

AFI 51-504

BY ORDER OF THE SECRETARY OF THE AIR FORCE

AIR FORCE INSTRUCTION 51-504

[Date]

Law

LEGAL ASSISTANCE AND SPECIAL VICTIMS' COUNSEL PROGRAMS

COMPLIANCE WITH THIS PUBLICATION IS MANDATORY

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PURPOSE

This publication implements AFPD 51-TBD, Legal Assistance Services, DoDD 1350.4, *Legal Assistance Matters* (April 2001), Directive-type Memorandum 14-003, *DoD Implementation of Special Victim Capability Prosecution and Legal Support [which will be incorporated in DoDI 1030.02, Victim and Witness Assistance (publication pending)]*. It describes the Air Force Legal Assistance, Special Victims' Counsel, Notary, Preventive Law, and Tax Programs. It implements 10 U.S.C. § 1044, which authorizes legal assistance to specified beneficiaries on an as-resources-permit basis; 10 U.S.C. § 1044a, which authorizes certain military personnel to act as notaries public; 10 U.S.C. § 1044b, which establishes the legal effect of military powers of attorney; 10 U.S.C. § 1044c, which establishes the legal effect of military advance medical directives; 10 U.S.C. § 1044d, which defines the requirements for military testamentary instruments and establishes their legal effect; 10 U.S.C. § 1044e, which establishes Special Victims' Counsel; and 10 U.S.C. § 1565b, which provides eligible victims of sexual assault access to legal assistance services. It applies to Regular Air Force (RegAF) units at all levels and Air Force Reserve (AFR) and Air National Guard (ANG) units, except where otherwise noted. This AFI may be supplemented at any level, but all supplements that directly implement this instruction must be routed to the Air Force Legal Operations Agency Community Legal Services Directorate (AFLOA/CLS) for coordination prior to certification and approval. Refer recommended changes and questions about this publication to the Office of Primary Responsibility (OPR) using the AF Form 847, Recommendation for Change of Publication; route AF Forms 847 from the field through the appropriate functional chain of command. This instruction requires the collection and maintenance of information protected by the Privacy Act of 1974 authorized by 10 U.S.C. §§ 8013 and 8037. System of Records Notice (SORN) F051 AFJA G, *Legal Assistance Administration Records*, applies. The authorities to waive wing/unit level requirements in this publication are identified with a Tier ("T-0, T-1, T-2, T-3") number following the compliance statement. See AFI 33-360, *Publications and Forms Management*, for a description of the authorities associated with the Tier numbers. Submit requests for waivers through the chain of command to the appropriate Tier waiver approval authority, or alternately, to the Publication OPR for non-tiered compliance items. Ensure that all records created as a result of processes prescribed in this publication are maintained in accordance with (IAW) Air

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Force Manual (AFMAN) 33-363, *Management of Records*, and disposed of IAW the Records Disposition Schedule (RDS) located in the Air Force Records Information Management System (AFRIMS). The use of the name or mark of any specific manufacturer, commercial product, commodity, or service in this publication does not imply endorsement by the Air Force.

SUMMARY OF CHANGES

This document has been substantially revised and must be completely reviewed. Major changes include: incorporating AFI 33-360 Tier requirements, incorporating Air Force guidance memoranda and special legislation concerning the Special Victims' Counsel (SVC) Program; and clarifying installation Tax Assistance Program requirements.

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Chapter 3

SPECIAL VICTIMS' COUNSEL PROGRAM

3.1. Purpose.

3.1.1. The Air Force provides legal assistance and representation in the military justice process to eligible victims of sexually-related offenses. The program, through its SVCs, serves to enhance victims' understanding of the investigative and military justice processes, protect victims' rights in the military justice process, and empower victims by giving them a voice and removing barriers to their full participation in the process.

3.1.2. As a measurement of compliance for the SVC program goals, the Circuit SSVC shall perform and document periodic (no less than semi-annually) assessments of each SVC location within the SSVC's Circuit using this Instruction and appropriate checklists derived from this Instruction. (T-2) The report will be discussed with the SVC and with the Chief, Special Victims' Counsel Division upon completion. (T-2) Copies of the completed assessments will be sent to AFLOA/CLSV within five working days of completion of the documentation. (T-3) The SSVC

shall ensure each SVC location complies with this Instruction and recommend and ensure implementation of corrective actions when necessary. (T-3)

3.2. Scope.

3.2.1. SVCs are legally authorized to enter into attorney-client relationships with eligible victims of sexually-related offenses. The SVC's primary responsibility is to his or her client and the SVC is bound by professional ethical responsibilities to him or her.

