</p> <ol style="list-style-type: none"> 1. SVC Handbook, 3rd Edition – Apr 16 2. Info Paper on SVC Program 3. Representing Children Overseas Info Paper 4. SVC Course Presentation 5. SVC Program Overview Hill Engagement 6. SVC Structure Slide 7. 2nd Child SVCC Course Block Schedule 8. 3rd Child SVCC Course Block Schedule 9. 4th SVC Course Block Schedule 10. 5th SVC Course Block Schedule 11. 6th SVC Course Block Schedule 12. DC2016 Brochure 13. FEB 2014 2nd Child SVCC Course Block Schedule 14. Final WO Training Schedule 15. SVC Attorney Training Courses
USAF	<p>To implement FY16 NDAA § 544, the Joint Service Committee on Military Justice has proposed an Executive Order that would amend Rule for Court-Martial 104(b) and add for SVCs/VLCs the same protections against less favorable ratings as those provided to defense counsel. The Executive Order is expected to be signed by summer 2016, and the revised rule reads as follows:</p>

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	<p>(1) Evaluation of member, defense counsel, or special victims’ counsel...</p> <p>(B) Give a less favorable rating or evaluation of any defense counsel or special victims’ counsel because of the zeal with which such counsel represented any client. As used in this rule, “special victims’ counsel” are judge advocates who, in accordance with 10 U.S.C. § 1044e, are designated as Special Victims’ Counsel by the TJAG of the armed force in which the judge advocates are members, and within the Marine Corps, by the Staff Judge Advocate to the Commandant of the Marine Corps.”</p>
USN	See #150 (b).
USMC	The Joint Service Committee on Military Justice (JSC) proposed an Executive Order for the President to sign that would amend RCM 104(b) as directed by Section 544 of the FY16 NDAA. The draft USMC VLC Manual will reflect this proposed change by directing that the VLCO’s independent chain of supervisory attorneys shall ensure the independence of VLC to zealously represent their clients and protect their rights.
USCG	<p>Currently, this is no formal mechanism in place to implement this section. However, as noted above, the SVC Program Manager provides the ratings for CG SVCs. Because zeal in representation is part of the SVC role, it would be unlikely that the Program Manager would downgrade an SVC for executing that function effectively.</p> <p>Further, the Joint Service Committee on Military Justice proposed an Executive Order which would amend RCM 104(b) by adding SVCs/VLCs to the same prohibition regarding defense counsel ensuring that SVC/VLCs are not given a less favorable rating due to the zeal of representation.</p>