3.2.2. For purposes of Chapter 3, unless otherwise specified, "sexually-related offense" means a violation of the UCMJ Articles 120, 120a, 120b, 120c, or 125 and attempts of those Articles pursuant to Article 80, respectively (including previous versions of the UCMJ, Article 120). See 10 U.S.C. 1044e(g). (T-0)

3.2.3. SVCs provide independent legal representation which might include opposing the government of the United States in order to promote the individual interests of their clients without regard to how their actions might otherwise affect the Air Force as an institution. (T-0)

3.2.4. An SVC's legal representation includes advocacy to relevant entities within the Air Force, representation in courts-martial proceedings, post-trial and appellate review and advocacy or assistance regarding related matters outside the military justice process in accordance with 18 U.S.C. § 205(c).

3.2.5. SVCs and SVPs have the authority to review relevant and necessary records within the control of the government to assist them in the performance of their official duties IAW DoD 5400.11-R, *Department of Defense Privacy Program*. Reliance on the SVC's reasonable explanation as to why a particular Privacy Act or non-Privacy Act record is necessary for them to carry out their official duties is usually sufficient to meet the official use request test under DoD 5400.11-R, *Department of Defense Privacy Program*. Requests should be processed as a functional/official use request. (T-0) Additionally, SVCs and SVPs may assist their clients in making a personal, formal FOIA request for Air Force records. (T-2)

3.2.6. SVCs may represent victims' legal interests in any UCMJ or administrative proceeding and shall receive copies of pleadings, motions, and other documents relating to those matters within a timely manner. (T-0)

3.2.7. SVCs and SVPs may be provided information which, if disclosed to the victim would be harmful to, or adversely affect, the client's interests. Before sharing such information with their clients, SVCs will comply with *Air Force Rules of Professional Conduct* (Attachment 6 of AFI 51-110, *Professional Responsibility Program* (5 August 2014)) and their state bar rules of professional conduct. (T-0)

3.2.8. SVCs and SVPs will comply with the restrictions on publicity in Rule 3.6 of the *Air Force Rules of Professional Conduct*. (T-0)

3.3. SVC and SVP Qualifications.

3.3.1. SVCs must be certified as trial or defense counsel under Article 27(b), UCMJ. (T-0)

3.3.2. SVCs must be designated as a Special Victims' Counsel by The Judge Advocate General of the Air Force.

3.3.3. Judge advocates must be recommended for the SVC position by their current SJA or equivalent through the JAX nomination process. The SJA should consider the unique characteristics necessary to provide victim services when making recommendations to include, but not limited to, court-martial and legal assistance experience, independence, competence, courage, compassion, creativity, personality, and leadership qualities. (T-3)

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3.3.4. Paralegals must have a 5-skill level or higher and a minimum of 12 months military justice experience. The Chief, Special Victims' Counsel Division, AFLOA/CLSV, may waive the 12-month military justice requirement. **(T-3)**

3.3.5. SVPs are Special Duty Category (SPECAT) volunteer positions. The volunteer must meet certain criteria including a favorable recommendation from their current SJA or equivalent. The SJA should consider the unique characteristics necessary to provide victim services when making recommendations to include, but not limited to military justice and legal assistance experience, independence, competence, courage, compassion, creativity, personality, and leadership qualities.

3.3.6. SVCs and SVPs must successfully complete a specialized JAG Corps SVC course as soon as practicable upon assignment selection and must have completed a child representation-specific course before representing children. **(T-0)**

3.3.7. Department of the Air Force civilian attorneys required to perform SVC duties pursuant to their position description may be appointed by the Chief, Special Victims' Counsel Division AFLOA/CLSV, to represent clients on a case-by-case basis provided that they:

3.3.7.1. Have successfully completed a specialized JAG Corps SVC course, and

3.3.7.2. Are certified as competent by The Judge Advocate General.

3.3.8. SVCs and SVPs are assigned to non-deployable billets. **(T-0)**

3.4. **SJA's Support of the SVC Office.** The quality of the SVC's facility and equipment must be equal to or better than that of the base legal office. Clients and others who visit SVC offices will not perceive that the system is operating on a level playing field unless SVC facilities and equipment achieve this standard. SJAs are responsible for assisting SVCs in obtaining and maintaining suitable facilities and equipment.

3.5. Obtaining SVC Services.

3.5.1. Victims of sexually-related offenses shall be informed of the availability of SVC assistance as soon as the victim seeks assistance from a SARC, SAPR Victim Advocate (SAPR VA), FAP staff member, military criminal investigator, victim liaison, Trial Counsel (TC), Defense Counsel (DC), chaplain, mental health, or medical provider. **(T-0)**

3.5.2. Victims, or in a case involving a child, the child and/or the child's non-offending parent or guardian, may contact SVC offices directly to obtain SVC representation. **(T-0)**

3.5.3. SVCs may not receive restricted sexual assault reports as defined by AFI 90-6001, *Sexual Assault Prevention and Response (SAPR) Program*. SVCs may facilitate a victim making a restricted report to individuals designated to receive them. **(T-0)**

3.5.4. Notwithstanding an SVC's inability to receive a "restricted report," communications between an SVC and their client will remain confidential in accordance with the SVC's rules of professional responsibility and Military Rule of Evidence 502.

3.5.5. SVCs representing an individual who files a restricted report shall inform the client of the option to permit a military criminal investigative organization (MCIO), on a confidential basis without affecting the restricted nature of the report, to access certain information that may identify individuals suspected of committing multiple sexual assaults. **(T-0)**

3.5.6. SARCs are the preferred entity through which to submit SVC referrals. To ensure proper eligibility, at a minimum, the following referral information must be provided to the servicing SVC office (see Attachments 4 and 5 for sample referrals):

3.5.6.1. General information about the incident, to include: (1) Date of the incident, (2) Date incident was reported, (3) Date the SVC was requested, (4) Date of next event in investigation or case, and (5) Whether the report is unrestricted or restricted if the victim is an adult (note, if the victim is a minor the referral is required to be unrestricted).

3.5.6.2. Information regarding the organization submitting the referral, to include: (1) Name of person submitting the referral, (2) Rank or title, (3) Official phone number of person submitting the referral, (4) Official e-mail of person submitting the referral, (5) Organization of person submitting the referral (6) Base/location of referral organization, and (7) Defense Sexual Assault Incident Database (DSAID) number.

3.5.6.3. Information regarding the victim of a sexually-related offense:

3.5.6.3.1. For all referral victims: (1) Name, (2) Rank or title, (3) Status (i.e., affiliation in relation to the Air Force and Title 10/32 status), (4) Preferred phone, (5) Preferred e-mail, (6) Preferred method of contact (e.g., phone, e-mail, text message), (7) Preferred time of contact (e.g., mornings, afternoons, evenings), (8) Location or base, organization, and commander's name (if military), (9) If applicable, location and status of expedited transfer, (10) Identification of any physical safety concerns, and (11) Whether a protective order was issued.

3.5.6.3.2. Additional information for minor referral victims: (1) Current non-offending parent/custodian/guardian name, (2) Whether other siblings are potentially victims, and (3) If the minor victim is a military dependent and the parent/custodian/guardian is different than the sponsor, provide the sponsor's rank, name, status, unit, base, commander's name.

3.5.6.4. Alleged perpetrator's information, to include: (1) Full name (if known), (2) Rank or title, (3) Status of the perpetrator in relation to Air Force at time of assault and currently (if known), (4) Unit, branch of service, and base (if known or applicable), and (5) relationship to the victim.

3.5.6.5. Other information, to include: (1) Identification of additional victims, if any, and (2) Brief description of what happened to the victim (refrain from discussing any alleged misconduct of the victim in the description).

3.5.7. The Chief, Special Victims' Counsel Division, AFLOA/CLSV, designee, or Senior Special Victims Counsel (SSVC), details Air Force SVCs to eligible victims for representation.

3.5.8. Requests for specific SVCs will be considered on a case-by-case basis for detailing by AFLOA/CLSV.

3.5.9. The Chief, Special Victims' Counsel Division, AFLOA/CLSV, or designee, details appellate representation to eligible victims.

3.6. Individuals Eligible for Air Force SVC Representation.

3.6.1. Active Duty, provided that:

3.6.1.1. The member is a victim of a sexually-related offense or analogous law under a competent jurisdiction criminalizing the sexually-related offense,

3.6.1.2. The victim filed an unrestricted or restricted report, and

3.6.1.3. The sexually-related offense occurred while the victim was on active duty in the Air Force.

3.6.1.4. The sexual assault occurred while the victim was on active duty (i.e. the assault was not pre-service). **(T-0)**

3.6.2. Air Force Reserve and Air National Guard, provided that:

3.6.2.1. The member is a victim of a sexually-related offense or analogous law under a competent jurisdiction criminalizing the sexually-related offense,

3.6.2.2. The victim filed an unrestricted or restricted report, and

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3.6.2.3. The circumstances of the alleged sexually-related offense have a nexus to the victim's readiness to mobilize or deploy. **(T-0)**

3.6.2.4. The sexual assault occurred while the victim was on active duty (i.e. the assault was not pre-service).

3.6.2.5. Air National Guard members will be referred to the National Guard SVC Program. **(T-3)**

3.6.3. Air Force retirees, provided that:

3.6.3.1. The retiree is a victim of a sexually-related offense,

3.6.3.2. The victim filed an unrestricted or restricted report,

3.6.3.3. The alleged perpetrator was at the time of the offense and currently is subject to the UCMJ, and

3.6.3.4. The victim is receiving or entitled to retired, retainer, or equivalent pay and former members of reserve components entitled to retired pay under 10 U.S.C. § 12731. Individuals eligible under this provision include members and former members receiving retired pay as a result of retirement due to permanent disability or placement on the temporary disability retired list. **(T-0)**

3.6.4. Adult dependents of Air Force Active Duty, Air Force Reserve, Air National Guard, Air Force retirees, and civilian employees of the Department of Defense (excluding Non-Appropriated Fund personnel and Air Reserve Technicians) provided that:

3.6.4.1. The individual is a victim of a sexually-related offense,

3.6.4.2. The victim filed an unrestricted or restricted report,

3.6.4.3. The alleged perpetrator was at the time of the offense and currently is subject to the UCMJ, and

3.6.4.4. The victim has a DoD identification card or qualifies as a dependent under AFI 36-3026, *Identification Cards for Members of the Uniformed Services, their Eligible Family Members, and Other Eligible Personnel*. **(T-0)**

3.6.5. Minor dependents of Air Force Active Duty, Air Force Reserve, Air National Guard, and Air Force retirees provided that:

3.6.5.1. The individual is a victim of a sexually-related offense,

3.6.5.2. The victim filed an unrestricted report,

3.6.5.3. The alleged perpetrator was at the time of the offense and currently is subject to the UCMJ, and

3.6.5.4. The victim has a DoD identification card or qualifies as a dependent under AFI 36-3026, *Identification Cards for Members of the Uniformed Services, their Eligible Family Members, and Other Eligible Personnel*. **(T-0)**

3.6.6. Officers of the Commissioned Corps of the Public Health Service provided that:

3.6.6.1. The individual is a victim of a sexually-related offense,

3.6.6.2. The victim filed an unrestricted or restricted report,

3.6.6.3. The alleged perpetrator was at the time of the offense and currently is subject to the UCMJ, and

3.6.6.4. The victim is on active duty or entitled to retired or equivalent pay. **(T-0)**

3.6.7. Entry-level Regular Air Force, Air Force Reserve, and Air National Guard members provided that:

3.6.7.1. The individual is a victim of a sexually-related offense, or the victim is alleged to have been involved in an unprofessional relationship, as defined by Air Education and Training

Command Instruction 36-2909, *Recruiting, Education and Training Standards of Conduct*, that involves conduct of a sexual nature with basic military training or technical training faculty or staff,

3.6.7.2. The victim filed an unrestricted or restricted report, and

3.6.7.3. The alleged perpetrator was at the time of the offense and currently is subject to the UCMJ. **(T-0)**

3.6.8. Eligible members and dependents from other Services. Anyone eligible for an SVC or Victims' Legal Counsel (VLC) from another Service (members, their dependents, those entitled to retired or retainer pay, or civilians deployed OCONUS) will be referred to their respective Service branch's SVC or VLC Program for representation. An Air Force SVC may be detailed if the other Service is unable to provide representation. **(T-3)** The Chief, Special Victims' Counsel Division, AFLOA/CLSV, or designee, after notification of the request for representation, will coordinate the detailing of an SVC/VLC with the Program Managers of the other Service. **(T-3)**

3.6.9. SVC services are subject to availability of staff resources and capabilities.

3.7. Extraordinary Circumstances Request (ECR) for SVC Representation.

3.7.1. An SVC may be detailed to persons not specifically identified above as eligible. Extraordinary Circumstances Request (ECR) for SVC Representation may be granted on an individual basis consistent with 10 U.S.C. §§ 1044, 1044e, and 1565b. **(T-0)** Threshold requirements include:

3.7.2.1. The individual is a victim of a sexually-related offense,

3.7.2.2. The alleged perpetrator was at the time of the offense and currently is subject to the UCMJ, and

3.7.2.3. The victim filed an unrestricted or restricted report if an adult, or

3.7.2.4. The victim filed an unrestricted report if a minor. **(T-0)**

3.7.3. Factors to be evaluated when considering an ECR for SVC Representation include:

3.7.3.1. Whether the perpetrator was an Air Force member;

3.7.3.2. Whether the type of service requested is within the SVC scope of services;

3.7.3.3. Whether the victim has had or will have an active and ongoing participation in an Air Force investigation or the military justice process;

3.7.3.4. Whether the statute of limitations is a bar to prosecution;

3.7.3.5. Whether the alleged sexually-related offense could be considered an abuse of authority;

3.7.3.6. If the case involves multiple victims, whether the other victims are eligible for and have obtained SVC services;

3.7.3.7. If the victim was an active duty Air Force member and has subsequently separated, whether the victim made a restricted report before separation;

3.7.3.8. If the victim is no longer a dependent of an Active Duty Air Force member, whether the former dependent made an unrestricted report prior to termination of the Active Duty Air Force dependent status; and

3.7.3.9. Whether other special circumstances support detailing an SVC. **(T-0)**

3.7.4. ECR requests will be submitted by a Senior Special Victims' Counsel to the Chief, Special Victims' Counsel Division, AFLOA/CLSV. If approved, an SVC will be assigned. If denied, the ECR will be appealed automatically to the Chief, AFLOA/CLS Director. If approved, an SVC will be assigned. If denied, the ECR will be appealed automatically to the AFLOA commander. In the absence of the AFLOA commander, the AFLOA Vice Commander will act

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on the ECR. In the absence of both the AFLOA commander and vice commander, the Deputy Judge Advocate General (DJAG) will take final action. The decision by the AFLOA commander, or the Vice Commander or DJAG in the commander's absence is final. **(T-0)**

3.7.5. AFLOA/CLSV will notify the requesting office, as well as the servicing Staff Judge Advocate, of the ECR decision. This responsibility may be delegated no lower than an SSVC. **(T-0)**

3.7.6. AFLOA/CLSV will maintain an electronic copy of all decisions on ECRs for SVC representation, which will include a summary of the facts, analysis, any coordination, and a final decision. **(T-0)**

3.7.6. SVC services are subject to availability of staff resources and capabilities.

3.8. Contact with the Represented Victim.

3.8.1. MCIOs, law enforcement agencies, investigating officers, TCs, military DC, civilian defense counsel, and their support staffs must obtain consent from the SVC prior to communicating with a represented victim. **(T-0)**

3.8.2. In a case with concurrent jurisdiction, prior to referring charges, the Special Court-Martial Convening Authority (SPCMCA) SJA will inform victims of sexually-related offenses of their ability to recommend a preference for adjudicating the sexually-related offenses in a civilian or military court IAW AFI 51-201, *Administration of Military Justice* (6 June 2013), para 7.11.9 and figure 7.5. For victims represented by an SVC, the notification and preference request will be provided to the SVC and the victim. If a victim prefers a civilian prosecution, the SVC will notify the convening authority and the convening authority's SJA of this preference. The convening authority's SJA will ensure that the civilian authority is notified of the victim's preference and ensure that the victim is notified of the civilian authority's decision. **(T-0)**

3.9. Scope of SVC Services Provided for Adult Victims. The SVC will execute a Scope of Representation memorandum with the client explaining the areas in which the SVC can provide legal representation and advice. At a minimum, SVCs are authorized to provide legal assistance, consultation, or information on the following matters:

3.9.1. Entities involved with the representation of a victim of a sexually-related offense, to include but not limited to:

3.9.1.1. VWAP,

3.9.1.2. SARC,

3.9.1.3. FAP,

3.9.1.4. Medical or mental health,

3.9.1.5. Chaplain,

3.9.1.6. MCIO,

3.9.1.7. Military justice entities,

3.9.1.8. Civilian victim support agencies,

3.9.1.9. Air Force personnel entity (for personnel actions),

3.9.1.10. Any administrative board or hearing where the victim has an interest,

3.9.1.11. Military Equal Opportunity,

3.9.1.12. Inspector General complaints

3.9.1.13. Congressional complaints, and

3.9.1.14. Retaliation, ostracism and maltreatment.

3.9.2. Collateral misconduct. **(T-0)**

3.9.2.1. Collateral misconduct means misconduct allegedly committed by a victim of a sexually-related offense while on active duty in the Air Force and that misconduct has a direct nexus to the sexually-related offense.

3.9.2.2. For those victims entitled to services of an Area Defense Counsel (ADC), the SVC will advise the victim of his or her right to seek assistance from an ADC. **(T-0)**

3.9.2.2.1. In the event a victim of a sexually-related offense indicates a desire to meet with an ADC, the SVC will contact the servicing Senior Defense Counsel (SDC) or AFLOA/JAJD to request an ADC be detailed to assist the victim as needed. **(T-3)** In these circumstances the ADC will serve as the lead counsel for collateral misconduct committed by the victim. **(T-3)**

3.9.2.2.2. The victim may choose representation by the SVC in lieu of the ADC for collateral misconduct that result in adverse administrative action. **(T-0)**

3.9.2.2.3. In cases where the collateral misconduct may result in court-martial, if the victim requests SVC representation for this collateral misconduct an individual military defense counsel (IMDC) request should be processed through AFLOA/JAJD for detailing. **(T-3)**

3.9.3. Crime Victims' Rights. SVCs may provide representation, consultation, and advocacy concerning crime victims' rights as outlined in 10 U.S.C. § 806b, UCMJ, VWAP services and rights delineated in AFI 51-201, *Administration of Military Justice* (6 June 2013), para. 7.11, and any additional rights provided by federal law. **(T-0)**

3.9.4. The military justice process. This includes, but is not limited to:

3.9.4.1. The Government's authority to compel cooperation and testimony, the victim's responsibility to testify, and other duties to the court; **(T-0)**

3.9.4.2. Legal representation of the client at any proceeding including, but not limited to, interviews in connection with the reporting, military investigation, and military prosecution of the alleged sexually-related offense; **(T-0)**

3.9.4.3. Asserting and protecting the victim's evidentiary privileges as listed in the Military Rules of Evidence in trial and appellate courts; and **(T-0)**

3.9.4.4. Understanding the availability of, and obtaining any protections offered by, military protective orders. **(T-0)**

3.9.5. Legal assistance. This includes, but is not limited to:

3.9.5.1. IG Complaints, Equal Opportunity Complaints, Complaints of Wrong under Article 138, Claims for Redress under Article 139, Congressional Complaints, or other similar matters with a nexus to the sexual assault IAW 18 U.S.C. § 205(c); **(T-0)**

3.9.5.2. Military and veterans' benefits eligibility and requirements, such as transitional compensation benefits found in 10 U.S.C. § 1059 and other state and federal victims' compensation programs; and **(T-0)**

3.9.5.3. Availability of review of a client's administrative separation action to the General Court-Martial Convening Authority (GCMCA) who serves as the separation authority following an unrestricted report of a sexual assault. **(T-0)**

3.9.6. Limited civilian actions. This includes:

3.9.6.1. Potential for civil litigation against parties other than the DoD;

3.9.6.2. Personal, civil legal affairs in accordance with 10 U.S.C. § 1044; and

3.9.6.3. Understanding the availability of, and obtaining any protections offered by, civilian protective or restraining orders. **(T-0)**

3.9.7. Advocacy to Air Force and DoD Agencies. SVCs may advocate a victim's interests to any Air Force or DoD agency including, but not limited to, commanders, convening authorities, the

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SJA, TC, the accused's MDC IAW the Manual for Courts-Martial (MCM), federal law or court order IAW 18 U.S.C. § 205(c). **(T-0)**

3.9.8. Advocacy to Civilian Agencies. Within the limitations of the Air Force and applicable State Rules of Professional Responsibility, SVCs may advocate a victim's interests to civilian prosecutors, law enforcement agencies, and other civilian and government agencies where there is a nexus to the client's status as a victim. This does not provide an SVC the authority to represent a victim at any civilian proceeding or investigative interview. **(T-0)**

3.9.9. Integrated Disability Evaluation System (IDES). If a client is already represented by the SVC and undergoes IDES processing for a matter directly related to the sexually-related offense, the SVC may assist the attorney assigned to represent the victim from the Office of Airmen's Counsel (AFLOA/CLSA), with the client's consent. The SVC should coordinate this with an Office of Airmen's Counsel attorney if one is assigned. Assistance may be provided on a time-available basis. **(T-0)**

3.10. Representation of Child Victims and Victims with Diminished Capacity.

3.10.1. Establishing representation.

3.10.1.1. Children sixteen (16) years of age and older. Victims 16 years of age and older are presumed to have the capacity to independently direct their own representation. **(T-0)**

3.10.1.2. Children under sixteen (16) years of age. Prior to reviewing the Scope of Representation letter with any child victim under the age of 16, the SVC will act in conformity with Rule 1.14 of the *Air Force Rules of Professional Conduct* to determine whether the victim has a diminished capacity preventing him or her from being competent to enter into an attorney-client relationship. **(T-0)** There is no presumption that a child under 16 years of age has diminished capacity. The SVC will assess the child's competency throughout the term of the attorney-client relationship.

3.10.1.3. The SVC should consider all relevant factors in assessing a child's capacity to enter into an attorney-client relationship, including but not limited to the following:

3.10.1.3.1. Ability to understand the nature of a client-directed relationship;

3.10.1.3.2. Ability to understand the scope of the SVC's representation;

3.10.1.3.3. Ability to understand that the SVC will maintain ethical obligations to the child;

3.10.1.3.4. Ability to communicate their direction to the SVC;

3.10.1.3.5. Ability to deliberate and reach conclusions about their own choices;

3.10.1.3.6. Ability to understand possible consequences of their choices; and

3.10.1.3.7. Opinions and input of others, which may include, but are not limited to, family members and multi-disciplinary child abuse team members. **(T-0)**

3.10.1.4. In establishing an attorney-client relationship, the SVC shall review the Scope of Representation letter with the victim after establishing competency and shall execute the agreement. For victims the SVC determines incompetent or of diminished capacity (as required in para. 3.10.1.2) the SVC shall review the Scope of Representation letter with a non-offending parent or guardian, who shall execute the agreement on the victim's behalf. **(T-0)**

3.10.2. The child victim, of any age, of a sexually-related offense is the SVC's client at all times for purposes of the SVC's ethical obligations, regardless of the name appearing as the signatory on the Scope of Representation letter. **(T-0)**

3.10.3. The SVC's duty is to represent the expressed interests of the child client and not what the SVC or any third party believes is in the best interests of the child client. **(T-0)**

3.10.4. An SVC may consider exploring the appointment of a guardian ad litem to protect the child's best interests in extraordinary circumstances. Consideration of any such action shall be coordinated with AFLOA/CLSV and JAX/PR. **(T-0)**

3.11. Scope of SVC Services Provided for Child Victims.

3.11.1. At a minimum, SVCs are authorized to provide legal assistance, consultation, or information on the following matters:

3.11.1.1. Entities involved with the representation of a victim of a sexually-related offense, to include but not limited to:

3.11.1.1.1. VWAP,

3.11.1.1.2. SARC,

3.11.1.1.3. FAP,

3.11.1.1.4. Medical or mental health,

3.11.1.1.5. Chaplain,

3.11.1.1.6. MCIO,

3.11.1.1.7. Military justice entities,

3.11.1.1.8. Civilian victim support agencies,

3.11.1.1.9. Air Force personnel entity (for personnel actions),

3.11.1.1.10. Any administrative board or hearing where the victim has an interest

3.11.1.1.11. Inspector General complaints,

3.11.1.1.12. Congressional complaints, and

3.11.1.1.13. Retaliation, ostracism and maltreatment.

3.11.1.2. Crime Victims' Rights. SVCs may provide representation, consultation, and advocacy concerning crime victims' rights as outlined in 10 U.S.C. § 806b, UCMJ, VWAP services and rights delineated in AFI 51-201, *Administration of Military Justice* (6 June 2013), and any additional rights provided by federal law. **(T-0)**

3.11.1.3. The military justice process. This includes, but is not limited to:

3.11.1.3.1. The Government's authority to compel cooperation and testimony, the victim's responsibility to testify, and other duties to the court; **(T-0)**

3.11.1.3.2. Legal representation of the client at any proceeding including, but not limited to, interviews in connection with the reporting, military investigation, and military prosecution of the alleged sexually-related offense;

3.11.1.3.3. Asserting and protecting the victim's evidentiary privileges as listed in the Military Rules of Evidence in trial and appellate courts; and **(T-0)**

3.11.1.3.4. Understanding the availability of, and obtaining any protections offered by, military protective orders. **(T-0)**

3.11.1.4. Legal assistance. This includes, but is not limited to:

3.11.1.4.1. IG Complaints, Congressional Complaints, or other similar matters with a nexus to the sexual assault IAW 18 U.S.C. § 205(c); **(T-0)**; and

3.11.1.4.2. Military and veteran's benefits eligibility and requirements, such as transitional compensation benefits found in 10 U.S.C. § 1059 and other state and federal victims' compensation programs. **(T-0)**

3.11.1.5. Limited civilian actions. This includes:

3.11.1.5.1. Potential for civil litigation against parties other than the DoD; **(T-0)**

3.11.1.5.2. Personal, civil legal matters in accordance with 10 U.S.C. § 1044;

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3.11.1.5.3. Legal rights afforded to child victims under federal law in the context of a criminal justice proceeding (e.g., 18 U.S.C. § 3509); and **(T-0)**

3.11.1.5.4. Understanding the availability of, and obtaining any protections offered by, civilian protective or restraining orders. **(T-0)**

3.11.1.6. Advocacy to Air Force and DoD Agencies. SVCs may advocate a victim's interests to any Air Force or DoD agency including, but not limited to, commanders, convening authorities, the SJA, TC, the accused's MDC, IAW the MCM, federal law or court order IAW 18 U.S.C. § 205(c). **(T-0)**

3.11.1.7. Advocacy to Civilian Agencies. SVCs may advocate a victim's interests to civilian prosecutors, law enforcement agencies, and other civilian and government agencies where there is a nexus to the client's status as a victim. **(T-0)**

3.11.1.8. Additional services may be provided in exceptional circumstances with the approval of the Chief, Special Victims' Counsel Division, AFLOA/CLSV, or designee.

3.11.2. Matters outside the scope of representation. SVCs shall not represent victims in civilian criminal courts; civil courts of delinquency; custody, neglect, or divorce matters; or in civilian school system or board matters. **(T-0)**

3.11.3. SVCs shall comply with federal and state mandatory reporting laws involving child, elderly, and other abuse and state rules of professional conduct. **(T-0)**

3.11.4. Under 10 U.S.C. § 806b(c), UCMJ, when an Article 6b Representative has been appointed to promote and preserve the Article 6b, UCMJ, crime victim rights of a minor or diminished capacity victim, the SVC cooperates with that representative to enforce the victim's rights, subject to the confidentiality, consent, and representation agreement requirements. Any conflict between the Article 6b Representative and the SVC should immediately be brought to the attention of AFLOA/CLSV. **(T-0)**

3.12. Termination or Declination of SVC Services.

3.12.1. Individuals who enter into an attorney-client relationship with an SVC remain eligible for SVC assistance, limited to matters directly related to the investigation and prosecution of the alleged sexually-related offense, even if they otherwise lose their eligibility for legal assistance. Such assistance will usually terminate as specified in the Representation Agreement signed by the individual and the SVC at the time representation commenced. **(T-0)**

3.12.2. Transfer of counsel due to deployments, expedited transfers, or other circumstances will be made through AFLOA/CLSV, with the consent or request of the victim. **(T-0)**

3.12.3. If the detailed SVC separates or retires from active duty, the SVC is no longer authorized to perform SVC duties under the authority of the United States Air Force. **(T-0)**

3.12.4. An SVC may decline or terminate representation IAW *Air Force Rules of Professional Conduct* or the SVC's state bar Rules of Professional Conduct, the representation requirements as defined by the scope of the representation and after consultation with AFLOA/CLSV. **(T-0)**

3.12.5. When appropriate, SVCs may refer clients to the servicing legal assistance office for traditional legal assistance services unrelated to the sexual-related offense. **(T-3)**

3.12.6. The SVC will execute a termination memorandum with the client after all matters relating to the sexual assault, including potential appellate issues, are completed. This memorandum will terminate the attorney-client relationship between the SVC and client. If the victim seeks additional SVC representation after the memorandum has been executed, the victim must make a new request for an SVC.

3.12.7. If, after termination, the SVC is made aware of a new legal issue or matter that relates back to the prior representation, the SVC may contact the client in order to inform the client of the new matter. If the SVC is no longer assigned to AFLOA/CLSV, the Chief, Special Victims' Counsel Division or designee may appoint a new counsel to contact the former client. The SVC and former client shall then determine if a new scope of representation should be executed to address the new matter.